

# HOUSE . . . . . No. 1328

## The Commonwealth of Massachusetts

PRESENTED BY:

**Thomas P. Conroy**

*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 to prohibit human trafficking in massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Conroy	13th Middlesex
William N. Brownsberger	24th Middlesex
Tom Sannicandro	7th Middlesex
Elizabeth A. Malia	11th Suffolk
Christine E. Canavan	10th Plymouth
Paul McMurtry	11th Norfolk
Linda Dorcena Forry	12th Suffolk
Steven J. D'Amico	4th Bristol
Susan C. Fargo	Third Middlesex
Michael F. Rush	10th Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO PROHIBIT HUMAN TRAFFICKING IN MASSACHUSETTS.

*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. **Purposes**

2 The purposes of this Act are to combat trafficking in persons; to protect victims of human  
3 trafficking, assist them in the rebuilding of their lives, and to restore them to their inherent  
4 dignity; to ensure the just and effective punishment of traffickers; and to create an environment  
5 in the State of Massachusetts in which the abolition of human trafficking is effectuated.

### 6 SECTION 2. **Findings**

7 The legislature finds that:

8 (1) As a nation, our founding rests on the principle that all persons are created equal and endowed  
9 with certain unalienable rights, and that among these are life, liberty and the pursuit of happiness.  
10 We are at our best as a people when we are faithful to that principle and struggle to realize its  
11 promise for all persons.

12 (2) Throughout history, many regimes of power have used the law to countenance *de jure* slavery,  
13 and have thereby denied the rights and inherent dignity of whole classes of people.

14 (3) Throughout history, persons of power and evil intent have isolated and coerced vulnerable  
15 individuals into exploitation, thereby preventing them from knowing or enforcing their rights.  
16 Sometimes these perpetrators have operated on the fringes of the law or have benefited from  
17 gaps in it, such as the restrictive common-law definition of coercion requiring an imminent threat  
18 of physical harm.

19 (4) The Thirteenth Amendment is an act to fulfill our founding principle. It mandates that “Neither  
20 slavery nor involuntary servitude . . . shall exist within the United States or any place subject to  
21 their jurisdiction,” and it further obligates Congress to enforce that mandate with “appropriate

22 legislation.” This state also has an affirmative obligation to eradicate the badges and incidents of  
23 slavery.

24 (5) Trafficking in persons is a modern-day manifestation of slavery. It consists of the exploitation  
25 of individuals in situations of commercial sex or forced labor for the purpose of financial gain.

26 (6) The highest order of the state is to fulfill the promise of our founding principle. This  
27 fulfillment is achieved by, *inter alia*, restoring the liberty and inherent dignity of an individual  
28 subjected to trafficking in persons.

29 (7) Every year traffickers in persons prey on hundreds of thousands of people around the world.  
30 Traffickers operate within or across international and state borders and usually target a society’s  
31 most vulnerable, most of whom are women and children. They subject their victims to  
32 exploitation through labor trafficking or commercial sex trafficking.

33 (8) In this country and state, both US citizens and non-citizens fall prey to traffickers of  
34 persons.

35 (9) Vulnerable people are often trafficked or maintained in trafficking because they do not  
36 know their rights or do not know to assert their rights.

37 (10) Traffickers use various techniques to instill fear in victims and keep them enslaved. Some  
38 traffickers keep their victims under lock and key. More frequently, traffickers employ less  
39 obvious techniques including, *inter alia*, isolating their victims from family and the public,  
40 confiscating passports, visas, driver’s licenses, or other identification documents, inflicting  
41 physical violence or the threat thereof against victims or their family, threatening to use legal  
42 processes against them or reporting them to law enforcement, immigration or juvenile  
43 authorities, fostering addiction, controlling their access to addicted substances, and controlling  
44 their funds.

45 (11) Many victims fear that their traffickers will exact retribution on their family members, whether  
46 residing in this country or abroad.

47 (12) Victims of human trafficking typically endure terrible physical and mental trauma. Victims  
48 often suffer from traumatic bonding (Stockholm Syndrome), post traumatic stress disorder  
49 (PTSD), and other conditions resulting from the psychological harm inflicted upon them. When  
50 rescued, the extent of this trauma must be recognized and assessed; victims need to be provided  
51 immediate access to stabilization services before they can effectively contribute to the  
52 investigation of the crimes that have been perpetrated against them.

53 (13) Due to the fear instilled in them by the traffickers, and to the experiences in foreign  
54 countries from which they came, victims often have a profound suspicion of law enforcement  
55 and will not seek the protection of law enforcement officers and agencies.

56 (14) Due to their fears and the psychological harms inflicted upon them, as noted in the US  
57 State Department's 2007 Trafficking in Persons Report, trafficking victims are unlikely to self-  
58 identify themselves as victims.

59 (15) Within the context of interactions with authorities, victims of human trafficking must  
60 primarily be recognized as the victims of a serious crime, and only secondarily as a witness to a  
61 crime.

62 As stated in the 2007 Trafficking in Persons Report:

63 A government should provide efficient access to justice for these victims, if they so  
64 choose, and access to shelter, medical care, legal aid, and psycho-social counseling.

65 As further stated in the 2007 Report:

66 By placing the needs of victims front and center, victims of this heinous crime are  
67 assured of the protection they so desperately need. Once given those assurances, many  
68 victims step forward voluntarily and without pressure to become powerful and confident  
69 witnesses....

70 (16) Jurisprudence concerning the Thirteenth Amendment of the U.S. Constitution holds that no  
71 person can consent to be enslaved, including agreement to debt bondage, nor can a person under  
72 the age of 18 consent to participate in commercial sex.

73 (17) The federal Trafficking Victims Protection Act of 2000 is an act that fulfills the promise of  
74 the Thirteenth Amendment at the national level. This Act seeks to fulfill that promise within the  
75 state of Massachusetts.

76 SECTION 3. Title 2 of the criminal code shall be amended as follows:

77 Section AAA.01 Definitions.

78 In this Article:

79 (1) "Blackmail" is to be given its ordinary meaning and includes but is not limited to a threat to  
80 convey or publish any fact or purported fact tending to subject any person to embarrassment,  
81 contempt, defamation, hatred, ridicule or worry.

82 (2) "Coercion" means (a) threats of harm to or physical restraint against any person; (b) any act,  
83 scheme, plan, or pattern intended to cause a person to believe that performing, or failing to  
84 perform, an act would result in serious physical, financial, or emotional harm or distress to or  
85 physical restraint against any person; (c) the abuse or threatened abuse of the legal process; (d)  
86 knowingly destroying, concealing, removing, confiscating or possessing any actual or purported  
87 passport, labor or other immigration document, or other government identification document  
88 (including but not limited to drivers licenses and birth certificates), of another person; (e)

89 facilitating or controlling a person's access to any addictive or controlled substance other than  
90 for legal medical purposes; (f) blackmail; (g) demanding or claiming money, goods, or any other  
91 thing of value from or on behalf of a prostituted person where such demand or claim arises from  
92 or is directly related to the act of prostitution; (h) determining, dictating or setting the price for  
93 which another person will engage in an act of prostitution with a third party; (i) determining,  
94 dictating or setting the times at which another person will be available to engage in an act of  
95 prostitution with a third party; (j) determining, dictating or setting the places at which another  
96 person will be available for solicitation of, or to engage in, an act of prostitution with a third  
97 party; or (k) determining, dictating or setting the places at which another person will reside for  
98 purposes of making such person available to engage in an act of prostitution with a third party.

99 (3) "Commercial sex" means (a) (i) any sex, or other, act intended to appeal to the sexual  
100 interests of any person or to arouse sexual excitement or gratification and (ii) with respect to  
101 which value is directly or indirectly given, promised to, or received by any person or with respect  
102 to which images or sounds are recorded or transmitted for the purposes of directly or indirectly  
103 giving, promising, or receiving value, or (b) any sex act intended to further a person's entry into,  
104 or participation in, prostitution or pornography.

105 (4) "Financial harm" includes credit extortion defined elsewhere in commonwealth statute.

106 (5) "Forced labor" shall include debt bondage, involuntary servitude, peonage, and slavery.

107 (6) "Legal process" refers to the criminal law, the civil law, or the regulatory system of the  
108 federal government, any state, territory, district, commonwealth, or trust territory therein, and  
109 any foreign government or subdivision thereof and include legal civil actions, criminal actions,  
110 and regulatory petitions or applications.

111 (7) "Minor" means anyone under the age of 18 (or 21 according to state law).

112 (8) "Debt Bondage" means the status or condition of a debtor arising from a pledge by the  
113 debtor of his or her personal services or of those of a person under his or her control as a security  
114 for debt, if the value of those services as reasonably assessed is not applied toward the  
115 liquidation of the debt or the length and nature of those services are not respectively limited and  
116 defined;

117 (9) "Peonage" means holding someone against his or her will to pay off a debt.

118 (10) "Human Smuggling" means the transportation of a person across a border illegally.

119 (11) "Trafficking in Persons" means commercial sex trafficking or labor trafficking.

120 (12) Commercial sex trafficking is defined as the:

- 121 (a) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by  
122 any means, another person (ii) through deception, force, fraud, threat or coercion (iii)  
123 for purposes of engaging the person in a commercial sex act; or
- 124 (b) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by  
125 any means, (ii) a person under the age of 18 [or 21, according to the state] (iii) for  
126 purposes of engaging the person in a commercial sex act; or
- 127 (c) Receipt of money, goods, or acceptance of the promise thereof knowing that such money,  
128 goods, or promise thereof arose from the trafficking of a person for commercial sex.

129 (13) Labor trafficking is defined as the:

- 130 (a) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by  
131 any means, another person (ii) through deception, force, fraud, threat or coercion (iii)  
132 for purposes of engaging the person in forced labor; or
- 133 (b) Receipt of money, goods, or acceptance of the promise thereof knowing that such money,  
134 goods, or promise thereof arose from the trafficking of a person for forced labor.

135 (14) "Victim of Trafficking" is defined as:

- 136 (a) a person who has been (i) recruited, enticed, harbored, maintained, transported, provided  
137 or obtained, by any means, (ii) through deception, force, fraud, threat or coercion (iii) in  
138 order to be engaged in a commercial sex act or forced labor; or
- 139 (b) a person under age 18 who has been recruited, enticed, harbored, maintained, transported,  
140 provided or obtained, by any means for purposes of a commercial sex act.

141 SECTION 4. Title 1 of the criminal code shall be amended as follows;

142 Section 265. Crimes against a Person

143 (1) Trafficking for labor or services- Any person who knowingly trafficks a person for labor or  
144 services shall be punished pursuant to penalties established by the Attorney General in  
145 accordance with the state felony sentencing structure and taking into account the length of the  
146 servitude and the overall harm inflicted upon the victim.

147 (A) The defendant shall be subject to enhanced penalties where the victim has been  
148 subjected to assault or battery.

149 (B) The defendant shall be subject to enhanced penalties where another person has been  
150 subjected to assault or battery where the purpose or effect has been to coerce another  
151 into, or maintain a person in, trafficking.

152 (C) The defendant shall be subject to enhanced penalties where the victim has been  
153 subjected to rape, sexual assault or sexual abuse.

154 (D) The defendant shall be subject to enhanced penalties where another person has been  
155 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to  
156 coerce another into, or maintain a person in, trafficking.

157 (E) The defendant shall be subject to enhanced penalties where death results from a  
158 violation of this section or if such violation includes an attempt to kill, kidnapping, or an  
159 attempt to kidnap.

160 (F) The court shall order the defendant to pay restitution to any trafficking victim.

161 (G) The court, in imposing sentence on any person convicted of a violation of this  
162 chapter, shall order, in addition to any other sentence imposed and irrespective of any  
163 other provision of law, that such person shall forfeit to the state --

164 (i) such person's interest in any property, real or personal, that was used or intended  
165 to be used to commit or to facilitate the commission of such violation, and

166 (ii) any property, real or personal, constituting or derived from, any proceeds that  
167 such person obtained, directly or indirectly, as a result of such violation.

168 (H) The first priority of such forfeited property shall be to pay the restitution to the  
169 victims of the defendant and to satisfy civil judgments obtained against the defendant  
170 under this Act.

171 (2) Trafficking for commercial sex- Any person who knowingly trafficks a person for  
172 commercial sex shall be punished:

173 (A) As determined by the Attorney General, in accordance with the Massachusetts  
174 felony sentencing structure, taking into account the length of the servitude and the  
175 overall harm inflicted upon the victim.

176 (B) The defendant shall be subject to enhanced penalties where the victim has been  
177 subjected to assault or battery.

178 (C) The defendant shall be subject to enhanced penalties where another person has been  
179 subjected to assault or battery where the purpose or effect has been to coerce another  
180 into, or maintain a person in, trafficking.

181 (D) The defendant shall be subject to enhanced penalties where the victim has been  
182 subjected to rape, sexual assault or sexual abuse.

183 (E) The defendant shall be subject to enhanced penalties where another person has been  
184 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to  
185 coerce another into, or maintain a person in, trafficking.

186 (F) The defendant shall be subject to enhanced penalties where death results from a  
187 violation of this section or if such violation includes an attempt to kill, kidnapping or an  
188 attempt to kidnap.

189 (G) The court shall order the defendant to pay restitution to any trafficking victim.

190 (H) The court, in imposing sentence on any person convicted of a violation of this  
191 chapter, shall order, in addition to any other sentence imposed and irrespective of any  
192 other provision of law, that such person shall forfeit to the state --

193 (i) such person's interest in any property, real or personal, that was used or intended  
194 to be used to commit or to facilitate the commission of such violation, and

195 (ii) any property, real or personal, constituting or derived from, any proceeds that  
196 such person obtained, directly or indirectly, as a result of such violation.

197 (I) The first priority of such forfeited property shall be to pay the restitution to the  
198 victims of the defendant and to satisfy civil judgments obtained against the defendant  
199 under this Act.

200 (3) Trafficking of a child for labor or services- Any person who knowingly trafficks a person  
201 defined as a child pursuant to Massachusetts statute for labor for services shall be punished as  
202 follows:

203 (A) In accordance with state felony sentencing structure, taking into account the length  
204 of the servitude and the overall harm inflicted upon the victim.

205 (B) The defendant shall be subject to enhanced penalties where the victim has been  
206 subjected to assault or battery.

207 (C) The defendant shall be subject to enhanced penalties where another person has been  
208 subjected to assault or battery where the purpose or effect has been to coerce another  
209 into, or maintain a person in, trafficking.

210 (D) The defendant shall be subject to enhanced penalties where the victim has been  
211 subjected to rape, sexual assault or sexual abuse.

212 (E) The defendant shall be subject to enhanced penalties where another person has been  
213 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to  
214 coerce another into, or maintain a person in, trafficking.

215 (F) The defendant shall be subject to enhanced penalties where death results from a  
216 violation of this section or if such violation includes an attempt to kill, kidnapping or an  
217 attempt to kidnap enhancement in accordance with state sentencing structure.

218 (G) The court shall order the defendant to pay restitution to any trafficking victim and  
219 any child as defined by Massachusetts law.

220 (H) The court, in imposing sentence on any person convicted of a violation of this  
221 chapter, shall order, in addition to any other sentence imposed and irrespective of any  
222 other provision of law, that such person shall forfeit to the state --

223 (i) such person's interest in any property, real or personal, that was used or intended  
224 to be used to commit or to facilitate the commission of such violation, and

225 (ii) any property, real or personal, constituting or derived from, any proceeds that  
226 such person obtained, directly or indirectly, as a result of such violation.

227 (I) The first priority of such forfeited property shall be to pay the restitution to the  
228 victims of the defendant and to satisfy civil judgments obtained against the defendant  
229 under this Act.

230 (4) Trafficking of a child for commercial sex – Any person who trafficks a person defined as a  
231 child by Massachusetts state law for commercial sex shall be punished as follows:

232 (A) Sentences to be in accordance with state felony sentencing structure and shall also  
233 take into account the length of the servitude and the overall harm inflicted upon the  
234 victim.

235 (B) The defendant shall be subject to enhanced penalties where the victim has been  
236 subjected to assault or battery.

237 (C) The defendant shall be subject to enhanced penalties where another person has  
238 been subjected to assault or battery where the purpose or effect has been to coerce  
239 another into, or maintain a person in, trafficking.

240 (D) The defendant shall be subject to enhanced penalties where the victim has been  
241 subjected to rape, sexual assault or sexual abuse enhancement in accordance with state  
242 sentencing structure.

243 (E) The defendant shall be subject to enhanced penalties where another person has been  
244 subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to  
245 coerce another into, or maintain a person in, trafficking.

246 (F) The defendant shall be subject to enhanced penalties where death results from a  
247 violation of this section or if such violation includes an attempt to kill, kidnapping or an  
248 attempt to kidnap.

249 (G) The court shall order the defendant to pay restitution to any trafficking victim and  
250 any child of the victim who was defined as a child pursuant to Massachusetts state law  
251 at any time during the trafficking.

252 (H) The court, in imposing sentence on any person convicted of a violation of this  
253 chapter, shall order, in addition to any other sentence imposed and irrespective of any  
254 other provision of law, that such person shall forfeit to the state -

255 (i) such person's interest in any property, real or personal, that was used or intended  
256 to be used to commit or to facilitate the commission of such violation, and

257 (ii) any property, real or personal, constituting or derived from, any proceeds that  
258 such person obtained, directly or indirectly, as a result of such violation.

259 (I) The first priority of such forfeited property shall be to pay the restitution to the  
260 victims of the defendant and to satisfy civil judgments obtained against the defendant  
261 under this Act.

262 (J) It shall not be a defense that the defendant was unaware of the age of the victim nor  
263 shall it be a defense that the victim or anyone acting on the victim's behalf gave consent

#### 264 Section CCC.03. Causes of Action

265 (1) The Attorney General may bring a civil action in the court of general jurisdiction to recover  
266 a civil penalty for each violation, and such injunctive and other equitable relief as the court, in its  
267 discretion, may order. A criminal case or prosecution is not a necessary precedent to such an  
268 action. The first priority of any money or property collected under such an action shall be to pay  
269 the restitution to the victims of the defendant and to satisfy civil judgments obtained against the  
270 defendant under this Act

271 (2) Any person aggrieved by a violation of this Act may bring a civil action against the person  
272 or persons who committed such violation to recover actual and punitive damages and reasonable  
273 attorneys' fees. A criminal case or prosecution is not a necessary precedent to such an action.  
274 The statute of limitations for such cause of action shall not commence until the latter of the  
275 victim's emancipation from the defendant or the victim's twenty-first birthday.

#### 276 Section DDD.04. Affirmative Defenses

277 (1) It shall be an affirmative defense for any victim of trafficking under any prosecution that  
278 such person was a victim of trafficking during the time of the alleged offense and that such crime  
279 was committed at the direction of the defendant or in furtherance of the trafficking enterprise.

280 SECTION 4. The criminal code and the human services code shall be further amended as  
281 necessary to implement the following:

282 Section EEE.05 State Government Response to and Responsibilities for the Abolition of Human  
283 Trafficking

284 (1) Within 1 year from the passage of this bill:

285 (A) The state human services department shall establish procedures for identifying victims of  
286 trafficking, including a list of all agencies and entities that should be trained on the  
287 issue. Such agencies shall include but not be limited to state law enforcement agencies,  
288 child protective services, juvenile courts, and runaway and homeless youth shelter  
289 administrators.

290 (B) The state human services department shall compile a list of services and programs  
291 available to (i) victims of human trafficking with a T visa, federal continued presence  
292 status, or a federal Letter of Eligibility and (ii) to putative victims who have not received  
293 a designation in subparagraph (i); (iii) to US juvenile citizens or permanent residents  
294 who are victims; and (iv) US adult citizens or permanent residents.

295 (C) The human services department shall appoint and train a Trafficking Victims Director to  
296 track and coordinate the provision of services to victims and putative victims of human  
297 trafficking. The department shall develop procedures for providing assistance to persons  
298 who are putative victims, including assistance in obtaining full benefits and services  
299 under federal and state law.

300 (D) The state shall establish education programs and “standard operating procedures” for  
301 relevant state employees and contractors, including caseworkers, juvenile justice  
302 workers, healthcare workers and child protective service workers, for assisting, under  
303 federal and state law, and identifying trafficking victims.

304 (E) The state human services department shall establish a program for the comprehensive  
305 care and treatment of child victims of commercial sex.

306 (2) With respect to child victims of commercial sex, no such victim shall be charged or  
307 prosecuted under state criminal law on account of such acts.

308 (3) The referral of a child to the Trafficking Victims Director shall constitute compliance with  
309 the state’s “must report” laws and regulations.

310 (4) State law enforcement agencies and child protective services shall report all putative victims  
311 of human trafficking to the Trafficking Victims Director. If a child victim falls under the  
312 jurisdiction of child protective services and the Trafficking Victims Director, both offices shall  
313 work together to develop a care and treatment plan to attain the best interests of the child.

314 (5) State legal assistance programs for victims of crime shall be available to putative trafficking  
315 victims for purposes of obtaining assistance under this statute and for purposes of pursuing civil  
316 actions against their defendants.

317 (6) The primary duty of the Trafficking Victims Director is to assist the victim in recovering  
318 from the trafficking and in fully enjoying the rights and privileges provided by the federal and  
319 state constitutions.

320 (7) Victims' Rights:

321 (A) Victims of human trafficking shall have the same rights as other victims of a crime,  
322 including the right to receive victim compensation.

323 (B) Victims of human trafficking shall also be entitled to basic information, including but  
324 not limited to information on their legal rights, human rights, immigration rights,  
325 emergency assistance and resources, and any other applicable right and resources.

326 (C) Any statement by a putative victim of human trafficking or the minor child of such  
327 victim to a qualified social worker or case-worker, guardian appointed under this title, or  
328 advocate is a privileged communication unless waived by the victim's attorney, the adult  
329 victim, or the advocate or guardian of a child victim.

330 (D) State employees and contractors shall provide information and statements to a person  
331 or such person's attorney, guardian, or legal representative for purposes of such person's  
332 application for immigration relief or benefits under the TVPA or other victim assistance  
333 law or regulation. Any statement made under this subsection shall be privileged for  
334 purposes of any criminal or civil action.

335 (E) The Trafficking Victims Director shall appoint an advocate who is not a state or  
336 federal employee for putative child victims of trafficking who shall have the authority to  
337 appoint and fire an attorney for the child victim, and to authorize legal process and  
338 applications. Such authority shall end when the advocate determines with the agreement  
339 of the Director that the child is not a victim of trafficking, the child attains the age of 21,  
340 or thirty days after the child receives a T visa, a U visa, a Letter of Eligibility, Continued  
341 Presence or Special Immigrant Juvenile Status and is, pursuant to such receipt, placed in  
342 a suitable long-term care situation including, but not limited to, the federal URM  
343 program.

344 (F) Victims of human trafficking shall not be required to cooperate with law enforcement  
345 in the investigation or prosecution of their traffickers as a condition to receiving any  
346 social service or benefit, including legal services.