HOUSE DOCKET, NO. 2838 FILED ON: 1/21/2011

HOUSE . . . . . No. 2277

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh and Elizabeth A. Malia

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:

An Act relative to safe harbor for exploited children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	*13th Suffolk*
Elizabeth A. Malia	*11th Suffolk*
Karen E. Spilka	☐ *[District]* ☐
Linda Dorcena Forry	*12th Suffolk*
Barry R. Finegold	☐ *[District]* ☐
Gale D. Candaras	☐ *[District]* ☐
Louis L. Kafka	*8th Norfolk*
Sonia Chang-Diaz	☐ *[District]* ☐
Susan C. Fargo	☐ *[District]*

	□
Denise Andrews	*2nd Franklin*
Carl M. Sciortino, Jr.	*34th Middlesex*
Thomas M. Stanley	*9th Middlesex*
Jason M. Lewis	*31st Middlesex*
William N. Brownsberger	□ *[District]* □
Jennifer E. Benson	*37th Middlesex*
David B. Sullivan	*6th Bristol*
Christine E. Canavan	*10th Plymouth*
Cory Atkins	*14th Middlesex*
Carlo Basile	*1st Suffolk*
Ruth B. Balser	*12th Middlesex*
Gloria L. Fox	*7th Suffolk*
James J. Dwyer	*30th Middlesex*
Bradley H. Jones, Jr.	*20th Middlesex*
Sean Garballey	*23rd Middlesex*
Steven A. Tolman	□ *[District]* □
Jennifer L. Flanagan	□ *[District]* □
George T. Ross	*2nd Bristol*
Carlos Henriquez	*5th Suffolk*
Alice K. Wolf	*25th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Kay Khan	*11th Middlesex*
Denise Provost	*27th Middlesex*

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By Representatives Walsh of Boston and Malia of Boston, a petition (accompanied by bill, House, No. 2277) of Martin J. Walsh, Elizabeth A. Malia and others relative to the protection of children under the age of 18 who have been subject to sexual exploitation. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to safe harbor for exploited children.

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

SECTION 1: 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.

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

23 SECTION 2: Chapter 119 of the General Laws is hereby amended by inserting after
24 section 39K the following section:

25 Section 39L. In any delinquency or criminal proceeding against a sexually exploited child
26 alleging that the defendant violated section 53(a) or 53A(a) of chapter 272, there shall be a
27 presumption that the matter should be handled instead as a proceeding under section 24 or 39E of
28 chapter 119. Upon the motion of the defendant, or as raised sua sponte by the Court, the Court
29 shall hold a hearing at which the prosecuting district attorney’s office, the defendant, and other
30 agencies or persons with relevant information may be heard to determine whether the matter
31 shall proceed as a delinquency or criminal proceeding, or whether the delinquency or criminal
32 proceeding should be dismissed and in its stead the Court should institute a child in need of
33 services or care and protection petition. The information that the Court should consider in
34 determining whether the presumption is rebutted should include, but not be limited to: whether
35 child has been previously found to have committed an offense pursuant to section 53A(a) of
36 chapter 272 or, has been previously convicted or adjudicated delinquent under section 53A(a) of
37 chapter 272 and committed to the department of youth services; or, has previously engaged in
38 conduct that, if proved, would constitute a violation of section 53A of chapter 272; or, has
39 previously refused or been unable to cooperate with services offered under section 51B of
40 chapter 119; and, the Court should consider the child’s need for services that may be provided by
41 department of children and families or any non-governmental organization that provides services
42 to such children, and the protection of society from the conduct that forms the basis for the
43 proceeding. Whether to continue with the delinquency or criminal proceeding, or to dismiss said
44 proceeding and proceed with a child in need of services or care and protection proceeding shall
45 be within the court's discretion. The necessary findings of fact to support the decision shall be
46 reduced to writing and made part of the court record. If, during the pendency of a child in need
47 of services or care and protection proceeding initiated under this section, the child is not in
48 substantial compliance with a lawful order of the court, or fails to comply with the guidance and
49 services of the department or any designated non-governmental service provider, the court may,
50 in its discretion, vacate the dismissal of the delinquency or criminal proceeding and restore that
51 proceeding to the docket for trial or further proceedings in accordance with the regular course of
52 such proceedings.

53 SECTION 3: Chapter 119 of the General Laws is hereby amended by inserting after
54 section 39L the following section:

55 Section 39M. Services for exploited children

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

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

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

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

84 SECTION 4. Chapter 119 section 51A(a), as so appearing, is hereby amended by
85 removing the word "or" following the words: neglect, including malnutrition; and by inserting
86 the words ": or (iv) being a 'sexually exploited child' as defined in section 39K(a) of this
87 chapter" after the following words: physical dependence upon an addictive drug upon birth.

88 SECTION 5. Chapter 119 section 21, as so appearing, is hereby amended by inserting the
89 words "; or (e) violates the provisions of chapter 272 sections 53A(a); 4A; 53(a) of The General
90 Laws" after the following words: willfully fails to attend school for more than 8 school days in a
91 quarter.

92 SECTION 6. Chapter 119 section 51B (k) (3), as so appearing, is hereby amended by
93 inserting the words "; or appears to be a 'sexually exploited child' as defined in section 39K(a)
94 of this chapter" after the words "chapter 272;"

95 SECTION 7. Chapter 119 section 51B (a), as so appearing, is hereby amended by
96 inserting the words "provided, however, that a report that a child who appears to be a 'sexually
97 exploited child' as defined in section 39K(a) of this chapter shall be investigated without regard
98 to whether the child is living with a parent or guardian or other caretaker or not" after the words
99 "home environment"

100 SECTION 8. Chapter 119 section 51B (g), as so appearing, is hereby amended by
101 inserting the words "provided, however, that a child who appears to be a 'sexually exploited
102 child' as defined in section 39K(a) of this chapter shall be offered appropriate services to
103 safeguard his or her welfare" after the following words: "whenever possible."

104 SECTION 9. Chapter 119 section 51B (g), as so appearing, is hereby amended by
105 inserting the words "If the child who appears to be a 'sexually exploited child' as defined in
106 section 39K(a) of this chapter shall decline the services, or is unable or unwilling to participate in
107 the services offered, then the department or any person may file a care and protection petition
108 under section 24 or a child in need of services petition." after the following words: "section 24."

109 SECTION 10. Section 51D of Chapter 119 as so appearing is hereby amended by
110 inserting after the third paragraph the following paragraph:

111 For 51A reports specifically involving a sexually exploited child as defined in Section
112 39K (a), the multi-disciplinary service team shall consist of a team of professionals trained or
113 otherwise experienced and qualified to assess the needs of sexually exploited children. The team
114 shall consist of at least the following: a police officer or designee of the Police Department, a
115 representative from the department of children and families, a representative of the appropriate
116 district attorney's office and a social service provider. The team shall also include a medical
117 professional and mental health professional when necessary.

118 Section 11. Section 51D of Chapter 119 as so appearing is hereby amended by inserting
119 after the fifth paragraph the following paragraph:

120 For 51B reports specifically involving a sexually exploited child as defined in Section
121 39K (a), the purpose of the multi-disciplinary service team shall be to determine whether the
122 child has been sexually exploited and to recommend a plan for services to include shelter or
123 placement, mental health and medical care needs, and other social services.