

adopted

Representatives Malia of Boston, Walsh of Boston, Provost of Somerville, Basile of Boston, Wolf of Cambridge, Benson of Lunenburg, Balsler of Newton, Fox of Boston, Dykema of Holliston, Khan of Newton, and Lewis of Winchester move to amend the bill by adding the following sections:

SECTION _: Chapter 119 of the General Laws is hereby amended by inserting after section 39J the following section:

Section 39K. Definitions, as used in sections 39L through 39M:

(a) The term "sexually exploited child" means any person under the age of 18 who has been subject to sexual exploitation because he or she:

(1) is the victim of the crime of sex trafficking as defined in 22 United States Code 7105

(2) engages in any act as defined in chapter 272 section 53A of the General Laws

(3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution as defined by chapter 272 section 4A of the General Laws

(4) engages in acts or conduct described in chapter 272 section 53(a) of the General Laws.

(b) The term "appropriate services" means the assessment, planning and care provided by a state agency or non-governmental organization or entity, provided however that such agency, organization or entity has expertise in providing services to sexually exploited children in accordance with such regulations that the department of children and families may promulgate or policies of said department. These services may be provided through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family based foster care or in the community. These services shall include food, clothing, medical care, counseling and appropriate crisis intervention services.

(c) The term "advocate" means an employee of the service providers referred to in section (b) of this section or similar employee of the department of children and families who has been trained to work and advocate for the needs of sexually exploited children.

SECTION _ : Chapter 119 of the General Laws is hereby amended by inserting after section 39K the following section:

Section 39L. In any delinquency or criminal proceeding against a sexually exploited child alleging that the defendant violated section 53(a) or 53A(a) of chapter 272, there shall be a presumption that the matter should be handled instead as a proceeding under section 24 or 39E of chapter 119. Upon the motion of the defendant, or as raised sua sponte by the Court, the Court shall hold a hearing at which the prosecuting district attorney's office, the defendant, and other agencies or persons with relevant information may be heard to determine whether the matter shall proceed as a delinquency or criminal proceeding, or whether the delinquency or criminal proceeding should be dismissed and in its stead the Court should institute a child in need of services or care and protection petition. The information that the Court should consider in determining whether the presumption is rebutted should include, but not be limited to: whether child has been previously found to have committed an offense pursuant to section 53A(a) of chapter 272 or, has been previously convicted or adjudicated delinquent under section 53A(a) of chapter 272 and committed to the department of youth services; or, has previously engaged in conduct that, if proved, would constitute a violation of section 53A of chapter 272; or, has previously refused or been unable to cooperate with services offered under section 51B of chapter 119; and, the Court should consider the child's need for services that may be provided by department of children and families or any non-governmental organization that provides services to such children, and the protection of society from the conduct that forms the basis for the

proceeding. Whether to continue with the delinquency or criminal proceeding, or to dismiss said proceeding and proceed with a child in need of services or care and protection proceeding shall be within the court's discretion. The necessary findings of fact to support the decision shall be reduced to writing and made part of the court record. If, during the pendency of a child in need of services or care and protection proceeding initiated under this section, the child is not in substantial compliance with a lawful order of the court, or fails to comply with the guidance and services of the department or any designated non-governmental service provider, the court may, in its discretion, vacate the dismissal of the delinquency or criminal proceeding and restore that proceeding to the docket for trial or further proceedings in accordance with the regular course of such proceedings.

SECTION __: Chapter 119 of the General Laws is hereby amended by inserting after section 39L the following section:

Section 39M. Services for exploited children

(a) Notwithstanding any inconsistent provision of law, the department of children and families shall promulgate regulations and shall provide for the child welfare services needs of sexually exploited children and to the extent that funds are available ensure appropriate services to serve sexually exploited children are available to children residing in the state at the time they are taken into custody by law enforcement, or are identified by the department of children and families as a sexually exploited child, and for the duration of any legal proceeding or proceeding in which they are either the complaining witness, defendant, or the subject child. Further, a sexually exploited child shall have access to an advocate as defined in section 39K (c). The advocate or a member of the multi-disciplinary service team as referenced in section 51D of

chapter 119 shall accompany the child to all court appearances and will serve as a liaison between the service providers and the court.

(b) All of the services created under this article may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, through a court proceeding under this chapter, or through a referral.

(c) In determining the need for and capacity of the services created 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, where the department of children and families determines that the need exists, to the extent that funds are available, appropriate services shall be made available, while ensuring that an appropriate continuum of services exists.

(d) The commissioner of the department of children and families may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with appropriate non-governmental organizations or entities with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. The department of children and families shall assist in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and/or the office of juvenile justice and delinquency prevention.

SECTION_. Chapter 119 section 51A(a), as so appearing, is hereby amended by removing the word "or" following the words: neglect, including malnutrition; and by inserting the words ": or (iv) being a 'sexually exploited child' as defined in section 39K(a) of this chapter" after the following words: physical dependence upon an addictive drug upon birth.

SECTION __. Chapter 119 section 21, as so appearing, is hereby amended by inserting the words “; or (e) violates the provisions of chapter 272 sections 53A(a); 4A; 53(a) of The General Laws” after the following words: willfully fails to attend school for more than 8 school days in a quarter.

SECTION __. Chapter 119 section 51B (k) (3), as so appearing, is hereby amended by inserting the words “; or appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter” after the words “chapter 272;”

SECTION __. Chapter 119 section 51B (a), as so appearing, is hereby amended by inserting the words “provided, however, that a report that a child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter shall be investigated without regard to whether the child is living with a parent or guardian or other caretaker or not” after the words “home environment”

SECTION __. Chapter 119 section 51B (g), as so appearing, is hereby amended by inserting the words “provided, however, that a child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter shall be offered appropriate services to safeguard his or her welfare” after the following words: “whenever possible.”

SECTION __. Chapter 119 section 51B (g), as so appearing, is hereby amended by inserting the words “If the child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter shall decline the services, or is unable or unwilling to participate in the services offered, then the department or any person may file a care and protection petition under section 24 or a child in need of services petition.” after the following words: “section 24.”

SECTION __. Section 51D of Chapter 119 as so appearing is hereby amended by inserting after the third paragraph the following paragraph:

For 51A reports specifically involving a sexually exploited child as defined in Section 39K (a), the multi-disciplinary service team shall consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of sexually exploited children. The team shall consist of at least the following: a police officer or designee of the Police Department, a representative from the department of children and families, a representative of the appropriate district attorney's office and a social service provider. The team shall also include a medical professional and mental health professional when necessary.

SECTION __. Section 51D of Chapter 119 as so appearing is hereby amended by inserting after the fifth paragraph the following paragraph:

For 51B reports specifically involving a sexually exploited child as defined in Section 39K (a), the purpose of the multi-disciplinary service team shall be to determine whether the child has been sexually exploited and to recommend a plan for services to include shelter or placement, mental health and medical care needs, and other social services.

Representative Lewis of Winchester moves to amend the bill by adding the following section:-

SECTION X. The court may grant a motion to vacate a judgment if:

- (a) The judgment is a conviction for engaging in prostitution or solicitation for prostitution, provided that the defendant was not alleged to be a customer of a prostitute; and
- (b) The participation of the defendant in the offense was the result of the defendant having been a victim of:
 - (1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or
 - (2) Trafficking or forced prostitution under Massachusetts law.
- (c) A motion made under this section must be supported by an affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule.
- (d) Official documentation of the defendant's status as a "trafficking victim" or a "victim of a severe form of trafficking" from a federal, state, or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a "trafficking victim" or a "victim of a severe form of trafficking," but shall not be required for granting a motion under this section.

(e) Official documentation includes, but is not limited to, a police report, court record, or affidavit generated from a federal, state, or local government agency.

(f) In deciding whether to grant a motion under this section, the court shall take into consideration any reasonable concerns for the safety of the defendant, family members of the defendant or other victims that may be jeopardized by the bringing of such a motion.

(g) If the court grants a motion made pursuant to this section, the court:

(a) Shall vacate the judgment and dismiss the accusatory pleading; and

(b) May take any additional action that the court deems appropriate under the circumstances.

Ms. Kay Khan of Newton moves to amend the bill (House, No.03469) by inserting in place thereof the following text for SECTION 2.

SECTION 2. Chapter 12 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding at the end thereof the following new section:-

Section 11M. There shall be an inter-agency task force to address all aspects of human trafficking, including sex trafficking and labor trafficking. The task force and shall consist of ___ members: 1 of whom shall be the attorney general or her designee who shall chair the task force; 1 of whom shall be the President of the Massachusetts District Attorneys Association or his designee; 1 of whom shall be the executive director of the Massachusetts Office for Victim Assistance or his designee; 1 of whom shall be the Director of the Department of Labor or his designee; 1 of whom shall be the Commissioner of the Department of Children and Families or his designee; 1 of whom shall be the Director of the Office for Refugees and Immigrants or his designee; 1 of whom shall be the Secretary of the Executive Office of Public Safety and Security or his designee; 1 of whom shall be the President of the Massachusetts Chiefs of Police Association or his designee; 1 of whom shall be the Commissioner of the Office of the Commissioner of Probation or his designee; 1 of whom shall be the Colonel of the Massachusetts State Police or his designee; 1 of whom shall be the Chief of the Massachusetts Bay Transportation Authority Transit Police or his designee; 1 of whom shall be the Director of the Division of Professional Licensure or his designee; 1 of whom shall be the Commissioner of the Boston Police Department or his designee; 2 of whom shall be the Chairmen of the Joint Committee on the Judiciary; 1 of whom shall be an academic researcher dedicated to the subject

of human trafficking; 3 representatives appointed by the attorney general from non-governmental organizations that specialize in human trafficking, including those who work in the following areas: child and runaway services, sexually exploited adults, and labor, who shall serve a term of eighteen months. The attorney general shall invite representatives of the U.S. Attorneys' offices and of federal law enforcement agencies operating within the state, including the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, and the U.S. Department of Labor, to be members of the task force. 1 representative of executive office of health and human services; 1 representative of the office of the secretary of the executive office of economic development; 1 representative of the Massachusetts police training committee 1 representative from the Inter-jurisdictional Anti-Human Trafficking Task Force; 1 representative from the Massachusetts office of the child advocate 1 representative of the Massachusetts Immigrant and Refugee Advocacy Coalition; 1 representative of Jane Doe, Inc.; 1 representative of the Massachusetts Children's Alliance; 1 representative of a coalition dedicated to prevention of and intervention in the trafficking of children; 1 senator appointed by the senate president; 1 senator appointed by the senate minority leader; 1 representative appointed by the speaker of the house; 1 representative appointed by the house minority leader; 2 survivors of human trafficking, one domestic and one international, appointed by the governor; 2 human trafficking attorneys, one who works with adults and one who works with children, appointed by the governor; 2 human trafficking caseworkers, one who works with adults and one who works with children, appointed by the governor; 1 medical professional appointed by the governor; 2 mental health professionals, one who works with adults and one who works with children, appointed by the governor; 1 person with a background in child and runaway services appointed by the governor;

and 1 representative from the Massachusetts Commission on the Status of Women appointed by the governor.

The task force shall: coordinate the collection and sharing of human trafficking data among government agencies, which data collection shall respect the privacy of victims of human trafficking; coordinate strategies and make recommendations for law enforcement to share information for the purposes of detecting individuals and groups engaged in human trafficking; review and recommend policies and procedures to enable state government to work with non-governmental organizations and other elements of civil society to prevent human trafficking and to protect and provide assistance to victims of trafficking; identify and review the existing services and facilities that meet the needs of victims of human trafficking that include, but are not limited to, health and mental health services, housing, education and job training, legal services, and victim compensation; recommend a system that would coordinate such services and assess the need for additional services; evaluate various approaches used by state and local governments to increase public awareness of human trafficking; develop strategies to address the demand side of human trafficking; review the General Laws to determine if they need to be amended in order to address human trafficking; and submit a report of its findings and recommendations to the clerks of the Senate and the House of Representatives who shall forward the same to the Chairs of the Joint Committee on the Judiciary 18 months from the effective date of this Act. The task force shall determine if subsequent reports are necessary in order to properly address human trafficking.

Representative Lewis of Winchester moves to amend the bill by adding the following sections:-

SECTION X. Chapter 10 of the General Laws is hereby amended by inserting after section 66 the following section:-

Section 66A. 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 assets forfeited and the proceeds of assets seized and forfeited under chapter 265A and fines and assessments collected under said chapter 265A, 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 the fund under this section under 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, established in section 4 of chapter 258B, from time to time, at the request of the victim witness assistance 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 human trafficking victims, as defined in section 1 of said chapter 265A including, but not limited to, social services, housing, job training or victims' compensation and public and private non-profit organizations that assist human trafficking victims. The board shall develop written criteria for the awarding of those grants, which shall be evaluated and, if necessary, revised on an annual basis. In addition, the board shall make available monies from the fund to support the costs of production of certain

materials by the attorney general under section 19 of chapter 265A.

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 December 1 of each calendar year. An amount not to exceed 5 per cent of the total monies deposited in the fund may be expended by the board for administrative costs directly attributable to the grants and programs funded by the fund including, but not limited to, the costs of clerical and support personnel. Any unexpended monies remaining 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.

SECTION X. The court shall order restitution to human trafficking victims for violations of this chapter including, in addition to any other amount of loss identified, the following:

- (a) lost income, which shall include the greater of: (i) the gross income or value to the defendant of the victim's labor or services; or (ii) the value of the victim's labor or services as guaranteed under the commonwealth's minimum wage and overtime laws and interest;
- (b) medical and related professional services relating to physical, psychiatric or psychological care;
- (c) physical and occupational therapy or rehabilitation;

- (d) necessary transportation, temporary housing, and child care expenses;
- (e) in the case of an offense resulting in damage to or destruction of property, return of the property, or if return is impossible, impracticable or inadequate, payment of the replacement value of the property;
- (f) in the case of an offense resulting in death, or bodily injury that results in death, the costs and expenses of necessary funeral and related services;
- (g) attorney's fees and other costs and expenses incurred, including those costs and expenses incurred that are related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;
- (h) compensation for emotional distress, pain, and suffering;
- (i) expenses incurred in relocating away from the defendant including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing and personal items; and
- (j) any other losses suffered by the human trafficking victim.

adopted

Representatives Jones of North Reading, Peterson of Grafton, Hill of Ipswich, Poirier of North Attleboro, and deMacedo of Plymouth move to amend House Bill 3470 by striking, in SECTION 1, the proposed subsection (a) of section 52, contained in lines 40 to 50, inclusive, inserting in place thereof the following subsection:

“(a) Whoever, after having been convicted of violation of section 50 or 51, commits a second or subsequent offense under said sections, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 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 10 years for such sentence.

Prosecutions commenced under the section shall not be continued without a finding nor placed on file.”

adopted

Representatives Jones of North Reading, Peterson of Grafton, Hill of Ipswich, Poirier of North Attleboro, and deMacedo of Plymouth move to amend the House Bill 3470 by striking in SECTION 4, in line 97, the figure "19" and inserting in place thereof:- "21"

; and further, by inserting in line 113, after the word "designees" the following:- "1 of whom who shall be appointed by the minority leader of the Senate; 1 of whom shall be appointed by the minority leader of the House of Representatives".

Representatives Jones of North Reading, Peterson of Grafton, Hill of Ipswich, Poirier of North Attleboro, and deMacedo of Plymouth move to amend House Bill 3470 by striking, in SECTION 1, in the proposed subsection (b) of section 50, in lines 37 to 38, the words “or for any term of years” and inserting in place thereof the following : - “but not less than 10 years”

; and further, by striking, in SECTION 1 in the proposed subsection (b) of section 51, in lines 52 to 53, the words “or for any term of years” and inserting in place thereof the following:- “but not less than 10 years”.

adopted

FLOOR AMENDMENT

Mr. Pedone of Worcester moves to amend House, No. 3470 in section 3, by inserting after the words "2 ½ years" in line 93, the following words:

"or by a fine of not more than \$10,000, or by both such imprisonment and fine".

Ms. Kay Khan of Newton moves to amend the bill (House, No.03469) by inserting in place thereof the following text.

SECTION 5

FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM

FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. The first offender prostitution prevention program has the following essential characteristics: the integration of services in the processing of cases in the judicial system;

(2) the use of a non- adversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to sex addiction, sexual aggression, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

(b) If a defendant successfully completes a first offender prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed, and whether issuance of the order is in the best interest of justice, as if the defendant had received a discharge and dismissal. The defendant may enter the program if the defendant:

(1) has not been previously convicted of a felony offense; and

(2) is not convicted of any other felony offense before the second anniversary of the defendant's successful completion of the program.

AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) the governing body or non-profit may establish a first offender prostitution prevention program for defendants charged with an offense under the commercial exploitation of people statute.

(b) A defendant is eligible to participate in a first offender prostitution prevention program established under this chapter only if:

(1) the district attorney representing the state consents to the defendant's participation in the program; and

(2) the court in which the criminal case is pending finds that the defendant has not been previously convicted of an offense for soliciting or enticement.

, a defendant has been previously convicted of an offense listed in that subsection if:

(1) the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; or

(2) the defendant was convicted under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in Subsection (b).

(3) (d) A defendant is not eligible to participate in the first offender prostitution prevention program if the defendant offered or agreed to hire a person to engage in sexual conduct

and the person was younger than 18 years of age at the time of the offense.

- (4) (e) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to participate in the first offender prostitution prevention program or otherwise proceed through the criminal justice system.
- (5) (f) If a defendant who chooses to participate in the first offender prostitution prevention program fails to attend any portion of the program, the court in which the defendant's criminal case is pending shall issue a warrant for the defendant's arrest and proceed on the criminal case as if the defendant had chosen not to participate in the program.
- (6) PROGRAM POWERS AND DUTIES. (a) A first offender prostitution prevention program established under this chapter must:
 - (7) (1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;
 - (8) (2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

- (9) (3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and
- (10) (4) provide each participant with classroom instruction related to the prevention of prostitution.
- (11) (b) To provide each program participant with information, counseling, and services a program established under this chapter may employ a person or solicit a volunteer who is:
 - (12) (1) a health care professional;
 - (13) (2) a psychologist;
 - (14) (3) a licensed counselor;
 - (15) (4) a survivor of commercial sexual exploitation
 - (16) (5) a family member of a person arrested for soliciting prostitution;
 - (17) (6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or
 - (18) (7) an employee of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or

human trafficking or in providing services to victims of those offenses.

- (19) (c) A program established under this section shall establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.
- (20) A first offender prostitution prevention program established under this section shall:
 - (21) (1) notify the criminal justice division of the governor's office before or on implementation of the program; and
 - (22) (2) provide information regarding the performance of the program to the relevant authorities upon request
- (23) FEES. (a) A first offender prostitution prevention program established under this section may collect from a participant in the program a nonrefundable program fee in a reasonable amount not to exceed \$750.00, from which the following must be paid:
 - (24) (1) a counseling and services fee in an amount necessary to cover the costs of the counseling and services provided by the program;

- (25) (2) a victim services fee in an amount equal to 10 percent of the amount paid under and
- (26) (3) administrative fee to pay for the cost of operating the program.
- (27) (b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, or program director administering the first offender prostitution prevention program.