

HOUSE No. 766

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

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 adoption of the accompanying bill:

An Act to reduce sexual exploitation of victims of human trafficking.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-----------------------------|------------------------------|
| <i>Michael S. Day</i> | <i>31st Middlesex</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> |
| <i>Paul Brodeur</i> | <i>32nd Middlesex</i> |
| <i>Daniel Cahill</i> | <i>10th Essex</i> |
| <i>Linda Dean Campbell</i> | <i>15th Essex</i> |
| <i>James M. Cantwell</i> | <i>4th Plymouth</i> |
| <i>Brendan P. Crighton</i> | <i>11th Essex</i> |
| <i>Daniel Cullinane</i> | <i>12th Suffolk</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Lori A. Ehrlich</i> | <i>8th Essex</i> |
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> |
| <i>Denise C. Garlick</i> | <i>13th Norfolk</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> |
| <i>Sheila C. Harrington</i> | <i>1st Middlesex</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> |

| | |
|---------------------------------|---------------------------------------|
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> |
| <i>Hannah Kane</i> | <i>11th Worcester</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Robert M. Koczera</i> | <i>11th Bristol</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> |
| <i>Jay D. Livingstone</i> | <i>8th Suffolk</i> |
| <i>Adrian Madaro</i> | <i>1st Suffolk</i> |
| <i>Joseph W. McGonagle, Jr.</i> | <i>28th Middlesex</i> |
| <i>James R. Miceli</i> | <i>19th Middlesex</i> |
| <i>Leonard Mirra</i> | <i>2nd Essex</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> |
| <i>Mathew Muratore</i> | <i>1st Plymouth</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |
| <i>Richard J. Ross</i> | <i>Norfolk, Bristol and Middlesex</i> |
| <i>Jose F. Tosado</i> | <i>9th Hampden</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> |
| <i>Aaron Vega</i> | <i>5th Hampden</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> |
| <i>Timothy R. Whelan</i> | <i>1st Barnstable</i> |

HOUSE No. 766

By Mr. Day of Stoneham, a petition (accompanied by bill, House, No. 766) of Michael S. Day and others relative to sexual exploitation of victims of human trafficking. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to reduce sexual exploitation of victims of human trafficking.

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 inserting after
2 section 58 the following section:-

3 Section 59.

4 (a) At any time after the entry of a judgment of disposition on an indictment or
5 criminal or delinquency complaint for an offense under section 8, section 26, section 53(a), or
6 section 53A of chapter 272 or under section 53(b) of chapter 272 or under section 34 of chapter
7 94C for simple possession of a Class A, Class B, Class C or Class D controlled substance as
8 defined in section 31 of chapter 94C, the court in which it was entered shall, upon motion of the
9 defendant, vacate any conviction, adjudication of delinquency, or continuance without a finding
10 and permit the defendant to withdraw any plea of guilty, plea of nolo contendere, plea of
11 delinquent, or factual admission tendered in association therewith upon a finding by the court of
12 a reasonable probability that the defendant’s participation in the offense was a result of having

13 been a victim of human trafficking as defined by section 20M of chapter 233 or a victim of
14 trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22,
15 chapter 78), provided that:

16 (1) Except as provided in (a)(2) and (a)(3) of this Section 59, the defendant shall have
17 the burden to establish a reasonable probability that the defendant's participation in the offense
18 was the result of having been a victim of human trafficking;

19 (2) Where a child under the age of eighteen was adjudicated delinquent for an offense
20 under section 8, section 26, section 53(a), or section 53A of chapter 272, based on allegations of
21 prostitution, there shall be a rebuttable presumption that the child's participation in the offense
22 was a result of having been a victim of human trafficking or trafficking in persons;

23 (3) Where the conviction, adjudication of delinquency, or continuance without a
24 finding was for an offense under section 8, section 26, section 53(a), or section 53A of chapter
25 272 committed when the defendant was 18 years of age or older, official documentation from
26 any local, state, or federal government agency of the defendant's status as a victim of human
27 trafficking or trafficking in persons at the time of the offense shall create a rebuttable
28 presumption that the defendant's participation in the offense was a result of having been a victim
29 of human trafficking or trafficking in persons, but shall not be required for granting a motion
30 under this paragraph;

31 (4) For purposes of subsection (a)(3) of this Section 59, "official documentation"
32 shall be defined as any document issued by a local, state, or federal government agency in the
33 agency's official capacity;

34 (5) The rules concerning the admissibility of evidence at criminal trials shall not
35 apply to the presentation and consideration of information at a hearing conducted pursuant to this
36 section, and the court shall consider hearsay contained in official documentation from any local,
37 state, or federal government agency of the defendant's status as a victim of human trafficking or
38 trafficking in persons offered in support of a motion pursuant to this section; and

39 (6) A motion pursuant to this section may be heard by any sitting justice of a court of
40 competent jurisdiction.

41 (b) Upon vacatur of a conviction, adjudication of delinquency, or continuance
42 without a finding, the court shall enter a plea of not guilty, except if the vacated conviction,
43 adjudication of delinquency, or continuance without a finding was for an offense under section 8,
44 section 26, section 53(a), or section 53A of chapter 272, in which case the court shall dismiss the
45 indictment or criminal or delinquency complaint.

46 (c) Upon vacatur of a conviction, adjudication of delinquency, or continuance
47 without a finding and the entrance of a plea of not guilty pursuant to this section 59, it shall be an
48 affirmative defense to the charges against the defendant that, while a human trafficking victim,
49 such person was under duress or coerced into committing the offenses for which such person is
50 being prosecuted or against whom juvenile delinquency proceedings have commenced.

51 (d) The administrative justices of the superior court, district court, juvenile court and
52 the Boston municipal court departments shall jointly promulgate a motion form for use under this
53 section.

54 SECTION 2. Section 57 of chapter 265 of the General Laws, as added by section 23 of
55 chapter 178 of the acts of 2011, is hereby further amended by:- Striking out, before the words

56 “section 53A of said chapter 272” the words “a violation of” and inserting the words “charges of
57 a violation of section 8, section 26 and,”-

58 SECTION 3. Chapter 276 of the General Laws is hereby amended by inserting after
59 section 100D the following section:-

60 Section 100E. In any case wherein a plea of not guilty has been entered by a court
61 pursuant to section 59 of chapter 265 and the criminal complaint is subsequently dismissed; the
62 defendant is found not guilty by a judge or a jury; a finding of no probable cause is made by the
63 court; or a nolle prosequi has been entered, the commissioner of probation shall seal said court
64 appearance and disposition recorded in his files and the clerk and the probation officers of the
65 courts in which the proceedings occurred or were initiated shall likewise seal the records of the
66 proceedings in their files. The provisions of this paragraph shall not apply if the defendant makes
67 a written request to the commissioner not to seal the records of the proceedings.

68 Such sealed records shall not operate to disqualify a person in any examination,
69 appointment or application for public employment in the service of the commonwealth or of any
70 political subdivision thereof.

71 An application for employment used by an employer which seeks information concerning
72 prior arrests or convictions or adjudications of delinquency of the applicant shall include in
73 addition to the statement required under section one hundred A the following statement: "An
74 applicant for employment with a sealed record on file with the commissioner of probation may
75 answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court
76 appearances." The attorney general may enforce the provisions of this section by a suit in equity
77 commenced in the superior court.

78 The commissioner or the clerk of courts in any district or superior court or juvenile court
79 or the Boston municipal court, in response to inquiries by authorized persons other than any law
80 enforcement agency or any court, shall in the case of a sealed record report that no record exists.