

Massachusetts State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Tier One (green)

Total Points: 10

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 7 Safe Harbor for Minors; 8 Victim Assistance; and 9 Civil Remedy

Categories Still Needed: 6 Posting of a Hotline and 10 Vacating Convictions.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

Ch. 265, §50. Trafficking of persons for sexual servitude; trafficking of persons under 18 years for sexual servitude; trafficking by business entities; penalties; tort actions brought by victims

(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 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.

Category 2: Labor Trafficking Statute

Ch. 265, §51. Trafficking of persons for forced service; victims under 18 years; trafficking by business entities; penalties; tort actions brought by victims

(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.

Category 3(a): Asset Forfeiture

Ch. 265, § 56. Property subject to forfeiture resulting from violations of Secs. 50 or 51; procedure; exceptions; records; preliminary orders for seizure; referral to office of seized property management; homestead exemptions; recording of certificate of fact of final judgment

(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.

No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(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.

Category 3(b): Investigative Tools

Ch. 271A, § 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Criminal enterprise activity”, the commission, attempt to commit or conspiracy to commit or the solicitation, coercion, aiding, abetting or intimidation of another to commit any of the following criminal activities under the laws of the commonwealth or equivalent crimes under the laws of any other jurisdiction:... human trafficking....

“Enterprise”, an entity including any individual, sole proprietorship, partnership, corporation, association, trust or other legal entity and any unchartered union or group of persons associated in fact although not a legally-recognized entity.

“Gaming establishment”, an establishment licensed under chapter 23K.

“Pattern of criminal enterprise activity”, engaging in at least 3 incidents of criminal enterprise activity that have the same or similar pattern, intents, results, accomplices, victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents; provided, however, that at least 1 of the incidents shall have occurred after the effective date of this chapter and the last incident shall have occurred within 5 years of another incident of criminal enterprise activity.

“Unlawful debt”, a debt which was incurred or contracted in an illegal gambling activity or business or which is unenforceable under state or federal law, in whole or in part, as to principal or interest under the law relating to usury.

Category 4(a): Training for Law Enforcement

Ch 119, §39K. Child welfare service needs of sexually exploited children

(d) The commissioner of the department may, subject to appropriation, contract with non-governmental 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.

Category 4(b): Human Trafficking Task Force

2011 Acts 178 § 31

(a) There is hereby established an Anti-Human Trafficking Task Force, co-chaired by the attorney general and the secretary of health and human services or their designees. The task force shall:

- (1) Collect and organize data on the nature and extent of human trafficking in the commonwealth including the harms and consequences to human trafficking victims;
- (2) Identify available federal, state, and local programs and licensing bodies that could provide services, benefits or licenses to human trafficking victims including, but not limited to, health care, mental health, human services, housing or shelter services, education, legal assistance, job training or preparation, interpreting services, English-as-a-second-language classes, voluntary repatriation, and victim's compensation, and examine how to move human trafficking victims quickly through the system in order to provide them with timely services;
- (3) Evaluate approaches to increase public awareness of human trafficking, and offer recommendations for programs and educational and training opportunities for law enforcement and social service providers, including, but not limited to, methods used to identify human trafficking victims including preliminary interviewing and questioning techniques, methods of protecting the special needs of women and child human trafficking victims, developments in state and federal laws regarding human trafficking, and methods to increase effective collaboration between state and local agencies, law enforcement, social service providers and non-governmental organizations;
- (4) Examine collaborative models between government and nongovernmental organizations for protecting human trafficking victims;
- (5) Measure and evaluate the progress of the state in preventing human trafficking, protecting and providing assistance to human trafficking victims, and prosecuting persons engaged in human trafficking;
- (6) Analyze existing state laws and regulations, including the effectiveness of existing victim-witness assistance laws, regulations and services and confidentiality laws, for their adequacy in addressing human trafficking and, if the analysis determines that those statutes are inadequate, recommend revisions to those statutes or the enactment of new statutes that specifically address human trafficking;
- (7) Consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent human trafficking, to protect and assist human trafficking victims, and to prosecute human traffickers; and
- (8) Issue an annual report outlining the task force's findings from paragraph (1) to (7), inclusive.

(b) The office of the attorney general and the executive office of health and human services shall provide staff and support for the task force, including, but not limited to, publication and dissemination of the annual report required by this section and posting the report on their websites, to the extent resources are available.

(c) The task force shall be comprised of the following members or their designees:



- (1) the secretary of the executive office of economic development;
- (2) the colonel of the state police;
- (3) a representative of the Massachusetts police chiefs association;
- (4) A representative of the Massachusetts district attorney's association;
- (5) the commissioner of the Boston police department;
- (6) A representative of the Massachusetts police training committee, formerly the Massachusetts criminal justice training counsel;
- (7) A representative from the Interjurisdictional Anti-Human Trafficking Task Force;
- (8) a representative of the Massachusetts Office of Victim Assistance;
- (9) a representative from the Massachusetts office of the child advocate;
- (10) a representative of the Trafficking Victims Outreach and Services network;
- (11) A representative of the Massachusetts Immigrant and Refugee Advocacy Coalition;
- (12) A representative of Jane Doe, Inc.;
- (13) a representative of the Massachusetts Children's Alliance;
- (14) A representative of a coalition dedicated to prevention of and intervention in the trafficking of children;
- (15) A senator appointed by the senate president;
- (16) A senator appointed by the senate minority leader;
- (17) A representative appointed by the speaker of the house;
- (18) A representative appointed by the house minority leader;
- (19) 2 survivors of human trafficking, one domestic and one international, appointed by the governor;
- (20) 2 human trafficking attorneys, one who works with adults and one who works with children, appointed by the governor;
- (21) 2 human trafficking caseworkers, one who works with adults and one who works with children, appointed by the governor;
- (22) A medical professional appointed by the governor;
- (23) 2 mental health professionals, one who works with adults and one who works with children, appointed by the governor;
- (24) A university researcher with a background in human trafficking appointed by the governor;
- (25) A person with a background in child and runaway services appointed by the governor; and
- (26) A representative from the Massachusetts Commission on the Status of Women appointed by the governor.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

Yes. Ch. 265, §50.

Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor



Ch. 119 §21 Definitions.

"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.

Ch. 119 § 39K. Child welfare service needs of sexually exploited children

(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; 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. Sexually exploited children shall have access to an advocate. The advocate or a member of the multi-disciplinary 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 102 this section, the department of children and families shall recognize that sexually exploited youth 103 have separate and distinct service needs according to gender and appropriate services shall be 104 made available while ensuring that an appropriate continuum of services exists.

(d) The commissioner of the department may, subject to appropriation, contract with non-governmental 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.

(f) The department shall adopt regulations to carry out this section.



Ch. 119 § 39L. Children in violation of prohibition against common night walking or common streetwalking; petition for care and protection; appointment of guardian ad litem; stay of juvenile delinquency or criminal proceedings; failure of child to comply with requirements

(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.

Category 8: Victim Assistance

Ch. 233 §20M. Disclosure of confidential communication regarding human trafficking victim by caseworker

(a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Confidential communication”, information 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.

“Human trafficking victim” or “victim”, a person who is subjected to the conduct prohibited under sections 50 or 51 of chapter 265.

“Human trafficking victims' caseworker,” 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”, 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.

(b) A human trafficking victims' caseworker shall not disclose any confidential communication without the prior written consent of the victim, or the victim's guardian in the case of a child, except as hereinafter provided. 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.

(c) During the initial meeting between a caseworker and victim, the caseworker shall inform the human trafficking victim and any guardian thereof of the confidentiality of communications between a caseworker and victim and the limitations thereto.

Ch. 10 §66A. Victims of Human Trafficking Trust Fund

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 and 56 of chapter 265 and fines and assessments collected pursuant to sections 50, 51 and 54 of said chapter 265, together with any interest or earnings accrued on such monies through investment or deposit. The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34 and 38 of chapter 29 in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of the fund to the victim and witness assistance board, as established in section 4 of chapter 258B, from time to time, at the request of the board. 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.

The board shall file a report detailing the amount of funds collected and expended from the fund, along with a copy of the written criteria used to expend the funds, to the house and senate committees on ways and means not later than August 15 of each calendar year. Administrative



and operational expenses directly attributable to the grants and programs funded by the fund including, but not limited to, the costs of clerical and support personnel, shall not exceed 5 per cent of the total assets of the fund in any 1 fiscal year. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

Category 9: Civil Remedy

Ch. 260, §4D. Civil remedies for victims of trafficking of persons for sexual servitude; damages; time for actions; representation of victim's rights by others

(a) 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.

(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.

(f) Any legal guardian, family member, representative of the human trafficking victim or court appointee may represent the human trafficking victim's rights, in the event the human trafficking victim is deceased or otherwise unable to represent his own interests in court.

Category 10: Vacating Convictions

None.

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.