

PROTECTED INNOCENCE INITIATIVE

STATE ACTION. NATIONAL CHANGE.



Massachusetts Changes Relative to the Protected Innocence Initiative

HB 3808

Passed Both the Senate and Houses on November 15, 2011

(House 137 Yeas, 1 No; Senate 37 Yeas, 0 Nays)

The passage of HB 3808 brought comprehensive changes to Massachusetts' laws affecting domestic minor sex trafficking. HB 3808 established a human trafficking crime that includes sex trafficking of a minor without requiring proof of force, fraud or coercion in the inducement, which is in alignment with current research and experience and the federal law. This law provides heightened penalties when the victim is a minor under 18. HB 3808 combats demand through improving the law that makes it a crime to buy sex with a minor under 18, expanding the protection of commercially sexually exploited children to include all minors instead of just those under 14. A new law established under the bill makes it a crime to use electronic communications to entice a child to engage in commercial sexual activity or human trafficking. Additionally, HB 3808 provides more financial penalties for those convicted of trafficking, including asset forfeiture and civil liability. The bill also provides critical protective responses to sexually exploited children and provides victims charged with prostitution offenses an affirmative defense or a presumption (depending on their age) that they were in fact a victim of sex trafficking.

Criminal Provisions

	<i>Before HB 3808</i>	<i>After HB 3808</i>
Human trafficking law	None existed.	Establishes a human trafficking law that includes commercial sexual exploitation and does not require force, fraud, or coercion when a minor is the victim. The law distinguishes between minor and adults. When a child is a victim the prison sentence is 5 years to life (as opposed to 5 years to 20 years for adults). An offender may also be sentenced to pay a fine not to exceed \$25,000. The law includes facilitators who benefit financially, and provides higher fines if a business is a facilitator (up to \$1,000,000).
Buyer CSEC crime	Only brought justice to minors under 14 who are bought for sex! A buyer who "pays, agrees to pay, or offers to pay" a person "to engage in sexual conduct with a child under the age of 14" may be prosecuted.	Now, extends to all minors under 18. Raises the age to 18.
Use of the Internet to commit the crime of sex trafficking	No law existed.	Creates a specific law for using an electronic communication to entice a child to engage in prostitution, commercial sexual activity, or human trafficking.
Sex offender registry	Required for CSEC crimes.	Incorporates the new sex trafficking law and Internet solicitation law as crimes requiring registration.

Financial Penalties and Civil Liability		
	<i>Before HB 3808</i>	<i>After HB 3808</i>
Civil action for human trafficking	No civil liability was provided.	The human trafficking law allows victims to bring a tort action against defendants.
Asset forfeiture for human trafficking	No asset forfeiture was provided.	Money used or intended to be used to violate the human trafficking law, along with conveyances are subject to forfeiture.
Human Trafficking Trust Fund	Did not exist.	Fines from human trafficking violations go to the fund which is used to provide grants for victim services.
Protective Provisions for Victims		
	<i>Before HB 3808</i>	<i>After HB 3808</i>
Minors charged with prostitution	Previously, minors could be charged with prostitution-related offenses and no defense was available.	Minors now have an affirmative defense that they are victims of human trafficking. Additionally, any child charged with prostitution-related offense is presumed to be a child in need of services.
Protective provisions for victims	The victim could be considered a child in need of services, but the definition was not specific to DMST victims. No specific services existed.	“Child in Need of Services” now includes a sexually exploited child (child under 18 that is a sex trafficking victim or child engaging in prostitution-related offenses). Establishes specific services for sexually exploited children, which can be accessed voluntarily by the child or through court order. Multi-disciplinary service teams must now include a team of professionals who are trained to assess the needs of sexually exploited children and human trafficking victims.
Mandatory abuse reporting	The term “sexually exploited child” was not included in the types of abuse requiring reporting.	Now includes required reporting if the child is believed to be a sexually exploited child or a human trafficking victim.
Victim-friendly criminal justice procedures	DMST victims were not protected under the “rape shield” law. No caseworker privilege. Previously closed-circuit television was allowed for some CSEC victims. There was no law on human trafficking, so this was not included.	Extends the “rape shield” law, which limits traumatizing cross-examination, to sex trafficking victims. A caseworker privilege for human trafficking victims is established; the caseworker does not have to disclose information the human trafficking victim reveals. Child victims of sex trafficking may now testify via closed-circuit television. A human trafficking victim’s name is not to be released on court records or police reports.