

HOUSE No. 4354

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

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 reduce sexual exploitation of victims of human trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>

<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>

HOUSE No. 4354

By Mr. Day of Stoneham, a petition (subject to Joint Rule 12) of Michael S. Day and others for legislation to reduce sexual exploitation of victims of human trafficking. The Judiciary.

The Commonwealth of Massachusetts

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

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

13 (1) Except as provided in (a)(2) of this Section 59, the defendant shall have the
14 burden to establish a reasonable probability that the defendant's participation in the offense was
15 the result of having been a victim of human trafficking;

16 (2) If the conviction, adjudication of delinquency, or continuance without a finding
17 was 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 paragraph;

23 (3) The rules concerning the admissibility of evidence at criminal trials shall not
24 apply to the presentation and consideration of information at a hearing conducted pursuant to this
25 section, and the court shall consider hearsay contained in official documentation from any local,
26 state, or federal government agency of the defendant's status as a victim of human trafficking or
27 trafficking in persons offered in support of a motion pursuant to this section; and

28 (4) A motion pursuant to this section may be heard by any sitting justice of a court of
29 competent jurisdiction.

30 (b) Upon vacatur of a conviction, adjudication of delinquency, or continuance
31 without a finding, the court shall enter a plea of not guilty, except if the vacated conviction,
32 adjudication of delinquency, or continuance without a finding was for an offense under section 8,
33 section 26, section 53, or section 53A of chapter 272, in which case the court shall dismiss the
34 indictment or criminal or delinquency complaint.

35 (c) Upon vacatur of a conviction, adjudication of delinquency, or continuance
36 without a finding and the entrance of a plea of not guilty pursuant to this section 59, it shall be an
37 affirmative defense to the charges against the defendant that, while a human trafficking victim,
38 such person was under duress or coerced into committing the offenses for which such person is
39 being prosecuted or against whom juvenile delinquency proceedings have commenced.

40 (d) The administrative justices of the superior court, district court, juvenile court and
41 the Boston municipal court departments shall jointly promulgate a motion form for use under this
42 section.

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

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

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

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

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

67 The commissioner or the clerk of courts in any district or superior court or juvenile court
68 or the Boston municipal court, in response to inquiries by authorized persons other than any law
69 enforcement agency or any court, shall in the case of a sealed record report that no record exists.
70 After a finding or verdict of guilty on a subsequent offense such sealed record shall be made
71 available to the probation officer and the same, with the exception of a not guilty, a no bill, or a
72 no probable cause, shall be made available to the court.