

SENATE No. 906

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 enhance the lives of survivors of human trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/3/2017</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>1/20/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/24/2017</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>2/1/2017</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>2/1/2017</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	<i>2/1/2017</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/1/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/2/2017</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>	<i>2/3/2017</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>2/3/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/3/2017</i>

SENATE No. 906

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 906) of Mark C. Montigny, Patricia A. Haddad, Sal N. DiDomenico, James M. Cantwell and other members of the General Court for legislation to enhance the lives of survivors of human trafficking. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to enhance the lives of survivors 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, as appearing in the 2014 Official
2 Edition, is hereby further amended by adding the following section:-

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

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

14 Except as provided in this section, the defendant shall have the burden of establishing by
15 a preponderance of the evidence that the defendant’s participation in the offense was the result of
16 having been a victim of human trafficking. If the conviction, adjudication of delinquency, or
17 continuance without a finding was for an offense under sections 8, 26 or 53A of chapter 272 or
18 common nightwalking or common streetwalking under section 53 of chapter 272, official
19 documentation of the defendant’s status as a victim of human trafficking or trafficking in persons
20 at the time of the offense shall create a rebuttable presumption that the defendant’s participation
21 in the offense was a result of having been a victim of human trafficking or trafficking in persons;
22 provided, however, that such documentation shall not be required for granting a motion under
23 this section.

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

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

31 (e) Where a child under the age of 18 was adjudicated delinquent for an offense under
32 sections 8, 26, 53 or 53A of chapter 272, based on allegations of prostitution, there shall be an

33 irrefutable presumption that the child's participation in the offense was a result of having been a
34 victim of human trafficking or trafficking in persons.

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

37 (g) Upon vacatur of a conviction, adjudication of delinquency, or continuance without a
38 finding, the court shall enter a plea of not guilty, except if the vacated conviction, adjudication of
39 delinquency, or continuance without a finding was for an offense under sections 8, 26 or 53A of
40 chapter 272 or for common nightwalking or common streetwalking under section 53 of chapter
41 272, in which case the court shall dismiss the indictment or criminal or delinquency complaint
42 with prejudice. Upon vacatur of a conviction, adjudication of delinquency, or continuance
43 without a finding and the entrance of a plea of not guilty pursuant to this section, it shall be an
44 affirmative defense to the charges against the defendant that the defendant's participation in the
45 offense was a result of having been a victim of human trafficking or trafficking in persons.

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

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

50 SECTION 2. Chapter 276 of the General Laws, as so appearing, is hereby amended by
51 inserting after section 100D the following section:-

52 Section 100E. (a) In any case wherein a plea of not guilty has been entered by a court
53 pursuant to section 59 of chapter 265 and (i) the criminal complaint is subsequently dismissed;

54 (ii) the defendant is found not guilty by a judge or a jury; (iii) a finding of no probable cause is
55 made by the court; or (iv) a nolle prosequi has been entered, a judge shall, upon motion of the
56 defendant, seal said court appearance and disposition recorded, and the clerk and the probation
57 officers of the courts in which the proceedings occurred or were initiated shall likewise seal the
58 records of the proceedings in their files. Sealed records shall not operate to disqualify a person in
59 any examination, appointment, or application for public employment in the service of the
60 commonwealth or of any political subdivision.

61 (b) An application for employment used by an employer which seeks information
62 concerning prior arrests or convictions or adjudications of delinquency of the applicant shall
63 include in addition to the statement required under section 100A the following statement: "An
64 applicant for employment with a sealed record on file with the commissioner of probation may
65 answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court
66 appearances." The attorney general may enforce the provisions of this section by a suit in equity
67 commenced in the superior court. Notwithstanding this section or any other general or special
68 law to the contrary, the commissioner of probation or the clerk of courts in any district court,
69 superior court, juvenile court, or the Boston municipal court, in response to inquiries by
70 authorized persons other than by a law enforcement agency or a court, shall in the case of a
71 sealed record report that no record exists.