

HOUSE No. 03469

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

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 passage of the accompanying bill:

An Act relative to the commercial exploitation of people.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

HOUSE No. 03469

By Mr. O’Flaherty of Chelsea, for the committee on the Judiciary, on House, No. 2850, a Bill relative to the commercial exploitation of people (House, No. 3468). May 26, 2011.

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act relative to the commercial exploitation of people.

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, as most recently amended by Chapter 256 of the
2 Acts of 2010, is hereby further amended by inserting after section 48 the following 5 sections:-

3 Section 49. As used in sections 50 through 51, inclusive, the following words shall, unless the
4 context clearly requires otherwise, have the following meanings:

5 “Blackmail”, is to be given its ordinary meaning and includes but is not limited to a threat to
6 convey or publish any fact or purported fact tending to subject any person to embarrassment,
7 contempt, defamation, hatred, ridicule or worry.

8 “Commercial sexual activity”, any sex act on account of which anything of value is given,
9 promised to, or received by any person.

10 “Financial harm” includes, but shall not be limited to, extortion as defined by section 25 of
11 chapter 265, a violation of section 49 of chapter 271, or employment contracts that violate the
12 Statute of Frauds as defined by chapter 259.

13 "Forced labor or services", labor or services that are performed or provided by another person
14 and are obtained or maintained through an actor's: (a) causing or threatening to cause serious
15 harm to any person; (b) physically restraining or threatening to physically restrain another
16 person; (c) abusing or threatening to abuse the law or legal process; (d) knowingly destroying,
17 concealing, removing, confiscating or possessing any actual or purported passport or other
18 immigration document, or any other actual or purported government identification document, of
19 another person; (e) blackmail; or (f) causing or threatening to cause financial harm to any person.

20 “Labor”, work of economic or financial value.

21 "Services", an ongoing relationship between a person and the actor in which the person performs
22 activities under the supervision of or for the benefit of the actor. Commercial sexual activity and
23 sexually-explicit performances are forms of “services” under sections 50 and 51 inclusive.
24 Nothing in this provision should be construed to legitimize or legalize prostitution.

25 “Sexually-explicit performance”, an unlawful live or public act or show intended to arouse or
26 satisfy the sexual desires or appeal to the prurient interests of patrons.

27 Section 50. (a) Whoever knowingly subjects or attempts to subject, or whoever knowingly
28 recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit,
29 entice, harbor, transport, provide, or obtain by any means, another person to engage in
30 commercial sexual activity, sexually-explicit performance, or the production of unlawful
31 pornography in violation of chapter 272, or causes or attempts to cause a person to engage in

32 commercial sexual activity, sexually-explicit performance, or the production of unlawful
33 pornography in violation of chapter 272; or (b) knowingly benefits, financially or by receiving
34 anything of value, from participation in a venture which has engaged in an act described herein,
35 is guilty of the crime of trafficking of persons for sexual servitude and shall be punished by
36 imprisonment in the state prison for not more than 20 years; provided, however, that a
37 prosecution commenced under the provisions of this section shall not be continued without a
38 finding or placed on file.

39 (b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person
40 under 18 years of age shall be punished by imprisonment in the state prison for life or for any
41 term of years; provided, however, that a prosecution commenced under the provisions of this
42 section shall not be continued without a finding or placed on file.

43 Section 51. Whoever knowingly: (a) subjects or attempts to subjects another person to forced
44 labor services, or whoever knowingly recruits, entices, harbors, transports, provides, or obtains
45 by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means,
46 another person, intending or knowing that the person will be subjected to forced labor or
47 services; or (b) knowingly benefits, financially or by receiving anything of value, from
48 participation in a venture which has engaged in an act described herein, is guilty of trafficking of
49 persons for forced labor or services and shall be punished by imprisonment in the state prison for
50 not more than 15 years; provided, however, that a prosecution commenced under the provisions
51 of this section shall not be continued without a finding or placed on file. A corporation
52 committing trafficking of persons for forced labor services shall be punished by a fine of not
53 more than \$250,000.

54 Whoever commits the crime of trafficking of persons for forced labor services upon a
55 person under 18 years of age shall be punished by imprisonment in the state prison for life or any
56 term of years; provided, however, that a prosecution commenced under the provisions of this
57 section shall not be continued without a finding or placed on file.

58 Section 52. Whoever, after having been convicted of a crime under sections 50 or 51 of this
59 chapter, commits a second or subsequent crime under sections 50 or 51 of this chapter, shall be
60 punished by imprisonment in the state prison for life or for any term of years, but not less than 10
61 years. The sentence imposed on such person shall not be reduced to less than 10 years, or
62 suspended, nor shall any person convicted under this section be eligible for probation, parole,
63 work release, or furlough or receive any deduction from his sentence for good conduct until he
64 shall have served 10 years of such sentence. Prosecutions commenced under this section shall
65 neither be continued without a finding nor placed on file.

66 In any prosecution commenced pursuant to this section, introduction into evidence of a
67 prior adjudication or conviction or a prior finding of sufficient facts by either certified attested
68 copies of original court papers, or certified attested copies of the defendant's biographical and
69 informational data from records of the department of probation, any jail or house of correction or
70 the department of correction, shall be prima facie evidence that the defendant before the court
71 has been convicted previously by a court of the commonwealth or any other jurisdiction. Such
72 documentation shall be self-authenticating and admissible, after the commonwealth has
73 established the defendant's guilt on the primary offense, as evidence in any court of the
74 commonwealth to prove the defendant's commission of any prior conviction described therein.
75 The commonwealth shall not be required to introduce any additional corroborating evidence or
76 live witness testimony to establish the validity of such prior conviction.

77 Section 53. All money seized as a result of a violation of sections 50 through 51 of this chapter,
78 shall be subject to forfeiture to the commonwealth and shall be made available by the court to
79 any victim who is ordered restitution by the court pursuant to section 3 of chapter 258B.

80 SECTION 2. Chapter 12 of the General Laws, as appearing in the 2008 Official Edition, is
81 hereby amended by adding at the end thereof the following new section:-

82 Section 11M. There shall be an inter-agency task force to address all aspects of human
83 trafficking, including sex trafficking and labor trafficking. The task force and shall consist of ____
84 members: 1 of whom shall be the attorney general or her designee who shall chair the task force;
85 1 of whom shall be the President of the Massachusetts District Attorneys Association or his
86 designee; 1 of whom shall be the executive director of the Massachusetts Office for Victim
87 Assistance or his designee; 1 of whom shall be the Director of the Department of Labor or his
88 designee; 1 of whom shall be the Commissioner of the Department of Children and Families or
89 his designee; 1 of whom shall be the Director of the Office for Refugees and Immigrants or his
90 designee; 1 of whom shall be the Secretary of the Executive Office of Public Safety and Security
91 or his designee; 1 of whom shall be the President of the Massachusetts Chiefs of Police
92 Association or his designee; 1 of whom shall be the Commissioner of the Office of the
93 Commissioner of Probation or his designee; 1 of whom shall be the Colonel of the Massachusetts Bay
94 State Police or his designee; 1 of whom shall be the Chief of the Massachusetts Bay
95 Transportation Authority Transit Police or his designee; 1 of whom shall be the Director of the
96 Division of Professional Licensure or his designee; 1 of whom shall be the Commissioner of the
97 Boston Police Department or his designee; 2 of whom shall be the Chairmen of the Joint
98 Committee on the Judiciary; 1 of whom shall be an academic researcher dedicated to the subject
99 of human trafficking; 3 representatives appointed by the attorney general from non-governmental

100 organizations that specialize in human trafficking, including those who work in the following
101 areas: child and runaway services, sexually exploited adults, and labor, who shall serve a term
102 of eighteen months. The attorney general shall invite representatives of the U.S. Attorneys'
103 offices and of federal law enforcement agencies operating within the state, including the Federal
104 Bureau of Investigation, U.S. Immigration and Customs Enforcement, and the U.S. Department
105 of Labor, to be members of the task force.

106 The task force shall: coordinate the collection and sharing of human trafficking data
107 among government agencies, which data collection shall respect the privacy of victims of human
108 trafficking; coordinate strategies and make recommendations for law enforcement to share
109 information for the purposes of detecting individuals and groups engaged in human trafficking;
110 review and recommend policies and procedures to enable state government to work with non-
111 governmental organizations and other elements of civil society to prevent human trafficking and
112 to protect and provide assistance to victims of trafficking; identify and review the existing
113 services and facilities that meet the needs of victims of human trafficking that include, but are
114 not limited to, health and mental health services, housing, education and job training, legal
115 services, and victim compensation; recommend a system that would coordinate such services and
116 assess the need for additional services; evaluate various approaches used by state and local
117 governments to increase public awareness of human trafficking; develop strategies to address the
118 demand side of human trafficking; review the General Laws to determine if they need to be
119 amended in order to address human trafficking; and submit a report of its findings and
120 recommendations to the clerks of the Senate and the House of Representatives who shall forward
121 the same to the Chairs of the Joint Committee on the Judiciary 18 months from the effective date

122 of this Act. The task force shall determine if subsequent reports are necessary in order to
123 properly address human trafficking.

124 SECTION 3. The General Laws, as appearing in the 2008 Official Edition, are hereby amended
125 by striking out section 8 of chapter 272 and inserting, in place thereof, the following new
126 section:-

127 Section 8. Whoever solicits or receives compensation for soliciting for a prostitute shall be
128 punished by imprisonment in a house of correction for not more than 2 ½ years, or by a fine of
129 not more than \$5,000, or by both such imprisonment and fine.

130 SECTION 4. The General Laws, as appearing in the 2008 Official Edition, are hereby amended
131 by striking out section 53A of chapter 272 and inserting, in place thereof, the following new
132 section:-

133 Section 53A. (a)Whoever engages, agrees to engage, or offers to engage in sexual conduct with
134 another person in return for a fee, shall be punished by imprisonment in the house of correction
135 for not more than 1 year or by a fine of not more than \$500 or by both such imprisonment and
136 fine, whether such sexual conduct occurs or not.

137 (b) Whoever pays, agrees to pay, or offers to pay another person to engage in sexual
138 conduct, or to agree to engage in sexual conduct with another natural person, shall be punished
139 by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more
140 than \$5,000 or by both such imprisonment and fine, whether such sexual conduct occurs or not.

141 (c) Whoever pays, agrees to pay, or offers to pay any person with the intent to engage in
142 sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay, or agrees that

143 a third person be paid in return for aiding a person who intends to engage in sexual conduct with
144 a child under the age of 18, shall be punished by imprisonment in the state prison for not more
145 than 10 years, or in the house of correction for not more than 2 ½ years, whether such sexual
146 conduct occurs or not; provided, however, that a prosecution commenced under the provisions of
147 this section shall not be continued without a finding or placed on file.