

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Massachusetts Report Card 2016

Massachusetts's human trafficking law includes sex trafficking of minors without regard to use of force, fraud or coercion. Victims identified as sexually exploited may access specialized services, but they may be denied victim compensation due to ineligibility factors.

Final Score

83.5

Final Grade

B



10

10

21

25

15

15

7.5

10

20

27.5

10

15



Criminalization of Domestic Minor Sex Trafficking

The human trafficking law includes sex trafficking of minors without requiring proof of force, fraud, or coercion used in commission of the offense. CSEC laws include: enticement of a child under 16, abduction for the purpose of prostitution, promoting child prostitution, deriving support from child prostitution, employment of children in child pornography, enticing a minor by electronic communication to engage in prostitution or commercial sexual activity, and engaging in sexual conduct for a fee. Although Massachusetts's prostitution statute does not refer to the human trafficking law, a separate law provides trafficking victims with an affirmative defense to prostitution-related charges. The state enterprise crime law, which includes trafficking and CSEC as predicate offenses, only applies when related to licensed gaming.



Criminal Provisions Addressing Demand

The human trafficking law applies to a buyer who "causes" a minor to engage in commercial sex acts. Engaging in sexual conduct for a fee specifically criminalizes purchasing sex with a minor under 18, and a buyer who entices a child under 16 to commit prostitution faces prosecution for enticement of a child. Enticing a minor by electronic communication makes it a crime when a buyer uses the Internet to commit human trafficking or CSEC offenses, addressing buyers' growing use of the Internet. CSEC and trafficking laws do not prohibit an age mistake defense. Buyers face mandatory asset forfeiture for trafficking convictions. Forfeited monies must be available to pay victim restitution, which a court may order if requested by the victim. Buyers are required to register as sex offenders if convicted of sex trafficking, enticement of a child under 16, enticing a minor by electronic communication to engage in prostitution, human trafficking or commercial sexual activity, or possessing child pornography.



Criminal Provisions for Traffickers

Human trafficking law is punishable by 5 years–life imprisonment, with no opportunity for release before 5 years, and a possible fine up to \$25,000. Arranging sex with a minor for another person is punishable by up to 10 years imprisonment (or 2½ years in the house of correction) and a fine of \$3,000–\$10,000. Deriving support from child prostitution is punishable by a minimum of 5 years imprisonment and promoting child prostitution is punishable by 3–5 years imprisonment, both with fines of \$5,000. Abduction for prostitution is punishable by up to 3 years imprisonment (or one 1 in the house of correction) and/or a fine of up to \$1,000. Enticing a child under 16 is punishable by up to five years imprisonment (or up to 2½ years in the house of correction) and/or a fine up to \$5,000, while use of a child in pornography is punishable by 10–20 years imprisonment and/or a fine of \$10,000–\$50,000. Traffickers who use the Internet to commit sex trafficking or CSEC offenses face prosecution for enticing a minor by electronic communication. Asset forfeiture is mandatory for human trafficking convictions. Forfeited monies must be available to pay victim restitution, which a court may order if requested by the victim. Traffickers convicted of sex trafficking, enticing a minor via electronic communication, exploiting a child through pornography, promoting child prostitution, deriving support from child prostitution, abduction for prostitution, or enticement of a child under 16 must register as sex offenders. Convictions for CSEC crimes are not expressly grounds for terminating a trafficker's parental rights.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Human trafficking–Sexual servitude (ch. 265, § 50)	Felony	5 years–life	Max. \$25,000, or \$1M (business entities)	●
Engaging in sexual conduct for fee with child under 18 (ch. 272, § 53A(b))	Felony	Max. 10 years (state prison) or 2½ years (house of correction)	\$3,000–\$10,000	○
Enticement of a child under 16 to engage in prostitution (ch. 265, § 26C(b))	Felony	Max. 5 years (state prison) or 2½ years (house of correction)	Max. \$5,000	○
Purchasing or Possessing child pornography (ch. 272, § 29C)	Felony	Max. 5 years (state prison) or 2½ years (house of correction)	\$1,000–\$10,000	○

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.



Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Protective provisions are statutorily mandated which require provision of specialized services to all sexually exploited youth. Prostitution laws apply to minors under 18, and juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. While trafficking victims may assert an affirmative defense to prostitution charges in criminal or delinquency proceedings, juvenile sex trafficking victims may still be adjudicated delinquent if they fail to assert the affirmative defense or fail to successfully complete diversion and remain subject to detention. A child requiring assistance is defined to include victims of CSEC and sex trafficking, and child welfare must provide services to all sexually exploited minors. Mandatory reporting requirements clearly apply to commercially sexually exploited children and any minors engaged in prostitution. Once identified as sexually exploited, any person or the department may file a care and protection petition, requiring child protective intervention and specialized services. Victims of CSEC offenses are eligible for crime victims' compensation, but eligibility criteria limit their ability to recover, including the requirement to cooperate with law enforcement unless a reasonable excuse exists for failing to cooperate and to report the crime to law enforcement within five days. The human trafficking law does not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Victim-friendly criminal justice procedures permit CSEC victims under 15 only to testify via closed circuit television. The "rape shield" law, which reduces the trauma of cross-examination for testifying victims, does not extend to CSEC victims. Minors may petition to have their juvenile records sealed, but three years must have elapsed since the minor was released from disposition or adjudicated a delinquent. A victim may request the court to order an offender to pay restitution, and civil remedies are expressly provided for trafficking victims. Monies forfeited by defendants convicted under the trafficking law must be available to pay restitution, and otherwise forfeited property must be deposited into the Victims of Human Trafficking Trust Fund. The statute of limitations for civil tort actions do not begin to run until the victim reaches 18, and are then the later of 3 years after the acts causing the injury or 3 years after the victim should have discovered the injury. Prosecutions for sex trafficking of minors may be brought at any time and other human trafficking prosecutions must be brought within 15 years. CSEC and child pornography offenses have 6 year statutes of limitations that begin to run on the earlier of the victim turning 16 or the crime being reported to law enforcement.



Criminal Justice Tools for Investigation and Prosecution

The development of training for law enforcement working with sexually exploited children, including child sex trafficking victims, is authorized in the law. Massachusetts generally requires two-party consent to audiotape conversations; however, an exception is allowed when a law enforcement officer is a party to the conversation or a person has given law enforcement consent to record a conversation related to certain offenses, including prostitution. Wiretapping is permitted in investigations of offenses involving kidnapping and prostitution in connection with organized crime. The enticement of children law permits the use of a law enforcement decoy in investigations of buyers and traffickers of sex acts with minors and specifically permits the use of the Internet to investigate prostitution or sex trafficking offenses, meaning that a defendant would be prohibited from asserting a defense based on the fact that an actual minor was not involved in the investigation. Massachusetts has a statewide registry to report missing and recovered children.



Criminal Provisions for Facilitators

Facilitators who benefit financially from human trafficking face 5 years to life imprisonment, with no opportunity for release before 5 years, and a possible fine up to \$25,000 under the human trafficking law. Business entities that commit sex trafficking of minors face a fine of up to \$1,000,000. Facilitators of sex trafficking also face liability under CSEC laws. The CSEC crime of aiding in the abduction of persons for the purpose of prostitution is punishable by imprisonment up to 3 years (or up to 1 year in a house of correction) and/or a fine of up to \$1,000. Promoting child prostitution includes knowingly aiding or assisting a minor to become a prostitute and is punishable by a sentence of 3–5 years imprisonment and a fine of \$5,000. Disseminating child pornography is punishable by 10–20 years imprisonment and/or fines the greater of \$10,000–\$50,000 or 3 times "the monetary value of any economic gain derived from" the dissemination of the pornography. Asset forfeiture is mandatory for human trafficking offenses. Additionally, though not mandatory, a victim may request the court to order restitution in the disposition of a case. No laws in Massachusetts address sex tourism.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: www.sharedhope.org.