

Combatting Human Trafficking and Protecting Survivors

Messrs. Montigny, Cyr, Rush and Ross, Ms. Lovely and Ms. Forry moved that the proposed new text be amended by inserting after section 65 the following 7 sections:

“SECTION 65A. Section 4D of chapter 260 of the General Laws, as so appearing, is hereby amended by striking out, in lines 11 and 14, the figure “3” and inserting in place thereof the following figure:- 10.

SECTION 65B. Chapter 265 of the General Laws is hereby further amended by adding the following section:-

Section 59. (a) At any time after the entry of a judgment of disposition on an indictment or criminal or delinquency complaint for an offense, excluding a felony offense, the court in which it was entered shall, upon motion of the defendant, vacate any conviction, adjudication of delinquency, or continuance without a finding and permit the defendant to withdraw any plea of guilty, plea of nolo contendere, plea of delinquent, or factual admission tendered in association with one or more pleas upon a finding by the court, established by a preponderance of the evidence, that the defendant’s participation in the offense was a result of having been a victim of human trafficking as defined by section 20M of chapter 233 or a victim of trafficking in persons under 22 U.S.C. 7102.

(b) For the purposes of this subsection, “official documentation” shall mean a document issued by a local, state or federal government agency in the agency’s official capacity.

Except as provided in this section, the defendant shall have the burden of establishing by a preponderance of the evidence that the defendant's participation in the offense was the result of having been a victim of human trafficking. If the conviction, adjudication of delinquency or continuance without a finding was for an offense under sections 8, 26 or 53A of chapter 272 or common night walking or common streetwalking under section 53 of said chapter 272, official documentation of the defendant's status as a victim of human trafficking or trafficking in persons at the time of the offense shall create a rebuttable presumption that the defendant's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons; provided, however, that official documentation shall not be required for granting a motion under this section.

(c) In determining whether the defendant's participation in the offense was a result of having been a victim of human trafficking, the court may consider any evidence it deems appropriate in determining whether the person was a victim of human trafficking.

(d) The rules concerning the admissibility of evidence at criminal trials shall not apply to the presentation and consideration of evidence at a hearing conducted pursuant to this section. The court may, in its discretion, consider any evidence it deems relevant, including, but not limited to, hearsay evidence.

(e) Where a child under the age of 18 is adjudicated delinquent for an offense under sections 8, 26, 53 or 53A of chapter 272, based on allegations of prostitution, there shall be an irrebuttable presumption that the child's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons.

(f) A motion pursuant to this section may be heard by the justice that originally heard the matter or any sitting justice of the court that originally heard the matter.

(g) Upon vacatur of a conviction, adjudication of delinquency or continuance without a finding, the court shall enter a plea of not guilty, except if the vacated conviction, adjudication of delinquency or continuance without a finding was for an offense under sections 8, 26 or 53A of chapter 272 or for common night walking or common streetwalking under section 53 of said chapter 272, in which case the court shall dismiss the indictment or criminal complaint or delinquency complaint with prejudice. Upon vacatur of a conviction, adjudication of delinquency or continuance without a finding and the entrance of a plea of not guilty pursuant to this section, it shall be an affirmative defense to the charges against the defendant that the defendant's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons.

(h) The chief justice of the trial court shall prescribe the form in which a motion may be filed under this section.

(i) A conviction, adjudication of delinquency or continuance without a finding vacated under this section shall be deemed to have been vacated on the merits.

SECTION 65C. Chapter 276 of the General Laws is hereby amended by inserting after section 87A the following section:-

Section 87B. (a) First offender commercial sexual exploitation prevention programs may be established and certified subject to appropriation. A court and the district attorney may after arraignment and prior to the disposition of a defendant and with the approval of the district

attorney divert the defendant charged with a first offense of subsection (b) of section 53A of chapter 272 to a first offender commercial sexual exploitation prevention program. The court shall continue the matter while the defendant fulfills the requirements of the program and shall retain jurisdiction pending the defendant's successful completion of the program.

(b) The court shall determine if the defendant is eligible to participate in the first offender commercial sexual exploitation prevention program established pursuant to this section. The defendant shall not be eligible if the court determines that the defendant: (i) was convicted or admitted to sufficient facts of a previous violation of subsection (b) of section 53A of chapter 272 or a similar offense under the laws of another state; (ii) was previously admitted to a first offender commercial sexual exploitation prevention program under this section; (iii) has previously been charged with a violation of said subsection (b) of said section 53A of said chapter 272 or a similar offense under the laws of another state and is awaiting adjudication of such offense; (iv) has been charged with, convicted of or admitted to sufficient facts of a violation of section 50 or 51 of chapter 265; or (v) is a registered sex offender under chapter 6 or under the laws of another jurisdiction.

(c) A first offender commercial sexual exploitation prevention program shall, at a minimum: (i) provide each participant with information, counseling and services relating to: (A) the negative impact of commercial sex and sex trafficking on victims; (B) the negative impact of commercial sex and sex trafficking on communities; (C) the health risks involved in commercial sexual exploitation, including the risk of sexually transmitted diseases and issues relating to mental health, substance abuse and sexual addiction; (D) the legal consequence to the defendant; and (E) classroom instruction related to the prevention of commercial sexual exploitation and organized crime and the sex industry; (ii) employ persons or solicit volunteers that may include,

but shall not be limited to, health care professionals, psychologists, licensed social workers or counselors, survivors of commercial sexual exploitation, members of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons or employees of a nongovernmental organization specializing in advocacy on laws related to sex trafficking or human trafficking or in providing services to victims of those offenses; (iii) allow a participant to withdraw from the program at any time before a trial on the merits; and (iv) certify to the court that the defendant has successfully completed the requirements of the program, has failed to complete the program or has withdrawn from the program.

(d) Upon successful completion of the program, the court may dismiss the charge against the defendant. Upon dismissal, the court may order the record of the defendant sealed.

(e) The court shall determine and assess an appropriate fee for participation in the first offender commercial sexual exploitation prevention program. The court shall not waive the fee but may, under section 100C of chapter 276 and its prevailing procedure and authority, reduce the fee based on a determination by the court that the defendant cannot pay the entire fee. The fee shall be distributed as follows: (i) 1/3 shall be transferred to the nonprofit organization certified by the commissioner of probation to conduct the program; (ii) 1/3 shall be transferred to the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10; and (iii) 1/3 shall be transferred to the state or municipal law enforcement agency responsible for the arrest of the defendant which shall be used for human trafficking investigations and prevention and to fund mandatory training for law enforcement agencies, prosecutors, public defenders, juvenile detention center employees providing direct services to victims of human trafficking and others providing direct services in the juvenile justice system and criminal justice system.

(f) The commissioner of probation shall review each organization that operates a first offender commercial sexual exploitation prevention program and shall certify that the program is operating under the requirements of subsection (c). The commissioner shall notify the administrative office of the trial court and the district attorney of all programs receiving such certification. Only programs certified by the commissioner shall be qualified to operate a program under this section. The commissioner, at the commissioner's discretion, may decertify a program for good cause and the commissioner shall notify the administrative office of the trial court of decertification.

SECTION 65D. Said chapter 276 of the General Laws is hereby amended by inserting after section 100D the following section:-

Section 100E. (a) In any case wherein a plea of not guilty has been entered by a court pursuant to section 59 of chapter 265 and: (i) the criminal complaint is subsequently dismissed; (ii) the defendant is found not guilty by a judge or a jury; (iii) a finding of no probable cause is made by the court; or (iv) a nolle prosequi has been entered, a judge shall, upon motion of the defendant, seal said court appearance and disposition recorded, and the clerk and the probation officers of the courts in which the proceedings occurred or were initiated shall likewise seal the records of the proceedings in their files. Sealed records shall not operate to disqualify a person in any examination, appointment or application for public employment in the service of the commonwealth or of any political subdivision.

(b) An application for employment used by an employer which seeks information concerning prior arrests or convictions or adjudications of delinquency of the applicant shall include in addition to the statement required under section 100A the following statement: "An applicant for

employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court appearances."

The attorney general may enforce the provisions of this section by a suit in equity commenced in the superior court. Notwithstanding this section or any other general or special law to the contrary, the commissioner of probation or the clerk of courts in any district court, superior court, juvenile court, or the Boston municipal court, in response to inquiries by authorized persons other than by a law enforcement agency or a court, shall in the case of a sealed record report that no record exists.”; and

by inserting after section 100 the following 3 sections:-

“SECTION 100A. (a) All state, county, municipal and campus police departments and other law enforcement agencies that report crime statistics to the executive office of public safety and security shall include statistics on the crimes of trafficking of persons for sexual servitude under section 50 of chapter 265 and trafficking of persons for forced service under section 51 of said chapter 265 to ensure compliance with reporting standards established by the Federal Bureau of Investigation Uniform Crime Reporting Program.

(b) The executive office of public safety and security shall promulgate regulations relative to the collection of human trafficking crime data. Said regulations shall include, but not be limited to:

(i) the responsibilities of the crime reporting unit, as defined by section 32 of chapter 22C, for the collection, analysis, classification reporting and retention of human trafficking crime data in a central repository; (ii) the procedures necessary to ensure effective data-gathering, preservation and protection of confidential information including, but not limited to, victims’ private and identifying information, and the disclosure of information as required by this section; (iii) the

procedures for reporting data on a standardized form to the crime reporting unit by law enforcement agencies; and (iv) the procedures for assessing the credibility and accuracy of reports of human trafficking from law enforcement agencies.

(c) The crime reporting unit shall analyze and summarize reports of human trafficking data received by the unit. The crime reporting unit shall produce a report summarizing the data collected from law enforcement agencies which shall be submitted annually to the governor, attorney general, the senate and house chairs of the joint committee on public safety, the senate and house chairs of the joint committee on the judiciary, the senate and house chairs of the committee on rules and the chairs of the senate and house committees on ways and means. The report shall not include the names, locations or other identifying information of victims of human trafficking. The annual report shall be a public record and shall be available on the executive office of public safety and security's website.

(d) The crime reporting unit shall make data collected on human trafficking under this section available to federal, state and municipal agencies including, but not limited to, law enforcement agencies. Data collected on human trafficking under this section shall be made available to the public. The disclosed information shall not include the names, addresses or other identifying information of victims of human trafficking.

(e) The district attorney for each county shall report on human trafficking data to the crime reporting unit. Data provided to the crime reporting unit shall include, but not be limited to: (i) the number of prosecutions and convictions of human trafficking crimes, including prosecutions and convictions under sections 50 and 51 of chapter 265; (ii) the characteristics of individuals prosecuted for and convicted of violations under sections 50 and 51 of chapter 265, including

nationality, age, gender, and place of origin; (iii) the characteristics of victims of human trafficking, including nationality, age, gender, and place of origin; (iv) the number of human trafficking prosecutions and convictions originating in each municipality under the district attorney's jurisdiction.

(f) The attorney general shall report on human trafficking data to the crime reporting unit. Data provided to the crime reporting unit shall include, but not be limited to: (i) the number of prosecutions and convictions of human trafficking crimes, including prosecutions and convictions under sections 50 and 51 of chapter 265; (ii) the characteristics of individuals prosecuted for and convicted of violations under said sections 50 and 51 of said chapter 265, including nationality, age, gender, and place of origin; (iii) the characteristics of victims of human trafficking, including nationality, age, gender, and place of origin; (iv) the number of human trafficking prosecutions and convictions originating in each municipality under the attorney general's jurisdiction.

(g) The executive office of public safety and security shall prescribe a standardized form for data collection under (e) and (f).

SECTION 100B. The secretary of health and human services shall file an annual report not later than January 1 with the senate and house chairs of the joint committee on children, families and persons with disabilities, the chairs of the senate and house committees on ways and means and the chairs of the senate and house committees on rules outlining the adequacy and limitations of current services to meet the safety, support, housing, health, education and quality of life needs of human trafficking victims. The report shall identify specialized needs of victims under the age of 18 including, but not limited to, the needs or current efforts to provide specialized foster

care, other suitable housing arrangements, and services to safe guard children. The report shall also identify current resources available at safe house facilities, including the number of beds, resources located on site, and number of victims served. The initial report shall be filed not later than July 1, 2018.

SECTION 100C. The division of professional licensure shall report not later than July 31, 2017 recommendations and an implementation plan to license and oversee professionals and establishments performing bodywork therapy, including but not limited to, any use of touch, words or directed movement to deepen awareness of patterns of movement in the body or the affection of the human energy system or acupoints or Qi meridians of the human body while engaged within the scope of practice of a profession with established standards and ethics. Such report, at a minimum, shall: (i) detail the scope of practice of individual bodywork professions including, but not limited to, practices outlined in section 228(b) of chapter 112; (ii) review nationally-recognized standards of training and certification for each identified practice in this section; (iii) review and recommend appropriate minimum standards for licensure of individual practitioners, establishments and training programs, broken down by each individual practice outlined in this section; (iv) review investigations and complaints filed with the division related to massage therapy or bodyworks establishments involving human trafficking or other violations of state law posing a threat to the public health and safety; (v) examine potential conflicts between state regulation of bodywork therapy and local health and safety ordinances; and (vi) include a timeline necessary to implement a board of registration of bodywork therapy, or its equivalent. The division shall file the report with the senate committee on rules, joint committee on the judiciary, and the senate committee on ways and means. The division shall promulgate

regulations to implement licensure recommendations contained in the report not more than 180 days after the effective date of this act.