

MASSACHUSETTS

REPORT CARD | 2018

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

86.5

Final Grade

B



10

10

21

25

15

15

7.5

10

21

27.5

12

15

Criminalization of Domestic Minor Sex Trafficking

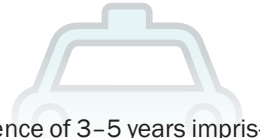
The human trafficking law includes sex trafficking of minors without requiring proof of force, fraud, or coercion used in commission of the offense. State commercial sexual exploitation of children (CSEC) laws include: "engaging in sexual conduct for fee," "enticement of children," "abduction of persons for the purpose of prostitution," "promoting child prostitution," "deriving support from child prostitution," "child pornography," and "enticement of child under age 18." 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 for Demand

The human trafficking law applies to a buyer who "causes" a minor to engage in commercial sex acts. Two CSEC offenses apply to buyers of sex with children: "engaging in sexual conduct for fee" and "enticement of children." Buyers convicted of human trafficking face 5 years–life imprisonment and a fine up to \$25,000, while convictions under the CSEC laws range from a maximum term of 5–10 years imprisonment, and fines between \$2,500–\$10,000. "Enticement of child under 18" criminalizes the use of the Internet to commit human trafficking or CSEC offenses. 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 convicted of sex trafficking, "enticement of children," "enticement of child under age 18" or possessing images of child sexual exploitation (ICSE) are required to register as sex offenders.

Criminal Provisions for Traffickers

The 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 a fine of up to \$1,000. Enticing a child under 16 is punishable by up to 5 years imprisonment (or up to 2½ years in the house of correction) and a fine up to \$5,000, while use of ICSE is punishable by 10–20 years imprisonment and a fine of \$10,000–\$50,000. Traffickers who use the Internet to commit sex trafficking or CSEC offenses face prosecution for "enticement of child under age 18." Forfeited monies must be available to pay victim restitution, which a court may order if requested by the victim. Traffickers convicted of sex trafficking, "enticement of child under age 18," "child pornography," "promoting child prostitution," "deriving support from child prostitution," "abduction of persons for the purpose of prostitution," or "enticement of children" must register as sex offenders. Convictions for CSEC crimes are not automatic grounds for the termination of a trafficker's parental rights.



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 fine up to \$25,000 under the human trafficking law. Business entities that commit sex trafficking of minors face a fine 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 a fine of up to \$1,000. “Promoting child prostitution” includes knowingly aiding or assisting a minor to engage in com-

mercial sex and is punishable by a sentence of 3–5 years imprisonment and a fine of \$5,000. Disseminating ICSE is punishable by 10–20 years imprisonment and fines the greater of \$10,000–\$50,000 or 3 times “the monetary value of any economic gain derived from” the dissemination of the images. 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.



Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Prostitution laws apply to minors under 18, meaning juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. However, victims who enter the juvenile justice system may be diverted based on a presumption of being in need of care and protection or services. Further, Massachusetts law mandates access to specialized services. 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. Victims of CSEC offenses are eligible for crime victims’ compensation, but certain eligibility criteria may limit their ability to recover, including the requirement to cooperate with law enforcement unless a reasonable excuse exists for failing to cooperate. 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 to testify via closed circuit television. The “rape shield” law, which reduces the trauma of cross-examina-

tion for testifying victims, does not extend to CSEC victims. Massachusetts law allows child sex trafficking victims to immediately vacate delinquency adjudications for prostitution and other offenses related to their victimization; however, juvenile records may only be sealed or expunged after a waiting period. 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 ICSE 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 not expressly permitted in human traffick-

ing investigations, but law enforcement may use wiretapping to investigate offenses involving kidnapping and CSEC in connection with organized crime. The “enticement of child under age 18” law prohibits a defense based on the use of a law enforcement decoy posing as a minor during an investigation. However, use of the Internet to investigate prostitution or sex trafficking offenses is not expressly permitted. Massachusetts has a statewide registry to report missing and located children.

The Report Card is based on the Protected Innocence Challenge Legislative Framework, an analysis of state laws performed by Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Challenge Legislative Framework Methodology, all state Report Cards, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.