

HOUSE No. 4595

The Commonwealth of Massachusetts

House of Representatives, August 29, 2016.

The committee on Health Care Financing to whom was referred the Bill to strengthen the anti-human trafficking law (Senate, No. 2461), reports recommending the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4595 [Cost: Greater than \$100,000.00] [Representative Barrows of Mansfield dissenting].

For the committee,

JEFFREY SÁNCHEZ

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

By striking out all after the enacting clause and inserting in place thereof the following:-

1 SECTION 1. Section 12 of chapter 120 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the figure “265”, in line 19, the following
3 words:- ; or trafficking of persons for sexual servitude in violation of subsection (a) of section 50
4 of said chapter 265; or trafficking of persons for sexual servitude upon a person under 18 years
5 of age in violation of subsection (b) of said section 50 of said chapter 265.

6 SECTION 2. Section 90A of chapter 127 of the General Laws, as so appearing, is hereby
7 amended by striking out, in line 13, the words “or section twenty-six” and inserting in place
8 thereof the following words:- , section 26 or section 50.

9 SECTION 3. Section 4D of chapter 260 of the General Laws, as appearing in 2014
10 Official Edition, is hereby amended by striking out, in lines 11 and 14, the figure “3” and
11 inserting in place thereof the following figure:- 10.

12 SECTION 4. Section 50 of chapter 265 is hereby amended by adding the following
13 subsection:-

14 (e) Upon the release of a person convicted of trafficking of persons for sexual servitude
15 in violation of subsection (a) of section 50 of said chapter 265; or trafficking of persons for
16 sexual servitude upon a person under 18 years of age in violation of subsection (b) of said

17 section 50 of said chapter 265, the department of corrections or the county sheriff shall notify the
18 chief of police of the city or town of which the person will reside and the chief of police of the
19 city or town where the offense occurred.

20 SECTION 5. Section 57 of chapter 265 of the General Laws, as so appearing, is hereby
21 amended by striking out, in line 5, the words “section 53A” and inserting in place thereof the
22 following words:- sections 8, 26 or 53A.

23 SECTION 6. Said chapter 265 is hereby further amended by adding the following
24 section:-

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

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

36 Except as provided in this section, the defendant shall have the burden of establishing by
37 a preponderance of the evidence that the defendant’s participation in the offense was the result of
38 having been a victim of human trafficking. If the conviction, adjudication of delinquency, or

39 continuance without a finding was for an offense under sections 8, 26 or 53A of chapter 272 or
40 common nightwalking or common streetwalking under section 53 of chapter 272, official
41 documentation of the defendant's status as a victim of human trafficking or trafficking in persons
42 at the time of the offense shall create a rebuttable presumption that the defendant's participation
43 in the offense was a result of having been a victim of human trafficking or trafficking in persons;
44 provided, however, that such documentation shall not be required for granting a motion under
45 this section.

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

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

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

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

59 (g) Upon vacatur of a conviction, adjudication of delinquency, or continuance without a
60 finding, the court shall enter a plea of not guilty, except if the vacated conviction, adjudication of

61 delinquency, or continuance without a finding was for an offense under sections 8, 26 or 53A of
62 chapter 272 or for common nightwalking or common streetwalking under section 53 of chapter
63 272, in which case the court shall dismiss the indictment or criminal or delinquency complaint
64 with prejudice. Upon vacatur of a conviction, adjudication of delinquency, or continuance
65 without a finding and the entrance of a plea of not guilty pursuant to this section, it shall be an
66 affirmative defense to the charges against the defendant that the defendant's participation in the
67 offense was a result of having been a victim of human trafficking or trafficking in persons.

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

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

72 SECTION 7. Chapter 276 is hereby amended by inserting after section 87A the
73 following section:-

74 Section 87B. (a) First offender commercial sexual exploitation prevention programs may
75 be established and certified subject to appropriation. A court and the district attorney may after
76 arraignment and prior to the disposition of a defendant and with the approval of the district
77 attorney divert the defendant charged with a first offense of subsection (b) or (c) of section 53A
78 of chapter 272 to a first offender commercial sexual exploitation prevention program. The court
79 shall continue the matter while the defendant fulfills the requirements of the program and shall
80 retain jurisdiction pending the defendant's successful completion of the program.

81 (b) The court shall determine if the defendant is eligible to participate in the first offender
82 commercial sexual exploitation prevention program established pursuant to this section. The

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

92 (c) A first offender commercial sexual exploitation prevention program shall, at a
93 minimum: (i) provide each participant with information, counseling and services relating to: (A)
94 the negative impact of commercial sex and sex trafficking on victims; (B) the negative impact of
95 commercial sex and sex trafficking on communities; (C) the health risks involved in commercial
96 sexual exploitation, including the risk of sexually transmitted diseases and issues relating to
97 mental health, substance abuse and sexual addiction; (D) the legal consequence to the defendant;
98 and (E) classroom instruction related to the prevention of commercial sexual exploitation and
99 organized crime and the sex industry; (ii) employ persons or solicit volunteers that may include,
100 but shall not be limited to, health care professionals, psychologists, licensed social workers or
101 counselors, survivors of commercial sexual exploitation, members of a neighborhood association
102 or community that is adversely affected by the commercial sex trade or trafficking of persons or
103 employees of a nongovernmental organization specializing in advocacy on laws related to sex
104 trafficking or human trafficking or in providing services to victims of those offenses; (iii)
105 establish and publish local procedures to promote maximum participation of eligible defendants

106 in programs established in the county or municipality in which defendants reside; (iv) allow a
107 participant to withdraw from the program at any time before a trial on the merits has been
108 initiated; and (v) certify to the court that the defendant has successfully completed the
109 requirements of the program, has failed to complete the program or has withdrawn from the
110 program.

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

113 (e) The court shall assess a fee of not less than \$900 for participation in the first offender
114 commercial sexual exploitation prevention program. The court shall not waive the fee but may,
115 under section 100C of chapter 276 and its prevailing procedure and authority, reduce the fee
116 based on a determination by the court that the defendant cannot pay the entire fee. The fee shall
117 be distributed as follows: (i) 1/3 shall be transferred to the nonprofit organization certified by the
118 commissioner of probation to conduct the program; (ii) 1/3 shall be transferred to the Victims of
119 Human Trafficking Trust Fund established in section 66A of chapter 10; and (iii) 1/3 shall be
120 transferred to the state or municipal law enforcement agency responsible for the arrest of the
121 defendant which shall be used for human trafficking investigations and prevention and to fund
122 mandatory training for law enforcement agencies, prosecutors, public defenders, juvenile
123 detention center employees providing direct services to victims of human trafficking and others
124 providing direct services in the juvenile justice system and criminal justice system.

125 (f) The commissioner of probation shall, in consultation with the chair of the anti-human
126 trafficking task force, review each organization that operates a first offender commercial sexual
127 exploitation prevention program and shall certify that the program is operating under the

128 requirements of subsection (c). The commissioner shall notify the administrative office of the
129 trial court and the district attorney of all programs receiving such certification. Only programs
130 certified by the commissioner shall be qualified to operate a program under this section. The
131 commissioner, at the commissioner's discretion, may decertify a program for good cause and the
132 commissioner shall notify the administrative office of the trial court of decertification.

133 SECTION 8. Said chapter 276 is hereby further amended by inserting after section 100D
134 the following section:-

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

144 (b) An application for employment used by an employer which seeks information
145 concerning prior arrests or convictions or adjudications of delinquency of the applicant shall
146 include in addition to the statement required under section 100A the following statement: "An
147 applicant for employment with a sealed record on file with the commissioner of probation may
148 answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court
149 appearances." The attorney general may enforce the provisions of this section by a suit in equity

150 commenced in the superior court. Notwithstanding this section or any other general or special
151 law to the contrary, the commissioner of probation or the clerk of courts in any district court,
152 superior court, juvenile court, or the Boston municipal court, in response to inquiries by
153 authorized persons other than by a law enforcement agency or a court, shall in the case of a
154 sealed record report that no record exists.

155 SECTION 9. (a) All state, county, municipal and campus police departments and other
156 law enforcement agencies that report crime statistics to the executive office of public safety and
157 security shall include statistics on the crimes of trafficking of persons for sexual servitude under
158 section 50 of chapter 265 and trafficking of persons for forced service under section 51 of said
159 chapter 265 to ensure compliance with reporting standards established by the Federal Bureau of
160 Investigation Uniform Crime Reporting Program.

161 (b) The executive office of public safety and security shall promulgate regulations
162 relative to the collection of human trafficking crime data. Said regulations shall include, but not
163 be limited to: (i) the responsibilities of the crime reporting unit, as defined by section 32 of
164 chapter 22C, for the collection, analysis, classification reporting and retention of human
165 trafficking crime data in a central repository; (ii) the procedures necessary to ensure effective
166 data-gathering, preservation and protection of confidential information including, but not limited
167 to, victims' private and identifying information, and the disclosure of information as required by
168 this section; (iii) the procedures for reporting data on a standardized form to the crime reporting
169 unit by law enforcement agencies; and (iv) the procedures for assessing the credibility and
170 accuracy of reports of human trafficking from law enforcement agencies.

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

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

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

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

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

205 SECTION 10. The executive office of public safety and security, in conjunction with the
206 executive office of health and human services and the office of the attorney general, shall
207 establish and maintain an independent website to disseminate information regarding human
208 trafficking, human trafficking crime statistics and resources for victims of human trafficking.
209 Information available through the website shall not include the names, locations or other
210 identifying information of victims of human trafficking.

211 SECTION 11. (a) Law enforcement agencies, prosecutors, public defenders, juvenile
212 detention center employees providing direct services and others providing direct services in the
213 juvenile justice system and criminal justice system shall be trained in identifying and responding
214 to human trafficking. The executive office public safety and security shall provide the training
215 which shall include information on: (i) human trafficking offenses; (ii) methods used in

216 identifying victims of human trafficking who may be United States citizens or foreign national
217 citizens, including preliminary interview techniques and appropriate questioning methods; (iii)
218 prosecuting human traffickers; (iv) increasing effective collaboration between the courts,
219 nongovernmental organizations and other relevant social service organizations to assist in the
220 investigation and prosecution of human trafficking cases; (v) protecting the rights of victims of
221 human trafficking, including but not limited to specific consideration of human rights, female
222 and minor victims; (vi) interacting with victims of human trafficking as crime victims rather than
223 criminals; and (vi) promoting the safety of victims of human trafficking. The training shall
224 include information on the screening of individuals who may be victims of human trafficking
225 and data collection protocols under section 12.

226 (b) The administrative office of the trial court shall provide mandatory training for
227 judges, clerk-magistrates and court personnel.

228 (c) The executive office of public safety and security shall collaborate with
229 nongovernmental organizations and other relevant organizations in the preparation and
230 presentation of the training required pursuant to this section.

231 (d) The executive office of education shall implement mandatory educational training for
232 educators in kindergarten through grade 12. The training shall include information to assist
233 educators in identifying victims of human trafficking and providing appropriate support to
234 victims of human trafficking. The training shall be incorporated into professional development
235 modules. The executive office of education may collaborate with public or nongovernmental
236 organizations to provide training and may use previously developed courses. The executive

237 office of education shall also develop a parent guide and teacher training material on internet
238 safety and methods of preventing the exploitation of minors over the internet.

239 (e) The department of public health shall implement mandatory training for all health
240 care professionals who are mandated reporters to assist in identifying human trafficking victims
241 and the appropriate actions to be undertaken when such victims have been identified. The
242 department may collaborate with public or nongovernmental organizations to provide training
243 and may use previously developed courses.

244 SECTION 12. (a) The executive office of health and human services, in cooperation with
245 the executive office of public safety and security, other agencies and nongovernmental
246 organizations shall, subject to appropriation, prepare public awareness programs designed to
247 educate potential victims of human trafficking and their families on the risks of victimization.
248 The public awareness programs shall include, but not be limited to: (i) information about the
249 risks of becoming a victim of human trafficking that uses best practices to prevent stigmatization
250 of victims and includes information about common recruitment techniques, use of debt bondage
251 and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually-
252 transmitted diseases and psychological harm related to victimization in human trafficking cases;
253 (ii) information about victims' rights under federal and state laws; (iii) methods for reporting
254 suspected recruitment activities; and (iv) information on the types of services available to victims
255 of human trafficking and how to access such services, including information on relevant hotlines,
256 such as the National Human Trafficking Resource Center hotline.

257 (b) The executive office of health and human services, in cooperation with other
258 appropriate government agencies and nongovernmental organizations, shall prepare and

259 disseminate general public awareness materials to educate the public on the extent of human
260 trafficking of both United States citizens and foreign nationals within the United States, to
261 discourage the demand that fosters the exploitation of persons and that leads to human
262 trafficking.

263 (c) General public awareness materials may include information on the impact of human
264 trafficking on individual victims, whether United States citizens or foreign nationals; aggregate
265 information on human trafficking worldwide and domestically; and warnings of the criminal
266 consequences of engaging in human trafficking. Such materials may include pamphlets,
267 brochures, posters, advertisements in mass media and any other appropriate media.

268 (d) Programs and materials described in this section shall preserve the privacy of victims
269 and their family members.

270 (e) All public awareness programs shall be evaluated periodically to ensure their
271 effectiveness.

272 SECTION 13. (a) The Massachusetts Department of Transportation shall display public
273 awareness signs that contain the National Human Trafficking Resource Center hotline, or its
274 successor, in every transportation station, rest area and welcome center that is open to the public.

275 (b) Public awareness campaign advertisements shall be displayed in a conspicuous
276 location visible to the public and employees in the following facilities: (i) adult entertainment
277 facilities and other businesses primarily dedicated to adult entertainment or sex-related products;
278 (ii) facilities determined to be a nuisance for prostitution under section 4 of chapter 139; (iii)
279 facilities licensed as massage parlors; (iv) job recruitment centers; (v) facilities operating as

280 foreign transmittal agencies under chapter 169; (vi) hospitals; and (vii) emergency care
281 providers.

282 (c) An employer who violates subsection (b) shall be punished by a fine of not more than
283 \$500 for a first offense and a fine of not more than \$1,000 for a second or subsequent offense.

284 (d) The attorney general shall promulgate rules and regulations to enforce subsection (b).

285 SECTION 14. The secretary of health and human services shall file an annual report not
286 later than January 1 with the senate and house chairs of the joint committee on children, families
287 and persons with disabilities, the chairs of the senate and house committees on ways and means
288 and the chairs of the senate and house committees on rules outlining the adequacy and
289 limitations of current services to meet the safety, support, housing, health, education and quality
290 of life needs of human trafficking victims. The report shall identify specialized needs of victims
291 under the age of 18 including, but not limited to, the needs or current efforts to provide
292 specialized foster care or other suitable housing arrangements. The report shall also identify
293 current resources available at safe house facilities, including the number of beds, resources
294 located on site, and number of victims served. The initial report shall be filed no later than
295 January 31, 2017.

296 SECTION 15. Chapter 6 of the General Laws, as appearing in the 2014 Official Edition,
297 is hereby amended by adding the following section:-

298 Section 219. (a) For purposes of this section, “partnership” shall mean the human
299 trafficking prevention business partnership.

300 (b) There shall be a human trafficking prevention business partnership. The partnership
301 shall engage participating corporations and other private entities in voluntary efforts to prevent
302 and combat human trafficking. The governor, or the governor's designee, shall serve as chair of
303 the partnership.

304 (c) Participating corporations in the partnership shall: (i) adopt a zero tolerance policy
305 toward human trafficking; (ii) ensure that the corporation's or entity's employees comply with the
306 policy adopted under clause (i); (iii) participate in public awareness and education campaigns;
307 (iv) enhance awareness of and encourage participation in the partnership; and (v) exchange
308 information about effective practices for abolishing human trafficking including, but not limited
309 to, identifying private and nonprofit resources that may be available to support the work of the
310 partnership and promote efforts to abolish human trafficking.

311 (d) The governor, or his designee, shall work collaboratively to promote the partnership
312 with other state agencies, including but not limited to the executive office of labor and workforce
313 development, the executive office of health and human services, and the executive office of
314 public safety and security.

315 (e) The chair of the partnership shall present a certificate of recognition to participating
316 corporations and private entities to recognize the corporation's or entity's contributions and
317 commitment to abolishing human trafficking.

318 (g) Nothing in this section shall be construed as limiting any laws currently in effect
319 related to human trafficking.

320 SECTION 16. Unless otherwise provided, this act shall take effect on January, 1, 2017.