

PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

MASSACHUSETTS REPORT CARD

With no sex trafficking law or other laws to prosecute the buyers of commercial sex acts with minors specifically, demand is unchecked, as is the growing use of the Internet to recruit or buy sex acts with a minor. Buyers convicted of engaging in sex for a fee are not required to register as sex offenders, no matter the age of the victim.

FINAL SCORE

45

FINAL GRADE

F



2.5
7.5

10.5
25

8
15

4
10

10
27.5

10
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Massachusetts has not enacted a sex trafficking law. The state has several commercial sexual exploitation of children (CSEC) laws that could apply to buyers, traffickers and facilitators, including enticement of children to engage in sexual conduct for a fee or pornography, abduction for the purpose of prostitution, promoting child prostitution, deriving support from child prostitution, employment of children in child pornography, and engaging in sexual conduct for a fee.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited CSEC laws provide a means of prosecuting buyers of commercial sex with minors, but do not carry serious penalties to deter buyers. The crime of engaging in sexual conduct for a fee distinguishes buying sex with a minor under 14 by enhancing penalties, leaving buyers at far less risk to exploit through prostitution minors 14 and older. Furthermore, the general solicitation of prostitution law does not distinguish between soliciting sex acts with an adult versus a minor, permitting the buyers charged under this law to escape any serious consequences even if a minor was solicited. No law criminalizes the use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor, despite this growing trend in sex trafficking minors. CSEC laws are silent on the admissibility of an age mistake defense, leaving open the possibility of a defendant asserting this defense. A court may order a buyer to pay restitution to the victim at sentencing. Buyers convicted of enticement of children under 16 (including for prostitution) or possessing child pornography are required to register as sex offenders. However, buyers convicted of the CSEC offense of engaging in sexual conduct for a fee, even when a minor is involved, are not required to register.

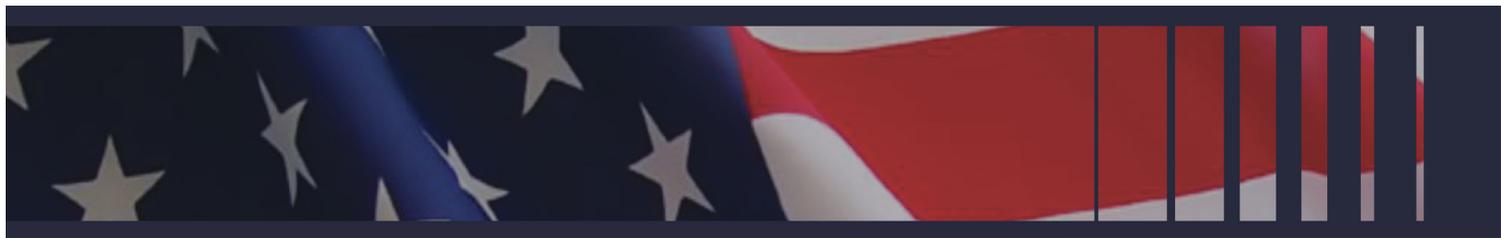
DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Engaging in sexual conduct for fee with child under 14 (ch. 272, § 53A(b))	Felony	Max. 10 years in state prison or 2½ years in a house of correction	n/a	●
Engaging in sexual conduct for fee with person 14 or older (ch. 272, § 53A(b))	Misdemeanor	Max. 1 year in a house of correction	Max. \$500	●
Enticement of children under 16 to engage in sexual conduct for a fee (ch. 265, § 26C(b))	Felony	Max. 5 years in state prison or 2½ years in a house of correction	Max. \$5,000	●
Purchasing or Possessing child pornography (ch. 272, § 29C)	Felony	Max. 5 years in state prison or 2½ years in a house of correction	[or] \$1,000–\$10,000	●

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

CRIMINAL PROVISIONS FOR TRAFFICKERS

In the absence of a state sex trafficking law, traffickers may be prosecuted under several CSEC laws with penalties below those of comparable federal crimes (10 years–life and fine of \$250,000). Arranging sex with a child under 14 for another person is punishable by up to 10 years imprisonment (or 2½ years in the house of correction). Deriving support from child prostitution is punishable by at least 5 years imprisonment and promoting child prostitution is 3–5 years imprisonment, both with fines of \$5,000. Abduction for prostitution is punishable by up to 3 years imprisonment (or one year in the house of correction) and/or a fine of up to \$1,000. Enticing a child under 16 to violate promoting child prostitution or child pornography laws 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 the use of a child in pornography is punishable by 10–20 years imprisonment and/or a fine of \$10,000–\$50,000. Civil forfeiture is available to seize proceeds or instrumentalities of a crime. A court may order a convicted trafficker to pay restitution to the victim and traffickers may face civil liability for injuries sustained by victims of certain CSEC offenses. Traffickers convicted of exploiting a child through pornography, promoting child prostitution, abduction for prostitution, or enticement of children for prostitution are required to register as sex offenders. Convictions for CSEC crimes are not expressly grounds for terminating a trafficker's parental rights, leaving children of traffickers at potential continued risk.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of domestic minor sex trafficking are vulnerable due to gaps in Massachusetts laws. The only offense expressly prohibiting a defense based on the consent of the victim is exploiting a child through child pornography. Prostitution offenses are not limited in application to adults, leaving minors vulnerable to arrest and charge. No protective provisions are statutorily mandated specifically for domestic minor sex trafficking victims, therefore, a victim may receive a variety of responses including a child in need of services determination or delinquency charge. Child abuse and neglect definitions do not expressly include CSEC victims but a caretaker is defined broadly as anyone who “at the time in question” is “entrusted with a degree of responsibility for the child,” making the term potentially broad enough to include a trafficker to allow for child protective intervention. Victims of CSEC offenses are likely eligible for crime victims’ compensation, but some eligibility criteria could hamper 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. 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, but no express civil remedies for damages resulting from CSEC offenses are provided in the law. The statute of limitations for civil tort actions do not begin to run until the victim reaches 18 and are then the later of three years after the acts causing the injury or three years after the time the victim should have discovered the injury was caused by the act. Prosecutions for CSEC and child pornography offenses have six 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 PROSECUTIONS

Training for law enforcement on domestic minor sex trafficking is not mandated. 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. No law in the Massachusetts Code permits the use of the Internet to investigate buyers and traffickers of sex acts with minors. While no law expressly permits the use of a decoy by law enforcement in the investigation of prostitution or sex trafficking, law enforcement may investigate such cases relying on the enticement of children law. Massachusetts has a statewide registry to report missing and recovered children.

CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators of sex trafficking face liability for their actions under several CSEC laws. The CSEC crime of aiding in the abduction of persons for the purpose of prostitution is punishable by imprisonment up to three years (or up to one 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. Civil forfeiture is available to seize proceeds or instrumentalities of a crime. Facilitators face civil liability for victims’ injuries from applicable CSEC offenses and child pornography 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/reportcards.aspx.

