

HOUSE No. 3483

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

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
2 48, 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
4 context clearly requires otherwise, have the following meanings:

5 "Commercial sexual activity", any sexual act on account of which anything of value is
6 given, 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
12 maintained by another person: (i) causing or threatening to cause serious harm to any person; (ii)
13 physically restraining or threatening to physically restrain another person; (iii) abusing or
14 threatening to abuse the law or legal process; (iv) knowingly destroying, concealing, removing,
15 confiscating or possessing any actual or purported passport or other immigration document, or
16 any other actual or purported government identification document, of another person; (v) use of
17 extortion as defined by section 25; or (vi) causing or threatening to cause financial harm to any
18 person.

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

22 “Sexually-explicit performance”, an unlawful live or public act or show intended to
23 arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

24 Section 50. (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits,
25 entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice,
26 harbor, transport, provide or obtain by any means, another person to engage in commercial
27 sexual activity, sexually-explicit performance or the production of unlawful pornography in
28 violation of chapter 272, or causes or attempts to cause a person to engage in commercial sexual
29 activity, sexually-explicit performance or the production of unlawful pornography in violation of
30 said chapter 272; or (ii) benefits, financially or by receiving anything of value, from participation
31 in a venture which has engaged in an act described herein, is guilty of the crime of trafficking of
32 persons for sexual servitude and shall be punished by imprisonment in the state prison for not
33 more than 15 years or by a fine of not more than \$25,000, or by both such imprisonment and
34 fine; provided, however, that a prosecution commenced under the provisions of this section shall
35 not be continued without a finding or placed on file.

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

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

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

55 Section 52. (a) (a) Whoever, after having been convicted of violation of section 50 or
56 51, commits a second or subsequent offense under said sections, shall be punished by
57 imprisonment in the state prison for life or for any term of years, but not less than 10 years. The
58 sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor

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

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

76 SECTION 2. Chapter 272 of the General Laws is hereby amended by striking out section
77 8, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

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

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

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

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

92 (c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in
93 sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a
94 third person be paid in return for aiding a person who intends to engage in sexual conduct with a

95 child under the age of 18, shall be punished by imprisonment in the state prison for not more
96 than 10 years, or in the house of correction for not more than 2 and one-half years or by a fine of
97 not more than \$10,000, or by both such imprisonment and fine, whether such sexual conduct
98 occurs or not; provided, however, that a prosecution commenced under the provisions of this
99 section shall not be continued without a finding or placed on file.

100 SECTION 4. (a) There shall be an interagency task force to address all aspects of
101 human trafficking, including sex trafficking and labor trafficking. The task force shall consist of
102 2 members of the senate, 1 of whom shall be the chairman of the committee on the judiciary, and
103 1 of whom shall be appointed by the minority leader of the senate; 2 members of the house of
104 representatives, 1 of whom shall be the chairman of the committee on the judiciary, and 1 of
105 whom shall be appointed by the minority leader of the house of representatives; the attorney
106 general or the attorney general's designee who shall serve as the chair; 3 persons who shall be
107 appointed by the attorney general from non-governmental organizations that specialize in human
108 trafficking, including, but not limited to, those who work in the following areas: child and
109 runaway services, and sexually exploited adults and labor, who shall serve for a term of 18
110 months; the executive director of the Massachusetts office for victim assistance or the director's
111 designee; the director of the department of labor standards or the director's designee; the
112 commissioner of the department of children and families or the commissioner's designee; the
113 director of the office for refugees and immigrants or the director's designee; the secretary of the
114 executive office of public safety and security or the secretary's designee; the commissioner of
115 the office of probation or the commissioner's designee; the colonel of the Massachusetts state
116 police or the colonel's designee; the director of the division of professional licensure or the
117 director's designee; and 5 persons to be appointed by the governor, 1 of whom shall be the
118 president of the Massachusetts District Attorneys Association or the president's designee, 1 of
119 whom shall be the president of the Massachusetts Chiefs of Police Association or the president's
120 designee, 1 of whom shall be the chief of the Massachusetts Bay transportation authority transit
121 police or the chief's designee, 1 of whom shall be the commissioner of the Boston police
122 department or the commissioner's designee, and 1 of whom shall be an academic researcher
123 dedicated to the subject of human trafficking. In addition to the designated members of the task
124 force, the attorney general shall invite representatives of the United States Attorneys' offices and
125 of federal law enforcement agencies operating within the commonwealth, including the Federal
126 Bureau of Investigation, United States Immigration and Customs Enforcement, and the United
127 States Department of Labor, to participate on the task force.

128 (b) The task force shall: (i) coordinate the collection and sharing of human trafficking
129 data among government agencies; provided, however that such data collection shall respect the
130 privacy of victims of human trafficking; coordinate strategies and make recommendations for
131 law enforcement to share information for the purposes of detecting individuals and groups
132 engaged in human trafficking; (ii) review and recommend policies and procedures to enable state
133 government to work with non-governmental organizations and other elements of civil society to

134 prevent human trafficking and to protect and provide assistance to victims of trafficking; (iii)
135 identify and review the existing services and facilities that meet the needs of victims of human
136 trafficking that include, but are not limited to, health and mental health services, housing,
137 education and job training, legal services, and victim compensation; (iv) recommend a system
138 that would coordinate such services and assess the need for additional services; (v) evaluate
139 various approaches used by state and local governments to increase public awareness of human
140 trafficking; (vi) develop strategies to address the demand side of human trafficking; (vii) review
141 the General Laws to determine if they need to be further amended in order to address human
142 trafficking; and (viii) submit a report of its findings and recommendations to the clerks of the
143 senate and the house of representatives who shall forward the same to the chairs of the joint
144 committee on the judiciary 18 months from the effective date of this act. The task force shall
145 determine if subsequent reports are necessary in order to properly address human trafficking.

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

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

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

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

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

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

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

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

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

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

170 Section 39L. In any delinquency or criminal proceeding against a sexually exploited child
171 alleging that the defendant violated section 53(a) or 53A(a) of chapter 272, there shall be a
172 presumption that the matter should be handled instead as a proceeding under section 24 or 39E of
173 chapter 119. Upon the motion of the defendant, or as raised sua sponte by the Court, the Court
174 shall hold a hearing at which the prosecuting district attorney's office, the defendant, and other
175 agencies or persons with relevant information may be heard to determine whether the matter
176 shall proceed as a delinquency or criminal proceeding, or whether the delinquency or criminal
177 proceeding should be dismissed and in its stead the Court should institute a child in need of
178 services or care and protection petition. The information that the Court should consider in
179 determining whether the presumption is rebutted should include, but not be limited to: whether
180 child has been previously found to have committed an offense pursuant to section 53A(a) of
181 chapter 272 or, has been previously convicted or adjudicated delinquent under section 53A(a) of
182 chapter 272 and committed to the department of youth services; or, has previously engaged in
183 conduct that, if proved, would constitute a violation of section 53A of chapter 272; or, has
184 previously refused or been unable to cooperate with services offered under section 51B of
185 chapter 119; and, the Court should consider the child's need for services that may be provided by
186 department of children and families or any non-governmental organization that provides services
187 to such children, and the protection of society from the conduct that forms the basis for the
188 proceeding. Whether to continue with the delinquency or criminal proceeding, or to dismiss said
189 proceeding and proceed with a child in need of services or care and protection proceeding shall
190 be within the court's discretion. The necessary findings of fact to support the decision shall be
191 reduced to writing and made part of the court record. If, during the pendency of a child in need
192 of services or care and protection proceeding initiated under this section, the child is not in
193 substantial compliance with a lawful order of the court, or fails to comply with the guidance and
194 services of the department or any designated non-governmental service provider, the court may,
195 in its discretion, vacate the dismissal of the delinquency or criminal proceeding and restore that
196 proceeding to the docket for trial or further proceedings in accordance with the regular course of
197 such proceedings.

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

200 Section 39M. Services for exploited children

201 (a) Notwithstanding any inconsistent provision of law, the department of children and
202 families shall promulgate regulations and shall provide for the child welfare services needs of
203 sexually exploited children and to the extent that funds are available ensure appropriate services
204 to serve sexually exploited children are available to children residing in the state at the time they
205 are taken into custody by law enforcement, or are identified by the department of children and

206 families as a sexually exploited child, and for the duration of any legal proceeding or proceeding
207 in which they are either the complaining witness, defendant, or the subject child. Further, a
208 sexually exploited child shall have access to an advocate as defined in section 39K (c). The
209 advocate or a member of the multi-disciplinary service team as referenced in section 51D of
210 chapter 119 shall accompany the child to all court appearances and will serve as a liaison
211 between the service providers and the court.

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

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

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

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

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

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

240 SECTION 11. Chapter 119 section 51B (a), as so appearing, is hereby amended by
241 inserting the words “provided, however, that a report that a child who appears to be a ‘sexually

242 exploited child' as defined in section 39K(a) of this chapter shall be investigated without regard
243 to whether the child is living with a parent or guardian or other caretaker or not" after the words
244 "home environment"

245 SECTION 12. Chapter 119 section 51B (g), as so appearing, is hereby amended by
246 inserting the words "provided, however, that a child who appears to be a 'sexually exploited
247 child' as defined in section 39K(a) of this chapter shall be offered appropriate services to
248 safeguard his or her welfare" after the following words: "whenever possible."

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

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

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

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

265 For 51B reports specifically involving a sexually exploited child as defined in Section
266 39K (a), the purpose of the multi-disciplinary service team shall be to determine whether the
267 child has been sexually exploited and to recommend a plan for services to include shelter or
268 placement, mental health and medical care needs, and other social services.