

SENATE No. 769

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 strengthen the Anti-Human Trafficking Law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>

SENATE No. 769

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 769) of Mark C. Montigny, Sal N. DiDomenico, James B. Eldridge, Daniel A. Wolf and other members of the General Court for legislation to strengthen the Anti-Human Trafficking Law. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to strengthen the Anti-Human Trafficking Law.

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. Section 12 of chapter 120 of the General Laws, as most recently amended
2 by section 22 of said chapter 267, is hereby further amended by inserting after the words “section
3 13B3/4 of said chapter 265” the following words:- ; or trafficking of persons for sexual servitude
4 in violation of subsection (a) of section 50 of said chapter 265; or trafficking of persons for
5 sexual servitude upon a person under 18 years of age in violation of subsection (b) of said
6 section 50 of said chapter 265.

7 SECTION 2. The first paragraph of section 90A of chapter 127 of the General Laws, as
8 most recently amended by section 39 of said chapter 267, is hereby further amended by striking
9 out the words “or section twenty-six,” and inserting in place thereof the following words:- ,
10 section 26 or section 50.

11 SECTION 3. Chapter 265 of the General Laws, as most recently amended by section 23
12 of chapter 178 of the Acts of 2011, is hereby amended by inserting after section 57 the following
13 new section:-

14 Section 58. (a) For purposes of this section, human trafficking shall mean a severe form
15 of trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000.
16 The attorney general, district attorney or any law enforcement official may certify in writing to
17 the United States Department of Justice, United States Department of Homeland Security or
18 other federal agency, that an investigation or prosecution under this chapter has begun and that a
19 human trafficking victim may cooperate or is currently cooperating with an investigation in order
20 to enable that individual, if eligible under federal law, to qualify for an appropriate visa and to

21 access available federal benefits. The attorney general, district attorney or any other law
22 enforcement official may provide this certification to the victim or the victim's designated legal
23 representative.

24 (b) The attorney general, district attorney, department of children and families or any law
25 enforcement official may certify in writing to the United States Department of Justice, the United
26 States Department of Homeland Security, including any subset of the Department of Homeland
27 Security, such as the United States Customs and Immigration Service or the United States
28 Immigration and Customs Enforcement, that a person making a request is a victim of a crime,
29 and that the person has assisted, is assisting, or is likely to assist in the investigation or
30 prosecution of a crime, in order to enable that person, if eligible under federal law, to qualify for
31 an appropriate visa or to access available federal benefits. The attorney general, district attorney
32 or any other law enforcement official may provide this certification to the victim or the victim's
33 designated legal representative.

34 SECTION 4. Chapter 276 of the General Laws, as appearing in the 2010 official edition,
35 is hereby further amended by inserting after section 87A the following section:-

36 Section 87B. (a) Subject to appropriation, a court may, prior to the disposition of a
37 defendant, divert said defendant charged with a first offense of section 8 or subsection (a) or (b)
38 of section 53A of chapter 272 to a first offender prostitution solicitation program. The court shall
39 continue the matter while the defendant fulfills the requirements of the program and retain
40 jurisdiction pending the defendant's successful completion of the program.

41 (b) The court shall determine if the defendant is eligible to participate in the first offender
42 prostitution prevention program established under this section. The defendant shall not be
43 eligible if the court determines that;

44 (1) the defendant was convicted or admitted sufficient facts to a previous violation
45 of section 8 or 53A of chapter 272 or a similar offense under the laws of another state;

46 (2) the defendant was previously admitted to a first offender prostitution
47 prevention program under this section;

48 (3) the defendant has been charged with a violation of section 8 or 53A of chapter
49 272 or a similar offense under the laws of another state and is awaiting adjudication of such
50 offense;

51 (4) the defendant has been charged with, convicted or admitted sufficient facts to
52 a violation of section 50 or 51 of chapter 265; or

53 (5) the defendant is a registered sex offender under chapter 6 or under the laws of
54 another jurisdiction.

(c) A first offender prostitution solicitation program shall, at a minimum:

- (1) provide each participant with information, counseling and services relating to:
 - (i) the negative impact of commercial sex and sex trafficking on victims;
 - (ii) the negative impact of commercial sex and sex trafficking on communities;
 - (iii) the health risk involved in prostitution, including the risk of sexually transmitted diseases, and issues relating to mental health, substance abuse and sexual addiction;
 - (iv) the legal consequence to the defendant; and
 - (v) classroom instruction related to the prevention of prostitution and organized crime and the sex industry;
- (2) employ persons or solicit volunteers that may include, but not be limited to:
 - (i) health care professionals;
 - (ii) psychologists;
 - (iii) licensed social worker or counselors;
 - (iv) former prostitutes;
 - (v) members of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or
 - (vi) employees of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses;
- (3) establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside;
- (4) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated; and
- (5) 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 shall dismiss the charge against the defendant. Upon dismissal the court may ordered the record of the defendant sealed.

(e) The court shall assess a fee of \$750 for participation in the first offender prostitution solicitation program. The court shall not waive the fee but may reduce the fee based on a determination by probation that the defendant cannot pay the entire fee. The fee shall be distributed as follows;

(1) one-third of the fee shall be transferred to the non-profit organization certified by the commissioner of probation to conduct the program;

(2) one-third shall be transferred to the Human Trafficking Trust Fund established in section 66A of chapter 10; and

(3) one-third shall be transferred to the police department responsible for the arrest of the defendant.

(f) The commissioner of probation shall, in consultation with the chair of the Anti-Human Trafficking Task Force, review each organization that operates a first offender prostitution solicitation program in the commonwealth, 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 of all programs receiving such certification. Only programs certified by the commissioner shall qualify to operate a program under this section. The commissioner, at the commissioner's discretion, may decertify a program for good cause at any time and the commissioner shall notify the administrative office of the trial court of such decertification.

SECTION 5. Subject to appropriation, the executive office of health and human services shall hereby established a pilot program creating a human trafficking safe house specifically to meet the unique needs of adult human trafficking victims, and the department of social services in consultation with the department of youth services shall hereby establish a pilot program creating a human trafficking safe house specifically to meet the unique needs of child human trafficking victims. The safe houses shall each provide specialized support services to adult or child human trafficking victims that will take into account the age, gender, linguistic capabilities, and special needs of the victims and the victim's dependent children, if any. The safe houses shall also provide 24 hour security on the premises, multilingual trauma trained case management staff, access to healthcare and mental health services, and access to employment and educational services.