

HOUSE No. 03483

The Commonwealth of Massachusetts

PRESENTED BY:

Brian S. Dempsey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the commercial exploitation of people.

PETITION OF:

NAME: _____ | DISTRICT/ADDRESS: _____

HOUSE No. 03483

House bill No. 3470, as changed by the committee on Bills in the Third Reading and as amended and passed to be engrossed by the House. June 1, 2011.

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
—————

An Act relative to the commercial exploitation of people.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 265 of the General Laws is hereby amended by adding after section 48,
2 added by section 119 of chapter 256 of the acts of 2010, the following 5 sections:-
- 3 Section 49. As used in sections 50 to 51, inclusive, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:
- 5 “Commercial sexual activity”, any sexual act on account of which anything of value is given,
6 promised to or received by any person.
- 7 “Financial harm”, a detrimental position in relation to wealth, property or other monetary
8 benefits that occurs as a result of another person’s illegal act including, but not limited to,
9 extortion as defined by section 25, a violation of section 49 of chapter 271 or illegal employment
10 contracts.

11 "Forced services", services performed or provided by a person that are obtained or maintained by
12 another person: (i) causing or threatening to cause serious harm to any person; (ii) physically
13 restraining or threatening to physically restrain another person; (iii) abusing or threatening to
14 abuse the law or legal process; (iv) knowingly destroying, concealing, removing, confiscating or
15 possessing any actual or purported passport or other immigration document, or any other actual
16 or purported government identification document, of another person; (v) use of extortion as
17 defined by section 25; or (vi) causing or threatening to cause financial harm to any person.

18 "Services", acts performed by a person under the supervision of or for the benefit of another,
19 including, but not limited to, commercial sexual activity and sexually-explicit performances.

20 "Sexually-explicit performance", an unlawful live or public act or show intended to arouse or
21 satisfy the sexual desires or appeal to the prurient interests of patrons.

22 Section 50. (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices,
23 harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor,
24 transport, provide or obtain by any means, another person to engage in commercial sexual
25 activity, sexually-explicit performance or the production of unlawful pornography in violation of
26 chapter 272, or causes or attempts to cause a person to engage in commercial sexual activity,
27 sexually-explicit performance or the production of unlawful pornography in violation of said
28 chapter 272; or (ii) benefits, financially or by receiving anything of value, from participation in a
29 venture which has engaged in an act described herein, is guilty of the crime of trafficking of
30 persons for sexual servitude and shall be punished by imprisonment in the state prison for not
31 more than 15 years or by a fine of not more than \$25,000, or by both such imprisonment and

32 fine; provided, however, that a prosecution commenced under the provisions of this section shall
33 not be continued without a finding or placed on file.

34 (b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person
35 under 18 years of age shall be punished by imprisonment in the state prison for life or for any
36 term of years; provided, however, that a prosecution commenced under the provisions of this
37 section shall not be continued without a finding or placed on file.

38 Section 51. (a) Whoever knowingly: (i) subjects, or attempts to subject, another person to forced
39 services, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to
40 recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or
41 knowing that the person will be subjected to forced services; or (ii) benefits, financially or by
42 receiving anything of value, from participation in a venture which has engaged in an act
43 described herein, is guilty of trafficking of persons for forced services and shall be punished by
44 imprisonment in the state prison for not more than 15 years or by a fine of not more than
45 \$25,000, or by both such imprisonment and fine; provided, however, that a prosecution
46 commenced under the provisions of this section shall not be continued without a finding or
47 placed on file. A business entity that commits trafficking of persons for forced labor services
48 shall be punished by a fine of not more than \$500,000.

49 (b) Whoever commits the crime of trafficking of persons for forced services upon a person under
50 18 years of age shall be punished by imprisonment in the state prison for life or for any term of
51 years; provided, however, that a prosecution commenced under the provisions of this section
52 shall not be continued without a finding or placed on file.

53 Section 52. (a) (a) Whoever, after having been convicted of violation of section 50 or 51,
54 commits a second or subsequent offense under said sections, shall be punished by imprisonment
55 in the state prison for life or for any term of years, but not less than 10 years. The sentence
56 imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any
57 person convicted under this section be eligible for probation, parole, work release, or furlough or
58 receive any deduction from his sentence for good conduct until he shall have served 10 years for
59 such sentence. Prosecutions commenced under the section shall not be continued without a
60 finding nor placed on file.(b) In any prosecution commenced pursuant to this section,
61 introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient
62 facts by either certified attested copies of original court papers, or certified attested copies of the
63 defendant's biographical and informational data from records of the department of probation, any
64 jail or house of correction or the department of correction, shall be prima facie evidence that the
65 defendant before the court has been convicted previously by a court of the commonwealth or any
66 other jurisdiction. Such documentation shall be self-authenticating and admissible, after the
67 commonwealth has established the defendant's guilt on the primary offense, as evidence in any
68 court of the commonwealth to prove the defendant's prior conviction described therein. The
69 commonwealth shall not be required to introduce any additional corroborating evidence or live
70 witness testimony to establish the validity of such prior conviction.

71 Section 53. All money seized as a result of a violation of section 50 or 51 shall be subject to
72 forfeiture to the commonwealth and shall be made available by the court to any victim who is
73 ordered restitution by the court pursuant to section 3 of chapter 258B.

74 SECTION 2. Chapter 272 of the General Laws is hereby amended by striking out section 8, as
75 appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

76 Section 8. Whoever solicits or receives compensation for soliciting for a prostitute shall be
77 punished by imprisonment in a house of correction for not more than 2 and one-half years, or by
78 a fine of not more than \$5,000 or by both such imprisonment and fine.

79 SECTION 3. Said chapter 272 is hereby further amended by striking out section 53A, as so
80 appearing, and inserting in place thereof the following section:-

81 Section 53A. (a)Whoever engages, agrees to engage or offers to engage in sexual conduct with
82 another person in return for a fee, shall be punished by imprisonment in the house of correction
83 for not more than 1 year or by a fine of not more than \$500, or by both such imprisonment and
84 fine, whether such sexual conduct occurs or not.

85 (b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct, or
86 to agree to engage in sexual conduct with another person, shall be punished by imprisonment in
87 the house of correction for not more than 2 and one-half years or by a fine of not more than
88 \$5,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

89 (c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual
90 conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third
91 person be paid in return for aiding a person who intends to engage in sexual conduct with a child
92 under the age of 18, shall be punished by imprisonment in the state prison for not more than 10
93 years, or in the house of correction for not more than 2 and one-half years or by a fine of not
94 more than \$10,000, or by both such imprisonment and fine, whether such sexual conduct occurs
95 or not; provided, however, that a prosecution commenced under the provisions of this section
96 shall not be continued without a finding or placed on file.

97 SECTION 4. (a) There shall be an interagency task force to address all aspects of human
98 trafficking, including sex trafficking and labor trafficking. The task force shall consist of 2
99 members of the senate, 1 of whom shall be the chairman of the committee on the judiciary, and 1
100 of whom shall be appointed by the minority leader of the senate; 2 members of the house of
101 representatives, 1 of whom shall be the chairman of the committee on the judiciary, and 1 of
102 whom shall be appointed by the minority leader of the house of representatives; the attorney
103 general or the attorney general's designee who shall serve as the chair; 3 persons who shall be
104 appointed by the attorney general from non-governmental organizations that specialize in human
105 trafficking, including, but not limited to, those who work in the following areas: child and
106 runaway services, and sexually exploited adults and labor, who shall serve for a term of 18
107 months; the executive director of the Massachusetts office for victim assistance or the director's
108 designee; the director of the department of labor standards or the director's designee; the
109 commissioner of the department of children and families or the commissioner's designee; the
110 director of the office for refugees and immigrants or the director's designee; the secretary of the
111 executive office of public safety and security or the secretary's designee; the commissioner of
112 the office of probation or the commissioner's designee; the colonel of the Massachusetts state
113 police or the colonel's designee; the director of the division of professional licensure or the
114 director's designee; and 5 persons to be appointed by the governor, 1 of whom shall be the
115 president of the Massachusetts District Attorneys Association or the president's designee, 1 of
116 whom shall be the president of the Massachusetts Chiefs of Police Association or the president's
117 designee, 1 of whom shall be the chief of the Massachusetts Bay transportation authority transit
118 police or the chief's designee, 1 of whom shall be the commissioner of the Boston police
119 department or the commissioner's designee, and 1 of whom shall be an academic researcher

120 dedicated to the subject of human trafficking. In addition to the designated members of the task
121 force, the attorney general shall invite representatives of the United States Attorneys' offices and
122 of federal law enforcement agencies operating within the commonwealth, including the Federal
123 Bureau of Investigation, United States Immigration and Customs Enforcement, and the United
124 States Department of Labor, to participate on the task force.

125 (b) The task force shall: (i) coordinate the collection and sharing of human trafficking data
126 among government agencies; provided, however that such data collection shall respect the
127 privacy of victims of human trafficking; coordinate strategies and make recommendations for
128 law enforcement to share information for the purposes of detecting individuals and groups
129 engaged in human trafficking; (ii) review and recommend policies and procedures to enable state
130 government to work with non-governmental organizations and other elements of civil society to
131 prevent human trafficking and to protect and provide assistance to victims of trafficking; (iii)
132 identify and review the existing services and facilities that meet the needs of victims of human
133 trafficking that include, but are not limited to, health and mental health services, housing,
134 education and job training, legal services, and victim compensation; (iv) recommend a system
135 that would coordinate such services and assess the need for additional services; (v) evaluate
136 various approaches used by state and local governments to increase public awareness of human
137 trafficking; (vi) develop strategies to address the demand side of human trafficking; (vii) review
138 the General Laws to determine if they need to be further amended in order to address human
139 trafficking; and (viii) submit a report of its findings and recommendations to the clerks of the
140 senate and the house of representatives who shall forward the same to the chairs of the joint
141 committee on the judiciary 18 months from the effective date of this act. The task force shall
142 determine if subsequent reports are necessary in order to properly address human trafficking.

143 SECTION 5. Chapter 119 of the General Laws is hereby amended by inserting after section 39J
144 the following section:

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

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

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

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

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

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

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

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

164 SECTION 6. Chapter 119 of the General Laws is hereby amended by inserting after section 39K
165 the following section:

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

187 reduced to writing and made part of the court record. If, during the pendency of a child in need
188 of services or care and protection proceeding initiated under this section, the child is not in
189 substantial compliance with a lawful order of the court, or fails to comply with the guidance and
190 services of the department or any designated non-governmental service provider, the court may,
191 in its discretion, vacate the dismissal of the delinquency or criminal proceeding and restore that
192 proceeding to the docket for trial or further proceedings in accordance with the regular course of
193 such proceedings.

194 SECTION 7. Chapter 119 of the General Laws is hereby amended by inserting after section 39L
195 the following section:

196 Section 39M. Services for exploited children

197 (a) Notwithstanding any inconsistent provision of law, the department of children and families
198 shall promulgate regulations and shall provide for the child welfare services needs of sexually
199 exploited children and to the extent that funds are available ensure appropriate services to serve
200 sexually exploited children are available to children residing in the state at the time they are
201 taken into custody by law enforcement, or are identified by the department of children and
202 families as a sexually exploited child, and for the duration of any legal proceeding or proceeding
203 in which they are either the complaining witness, defendant, or the subject child. Further, a
204 sexually exploited child shall have access to an advocate as defined in section 39K (c). The
205 advocate or a member of the multi-disciplinary service team as referenced in section 51D of
206 chapter 119 shall accompany the child to all court appearances and will serve as a liaison
207 between the service providers and the court.

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

211 (c) In determining the need for and capacity of the services created under this section, the
212 department of children and families shall recognize that sexually exploited youth have separate
213 and distinct service needs according to gender and, where the department of children and
214 families determines that the need exists, to the extent that funds are available, appropriate
215 services shall be made available, while ensuring that an appropriate continuum of services exists.

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

225 SECTION 8. Chapter 119 section 51A(a), as so appearing, is hereby amended by removing the
226 word “or” following the words: neglect, including malnutrition; and by inserting the words “: or
227 (iv) being a ‘sexually exploited child’ as defined in section 39K(a) of this chapter” after the
228 following words: physical dependence upon an addictive drug upon birth.

229 SECTION 9. Chapter 119 section 21, as so appearing, is hereby amended by inserting the words
230 “; or (e) violates the provisions of chapter 272 sections 53A(a); 4A; 53(a) of The General Laws”
231 after the following words: willfully fails to attend school for more than 8 school days in a
232 quarter.

233 SECTION 10. Chapter 119 section 51B (k) (3), as so appearing, is hereby amended by inserting
234 the words “; or appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this
235 chapter” after the words “chapter 272;”

236 SECTION 11. Chapter 119 section 51B (a), as so appearing, is hereby amended by inserting the
237 words “provided, however, that a report that a child who appears to be a ‘sexually exploited
238 child’ as defined in section 39K(a) of this chapter shall be investigated without regard to whether
239 the child is living with a parent or guardian or other caretaker or not” after the words “home
240 environment”

241 SECTION 12. Chapter 119 section 51B (g), as so appearing, is hereby amended by inserting the
242 words “provided, however, that a child who appears to be a ‘sexually exploited child’ as defined
243 in section 39K(a) of this chapter shall be offered appropriate services to safeguard his or her
244 welfare” after the following words: “whenever possible.”

245 SECTION 13. Chapter 119 section 51B (g), as so appearing, is hereby amended by inserting the
246 words “If the child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of
247 this chapter shall decline the services, or is unable or unwilling to participate in the services
248 offered, then the department or any person may file a care and protection petition under section
249 24 or a child in need of services petition.” after the following words: “section 24.”

250 SECTION 14. Section 51D of Chapter 119 as so appearing is hereby amended by inserting after
251 the third paragraph the following paragraph:

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

259 SECTION 15. Section 51D of Chapter 119 as so appearing is hereby amended by inserting after
260 the fifth paragraph the following paragraph:

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