

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of Massachusetts’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



ISSUE 1: Criminal Provisions

Policy Goal 1.1 The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Massachusetts’s trafficking law could apply to buyers of commercial sex with minors based on the term “causes.” Specifically, Mass. Gen. Laws ch. 265, § 50(a) (Human trafficking – Sexual servitude) states,

Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity,¹ a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272 . . . shall be guilty of the crime of trafficking of persons for sexual servitude

Further, following federal precedent, Mass. Gen. Laws ch. 265, § 50(a) could apply to buyers based on the term “obtains.”² However, to ensure buyers are held accountable as sex trafficking offenders, the trafficking law should be amended to expressly apply to persons who “patronize” a minor for commercial sex.

¹ Mass. Gen. Law ch. 265, § 49 (Definitions) defines “commercial sexual activity” as “any sexual act on account of which anything of value is given, promised to or received by any person.”

² See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is

- 1.1.1 Recommendation: Amend Mass. Gen. Laws ch. 265, § 50(a) (Human trafficking – Sexual servitude) to clarify that buyer conduct is included as a violation of Mass. Gen. Laws ch. 265, § 50.

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Massachusetts law criminalizes both purchasing and soliciting commercial sex with a minor. Pursuant to Mass. Gen. Laws ch. 272, § 53A(c) (Engaging in sexual conduct for fee; payors and payees; penalties),

Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18, shall be punished

Further, Mass. Gen. Laws ch. 265, § 26D(c) (Enticement of child under age 18 to engage in prostitution, human trafficking or commercial sexual activity) states,

Whoever, by electronic communication,³ knowingly entices⁴ a child under the age of 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so, shall be punished

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Massachusetts’s CSEC laws address an array of trafficker conduct. Mass. Gen. Laws ch. 272, § 4A (Promoting child prostitution; mandatory sentence) criminalizes “induc[ing] a minor to become a prostitute, or [to] knowingly aid[] and assist[] in such inducement”

Further, Mass. Gen. Laws ch. 272, § 4B (Deriving support from child prostitution; mandatory sentence) provides,

Whoever lives or derives support or maintenance, in whole or in part, from the earnings or proceeds of prostitution committed by a minor, knowing the same to be earnings or proceeds of prostitution, or shares in such earnings, proceeds or monies, shall be punished

intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

³ Mass. Gen. Laws ch. 265, § 26D(b) defines “electronic communication” to include, “but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electric or photo-optical system.”

⁴ Mass. Gen. Laws ch. 265, § 26D(a) defines “entice” as “to lure, induce, persuade, tempt, incite, solicit, coax or invite.”

Mass. Gen. Laws ch. 265, § 26C(b) (Enticement of children) states,

Any one who entices⁵ a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section . . . 4A [Promoting child prostitution; mandatory sentence], . . . 28 [Matter harmful to minors – Dissemination or possession with intent], . . . 29A [Child pornography – Enticement, solicitation, employment of children], 29B [child pornography – Dissemination], 29C [child pornography—purchase or possession], 35A [Obscene material/acts – Acts with child under sixteen], 53 [Common night walkers, disorderly persons and disturbers of the peace] or 53A [Engaging in sexual conduct for a fee; payors and payees; penalties] of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished

Under Mass. Gen. Laws ch. 265, § 26D(c) (Enticement of child under age 18 to engage in prostitution, human trafficking or commercial sexual activity),

Whoever, by electronic communication,⁶ knowingly entices⁷ a child under the age of 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so, shall be punished

Lastly, pursuant to Mass. Gen. Laws ch. 272, § 2 (Abduction of persons for the purpose of prostitution or unlawful sexual intercourse),

Whoever fraudulently and deceitfully entices or takes away a person from the house of his parent or guardian or elsewhere, for the purpose of prostitution or for the purpose of unlawful sexual intercourse, and whoever aids and assists in such abduction for such purpose, shall be punished

Policy Goal 1.4 Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Massachusetts law does not expressly prohibit a mistake of age defense in prosecutions for child sex trafficking and CSEC.

- 1.4.1 Recommendation: Prohibit a mistake of age defense in all cases involving child sex trafficking and CSEC.

Policy Goal 1.5 Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Massachusetts’s criminal attempt statute, Mass. Gen. Laws ch. 274, § 6 (Attempt), could provide prosecutors with an alternative avenue to prosecute those cases. Mass. Gen. Laws ch. 274, § 6 states, “Whoever attempts to commit a crime by doing any act toward its commission, but fails in its perpetration, or is intercepted or prevented in its perpetration, shall, except as otherwise provided, be punished” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense if the

⁵ Mass. Gen. Law ch. 265, § 26C(a) defines “entice” as “to lure, induce, persuade, tempt, incite, solicit, coax or invite.”

⁶ See *supra* note 3 for the definition of “electronic communication.”

⁷ See *supra* note 4 for the definition of “entice.”

offender committed an act in furtherance of child sex trafficking but was prevented from perpetrating the offense since the intended victim was a law enforcement decoy rather than an actual minor.

Policy Goal 1.6 The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Massachusetts's trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme. Specifically, Mass. Gen. Laws ch. 265, § 50 (Human trafficking – Sexual servitude) provides,

(a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of the crime of trafficking of persons for sexual servitude

(c) A business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000.

(d) . . . Any business entity that knowingly aids or is a joint venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under this section.

Policy Goal 1.7 State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Massachusetts law levies financial penalties, including fines and asset forfeiture, on sex trafficking and CSEC offenders and directs those financial penalties to the Victim of Human Trafficking Trust Fund established under Mass. Gen. Laws ch. 10, § 66A (Victims of human trafficking trust fund), which states,

There shall be established and set up on the books of the commonwealth a separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of proceeds of assets seized and forfeited pursuant to sections 55 [Human trafficking – Monies to be directed to victim restitution] and 56 [Human trafficking – Property subject to forfeiture] of chapter 265 and fines and assessments collected pursuant to sections 50 [Human trafficking – Sexual servitude], 51 [Human trafficking – Forced services] and 54 [Human trafficking – Fines to be directed to victims of human trafficking trust fund] of said chapter 265 and section 107 of chapter 272 [Fines to be directed to victims of human trafficking trust fund], together with any interest or earnings accrued on such monies through investment or deposit The board shall award and administer grants from the fund, without further appropriation, to public, private non-profit or community-based programs in the commonwealth to provide services to victims of offenses under said sections 50 and 51 of said chapter 265

Regarding fines, Mass. Gen. Laws ch. 265, § 54 (Human trafficking – Fines to be directed to victims of human trafficking trust fund) and Mass. Gen. Laws ch. 272, § 107 (Fines directed to victims of human trafficking trust fund) direct the criminal fines paid by certain sex trafficking and CSEC offenders to the Victims of Human Trafficking Trust Fund. Mass. Gen. Laws ch. 265, § 54 states,

The court shall transmit fines collected pursuant to subsection (c) and subsection (d) of section 26D [Enticement of children to engage in prostitution or commercial sexual activity] and sections 50 [Human trafficking – Sexual servitude] and 51 [Human trafficking – Forced services] to the state treasurer. The treasurer shall deposit such fines into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10 [Victims of human trafficking trust fund].

Similarly, under Mass. Gen. Laws ch. 272, § 107,

The court shall transmit fines collected pursuant to section 8 and subsection (b) and subsection (c) of section 53A [Engaging in sexual conduct for fee; payors and payees; penalties] to the state treasurer. The treasurer shall deposit such fines into the Victims of Human Trafficking Trust Fund established pursuant to section 66A of chapter 10.

In addition, state asset forfeiture laws direct a percentage of a sex trafficking offender's forfeited assets to the Victims of Human Trafficking Trust Fund. Pursuant to Mass. Gen. Laws ch. 265, § 56(a)–(e) (Human trafficking—Property subject to forfeiture),

- (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:
- (i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 50 or 51;
 - (ii) all books, records and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 50 or 51;
 - (iii) all negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all negotiable instruments and securities used or intended to be used to facilitate any violation of section 50 or 51; and
 - (iv) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part to commit or to facilitate any violation of section 50 or 51.
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- (b) Property subject to forfeiture pursuant to clauses (i) to (iv), inclusive, of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under this section.
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- (d) . . . [T]he court shall . . . issue a final order from which the parties shall have a right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as further provided in this section.
- (e) The final order of the court shall be deposited into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

Further, Mass. Gen. Laws ch. 265, § 55 (Human trafficking – Monies to be directed to victim restitution) states,

All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B [Rights of victims and witnesses of crime].



ISSUE 2: Identification of & Response to Victims

Policy Goal 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Mass. Gen. Laws ch. 265, § 50(a) (Human trafficking – Sexual servitude) can apply directly to buyers of commercial sex with minors based on the term “causes,”⁸ meaning a buyer can be charged regardless of whether a trafficker is involved or identified. Accordingly, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

Policy Goal 2.2 State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Massachusetts law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Policy Goal 2.3 State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Massachusetts law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.4 State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Massachusetts law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

⁸ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Mass. Gen. Laws ch. 265, § 50.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses.

Massachusetts law fails to prohibit the criminalization of minors for prostitution offenses. Specifically, the core prostitution statute, Mass. Gen. Laws ch. 272, § 53A(a) (Engaging in sexual conduct for a fee; payors and payees; penalties), applies equally to minors and adults, stating,

Whoever engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, shall be punished by imprisonment in the house of correction for not more than 1 year or by a fine of not more than \$500, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

Similarly, Mass. Gen. Laws ch. 272, § 53(a) (Penalty for certain offenses) fails to distinguish between minors and adults in criminalizing conduct amounting to loitering; it provides,

Common night walkers, common street walkers, both male and female, person who with offensive and disorderly acts or language accost or annoy another person, lewd, wanton and lascivious persons in speech or behavior, keepers of noisy and disorderly houses, and persons guilty of indecent exposure shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or by a fine of not more than \$200, or by such fine and imprisonment.

While the prostitution offenses fail to account for age or sex trafficking victimization, Mass. Gen. Laws ch. 265, § 57 (Human trafficking – Victims accused of common night walking or street walking – Affirmative defense) provides an affirmative defense in a prosecution for prostitution offenses, stating,

In any prosecution or juvenile delinquency proceeding of a person who is a human trafficking victim, as defined by section 20M of chapter 233, it shall be an affirmative defense to charges of engaging in common night walking or common streetwalking in violation of section 53 of chapter 272 and to charges of violating section 26 or 53A of said chapter 272 that, while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have been commenced.

Consequently, while child and youth survivors of trafficking may raise an affirmative defense, Massachusetts law does not protect against arrest, detention, charges, or prosecution for minors engaged in conduct in violation of the prostitution laws.

2.5.1 Recommendation: Enact a law prohibiting the criminalization of minors for prostitution offenses.

Policy Goal 2.6 State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Massachusetts law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Massachusetts law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

2.7.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Policy Goal 2.8 State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Massachusetts law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.9 Juvenile court jurisdiction aligns with international human rights standards.

Massachusetts law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Massachusetts law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute establishes a minimum age of 12 years for purposes of juvenile court jurisdiction, automatically transfers minors older than 13 years of age charged with certain offenses to criminal court, and allows, at the prosecutor’s discretion, direct file in certain cases involving minors older than 13 years of age.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	12; “Delinquent child” is defined as, “a child between 12 and 18 years of age who commits any offense against a law of the commonwealth”	17	Yes. Minors: (1) 14+ years of age charged with an offense that, if committed by an adult, would be punishable by imprisonment <i>and</i> : (a) has previously been incarcerated; (b) has committed an offense involving serious bodily harm; or (c)	No.	No.

			has violated certain criminal offenses.		
Relevant Statute(s)	Mass. Gen. Laws ch. 119 § 52 (Delinquency – Determination – Definitions)	Mass. Gen. Laws ch. 119 § 52 (Delinquency – Determination – Definitions)	Mass. Gen. Laws ch. 119 § 52 (Delinquency – Determination – Definitions); Mass. Gen. Laws ch. 119 § 74 (Delinquency – Procedure where youth commits offense prior to eighteenth birthday)	N/A	N/A

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) do not establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; and (2) allows minors older than 13 years of age to be subjected to automatic transfers and direct file.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

While Massachusetts law does not define abuse to include child sex trafficking, it defines “sexually exploited child” to include child sex trafficking and commercial sexual exploitation of children and clearly establishes the duty of the Department of Children and Families to provide a specialized child welfare response to child victims of human trafficking and commercial sexual exploitation of children. Pursuant to Mass. Gen. § 39K(a) (Sexually exploited children – Child welfare services),

Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) provide appropriate services⁹ to a child reasonably believed to be a sexually exploited child in order to safeguard the child’s welfare.

⁹ Mass. Gen. Laws ch. 119, § 21 (Definitions Applicable to §§ 21 to 55H) defines “appropriate services” as follows:

[T]he assessment, planning and care provided by a state agency or nongovernmental organization or entity, through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family-based foster care or the community, including food, clothing, medical care, counseling and appropriate crisis intervention services, provided: (i) that such agency, organization or entity has expertise in providing services to sexually exploited children or children who are otherwise human trafficking victims; and (ii) that such services are provided in accordance with such regulations that the department of children and families may adopt or the policies of such department.

Additionally, Mass. Gen. Laws ch. 119, § 21 (Definitions Applicable to §§ 21 to 55H) provides,

As used in sections 21 to 51H, inclusive, the following words shall have the following meanings, unless the context clearly otherwise requires:

.....

“Sexually exploited child”, any person under the age of 18 who has been subjected to sexual exploitation because such person:

- (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
- (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
- (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or
- (4) engages in common night walking or common streetwalking under section 53 of chapter 272.

Policy Goal 2.11 State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

Massachusetts allows for a child welfare response to non-familial child sex trafficking cases that does not hinge on caregiver fault and provides a trafficking-specific process for child sex trafficking victims to access services through child welfare without having to enter the dependency process. Pursuant to Mass. Gen. Laws ch. 119, § 39K(b) (Sexually exploited children – Child welfare services), “The services that shall be provided under this section¹⁰ shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person.”

However, Mass. Gen. Laws ch. 119, § 39K(a) also states, “If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24,”¹¹ potentially subjecting the child and the child’s parents to the coercive intervention of the court, which could unnecessarily involve non-offending parents in the child welfare system.

¹⁰ See *supra* Policy Goal 2.10 for the services to be provided.

¹¹ Mass. Gen. Laws ch. 119, § 24 (Commitment – Divisions of juvenile court department; powers and duties) provides in part,

A person may petition under oath the juvenile court alleging on behalf of a child within its jurisdiction that the child: (a) is without necessary and proper physical or educational care and discipline; (b) is growing up under conditions or circumstances damaging to the child’s sound character development; (c) lacks proper attention of the parent, guardian with care and custody or custodian; or (d) has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention. The court may issue a precept to bring the child before the court, and shall issue a notice to the department and summonses to both parents of the child to show cause why the child should not be committed to the custody of the department or why any other appropriate order should not be made



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Massachusetts law provides child sex trafficking victims with access to specialized services through a non-punitive system. After receiving a 51A report,¹² Mass. Gen. Laws ch. 119, § 51B (Duties of department as to child abuse reports) requires the Department of Children and Families to investigate cases of sexual exploitation,¹³ including child sex trafficking.¹⁴ Under Mass. Gen. Laws ch. 119, § 39K(a)–(d) (Sexually exploited children – Child welfare services), a specialized process is available for children identified as sexually exploited; it states,

(a) Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law

¹² Mass. Gen. Laws ch. 119, § 21 (Definitions applicable to Secs. 21 to 51H) defines “51A report” as “a report filed with the department under section 51A that details suspected child abuse or neglect.”

Further Mass. Gen. Laws ch. 119, § 51A(a) (Abuse and neglect – Mandated reporter – Responsibilities) provides,

A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child’s health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

¹³ Mass. Gen. Laws ch. 119, § 21 defines “sexually exploited child” as follows:

[A]ny person under the age of 18 who has been subjected to sexual exploitation because such person:

- (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
- (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
- (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or
- (4) engages in common night walking or common streetwalking under section 53 of chapter 272.

¹⁴ Pursuant to Mass. Gen. Laws ch. 119, 51B(a),

Upon receipt of a report filed under section 51A, the department shall investigate the suspected child abuse or neglect, provide a written evaluation of the household of the child, including the parents and home environment and make a written determination relative to the safety of and risk posed to the child and whether the suspected child abuse or neglect is substantiated. The department shall immediately report to the district attorney and local law enforcement authorities, a sexually exploited child or a child who is otherwise a human trafficking victim, regardless of whether the child is living with a parent, guardian or other caretaker.

enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child's welfare. If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24 [Commitment – Divisions of juvenile court department; Powers and duties]. Sexually exploited children shall have access to an advocate.¹⁵ The advocate or a member of the multidisciplinary service team established under section 51D shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court.

(b) The services that shall be provided under this section shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person.

(c) In determining the need for and capacity of the services that may be provided under this section, the department of children and families shall recognize that sexually exploited youth have separate and distinct service needs according to gender and appropriate services shall be made available while ensuring that an appropriate continuum of services exists.

(d) The commissioner of the department may, subject to appropriation, contract with nongovernmental organizations or entities with experience working with sexually exploited children to train law enforcement officials likely to encounter sexually exploited children in the course of their law enforcement duties. The training shall include, but not be limited to, awareness and compliance with the provisions of this section, identification of, access to, and the provision of services for sexually-exploited children and any other services the department deems necessary.

Although services may be accessed on a voluntary basis under Mass. Gen. Laws ch. 119, § 39K, if the child chooses not to participate in services, the Department of Children and Families may file a care and protection petition, which can force the family to comply or initiate removal proceedings. Mass. Gen. Laws ch. 119, § 24 (Commitment – Divisions of juvenile court department; Powers and duties).

Policy Goal 3.2 State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Massachusetts law requires a multi-disciplinary team response to child sex trafficking cases. Mass. Gen. Laws ch. 119, § 51D (Abuse and neglect – Multi-disciplinary service teams) states in part,

For 51A reports specifically involving a sexually exploited child or a child who is otherwise a human trafficking victim, the multi-disciplinary service team may consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of sexually exploited children or children who are otherwise human trafficking victims including, but not limited to, a police officer, as defined by section 1 of chapter 90C [Definitions], or other person designated by a police chief, as defined in said section 1 of said chapter 90C, an employee of the department of children and families, a representative of the appropriate district attorney, a social service provider, a medical professional or a mental health professional.

The team shall review and monitor the service plan developed by the department under subsection (g) of section 51B [Duties of department as to child abuse reports]. The team shall evaluate the effectiveness of the service plan in protecting the child from further abuse or neglect. The team shall make recommendations regarding amendments to the service plan, the advisability of prosecuting members of

¹⁵ Mass. Gen. Laws ch. 119, § 21 defines “advocate” as “an employee of a governmental or non-governmental organization or entity providing appropriate services, or a similar employee of the department of children and families who has been trained to work and advocate for the needs of sexually exploited children.”

the family, and the possibility of utilizing diversionary alternatives. If the team finds that services required under such plan are not provided to the family, the case shall be referred to the commissioner.

For 51B reports specifically involving a sexually exploited child, the purpose of the multi-disciplinary service team shall be to determine whether the child has been sexually exploited or is otherwise a human trafficking victim and to recommend a plan for services to the department that may include, but shall not be limited to, shelter or placement, mental health and medical care needs and other social services

EXTRA CREDIT



The multi-disciplinary team (MDT) response outlined above extends to cases involving child labor trafficking. Specifically, Mass. Gen. Laws ch. 119, § 51D (Abuse and neglect – Multi-disciplinary service teams) provides for MDT involvement upon receiving a report “involving a sexually exploited child or a child who is otherwise a human trafficking victim.”

Policy Goal 3.3 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Although the Department of Children and Families must provide specialized services to sexually exploited children who are “taken into custody by law enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are . . . [the] defendant . . . ,” Massachusetts law does not required the juvenile justice system to identify and refer child sex trafficking victims to services. Specifically, Mass. Gen. Laws ch. 119, § 39K(a)–(e) (Sexually exploited children – Child welfare services) provides,

(a) Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24 [Commitment – Divisions of juvenile court department; Powers and duties]. Sexually exploited children shall have access to an advocate.¹⁶ The advocate or a member of the multidisciplinary service team established under section 51D shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court.

(b) The services that shall be provided under this section shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person.

(c) In determining the need for and capacity of the services that may be provided under this section, the department of children and families shall recognize that sexually exploited youth have separate and distinct

¹⁶ Mass. Gen. Laws ch. 119, § 21 defines “advocate” as “an employee of a governmental or non-governmental organization or entity providing appropriate services, or a similar employee of the department of children and families who has been trained to work and advocate for the needs of sexually exploited children.”

service needs according to gender and appropriate services shall be made available while ensuring that an appropriate continuum of services exists.

...
(e) The department may apply to the victim and witness assistance board for grants from the Victims of Human Trafficking Trust Fund, established in section 66A of chapter 10, grants from the United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention or any other federal agency, or grants from any other private source to fund the law enforcement training and services for sexually-exploited children.

Further, specialized diversion processes are only available to children charged with a prostitution-related offense. Mass. Gen. Laws ch. 119, § 39L (Sexually exploited children – Safeguarding welfare during criminal proceedings) states,

(a) Before or after arraignment in any juvenile delinquency or criminal proceeding against a sexually exploited child alleging that such juvenile or such defendant violated the prohibition against common night walking or common streetwalking under section 53 of chapter 272 or the provisions of subsection (a) of section 53A of said chapter 272, there shall be a presumption that a care and protection petition on behalf of such child, or a child in need of services petition under section 39E, shall be filed. Any person, including the juvenile, may file a care and protection petition on behalf of such child, including a petition for emergency commitment under section 24, or a parent or a police officer may file a child in need of services petition under section 39E.

(b) The court may appoint a guardian ad litem and shall hold a hearing on such petition. The court may allow a reasonable delay in the proceedings, including any arraignment, to consider the petition. The necessary findings of fact to support the court's decision shall be reduced to writing and made part of the court record.

(c) Upon a motion by a party to the juvenile delinquency or criminal proceeding or by a guardian ad litem, unless the district attorney or the attorney general objects, and upon a finding that a child alleged to be a juvenile delinquent by reason of violating section 53 of chapter 272 or subsection (a) of section 53A of said chapter 272 is a child in need of care and protection or a child in need of services, the court shall, if arraignment has not yet occurred, indefinitely stay arraignment and place the proceeding on file. If the court finds that the child has failed to substantially comply with the requirements of services or that the child's welfare or safety so requires, the court may remove the proceeding from file, arraign the child and restore the delinquency or criminal complaint to the docket for trial or further proceedings in accordance with the regular course of such proceedings. If arraignment has already occurred, unless the district attorney or the attorney general objects, the court shall place the child on pretrial probation under section 87 of chapter 276. If appropriate, the conditions of such probation shall include, but not be limited to, requiring the child to substantially comply with all lawful orders of the court, including orders relating to any care and protection or child in need of services proceeding, and the child shall also comply with the guidance and services of the department or any designated non-governmental service provider. If the child fails to substantially comply with the conditions of probation or if the child's welfare or safety so requires, the court may in its discretion restore the delinquency or criminal complaint to the docket for trial or further proceedings in accordance with the regular course of such proceedings.

- 3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Policy Goal 3.4 State law extends foster care services to older foster youth.

Massachusetts law extends foster care services to youth under 23 years of age. Pursuant to Mass. Gen. Laws ch. 119, § 21 (Definitions Applicable to §§ 21 to 55H), “young adult” is defined as “a person between the ages of 18 and 22.” Mass. Gen. Laws ch. 119, § 23(f) (Foster Care – Instances; Guidelines and Standards; Child Profile Form; Services) extends foster care services to young adults as follows:

The department shall offer to continue its responsibility to any young adult who is under the custody, care, or responsibility of the department including, but not limited to, those persons who meet any of the criteria set forth in 42 USC § 675(8)(B)(iv): (i) for the purposes of specific educational or rehabilitative programs, or (ii) to promote and support that person in fully developing and fulfilling that person's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the department and that person. The department's continued responsibility for such persons is contingent upon the express written consent of the person or their guardian unless: (i) before reaching the age of 18, the person had an intellectual disability and was declared mentally incompetent under clause (3) of subsection (a) while under the responsibility of the department; or (ii) the person is under the responsibility of the department pursuant to section 5-305 of chapter 190B. The purposes and conditions of such responsibility may be reviewed and revised or terminated by either the person or the department; provided, however, that within 90 days before the termination of such responsibility, the department shall provide the person with assistance and support in developing a transition plan which fulfills the requirements of 42 USC § 675(5)(H). If after termination the person requests that the department renew its responsibility therefor, the department shall make every reasonable attempt to provide a program of support which is acceptable to the person and which permits the department to renew its responsibility; provided, however, that the department may require the person to meet 1 of the criteria set forth in 42 USC § 675(8)(B)(iv). If the department renews its responsibility, all other provisions of this subsection shall apply.

Policy Goal 3.5 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Massachusetts state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

- 3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

Policy Goal 3.6 State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The Massachusetts state legislature did not appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

- 3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



ISSUE 4: Access to Justice for Trafficking Survivors

Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

Massachusetts law expressly allows victims of CSEC, but not trafficking, to seek ex parte civil orders of protection against their exploiters. Pursuant to Mass. Gen. Laws ch. 258E, § 3(a) (Filing of complaint),

A person suffering from harassment may file a complaint in the appropriate court requesting protection from such harassment. A person may petition the court under this chapter for an order that the defendant:

- (i) refrain from abusing or harassing the plaintiff, whether the defendant is an adult or minor;
- (ii) refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- (iii) remain away from the plaintiff's household or workplace, whether the defendant is an adult or minor; and
- (iv) pay the plaintiff monetary compensation for the losses suffered as a direct result of the harassment; provided, however, that compensatory damages shall include, but shall not be limited to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged, cost of replacement of locks, medical expenses, cost for obtaining an unlisted phone number and reasonable attorney's fees.

Mass. Gen. Laws ch. 258E, § 1(ii) (Definitions) defines “harassment” as “an act that: (A) by force, threat or duress causes another to involuntarily engage in sexual relations; or (B) constitutes a violation of section . . . 26C . . . of chapter 265” Accordingly, victims of Mass. Gen. Laws ch. 265, § 26C (Enticement of children), one of Massachusetts’s CSEC offenses, may seek civil orders of protection. As noted above, however, this protection is not available to victims of child sex trafficking.

Importantly, Mass. Gen. Laws ch. 258E, § 5 (Temporary Protection Orders – Hearing) allows emergency orders of protection to be granted on an ex parte basis, stating,

Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from harassment, including relief as provided in section 3. If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from harassment and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff not later than 10 court business days after such orders are entered. Notice shall be made by the appropriate law enforcement agency as provided in section 9. If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.

- 4.1.1 Recommendation: Strengthen state law to allow victims of trafficking to obtain ex parte civil orders of protection against their exploiters.

Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Massachusetts's crime victims' compensation laws exempt victims of child sex trafficking and CSEC from some, but not all, ineligibility factors, leaving some commercially sexually exploited children without access to an award.

For purposes of accessing crime victims' compensation, Mass. Gen. Laws ch. 258C, § 1 (Definitions) defines "victim" as follows:

- [A] person who suffers personal physical or psychological injury or death:
 - (a) as a direct result of a crime as defined in this section;
 - (b) as a result of attempting to assist a person against whom a crime was attempted or committed; or
 - (c) as a result of efforts to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence.

"Crime" is defined under Mass. Gen. Laws ch. 258C, § 1 to include the following:

[A]n act committed by a person which, if committed by a mentally competent, criminally responsible adult who has no legal exemption or defense, would constitute a crime. Crime shall apply to an act occurring within the commonwealth, and to an act of terrorism, as defined in 18 USC section 2331, occurring outside the United States or territories against a resident of the commonwealth.

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Mass. Gen. Laws ch. 258C, § 2(c), (e) (Eligibility for compensation; assistance of counsel in claim for compensation),

(c) A claimant shall be eligible for compensation only if such claimant cooperates with law enforcement authorities in the investigation and prosecution of the crime in which the victim was injured or killed unless the claimant demonstrates that he possesses or possessed a reasonable excuse for failing to cooperate.

....

(e) An offender or an accomplice of an offender shall not be eligible to receive compensation with respect to a crime committed by an offender. To the extent that the victim's acts or conduct provoked or contributed to the injuries, the division may reduce or deny an award to the claimant or claimants in accordance with regulations enacted pursuant to section four. In the event of a victim's death by homicide, an award may be reduced except that the costs for appropriate and modest funeral, burial or cremation services shall be paid by the fund.

Notably, Massachusetts law carves out an exception to reporting requirements for all minors; Mass. Gen. Laws ch. 258C, § 2(b) states,

No compensation shall be paid under this chapter unless the claimant demonstrates that the crime was reported to the police or other law enforcement authorities or to an agency or entity obligated by law to report complaints of criminal misconduct to law enforcement authorities. Except in the case where the division finds such report to have been delayed for good cause, such report shall have been made within five days after the occurrence of such crime; provided, however, that a claimant who was a victim under 18 years of age shall not be required to file such report within 5 days.

Accordingly, victims of child sex trafficking and CSEC are exempt from this last eligibility criteria. Because exceptions are not provided for the other ineligibility factors noted above, however, some commercially sexually exploited children may not have access to an award.

4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation.

Policy Goal 4.3

Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Massachusetts law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions but only for certain offenses arising from trafficking victimization. Pursuant to Mass. Gen. Laws ch. 265, § 59 (Human trafficking – Victim participation in crime – Motion to vacate),

(a) At any time after the entry of a judgment of disposition on an indictment or criminal or delinquency complaint for an offense under section 26 [Resorting to restaurants or taverns for immoral purposes], subsection (a) of section 53 [Penalty for certain offenses] or subsection (a) of section 53A [Engaging in sexual conduct for a fee; engaging in sexual conduct with a child under 18 for a fee; penalties] of chapter 272 or under section 34 of chapter 94C [Unlawful possession of particular controlled substances, including heroin and marihuana] for simple possession of a controlled substance, the court in which it was entered shall, upon motion of the defendant, vacate any conviction, adjudication of delinquency or continuance without a finding and permit the defendant to withdraw any plea of guilty, plea of nolo contendere, plea of delinquent or factual admission tendered in association therewith upon a finding by the court of a reasonable probability that the defendant’s participation in the offense was a result of having been a human trafficking victim as defined by section 20M of chapter 233 [Confidential communications between human trafficking victim and victim’s caseworker] or a victim of trafficking in persons under 22 U.S.C. 7102; provided, however, that:

.....

(2) where a child under the age of 18 was adjudicated delinquent for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272, based on allegations of prostitution, there shall be a rebuttable presumption that the child’s participation in the offense was a result of having been a victim of human trafficking or trafficking in persons;

(3) where the conviction, adjudication of delinquency or continuance without a finding was for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272 committed when the defendant was 18 years of age or older, official documentation from any local, state or federal government agency of the defendant’s status as a victim of human trafficking or trafficking in persons at the time of the offense shall create a rebuttable presumption that the defendant’s participation in the offense was a result of having been a victim of human trafficking or trafficking in persons, but shall not be required for granting a motion under this subsection;

.....

(b) Upon vacatur of a conviction, adjudication of delinquency or continuance without a finding, the court shall enter a plea of not guilty. It shall be an affirmative defense to the charges against the defendant that, while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have commenced.

.....

(d) A conviction, adjudication of delinquency or continuance without a finding vacated under this section shall be deemed to have been vacated on the merits.

As noted above, however, vacatur is limited to certain offenses, which fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Policy Goal 4.4 State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Although authorized, restitution is not mandated in child sex trafficking and CSEC cases. Specially, Mass. Gen. Laws ch. 258B, § 3(o) (Rights of victims and witnesses of crime) provides crime victims with the right “to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim’s losses.”¹⁷

4.4.1 Recommendation: Statutorily mandate restitution in child sex trafficking and CSEC cases.

Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Massachusetts law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Mass. Gen. Laws ch. 260, § 4D(a) (Actions by victims of sexual servitude, or forced labor or services) states,

A victim of trafficking of persons for sexual servitude under section 50 of chapter 265 or of trafficking of persons for forced services under section 51 of said chapter 265 may bring a civil action for trafficking of persons for forced labor or services or sexual servitude. The court may award actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages may be awarded on proof of actual damages if the defendant’s acts were willful and malicious.

Mass. Gen. Laws ch. 265, § 50(d) (Human trafficking – Sexual servitude) further provides,

A victim . . . may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under this section.

Similarly, Mass. Gen. Laws ch. 265, § 51 (Human trafficking – Forced services) states,

A victim . . . may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of person for forced labor or services shall be civilly liable for an offense under this section.

Lastly, Mass. Gen. Laws ch. 260, § 4C (Sexual abuse of Minor – Civil action for assault and battery) provides victims of sexual abuse, including victims of sex trafficking and CSEC, with a civil cause of action. Mass. Gen. Law ch. 260, § 4C defines “sexual abuse” to include violations of Mass. Gen. Laws ch. 265, § 50 (Human trafficking – Sexual servitude), Mass. Gen. Laws ch. 272, § 2 (Abduction of persons for the purpose of prostitution or unlawful sexual

¹⁷ Mass. Gen. Laws ch. 265, § 55 (Human trafficking – Monies to be directed to victim restitution) clarifies that restitution may be authorized under Mass. Gen. Laws ch. 258B, § 3 in trafficking cases, stating,

All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 [Human trafficking – Forced services] or 51 [Human trafficking – Sexual servitude] shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B.

intercourse), Mass. Gen. Laws ch. 272, § 4A (Promoting child prostitution; mandatory sentence), and Mass. Gen. Laws ch. 272, § 4B (Deriving support from child prostitution; mandatory sentence).

EXTRA CREDIT



Massachusetts law provides sex trafficked youth with a trafficking-specific civil remedy under Mass. Gen. Laws ch. 260, § 4D, which expressly includes victims of Mass. Gen. Laws ch. 265, § 50, Massachusetts's sex trafficking offense, regardless of their age.



Massachusetts law provides child labor trafficking victims with a trafficking-specific civil remedy under Mass. Gen. Laws ch. 260, § 4D, which expressly includes victims of Mass. Gen. Laws ch. 265, § 51, Massachusetts's labor trafficking offense.

Policy Goal 4.6 Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Child sex trafficking prosecutions may commence at any time; however, prosecutions for other trafficking conduct are subject to a statute of limitation as are civil actions. Mass. Gen. Laws ch. 277, § 63 (Limitation of criminal prosecution) states in part,

An indictment or complaint for an offense set forth in . . . subsection (b) of section 50 of chapter 265 [Human trafficking – Sexual servitude], for conspiracy to commit any of these offenses, as an accessory thereto, or any 1 or more of them may be found and filed at any time after the date of the commission of such offense; but any indictment or complaint found and filed more than 27 years after the date of commission of such offense shall be supported by independent evidence that corroborates the victim's allegation An indictment for an offense set forth in . . . subsection (a) of section 50 of chapter 265, or for conspiracy to commit either of these offenses or as an accessory thereto or any 1 or more of them may be found and filed within 15 years of the date of commission of such offense.

Otherwise, Mass. Gen. Laws ch. 277, § 63 establishes a 6-year statute of limitation for prosecutions of other crimes. However, Mass. Gen. Laws ch. 277, § 63 tolls the running of statutes of limitation in trafficking and CSEC cases involving victims under 16 years of age, stating,

Notwithstanding the first paragraph, if a victim of a crime set forth in section . . . 50 of chapter 265, or section . . . 2 [Abduction of persons for the purpose of prostitution or unlawful sexual intercourse], . . . 4A [Promoting child prostitution; mandatory sentence], 4B [Deriving support from child prostitution; mandatory sentence] . . . of chapter 272 is under the age of 16 at the time the crime is committed, the period of limitation for prosecution shall not commence until the victim has reached the age of 16 or the violation is reported to a law enforcement agency, whichever occurs earlier.

Regarding civil actions, Mass. Gen. Laws ch. 260, § 4D(b)–(e) (Actions by victims of sexual servitude, or forced labor or services) provides,

(b) A civil action for trafficking of persons for forced labor or services or sexual servitude shall be commenced within 3 years of the date on which the human trafficking victim was freed from human trafficking or, if the victim was a child during the commission of the offense, within 3 years after the date the plaintiff attains the age of 18.

(c) If a person entitled to sue is under a disability at the time the cause of action accrues, such that it is impossible or impracticable for such person to bring an action, the time during which the plaintiff is under a disability shall toll the statute until the disability ceases.

(d) In the event that a child plaintiff is under a disability, the failure of the child's guardian ad litem to bring a plaintiff's action within the applicable limitation period shall not prejudice the plaintiff's right to do so after his disability ceases.

(e) A defendant shall be estopped from asserting a defense of the statute of limitations if the expiration of the statute is due to the defendant inducing the plaintiff to delay the filing of the action, preventing the plaintiff from filing the action or threats made by the defendant that caused duress upon the plaintiff.

Further, Mass. Gen. Laws ch. 260, § 4C (Sexual Abuse of Minor – Civil Action for Assault and Battery) states in part,

Actions of tort alleging the defendant sexually abused¹⁸ a minor shall be commenced within 35 years of the acts alleged to have caused an injury or condition or within 7 years of the time the victim discovered or reasonably should have discovered that an emotional or psychological injury or condition was caused by said act, whichever period expires later; provided, however, that the time limit for commencement of an action under this section is tolled for a child until the child reaches eighteen years of age.

Otherwise, Mass. Gen. Laws ch. 260, § 2A (Limitation of three years in certain cases) establishes a 3-year statute of limitations for actions in tort. Notably, both Mass. Gen. Laws ch. 265, § 50(d) (Human trafficking – Sexual servitude) and Mass. Gen. Laws ch. 265, § 51 (Human trafficking – Forced services) allow trafficking victims to “bring an action in tort.” Accordingly, the 3-year statute of limitation provided for under Mass. Gen. Laws ch. 260, § 2A would apply to actions filed under those sections.

4.6.1 Recommendation: Eliminate the civil statute of limitation for all cases involving child sex trafficking.

¹⁸ Mass. Gen. Law ch. 260, § 4C defines “sexual abuse” to include violations of Mass. Gen. Laws ch. 265, § 50 (Human trafficking – Sexual servitude), Mass. Gen. Laws ch. 272, § 2 (Abduction of persons for the purpose of prostitution or unlawful sexual intercourse), Mass. Gen. Laws ch. 272, § 4A (Promoting child prostitution; mandatory sentence), and Mass. Gen. Laws ch. 272, § 4B (Deriving support from child prostitution; mandatory sentence).



ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

Policy Goal 5.1 State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Massachusetts law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

Policy Goal 5.2 State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Massachusetts law allows child sex trafficking victims who are under 15 years of age to testify by an alternative method. Specifically, Mass. Gen. Laws ch. 278, § 16D(b)(1), (2) (Child witness – Alternative procedure for taking testimony) states,

(1) At any time after the issuance of a complaint or indictment alleging an offense punished by any of the statutes listed herein, the court on its own motion or on motion of the proponent of a child witness, and after a hearing, may order the use of a suitable alternative procedure for taking the testimony of the child witness, in proceedings pursuant to said complaint or indictment, provided that the court finds by a preponderance of the evidence at the time of the order that the child witness is likely to suffer psychological or emotional trauma as a result of testifying in open court, as a result of testifying in the presence of the defendant, or as a result of both testifying in open court and testifying in the presence of the defendant¹⁹

(2) An order issued under paragraph (1) shall provide that the testimony of the child witness be recorded on videotape or film to be shown in court at a later time or that the testimony be transmitted to the courtroom by simultaneous electronic means.²⁰

¹⁹ Pursuant to Mass. Gen. Laws ch. 278, § 16D(3), (4),

(3) Testimony taken by an alternative procedure pursuant to an order issued under paragraph (1) shall be taken in the presence of the judge, the prosecutor, defense counsel and such other persons as the court may allow. The defendant shall also have the right to be present unless the court's order under paragraph (1) is based wholly or in part upon a finding that the child witness is likely to suffer trauma as a result of testifying in the presence of the defendant. If the order is based on such a finding, the testimony of the child witness shall not be taken in the presence of the defendant except as provided in paragraph (4).

(4) Testimony taken by an alternative procedure pursuant to an order issued under paragraph (1) shall be taken in a suitable setting outside the courtroom, except that an order based only on a finding that the child witness is likely to suffer trauma as a result of testifying in the presence of the defendant may provide that the testimony be taken in a suitable setting inside the courtroom in a manner so that the child witness is not able to see or hear the defendant.

²⁰ Mass. Gen. Laws ch. 278, § 16D(a) defines "simultaneous electronic means" as "[a]ny device capable of projecting a live visual and aural transmission such as closed-circuit television."

Mass. Gen. Laws ch. 278, § 16D(a) defines “child witness” to include “a person who is under the age of fifteen years and who is alleged to have been a victim of, or a witness to” one of the following”

[A]n alleged violation of section . . . 50 [Human Trafficking – Sexual Servitude] . . . of chapter 265, or section two [Abduction of persons for the purposes of prostitution or unlawful sexual intercourse], . . . four A [Promoting child prostitution; mandatory sentence], four B [Deriving support from child prostitution; mandatory sentence] . . . of chapter two hundred and seventy-two.

Notably, child victims who are 15 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

- 5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

Policy Goal 5.3 Child sex trafficking victims have access to victim protections in the criminal justice system.

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom.	Child sex trafficking victims’ identifying information is protected from disclosure in court records.
Summary	Not statutorily required.	Courts can expedite trials for children and give precedence to the case over others, and court can exclude the public from the room during child witness testimony.	Not statutorily required.
Relevant Statute(s)	None.	Mass. Gen. Laws ch. 278 § 16F (Expedited trial – Sex crimes involving minor victims or witnesses); Mass. Gen. Laws ch. 278 § 16A (Exclusion of public – Trial of certain crimes involving minors under age of eighteen)	None.

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate and their identifying information is protected from disclosure in court records.

Policy Goal 5.4 State law provides for privileged communications between caseworkers and child sex trafficking victims.

Massachusetts law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim’s communications with their caseworker from being disclosed. Under Mass. Gen. Laws ch. 233, § 20M(b) (Confidential communications between human trafficking victim and victim’s caseworker), “A human

trafficking victims' caseworker²¹ shall not disclose any confidential communication²² without the prior written consent of the victim,²³ or the victim's guardian in the case of a child, except as hereinafter provided.”

Notably, this protection is limited in proceedings related to criminal actions but not for civil, legislative, or administrative proceedings. Mass. Gen. Laws ch. 233, § 20M(b) further provides,

Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim, or victim's guardian in the case of a child, to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is contained in the communication before allowing such discovery or the introduction of such evidence.

²¹ Mass. Gen. Laws ch. 233, § 20M(a) defines “human trafficking victims' caseworker” as follows:

[A] person who is employed by or volunteers with a program serving human trafficking victims, who has undergone a minimum of 25 hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a human trafficking victim program, and whose primary purpose is the rendering of advice, counseling or assistance to human trafficking victims.

“Human trafficking victims' program” is defined to include “any refuge, shelter, office, safe house, institution or center established for the purpose of offering assistance to human trafficking victims through crisis intervention, medical, legal or support counseling.”

²² Mass. Gen. Laws ch. 233, § 20M(a) defines “confidential communication” as follows:

[I]nformation transmitted in confidence by and between a victim and a victim's caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term confidential communication shall include all information received by a victim's caseworker which arises out of and in the course of such counseling and assisting including, but not limited to, reports, records, working papers or memoranda.

²³ Mass. Gen. Laws ch. 233, § 20M(a) defines “human trafficking victim” or “victim” as “a person who is subjected to the conduct prohibited under sections 50 [Human trafficking – Sexual servitude] or 51 [Human trafficking – Forced Services] of chapter 265.”

EXTRA CREDIT

18+

Massachusetts law prevents disclosure of confidential communications made between a sex trafficking victim and their caseworker under Mass. Gen. Laws ch. 233, § 20M regardless of the victim's age.

CLT

Massachusetts law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under Mass. Gen. Laws ch. 233, § 20M based on the definition of "victim,"¹ which expressly applies broadly to victims of both sex and labor trafficking.



ISSUE 6: Prevention & Training

Policy Goal 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Massachusetts law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

- 6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

Policy Goal 6.2 State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Massachusetts law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

- 6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Policy Goal 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Massachusetts law authorizes training for law enforcement on issues related to sexually exploited children. Pursuant to Mass. Gen. Laws ch. 119, § 39K(d), (e) (Sexually exploited children – Child welfare services),

(d) The commissioner of the department may, subject to appropriation, contract with nongovernmental organizations or entities with experience working with sexually exploited children to train law enforcement officials likely to encounter sexually exploited children in the course of their law enforcement duties. The training shall include, but not be limited to, awareness and compliance with the provisions of this section, identification of, access to, and the provision of services for sexually-exploited children and any other services the department deems necessary.

(e) The department may apply to the victim and witness assistance board for grants from the Victims of Human Trafficking Trust Fund, established in section 66A of chapter 10, grants from the United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention or any other federal agency, or grants from any other private source to fund the law enforcement training and services for sexually-exploited children.

Resultingly, training regarding child sex trafficking may be, or become, available to law enforcement. However, law enforcement officers are not statutorily mandated to receive such training nor is the training required to be ongoing.

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Policy Goal 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Massachusetts law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Policy Goal 6.5 State law mandates child sex trafficking training for school personnel.

Massachusetts law does not mandate training on child sex trafficking for school personnel.

6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

Policy Goal 6.6 State law mandates child sex trafficking prevention education in schools.

Massachusetts law does not mandate child sex trafficking prevention education in schools.

6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

State Laws Addressing Child Sex Trafficking

1. Mass. Gen. Laws ch. 265, § 50(a)–(c) (Human trafficking – Sexual servitude) states,

(a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity,²⁴ a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.

(c) A business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000.

2. Mass. Gen. Laws ch. 265, § 51(a)–(c) (Human trafficking – Forced services) states,

(a) Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of trafficking of persons for forced services and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for forced services upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.

(c) A business entity that commits trafficking of persons for forced labor services shall be punished by a fine of not more than \$1,000,000.

²⁴ Mass. Gen. Law ch. 265, § 49 (Definitions) defines “commercial sexual activity” as “any sexual act on account of which anything of value is given, promised to or received by any person.”

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Mass. Gen. Laws ch. 272, § 53A(c) (Engaging in sexual conduct for fee; payors and payees; penalties) states,

Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18, shall be punished by imprisonment in the state prison for not more than 10 years, or in the house of correction for not more than 2 and one-half years and by a fine of not less than \$3,000 and not more than \$10,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not; provided, however, that a prosecution commenced under this section shall not be continued without a finding or placed on file.

2. Mass. Gen. Laws ch. 265, § 26C(b) (Enticement of children) states,

Any one who entices²⁵ a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section . . . 4A [Promoting child prostitution; mandatory sentence], . . . 28 [Matter harmful to minors – Dissemination or possession with intent], . . . 29A [Child pornography – Enticement, solicitation, employment of children], 29B [child pornography – Dissemination], 29C [child pornography—purchase or possession], 35A [Obscene material/acts – Acts with child under sixteen], 53 [Common night walkers, disorderly persons and disturbers of the peace] or 53A [Engaging in sexual conduct for a fee; payors and payees; penalties] of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2½ years, or by both imprisonment and a fine of not more than \$5,000.

3. Mass. Gen. Laws ch. 272, § 2 (Abduction of persons for the purpose of prostitution or unlawful sexual intercourse) states,

Whoever fraudulently and deceitfully entices or takes away a person from the house of his parent or guardian or elsewhere, for the purpose of prostitution or for the purpose of unlawful sexual intercourse, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment in jail.

4. Mass. Gen. Laws ch. 272, § 4A (Promoting child prostitution; mandatory sentence) states,

Whoever induces a minor to become a prostitute, or who knowingly aids and assists in such inducement, shall be punished by imprisonment in the state prison for not more than five, nor less than three years, and by a fine of five thousand dollars. The sentence of imprisonment imposed under this section shall not be reduced to less than three years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct or otherwise until he shall have served three years of such sentence. Prosecutions commenced under this section shall not be continued without a finding nor placed on file.

5. Mass. Gen. Laws ch. 272, § 4B (Deriving support from child prostitution; mandatory sentence) states,

²⁵ Mass. Gen. Law ch. 265, § 26C(a) defines “entice” as “to lure, induce, persuade, tempt, incite, solicit, coax or invite.”

Whoever lives or derives support or maintenance, in whole or in part, from the earnings or proceeds of prostitution committed by a minor, knowing the same to be earnings or proceeds of prostitution, or shares in such earnings, proceeds or monies, shall be punished by imprisonment in the state prison for not less than five years and by a fine of five thousand dollars. The sentence imposed under this section shall not be reduced to less than five years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct or otherwise until he shall have served five years of such sentence. Prosecutions commenced under this section shall not be continued without a finding nor placed on file.

6. Mass. Gen. Laws ch. 265, § 26D(c) (Enticement of child under age 18 to engage in prostitution, human trafficking or commercial sexual activity) states,

Whoever, by electronic communication,²⁶ knowingly entices²⁷ a child under the age of 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so, shall be punished by imprisonment in a house of correction for not more than 2½ years or in the state prison for not more than 5 years or by a fine of not less than \$2,500, or by both such fine and imprisonment.

²⁶ Mass. Gen. Laws ch. 265, § 26D(b) defines “electronic communication” to include, “but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electric or photo-optical system.”

²⁷ Mass. Gen. Laws ch. 265, § 26D(a) defines “entice” as “to lure, induce, persuade, tempt, incite, solicit, coax or invite.”