

SENATE No. 2373

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 stop human trafficking and enhance the lives of survivors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>7/12/2016</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>7/12/2016</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>7/12/2016</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>7/13/2016</i>

SENATE No. 2373

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 2373) (subject to Joint Rule 12) of Mark C. Montigny for legislation to stop human trafficking and enhance the lives of survivors. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to stop human trafficking and enhance the lives of survivors.

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 is hereby amended by inserting after
2 section 58 the following section:-

3 Section 59.

4 (a) At any time after the entry of a judgment of disposition on an indictment or criminal
5 or delinquency complaint for an offense, excluding a felony offense, the court in which it was
6 entered shall, upon motion of the defendant, vacate any conviction, adjudication of delinquency,
7 or continuance without a finding and permit the defendant to withdraw any plea of guilty, plea of
8 nolo contendere, plea of delinquent, or factual admission tendered in association therewith upon
9 a finding by the court of a reasonable probability that the defendant’s participation in the offense
10 was a result of having been a victim of human trafficking as defined by section 20M of chapter
11 233 or a victim of trafficking in persons under the Trafficking Victims Protection Act (United
12 States Code, title 22, chapter 78).

13 (b) (1) Except as provided in subsection (b)(2), the defendant shall have the burden to
14 establish a reasonable probability that the defendant's participation in the offense was the result
15 of having been a victim of human trafficking;

16 (2) If the conviction, adjudication of delinquency, or continuance without a finding was
17 for an offense under section 8, section 26, section 53, or section 53A of chapter 272, official
18 documentation from any local, state, or federal government agency of the defendant's status as a
19 victim of human trafficking or trafficking in persons at the time of the offense shall create a
20 rebuttable presumption that the defendant's participation in the offense was a result of having
21 been a victim of human trafficking or trafficking in persons, but shall not be required for
22 granting a motion under this section.

23 (c) In determining whether the defendant's participation in the offense was a result of
24 having been a victim of human trafficking, the court may consider any evidence it deems
25 appropriate in determining whether the person was a victim of human trafficking, including but
26 not limited to:

27 (i) certified records of federal or state court proceedings which demonstrate that the
28 defendant was a victim of a trafficker charged with a human trafficking offense under state or
29 federal law;

30 (ii) certified records of approval notices or law enforcement certifications generated from
31 a federal immigration proceeding available to victims of human trafficking; and

32 (iii) testimony or a sworn statement from a trained professional staff member of a victims
33 services organization, an attorney, a member of the clergy, or a health care or other professional

34 from whom the person has sought assistance in addressing the trauma associated with being a
35 victim of human trafficking.

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

40 (e) Where a child under the age of eighteen was adjudicated delinquent for an offense
41 under section 8, section 26, section 53, or section 53A of chapter 272, based on allegations of
42 prostitution, the court shall make a judicial finding that the child's participation in the offense
43 was a result of having been a victim of human trafficking or trafficking in persons.

44 (f) A motion pursuant to this section may be heard by any sitting justice of a court of
45 competent jurisdiction.

46 (g)(1) Upon vacatur of a conviction, adjudication of delinquency, or continuance without
47 a finding, the court shall enter a plea of not guilty, except if the vacated conviction, adjudication
48 of delinquency, or continuance without a finding was for an offense under section 8, section 26,
49 section 53, or section 53A of chapter 272, in which case the court shall dismiss the indictment or
50 criminal or delinquency complaint.

51 (2) Upon vacatur of a conviction, adjudication of delinquency, or continuance without a
52 finding and the entrance of a plea of not guilty pursuant to this section, it shall be an affirmative
53 defense to the charges against the defendant that, while a human trafficking victim, such person
54 was under duress or coerced into committing the offenses for which such person is being
55 prosecuted or against whom juvenile delinquency proceedings have commenced.

56 (h) The superior court, district court, juvenile court and the Boston municipal court
57 departments shall jointly promulgate a motion form for use under this section.

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

60 SECTION 2. Section 57 of chapter 265 of the General Laws, as added by section 23 of
61 chapter 178 of the acts of 2011, is hereby further amended by:- Striking out, before the words “to
62 a violation of section 53A of said chapter 272” the word “and” and inserting the words “, a
63 violation of sections 8 and 26 of chapter 272, and”

64 SECTION 3. Chapter 276 of the General Laws is hereby amended by inserting after
65 section 100D the following section:-

66 Section 100E. In any case wherein a plea of not guilty has been entered by a court
67 pursuant to section 59 of chapter 265 and the criminal complaint is subsequently dismissed; the
68 defendant is found not guilty by a judge or a jury; a finding of no probable cause is made by the
69 court; or a nolle prosequi has been entered, the commissioner of probation shall seal said court
70 appearance and disposition recorded in his files and the clerk and the probation officers of the
71 courts in which the proceedings occurred or were initiated shall likewise seal the records of the
72 proceedings in their files. The provisions of this paragraph shall not apply if the defendant makes
73 a written request to the commissioner not to seal the records of the proceedings.

74 Such sealed records shall not operate to disqualify a person in any examination,
75 appointment or application for public employment in the service of the commonwealth or of any
76 political subdivision thereof.

77 An application for employment used by an employer which seeks information concerning
78 prior arrests or convictions or adjudications of delinquency of the applicant shall include in
79 addition to the statement required under section one hundred A the following statement: "An
80 applicant for employment with a sealed record on file with the commissioner of probation may
81 answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court
82 appearances." The attorney general may enforce the provisions of this section by a suit in equity
83 commenced in the superior court.

84 The commissioner or the clerk of courts in any district or superior court or juvenile court
85 or the Boston municipal court, in response to inquiries by authorized persons other than any law
86 enforcement agency or any court, shall in the case of a sealed record report that no record exists.