

HOUSE No. 1328

The Commonwealth of Massachusetts

PRESENTED BY:
Thomas P. Conroy

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 to prohibit human trafficking in massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Conroy	13th Middlesex
William N. Brownsberger	24th Middlesex
Tom Sannicandro	7th Middlesex
Elizabeth A. Malia	11th Suffolk
Christine E. Canavan	10th Plymouth
Paul McMurtry	11th Norfolk
Linda Dorcena Forry	12th Suffolk
Steven J. D'Amico	4th Bristol
Susan C. Fargo	Third Middlesex
Michael F. Rush	10th Suffolk

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT TO PROHIBIT HUMAN TRAFFICKING IN MASSACHUSETTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. **Purposes**

The purposes of this Act are to combat trafficking in persons; to protect victims of human trafficking, assist them in the rebuilding of their lives, and to restore them to their inherent dignity; to ensure the just and effective punishment of traffickers; and to create an environment in the State of Massachusetts in which the abolition of human trafficking is effectuated.

SECTION 2. **Findings**

The legislature finds that:

- (1) As a nation, our founding rests on the principle that all persons are created equal and endowed with certain unalienable rights, and that among these are life, liberty and the pursuit of happiness. We are at our best as a people when we are faithful to that principle and struggle to realize its promise for all persons.
- (2) Throughout history, many regimes of power have used the law to countenance *de jure* slavery, and have thereby denied the rights and inherent dignity of whole classes of people.
- (3) Throughout history, persons of power and evil intent have isolated and coerced vulnerable individuals into exploitation, thereby preventing them from knowing or enforcing their rights. Sometimes these perpetrators have operated on the fringes of the law or have benefited from gaps in it, such as the restrictive common-law definition of coercion requiring an imminent threat of physical harm.
- (4) The Thirteenth Amendment is an act to fulfill our founding principle. It mandates that “Neither slavery nor involuntary servitude . . . shall exist within the United States or any place subject to their jurisdiction,” and it further obligates Congress to enforce that mandate with “appropriate legislation.” This state also has an affirmative obligation to eradicate the badges and incidents of slavery.
- (5) Trafficking in persons is a modern-day manifestation of slavery. It consists of the exploitation of individuals in situations of commercial sex or forced labor for the purpose of financial gain.
- (6) The highest order of the state is to fulfill the promise of our founding principle. This fulfillment is achieved by, *inter alia*, restoring the liberty and inherent dignity of an individual subjected to trafficking in persons.
- (7) Every year traffickers in persons prey on hundreds of thousands of people around the world. Traffickers operate within or across international and state borders and usually target a society’s most vulnerable, most of whom are women and children. They subject their victims to exploitation through labor trafficking or commercial sex trafficking.

- (8) In this country and state, both US citizens and non-citizens fall prey to traffickers of persons.
- (9) Vulnerable people are often trafficked or maintained in trafficking because they do not know their rights or do not know to assert their rights.
- (10) Traffickers use various techniques to instill fear in victims and keep them enslaved. Some traffickers keep their victims under lock and key. More frequently, traffickers employ less obvious techniques including, *inter alia*, isolating their victims from family and the public, confiscating passports, visas, driver's licenses, or other identification documents, inflicting physical violence or the threat thereof against victims or their family, threatening to use legal processes against them or reporting them to law enforcement, immigration or juvenile authorities, fostering addiction, controlling their access to addicted substances, and controlling their funds.
- (11) Many victims fear that their traffickers will exact retribution on their family members, whether residing in this country or abroad.
- (12) Victims of human trafficking typically endure terrible physical and mental trauma. Victims often suffer from traumatic bonding (Stockholm Syndrome), post traumatic stress disorder (PTSD), and other conditions resulting from the psychological harm inflicted upon them. When rescued, the extent of this trauma must be recognized and assessed; victims need to be provided immediate access to stabilization services before they can effectively contribute to the investigation of the crimes that have been perpetrated against them.
- (13) Due to the fear instilled in them by the traffickers, and to the experiences in foreign countries from which they came, victims often have a profound suspicion of law enforcement and will not seek the protection of law enforcement officers and agencies.
- (14) Due to their fears and the psychological harms inflicted upon them, as noted in the US State Department's 2007 Trafficking in Persons Report, trafficking victims are unlikely to self-identify themselves as victims.
- (15) Within the context of interactions with authorities, victims of human trafficking must primarily be recognized as the victims of a serious crime, and only secondarily as a witness to a crime.

As stated in the 2007 Trafficking in Persons Report:

A government should provide efficient access to justice for these victims, if they so choose, and access to shelter, medical care, legal aid, and psycho-social counseling.

As further stated in the 2007 Report:

By placing the needs of victims front and center, victims of this heinous crime are assured of the protection they so desperately need. Once given those assurances, many victims step forward voluntarily and without pressure to become powerful and confident witnesses....

- (16) Jurisprudence concerning the Thirteenth Amendment of the U.S. Constitution holds that no person can consent to be enslaved, including agreement to debt bondage, nor can a person under the age of 18 consent to participate in commercial sex.
- (17) The federal Trafficking Victims Protection Act of 2000 is an act that fulfills the promise of the Thirteenth Amendment at the national level. This Act seeks to fulfill that promise within the state of Massachusetts.

SECTION 3. Title 2 of the criminal code shall be amended as follows:

Section AAA.01 Definitions.

In this Article:

- (1) "Blackmail" is to be given its ordinary meaning and includes but is not limited to a threat to convey or publish any fact or purported fact tending to subject any person to embarrassment, contempt, defamation, hatred, ridicule or worry.
- (2) "Coercion" means (a) threats of harm to or physical restraint against any person; (b) any act, scheme, plan, or pattern intended to cause a person to believe that performing, or failing to perform, an act would result in serious physical, financial, or emotional harm or distress to or physical restraint against any person; (c) the abuse or threatened abuse of the legal process; (d) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport, labor or other immigration document, or other government identification document (including but not limited to drivers licenses and birth certificates), of another person; (e) facilitating or controlling a person's access to any addictive or controlled substance other than for legal medical purposes; (f) blackmail; (g) demanding or claiming money, goods, or any other thing of value from or on behalf of a prostituted person where such demand or claim arises from or is directly related to the act of prostitution; (h) determining, dictating or setting the price for which another person will engage in an act of prostitution with a third party; (i) determining, dictating or setting the times at which another person will be available to engage in an act of prostitution with a third party; (j) determining, dictating or setting the places at which another person will be available for solicitation of, or to engage in, an act of prostitution with a third party; or (k) determining, dictating or setting the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party.
- (3) "Commercial sex" means (a) (i) any sex, or other, act intended to appeal to the sexual interests of any person or to arouse sexual excitement or gratification and (ii) with respect to which value is directly or indirectly given, promised to, or received by any person or with respect to which images or sounds are recorded or transmitted for the purposes of directly or indirectly giving, promising, or receiving value, or (b) any sex act intended to further a person's entry into, or participation in, prostitution or pornography.
- (4) "Financial harm" includes credit extortion defined elsewhere in commonwealth statute.
- (5) "Forced labor" shall include debt bondage, involuntary servitude, peonage, and slavery.
- (6) "Legal process" refers to the criminal law, the civil law, or the regulatory system of the federal government, any state, territory, district, commonwealth, or trust territory therein, and any foreign government or subdivision thereof and include legal civil actions, criminal actions, and regulatory petitions or applications.
- (7) "Minor" means anyone under the age of 18 (or 21 according to state law).
- (8) "Debt Bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (9) "Peonage" means holding someone against his or her will to pay off a debt.
- (10) "Human Smuggling" means the transportation of a person across a border illegally.
- (11) "Trafficking in Persons" means commercial sex trafficking or labor trafficking.
- (12) Commercial sex trafficking is defined as the:
 - (a) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person (ii) through deception, force, fraud, threat or coercion (iii) for purposes of engaging the person in a commercial sex act; or

- (b) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, (ii) a person under the age of 18 [or 21, according to the state] (iii) for purposes of engaging the person in a commercial sex act; or
 - (c) Receipt of money, goods, or acceptance of the promise thereof knowing that such money, goods, or promise thereof arose from the trafficking of a person for commercial sex.
- (13) Labor trafficking is defined as the:
- (a) (i) Recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person (ii) through deception, force, fraud, threat or coercion (iii) for purposes of engaging the person in forced labor; or
 - (b) Receipt of money, goods, or acceptance of the promise thereof knowing that such money, goods, or promise thereof arose from the trafficking of a person for forced labor.
- (14) “Victim of Trafficking” is defined as:
- (a) a person who has been (i) recruited, enticed, harbored, maintained, transported, provided or obtained, by any means, (ii) through deception, force, fraud, threat or coercion (iii) in order to be engaged in a commercial sex act or forced labor; or
 - (b) a person under age 18 who has been recruited, enticed, harbored, maintained, transported, provided or obtained, by any means for purposes of a commercial sex act.

SECTION 4. Title 1 of the criminal code shall be amended as follows;

Section 265. Crimes against a Person

- (1) Trafficking for labor or services- Any person who knowingly trafficks a person for labor or services shall be punished pursuant to penalties established by the Attorney General in accordance with the state felony sentencing structure and taking into account the length of the servitude and the overall harm inflicted upon the victim.
- (A) The defendant shall be subject to enhanced penalties where the victim has been subjected to assault or battery.
 - (B) The defendant shall be subject to enhanced penalties where another person has been subjected to assault or battery where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.
 - (C) The defendant shall be subject to enhanced penalties where the victim has been subjected to rape, sexual assault or sexual abuse.
 - (D) The defendant shall be subject to enhanced penalties where another person has been subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.
 - (E) The defendant shall be subject to enhanced penalties where death results from a violation of this section or if such violation includes an attempt to kill, kidnapping, or an attempt to kidnap.
 - (F) The court shall order the defendant to pay restitution to any trafficking victim.
 - (G) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any other provision of law, that such person shall forfeit to the state --
 - (i) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation, and
 - (ii) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

- (H) The first priority of such forfeited property shall be to pay the restitution to the victims of the defendant and to satisfy civil judgments obtained against the defendant under this Act.
- (2) Trafficking for commercial sex- Any person who knowingly trafficks a person for commercial sex shall be punished:
- (A) As determined by the Attorney General, in accordance with the Massachusetts felony sentencing structure, taking into account the length of the servitude and the overall harm inflicted upon the victim.
 - (B) The defendant shall be subject to enhanced penalties where the victim has been subjected to assault or battery.
 - (C) The defendant shall be subject to enhanced penalties where another person has been subjected to assault or battery where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.
 - (D) The defendant shall be subject to enhanced penalties where the victim has been subjected to rape, sexual assault or sexual abuse.
 - (E) The defendant shall be subject to enhanced penalties where another person has been subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.
 - (F) The defendant shall be subject to enhanced penalties where death results from a violation of this section or if such violation includes an attempt to kill, kidnapping or an attempt to kidnap.
 - (G) The court shall order the defendant to pay restitution to any trafficking victim.
 - (H) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any other provision of law, that such person shall forfeit to the state --
 - (i) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation, and
 - (ii) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.
 - (I) The first priority of such forfeited property shall be to pay the restitution to the victims of the defendant and to satisfy civil judgments obtained against the defendant under this Act.
- (3) Trafficking of a child for labor or services- Any person who knowingly trafficks a person defined as a child pursuant to Massachusetts statute for labor for services shall be punished as follows:
- (A) In accordance with state felony sentencing structure, taking into account the length of the servitude and the overall harm inflicted upon the victim.
 - (B) The defendant shall be subject to enhanced penalties where the victim has been subjected to assault or battery.
 - (C) The defendant shall be subject to enhanced penalties where another person has been subjected to assault or battery where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.
 - (D) The defendant shall be subject to enhanced penalties where the victim has been subjected to rape, sexual assault or sexual abuse.

(E) The defendant shall be subject to enhanced penalties where another person has been subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.

(F) The defendant shall be subject to enhanced penalties where death results from a violation of this section or if such violation includes an attempt to kill, kidnapping or an attempt to kidnap enhancement in accordance with state sentencing structure.

(G) The court shall order the defendant to pay restitution to any trafficking victim and any child as defined by Massachusetts law.

(H) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any other provision of law, that such person shall forfeit to the state --

(i) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation, and

(ii) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(I) The first priority of such forfeited property shall be to pay the restitution to the victims of the defendant and to satisfy civil judgments obtained against the defendant under this Act.

(4) Trafficking of a child for commercial sex – Any person who trafficks a person defined as a child by Massachusetts state law for commercial sex shall be punished as follows:

(A) Sentences to be in accordance with state felony sentencing structure and shall also take into account the length of the servitude and the overall harm inflicted upon the victim.

(B) The defendant shall be subject to enhanced penalties where the victim has been subjected to assault or battery.

(C) The defendant shall be subject to enhanced penalties where another person has been subjected to assault or battery where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.

(D) The defendant shall be subject to enhanced penalties where the victim has been subjected to rape, sexual assault or sexual abuse enhancement in accordance with state sentencing structure.

(E) The defendant shall be subject to enhanced penalties where another person has been subjected to rape, sexual assault or sexual abuse where the purpose or effect has been to coerce another into, or maintain a person in, trafficking.

(F) The defendant shall be subject to enhanced penalties where death results from a violation of this section or if such violation includes an attempt to kill, kidnapping or an attempt to kidnap.

(G) The court shall order the defendant to pay restitution to any trafficking victim and any child of the victim who was defined as a child pursuant to Massachusetts state law at any time during the trafficking.

(H) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any other provision of law, that such person shall forfeit to the state -

(i) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation, and

(ii) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(I) The first priority of such forfeited property shall be to pay the restitution to the victims of the defendant and to satisfy civil judgments obtained against the defendant under this Act.

(J) It shall not be a defense that the defendant was unaware of the age of the victim nor shall it be a defense that the victim or anyone acting on the victim's behalf gave consent

Section CCC.03. Causes of Action

(1) The Attorney General may bring a civil action in the court of general jurisdiction to recover a civil penalty for each violation, and such injunctive and other equitable relief as the court, in its discretion, may order. A criminal case or prosecution is not a necessary precedent to such an action. The first priority of any money or property collected under such an action shall be to pay the restitution to the victims of the defendant and to satisfy civil judgments obtained against the defendant under this Act

(2) Any person aggrieved by a violation of this Act may bring a civil action against the person or persons who committed such violation to recover actual and punitive damages and reasonable attorneys' fees. A criminal case or prosecution is not a necessary precedent to such an action. The statute of limitations for such cause of action shall not commence until the latter of the victim's emancipation from the defendant or the victim's twenty-first birthday.

Section DDD.04. Affirmative Defenses

(1) It shall be an affirmative defense for any victim of trafficking under any prosecution that such person was a victim of trafficking during the time of the alleged offense and that such crime was committed at the direction of the defendant or in furtherance of the trafficking enterprise.

SECTION 4. The criminal code and the human services code shall be further amended as necessary to implement the following:

Section EEE.05 State Government Response to and Responsibilities for the Abolition of Human Trafficking

(1) Within 1 year from the passage of this bill:

(A) The state human services department shall establish procedures for identifying victims of trafficking, including a list of all agencies and entities that should be trained on the issue. Such agencies shall include but not be limited to state law enforcement agencies, child protective services, juvenile courts, and runaway and homeless youth shelter administrators.

(B) The state human services department shall compile a list of services and programs available to (i) victims of human trafficking with a T visa, federal continued presence status, or a federal Letter of Eligibility and (ii) to putative victims who have not received a designation in subparagraph (i); (iii) to US juvenile citizens or permanent residents who are victims; and (iv) US adult citizens or permanent residents.

(C) The human services department shall appoint and train a Trafficking Victims Director to track and coordinate the provision of services to victims and putative victims of human trafficking. The department shall develop procedures for providing assistance to persons who are putative victims, including assistance in obtaining full benefits and services under federal and state law.

(D) The state shall establish education programs and "standard operating procedures" for relevant state employees and contractors, including caseworkers, juvenile justice

workers, healthcare workers and child protective service workers, for assisting, under federal and state law, and identifying trafficking victims.

- (E) The state human services department shall establish a program for the comprehensive care and treatment of child victims of commercial sex.
- (2) With respect to child victims of commercial sex, no such victim shall be charged or prosecuted under state criminal law on account of such acts.
- (3) The referral of a child to the Trafficking Victims Director shall constitute compliance with the state's "must report" laws and regulations.
- (4) State law enforcement agencies and child protective services shall report all putative victims of human trafficking to the Trafficking Victims Director. If a child victim falls under the jurisdiction of child protective services and the Trafficking Victims Director, both offices shall work together to develop a care and treatment plan to attain the best interests of the child.
- (5) State legal assistance programs for victims of crime shall be available to putative trafficking victims for purposes of obtaining assistance under this statute and for purposes of pursuing civil actions against their defendants.
- (6) The primary duty of the Trafficking Victims Director is to assist the victim in recovering from the trafficking and in fully enjoying the rights and privileges provided by the federal and state constitutions.
- (7) Victims' Rights:
 - (A) Victims of human trafficking shall have the same rights as other victims of a crime, including the right to receive victim compensation.
 - (B) Victims of human trafficking shall also be entitled to basic information, including but not limited to information on their legal rights, human rights, immigration rights, emergency assistance and resources, and any other applicable right and resources.
 - (C) Any statement by a putative victim of human trafficking or the minor child of such victim to a qualified social worker or case-worker, guardian appointed under this title, or advocate is a privileged communication unless waived by the victim's attorney, the adult victim, or the advocate or guardian of a child victim.
 - (D) State employees and contractors shall provide information and statements to a person or such person's attorney, guardian, or legal representative for purposes of such person's application for immigration relief or benefits under the TVPA or other victim assistance law or regulation. Any statement made under this subsection shall be privileged for purposes of any criminal or civil action.
 - (E) The Trafficking Victims Director shall appoint an advocate who is not a state or federal employee for putative child victims of trafficking who shall have the authority to appoint and fire an attorney for the child victim, and to authorize legal process and applications. Such authority shall end when the advocate determines with the agreement of the Director that the child is not a victim of trafficking, the child attains the age of 21, or thirty days after the child receives a T visa, a U visa, a Letter of Eligibility, Continued Presence or Special Immigrant Juvenile Status and is, pursuant to such receipt, placed in a suitable long-term care situation including, but not limited to, the federal URM program.
 - (F) Victims of human trafficking shall not be required to cooperate with law enforcement in the investigation or prosecution of their traffickers as a condition to receiving any social service or benefit, including legal services.