

HOUSE No. 3414**The Commonwealth of Massachusetts**

PRESENTED BY:

Tram T. Nguyen and Patricia A. Haddad*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 promote safety for victims of violent crime and human trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/17/2019</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>3/18/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/25/2019</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>1/31/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/29/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/1/2019</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/30/2019</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	<i>1/24/2019</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/29/2019</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/1/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/28/2019</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>1/30/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/1/2019</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/29/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>1/30/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/2/2019</i>

<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>1/31/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>1/29/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/1/2019</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/29/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/28/2019</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/29/2019</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>1/28/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/1/2019</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/1/2019</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/1/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>1/30/2019</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>1/31/2019</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>2/1/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/29/2019</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/31/2019</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/29/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>1/24/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/28/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/29/2019</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>2/1/2019</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>2/1/2019</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>1/30/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/30/2019</i>

HOUSE No. 3414

By Representatives Nguyen of Andover and Haddad of Somerset, a petition (accompanied by bill, House, No. 3414) of Tram T. Nguyen, Patricia A. Haddad and others for legislation to promote safety for victims of violent crime and human trafficking. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to promote safety for victims of violent crime and 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 The purpose of this bill is to promote public safety by encouraging victims of violent
2 crime and human trafficking to collaborate with law enforcement and to attain justice for
3 Massachusetts residents. The goal is to bring fairness and protection to immigrant victims who
4 assist in those efforts by ensuring them access to justice and legal relief. The bill also will
5 standardize certification procedures and protocol statewide, and create transparency and
6 accountability for victims.

7 SECTION 1. Chapter 258B of the General Laws is hereby amended by inserting after
8 section 13 the following section:-

9 Section 14. U Nonimmigrant Status Certification.

10 (a) For purposes of this section, a "certifying entity" is any of the following:

11 (1) A state, local, tribal, territorial, or campus law enforcement agency.

12 (2) A prosecutor.

13 (3) A judge.

14 (4) Any other authority that has responsibility for the detection, investigation, or
15 prosecution of a qualifying crime or criminal activity.

16 (5) Agencies that have criminal detection or investigative jurisdiction in a related
17 area of expertise, including, but not limited to, the Massachusetts Department of Children and
18 Families, the Massachusetts Commission Against Discrimination, the Massachusetts Department
19 of Labor Relations, the Massachusetts Department of Labor Standards, the Massachusetts
20 Division of Industrial Accidents, and local boards of health.

21 (b) For purposes of this section, a "certifying official" is any of the following:

22 (1) The head of the certifying entity.

23 (2) A person in a supervisory role who has been designated by the head of the
24 certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.

25 (3) A judge.

26 (4) Any other certifying official defined under Section 214.14(a)(2) of Title 8 of
27 the Code of Federal Regulations.

28 (c) "Qualifying criminal activity" means any qualifying criminal activity, under state
29 or federal law, pursuant to section 101(a)(15)(U)(iii) of the Immigration and Nationality Act in
30 its most recent form, which includes, but is not limited to, the following crimes:

31 (1) Abduction.

- 32 (2) Abusive sexual conduct.
- 33 (3) Being held hostage.
- 34 (4) Blackmail.
- 35 (5) Domestic violence.
- 36 (6) Extortion.
- 37 (7) False imprisonment.
- 38 (8) Felonious assault.
- 39 (9) Female genital mutilation.
- 40 (10) Fraud in foreign labor contracting.
- 41 (11) Human trafficking.
- 42 (12) Incest.
- 43 (13) Involuntary servitude.
- 44 (14) Kidnapping.
- 45 (15) Manslaughter.
- 46 (16) Murder.
- 47 (17) Obstruction of justice.
- 48 (18) Peonage.

- 49 (19) Perjury.
- 50 (20) Prostitution.
- 51 (21) Rape.
- 52 (22) Sexual Assault.
- 53 (23) Sexual exploitation.
- 54 (24) Slavery.
- 55 (25) Stalking.
- 56 (26) Torture.
- 57 (27) Unlawful criminal restraint.
- 58 (28) Witness tampering.

59 (d) A "qualifying crime" also includes:

60 (1) Other criminal offenses for which the nature of the offense is substantially
61 similar to a criminal activity described in subdivision (c); and

62 (2) Any attempt, conspiracy, or solicitation to commit any offense described in
63 subdivision (c) or subdivision (d)(1).

64 (e) A "victim of a qualifying criminal activity" includes, but is not limited to:

65 (1) The direct victim of any qualifying criminal activity; and

(2) Where the direct victim is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity for circumstances including but not limited to where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, then the following will be considered victims of qualifying criminal activity:

(i) The direct victim's spouse.

(ii) The direct victim's children under 21 years of age.

(iii) The direct victim's parents and unmarried siblings who are under 18 years of age, if the direct victim is under 21 years of age.

For purposes of determining eligibility under this definition, the age of the victim will be considered at the time the qualifying criminal activity occurred.

(3) Bystanders who suffer unusually direct injury as a result of a qualifying crime.

(f) The victim, the victim's family member, or an advocate may request a certifying official from a certifying agency to execute a Form I-918 Supplement B certification based on a determination by the certifying agency that the victim has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity. Upon determination to issue such a certification, the procedural requirements for the completion of the Form I-918 Supplement B form shall be followed as set forth in subsection (h) below.

(g) Determining whether the victim has cooperated with a reasonable request for assistance in an investigation or prosecution. For the purposes of determining victim cooperation pursuant to section (f):

(1) For certification purposes, victim cooperation includes, but is not limited to, reporting a crime, offering useful or relevant information regarding the qualifying criminal activity or its actor, and providing assistance to law enforcement when reasonably requested.

(2) There is a rebuttable presumption that a victim has cooperated with a reasonable request in an investigation or prosecution if the victim has not refused to provide information and assistance reasonably requested by law enforcement.

(3) There is no requirement for a current investigation, the filing of charges, an arrest, a prosecution, or a conviction to occur in order for a victim to be deemed cooperative and receive Form I-918 Supplement B. A certifying entity or official can certify based on past, present, or the likelihood of future cooperation from a victim.

(4) A request to a certifying entity for certification may be made at any time, regardless of when the crime occurred, including if the statute of limitations has run.

(h) Certification Requirements for the Form I-918 Supplement B Certifying Official.

(1) The certifying official shall complete and sign the Form I-918 Supplement B in a color of ink other than black for verification purposes.

(2) If the certifying official decides the victim is eligible for certification, the certifying official shall describe victim helpfulness on the Form I-918 Supplement B by providing detailed information regarding the nature of the crime detected, investigated, or

106 prosecuted, and the victim's helpfulness or likely helpfulness to the detection, investigation, or
107 prosecution of the criminal activity.

108 (3) A certifying entity shall process the request for the I-918 Supplement B within
109 90 calendar days of receipt of the request unless urgent circumstances occur. If the following
110 circumstances occur, the certification request shall be processed within 14 calendar days of the
111 request: (1) the noncitizen is in removal proceedings or in immigration detention; (2) there is an
112 urgent deadline involving a qualifying family member who will otherwise lose derivative
113 eligibility, or; (3) there is a similarly compelling humanitarian circumstances necessitating timely
114 submission of the underlying application.

115 (4) If a certifying entity decides not to complete an I-918 Supplement B for a
116 victim, the entity must provide prompt written notification of the denial to the victim and the
117 reason or reasons why the request was denied. A certifying entity may not deny certification
118 solely because there is another agency qualified to certify. The denial will be without prejudice
119 and a new request can be submitted if supplemental information becomes available.

120 (5) A certifying entity may only withdraw the certification if the victim
121 unreasonably refuses to provide information or assistance. If a certifying entity decides to
122 withdraw the certification for a victim, the entity must provide prompt written notification of the
123 withdrawal to the victim and the reason or reasons why the certification was withdrawn.

124 (6) A certifying entity is prohibited from disclosing the immigration status or
125 current address of a victim or victim's family member requesting certification, except to comply
126 with federal law or legal process, or if explicitly authorized by the victim, the victim's family

member, or the victim's advocate. If disclosure is required, the victim must be promptly notified of the disclosure.

(7) A certifying entity that receives a request for the Form I-918 Supplement B shall report to the Massachusetts Office for Victim Assistance, on or before October 1, 2020, and annually thereafter, the number of victims that requested the Form I-918 Supplement B from the entity, the number of those certification forms that were signed, and the number of those certifications that were denied. The Massachusetts Office for Victim Assistance shall submit a report to the Speaker of the House of Representatives, the President of the Senate, and the Joint Committee on Public Safety and Homeland Security by January 1, 2021, and annually thereafter, setting forth the number of victims that requested the Form I-918 Supplement B from each entity, the number of those such forms that were signed by each entity, and the number of those certifications that were denied by each entity, as well as total statewide statistics.

(i) The attorney general shall receive, investigate, and attempt to resolve complaints of violations of subdivisions (a) through (h), inclusive. The attorney general may bring an action in any state court of competent jurisdiction:

(1) To enjoin violations of this title and seek other relief going forward necessary to prevent future violations;

(2) In the case of a violation of subsections (a) through (h), inclusive, a civil penalty of not less than \$500 per violation; or

(3) Any other equitable relief the Court deems appropriate.

Any sums recovered by the attorney general shall be held in a special deposit account and shall be paid directly to each affected victim of a qualifying criminal activity.

(j) An action under subsection (i) may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought, provided that the limitations for filing an action shall be tolled during the period that the attorney general is considering a complaint against any certifying entity filed with under subsection (i).

SECTION 2. Chapter 258B of the General Laws is hereby amended by inserting after section 14 the following section:

Section 15. T nonimmigrant status certification.

(a) For purposes of this section, a "law enforcement agency" is any of the following:

(1) A state, local, tribal, territorial, or campus law enforcement agency.

(2) A prosecutor.

(3) A judge.

(4) Any other authority that has responsibility for the detection, investigation, and/or prosecution of severe forms of human trafficking in persons, including but not limited to, the Massachusetts department of children and families, the Massachusetts Commission Against Discrimination, the Massachusetts Department of Labor Relations, the Massachusetts Department of Labor Standards, the Massachusetts division of industrial accidents, and local boards of health.

(b) For purposes of this section “severe forms of trafficking in persons,” as defined in 22 U.S.C. § 7102, in the Trafficking Victims Protection Act, means:

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) The victim, the victim's family member, or an advocate may request a certifying official from a certifying agency to execute a Form I-914 Supplement B based on a determination by the certifying agency that the victim has cooperated with a reasonable request for assistance in the investigation or prosecution of trafficking in persons as defined in subdivision (b). Upon determination to issue such a certification, the procedural requirements for the completion of the Form I-914 Supplement B form shall be followed as set forth in subsection (e) below.

(d) Determining whether the victim has cooperated with a reasonable request for assistance in an investigation or prosecution. For the purposes of determining victim cooperation pursuant to section (c):

(1) For certification purposes, reasonable request for assistance means a request made to a victim to assist in the investigation or prosecution of the acts of trafficking in persons or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.

(2) Victim cooperation includes, but is not limited to, reporting a crime, offering useful or relevant information regarding severe forms of trafficking in persons or its actor, and responding to a reasonable request for assistance from a law enforcement agency.

(3) There is a rebuttable presumption that a victim has responded to a reasonable request for assistance in an investigation or prosecution if the victim has not refused to provide information and assistance reasonably requested by a law enforcement agency.

(4) There is no requirement for a current law enforcement investigation, the filing of charges, an arrest, a prosecution, or a conviction to occur in order for a victim to be deemed cooperative and receive Form I-914 Supplement B.

(5) A request to a law enforcement agency for certification may be made at any time, regardless of when the crime occurred, including if the statute of limitations has run.

(e) Certification Requirements for the Form I-914 Supplement B law enforcement agency.

(1) If the certifying official decides the victim is eligible for certification, the law enforcement agency shall complete and sign the Form I-914 Supplement B in a color of ink other than black for verification purposes.

(2) If the certifying official decides the victim is eligible for certification, the law enforcement agency shall describe how the victim complied with a reasonable request for assistance in the investigation or prosecution of the acts of the trafficking in persons or the investigation of severe forms of trafficking in persons.

(3) The “reasonableness” of the request for assistance depends on the totality of the circumstances. Factors to consider include, but are not limited to: law enforcement and prosecutorial practices; the nature of the victimization; the specific circumstances of the victim; severe trauma (both mental and physical); access to support services; whether the request would cause further trauma; the safety of the victim or the victim's family; compliance with other requests and the extent of such compliance; whether the request would yield essential information; whether the information could be obtained without the victim's compliance; whether an interpreter or attorney was present to help the victim understand the request; cultural, religious, or moral objections to the request; the time the victim had to comply with the request; and the age and maturity of the victim.

(4) A law enforcement agency shall process the request for an I-914 Supplement B within 90 calendar days of receipt of the certification request unless urgent circumstances occur. If the following circumstances occur, the certification request shall be processed within 14 calendar days of the request: (i) the noncitizen is in removal proceedings or in immigration detention; (ii) there is an urgent deadline involving a qualifying family member who will otherwise lose derivative eligibility; or (iii) there is a similarly compelling humanitarian situation necessitating timely submission of the underlying application.

(5) If a law enforcement agency decides not to complete an I-914 Supplement B for a victim of a severe form of trafficking in persons, the law enforcement agency must provide prompt written notification of the denial to the victim and the reason or reasons why the request was denied. A law enforcement agency may not deny certification solely because there is another agency qualified to certify. The denial will be without prejudice and a new request can be submitted if supplemental information becomes available.

230 (6) A law enforcement agency may only withdraw the certification if the victim
231 refuses to respond to a reasonable request for assistance from law enforcement. If a law
232 enforcement agency decides to withdraw the certification for a victim, the law enforcement
233 agency must provide prompt written notification of the withdrawal to the victim and the reason
234 or reasons why the certification was withdrawn.

235 (7) A law enforcement agency is prohibited from disclosing the immigration status
236 or current address of a victim or victim's family member requesting certification, except to
237 comply with federal law or legal process, or if explicitly authorized by the victim, the victim's
238 family member, or the victim's advocate. If disclosure is required, the victim must be promptly
239 notified of the disclosure.

240 (8) A law enforcement agency that receives a request for the Form I-914
241 Supplement B shall report to the Massachusetts Office for Victim Assistance, on or before
242 October 1, 2020, and annually thereafter, the number of victims that requested the Form I-914
243 Supplement B from the entity, the number of those certification forms that were signed, and the
244 number that were denied. The Massachusetts Office for Victim Assistance shall submit a report
245 to the Speaker of the House of Representatives, the President of the Senate, and the Joint
246 Committee on Public Safety and Homeland Security by January 1, 2021, and annually thereafter,
247 setting forth the number of victims that requested the Form I-914 Supplement B from each
248 entity, the number of those certification forms that were signed by each entity, and the number of
249 those certifications that were denied by each entity, as well as total statewide statistics.

(f) The attorney general shall receive, investigate, and attempt to resolve complaints of violations of subdivisions (a) through (e), inclusive. The attorney general may bring an action in any state court of competent jurisdiction:

(1) To enjoin violations of this title and seek other relief going forward necessary to prevent future violations;

(2) In the case of a violation of subsections (a) through (e), inclusive, a civil penalty of not less than \$500 per violation; or

(3) Any other equitable relief the Court deems appropriate.

Any sums recovered by the attorney general shall be held in a special deposit account and shall be paid directly to each affected victim of severe forms of human trafficking.

(g) An action under subsection (f) may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought, provided that the limitations for filing an action shall be tolled during the period that the attorney general is considering a complaint against any law enforcement agency filed with under subsection (f).