

HOUSE No. 02277

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh and

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 safe harbor for exploited children.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|-------------------------------------|
| <i>Martin J. Walsh</i> | <i>13th Suffolk</i> |
| <i>Karen E. Spilka</i> | <i>Second Middlesex and Norfolk</i> |
| <i>Linda Dorcena Forry</i> | <i>12th Suffolk</i> |
| <i>Barry R. Finegold</i> | <i>Second Essex and Middlesex</i> |
| <i>Gale D. Candaras</i> | <i>First Hampden and Hampshire</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> |
| <i>Sonia Chang-Diaz</i> | <i>Second Suffolk</i> |
| <i>Susan C. Fargo</i> | <i>Third Middlesex</i> |
| <i>Denise Andrews</i> | <i>2nd Franklin</i> |
| <i>Carl M. Sciortino, Jr.</i> | <i>34th Middlesex</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> |
| <i>Jason M. Lewis</i> | <i>31st Middlesex</i> |
| <i>William N. Brownsberger</i> | <i>24th Middlesex</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> |
| <i>David B. Sullivan</i> | <i>6th Bristol</i> |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> |
| <i>Christine E. Canavan</i> | <i>10th Plymouth</i> |

| | |
|------------------------------|-------------------------------------|
| <i>Cory Atkins</i> | <i>14th Middlesex</i> |
| <i>Carlo Basile</i> | <i>1st Suffolk</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Gloria L. Fox</i> | <i>7th Suffolk</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>Steven A. Tolman</i> | <i>Second Suffolk and Middlesex</i> |
| <i>Jennifer L. Flanagan</i> | <i>Worcester and Middlesex</i> |
| <i>George Ross</i> | <i>2nd Bristol</i> |
| <i>Carlos Henriquez</i> | <i>5th Suffolk</i> |
| <i>Alice K. Wolf</i> | <i>25th Middlesex</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |

HOUSE No. 02277

By Representatives Mr. Walsh of Boston and Ms. Malia, a petition (accompanied by bill, House, No. 2277) of Spilka and others relative to the protection of children under the age of 18 who have been subject to sexual exploitation Joint Committee on the Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

- 1 SECTION 1: Chapter 119 of the General Laws is hereby amended by inserting after section 39J
- 2 the following section:
- 3 Section 39K. Definitions, as used in sections 39L through 39M:
- 4 (a) The term “sexually exploited child” means any person under the age of 18 who has been
- 5 subject to sexual exploitation because he or she:
- 6 (1) is the victim of the crime of sex trafficking as defined in 22 United States Code 7105
- 7 (2) engages in any act as defined in chapter 272 section 53A of the General Laws
- 8 (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution as
- 9 defined by chapter 272 section 4A of the General Laws

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

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

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

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

24 Section 39L. In any delinquency or criminal proceeding against a sexually exploited child
25 alleging that the defendant violated section 53(a) or 53A(a) of chapter 272, there shall be a
26 presumption that the matter should be handled instead as a proceeding under section 24 or 39E of
27 chapter 119. Upon the motion of the defendant, or as raised sua sponte by the Court, the Court
28 shall hold a hearing at which the prosecuting district attorney’s office, the defendant, and other
29 agencies or persons with relevant information may be heard to determine whether the matter
30 shall proceed as a delinquency or criminal proceeding, or whether the delinquency or criminal
31 proceeding should be dismissed and in its stead the Court should institute a child in need of

32 services or care and protection petition. The information that the Court should consider in
33 determining whether the presumption is rebutted should include, but not be limited to: whether
34 child has been previously found to have committed an offense pursuant to section 53A(a) of
35 chapter 272 or, has been previously convicted or adjudicated delinquent under section 53A(a) of
36 chapter 272 and committed to the department of youth services; or, has previously engaged in
37 conduct that, if proved, would constitute a violation of section 53A of chapter 272; or, has
38 previously refused or been unable to cooperate with services offered under section 51B of
39 chapter 119; and, the Court should consider the child's need for services that may be provided by
40 department of children and families or any non-governmental organization that provides services
41 to such children, and the protection of society from the conduct that forms the basis for the
42 proceeding. Whether to continue with the delinquency or criminal proceeding, or to dismiss said
43 proceeding and proceed with a child in need of services or care and protection proceeding shall
44 be within the court's discretion. The necessary findings of fact to support the decision shall be
45 reduced to writing and made part of the court record. If, during the pendency of a child in need
46 of services or care and protection proceeding initiated under this section, the child is not in
47 substantial compliance with a lawful order of the court, or fails to comply with the guidance and
48 services of the department or any designated non-governmental service provider, the court may,
49 in its discretion, vacate the dismissal of the delinquency or criminal proceeding and restore that
50 proceeding to the docket for trial or further proceedings in accordance with the regular course of
51 such proceedings.

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

54 Section 39M. Services for exploited children

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

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

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

74 (d) The commissioner of the department of children and families may, to the extent that funds
75 are available, in conjunction with local law enforcement officials, contract with appropriate non-
76 governmental organizations or entities with experience working with sexually exploited children

77 to train law enforcement officials who are likely to encounter sexually exploited children in the
78 course of their law enforcement duties on the provisions of this section and how to identify and
79 obtain appropriate services for sexually exploited children. The department of children and
80 families shall assist in obtaining any available funds for the purposes of conducting law
81 enforcement training from the federal justice department and/or the office of juvenile justice and
82 delinquency prevention.

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

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

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

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

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

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

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

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

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

119 For 51B reports specifically involving a sexually exploited child as defined in Section 39K (a),
120 the purpose of the multi-disciplinary service team shall be to determine whether the child has

- 121 been sexually exploited and to recommend a plan for services to include shelter or placement,
- 122 mental health and medical care needs, and other social services.