

SENATE No. 995

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 promoting safety for victims of violent crime and human trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/25/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/25/2019</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>1/25/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/28/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/30/2019</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/30/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/30/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/30/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/31/2019</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/31/2019</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/1/2019</i>

<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/8/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>4/30/2019</i>

SENATE No. 995

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 995) of Mark C. Montigny, Joanne M. Comerford, José F. Tosado, Maria Duaine Robinson and other members of the General Court 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 promoting 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 SECTION 1. Chapter 258B of the General Laws, as so appearing in the 2016 Official
2 Edition, is hereby amended by inserting after section 13 the following section:-

3 Section 14. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Certifying entity”, a state, local, tribal, territorial, or campus law enforcement agency,
6 prosecutor, judge, or other authority that has responsibility for the detection, investigation, or
7 prosecution of a qualifying crime or criminal activity, including but not limited to, the
8 department of children and families, Massachusetts Commission Against Discrimination,
9 department of labor relations, department of labor standards, division of industrial accidents, and
10 each municipal board of health. “Certifying official”, any head of a certifying entity, a person in a
11 supervisory role who has been designated by the head of the certifying entity to issue Form I-918

12 Supplement B certifications on behalf of that entity, a judge, or any other certifying official
13 designated by federal law.

14 \“Qualifying criminal activity”, criminal activity defined in Section 101 of the
15 Immigration and Nationality Act involving one or more of the following or any substantially
16 similar activity in violation of federal or state criminal law: (1) abduction; (2) abusive sexual
17 conduct; (3) being held hostage; (4) blackmail; (5) domestic violence; (6) extortion; (7) false
18 imprisonment; (8) felonious assault; (9) female genital mutilation; (10) fraud in foreign labor
19 contracting; (11) human trafficking; (12) incest; (13) involuntary servitude; (14) kidnapping;
20 (15) manslaughter; (16) murder; (17) obstruction of justice; (18) peonage; (19) perjury; (20)
21 prostitution; (21) rape; (22) sexual assault; (23) sexual exploitation; (24) slavery; (25) stalking;
22 (26) torture; (27) unlawful criminal restraint; (28) witness tampering; or (29) attempt,
23 conspiracy, or solicitation to commit any of the above mentioned crimes.

24 “Victim of a qualifying criminal activity ”, the (1) direct victim of a qualifying criminal
25 activity; (2) in the case where the direct victim is unable to provide information concerning the
26 criminal activity or be helpful in the investigation or prosecution of the criminal activity for
27 circumstances including but not limited to where the direct victim is deceased due to murder or
28 manslaughter, or is incompetent or incapacitated, the following: (i) the direct victim’s spouse;
29 (ii) the direct victim’s children under 21 years of age; (iii) the direct victim’s parents and
30 unmarried siblings who are under 18 years of age, if the direct victim is under 21 years of age at
31 the time the qualifying criminal activity occurred; or (3) bystanders who suffer unusually direct
32 injury as a result of a qualifying crime.

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

40 (c) Determining whether the victim has cooperated with a reasonable request for
41 assistance in an investigation or prosecution.

42 For the purposes of determining victim cooperation pursuant to section (b):

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

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

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

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

55 (d) Certification Requirements for the Form I-918 Supplement B.

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

58 (2) If the certifying official decides the victim is eligible for certification, the certifying
59 official shall describe victim helpfulness on the Form I-918 Supplement B by providing detailed
60 information regarding the nature of the crime detected, investigated, or prosecuted, and the
61 victim's helpfulness or likely helpfulness to the detection, investigation, or prosecution of the
62 criminal activity.

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

70 (4) A certifying official may only withdraw the certification if the victim unreasonably
71 refuses to provide information or assistance. If a certifying entity decides to withdraw the
72 certification for a victim, the certifying entity must provide prompt written notification of the
73 withdrawal to the victim including the reason or reasons why the certification was withdrawn.

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

79 (6) A certifying entity is prohibited from disclosing the immigration status or current
80 address of a victim or victim's family member requesting certification, except to comply with
81 federal law or legal process, or if explicitly authorized by the victim, the victim's family
82 member, or the victim's advocate. If disclosure is required, the victim must be promptly notified
83 of the disclosure.

84 (7) A certifying entity that receives a request for the Form I-918 Supplement B shall
85 report to the Massachusetts office for victim assistance, on or before October 1, 2020, and
86 annually thereafter, the number of victims that requested the Form I-918 Supplement B from the
87 entity, the number of those certification forms that were signed, and the number of those
88 certifications that were denied.

89 (e)The Massachusetts office for victim assistance shall submit a report to the speaker of
90 the house of representatives, the president of the senate, and the joint committee on public safety
91 and homeland security by January 1, 2021, and annually thereafter, setting forth the number of
92 victims that requested the Form I-918 Supplement B from each entity, the number of those such
93 forms that were signed by each entity, and the number of those certifications that were denied by
94 each entity, as well as total statewide statistics.

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

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

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

102 (3) Any other equitable relief the court deems appropriate.

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

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

109 SECTION 2. Said chapter 258B of the General Laws is hereby further amended by
110 inserting after section 14 the following section:

111 Section 15. (a) As used in this section, the following words shall, unless the context
112 clearly requires otherwise, have the following meanings:-

113 “Law enforcement agency”, a state, local, tribal, territorial, or campus law enforcement
114 agency, prosecutor, judge, or other authority that has responsibility for the detection,
115 investigation, or prosecution of severe forms of human trafficking in persons, including but not

116 limited to, the department of children and families, Massachusetts Commission Against
117 Discrimination, department of labor relations, department of labor standards, division of
118 industrial accidents, and each municipal board of health.

119 “Certifying official”, any head of a certifying entity, a person in a supervisory role who
120 has been designated by the head of the certifying entity to issue Form I-918 Supplement B
121 certifications on behalf of that entity, a judge, or any other certifying official designated by
122 federal law.

123 “Severe forms of trafficking in persons”, trafficking in persons as defined in 22 U.S.C. §
124 7102, including but not limited to, (1) sex trafficking in which a commercial sex act is induced
125 by force, fraud, or coercion, or in which the person induced to perform such act has not attained
126 18 years of age; or (2) the recruitment, harboring, transportation, provision, obtaining,
127 patronizing, or soliciting of a person for labor or services, through the use of force, fraud, or
128 coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or
129 slavery.

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

137 (c) Determining whether the victim has cooperated with a reasonable request for
138 assistance in an investigation or prosecution.

139 For the purposes of determining victim cooperation pursuant to section (b):

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

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

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

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

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

155 (d) Certification Requirements for the Form I-914 Supplement B.

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

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

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

173 (4) A law enforcement agency shall process the request for an I-914 Supplement B within
174 90 calendar days of receipt of the certification request unless urgent circumstances occur. If the
175 following circumstances occur, the certification request shall be processed within 14 calendar
176 days of the request: (i) the noncitizen is in removal proceedings or in immigration detention; (ii)
177 there is an urgent deadline involving a qualifying family member who will otherwise lose

178 derivative eligibility; or (iii) there is a similarly compelling humanitarian situation necessitating
179 timely submission of the underlying application.

180 (5) A law enforcement agency may only withdraw the certification if the victim
181 unreasonably refuses to respond to a reasonable request for assistance from law enforcement. If a
182 certifying entity decides to withdraw the certification for a victim, the entity must provide
183 prompt written notification of the withdrawal to the victim including the reason or reasons why
184 the certification was withdrawn.

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

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

196 (8) A law enforcement agency that receives a request for the Form I-914 Supplement B
197 shall report to the Massachusetts office for victim assistance, on or before October 1, 2020, and
198 annually thereafter, the number of victims that requested the Form I-914 Supplement B from the

199 entity, the number of those certification forms that were signed, and the number that were
200 denied.

201 (e)The Massachusetts office for victim assistance shall submit a report to the speaker of
202 the house of representatives, the president of the senate, and the joint committee on public safety
203 and homeland security by January 1, 2021, and annually thereafter, setting forth the number of
204 victims that requested the Form I-914 Supplement B from each entity, the number of those
205 certification forms that were signed by each entity, and the number of those certifications that
206 were denied by each entity, as well as total statewide statistics.

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

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

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

214 (3) Any other equitable relief the court deems appropriate.

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

217 (g) An action under subsection (f) may be brought not later than 3 years after the date of
218 the last event constituting the alleged violation for which the action is brought, provided that the

219 limitations for filing an action shall be tolled during the period that the attorney general is
220 considering a complaint against any certifying entity filed with under subsection (f).