

SENATE No. 01921

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

SECTION 1. Chapter 10 of the General Laws is hereby amended by inserting after section 66 the following section:-

Section 66A. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of assets forfeited and the proceeds of assets seized and forfeited pursuant to chapter 265A and fines and assessments collected pursuant to said chapter 265A, together with any interest or earnings accrued on such monies through investment or deposit. The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34, 34A and 38 of chapter 29 in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of the fund to the victim and witness assistance board, as established in section 4 of chapter 258B, from time to time, at the request of the office. The board shall award and administer grants from the fund, without further appropriation, to public, private non-profit or community-based programs in the commonwealth to provide services to human trafficking victims, as defined in section 1 of said chapter 265A including, but not limited to, legal and case management services, health care, mental health, social services, housing or shelter services, education, job training or preparation, interpreting services, English-as-a-second-language classes, victims' compensation, and public and private non-profit collaborations to protect and assist human trafficking victims. The board shall develop, in conjunction with the Anti-Human Trafficking Task Force established by section 20 of chapter 265A, written criteria for the

awarding of those grants, which shall be evaluated and, if necessary, revised on an annual basis.

The board shall file a report detailing the amount of funds collected and expended from the fund along with a copy of the written criteria used to expend the funds to the house and senate committees on ways and means not later than August 15 of each calendar year. An amount not to exceed 5 per cent of the total funds deposited in the fund may be expended by the office for administrative costs directly attributable to the grants and programs funded by the fund including, but not limited to, the costs of clerical and support personnel. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

SECTION 2. Section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by inserting after the word "year", in line 179, the following subparagraph:-

(Q) Any amounts received by a human trafficking victim, as defined in section 1 of chapter 265A, pursuant to an action for involuntary servitude, trafficking of persons for forced labor or services or sexual servitude.

SECTION 3. Section 51A of chapter 119, as so appearing, is hereby amended by striking the seventh paragraph and inserting in place thereof the following paragraph:-

Any privilege established by sections 135A and 138B of chapter 112 or by sections 20A, 20B or 20M of chapter 233, relating to confidential communications shall not prohibit the filing of a report pursuant to this section or section 24.

SECTION 4. Chapter 231 of the 2004 official edition of the general laws is hereby amended by inserting, after section 59H, the following section:-

Section 59I. In any civil action in any court of the commonwealth in which the plaintiff alleges to be a human trafficking victim, as defined in section 1 of chapter 265A, the court shall, upon motion of the plaintiff, advance the proceeding for speedy trial so that it may be heard and determined with as little delay as possible.

SECTION 5. Chapter 233 of the General Laws, as so appearing, is hereby amended by inserting after section 11 the following new section:

Section 11A. Notwithstanding any general or special law to the contrary, in any civil action or other civil judicial proceeding commenced by a person alleging to be a human trafficking victim, as defined in chapter 265A, in which the petitioner is unable to be present in the jurisdiction in order to prosecute such action or proceeding due to the

application of the immigration laws of the United States or undue financial or other hardship, testimony of such person may be given under oath before any ambassador or consul general or their respective designee in any embassy or consular office of the United States in any foreign country at which legal counsel for the defendant shall have the opportunity to either (a) be present and cross examine the witness, or (b) see, hear and cross examine the witness by way of video conference or other technology providing defense counsel with the opportunity to see, hear and cross examine the witness in real time. A live-video conference, a video-taped record or a transcript of such testimony shall be admissible at trial in any such action or proceeding.

SECTION 6. Said chapter 233 is hereby further amended by inserting after section 20L the following 2 sections:-

Section 20M. (a) As used in this section the following words shall unless the context clearly requires otherwise have the following meanings:-

"Confidential communication", information transmitted in confidence by and between a human trafficking victim and a human trafficking victims' caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the human trafficking victims- caseworker which arises out of and in the course of such counseling and assisting, including, but not limited to, reports, records, working papers or memoranda.

"Human trafficking victims" caseworker, a person who is employed or volunteers in program serving human trafficking, who has undergone a minimum of 25 hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a human trafficking victims? program, and whose primary purpose is the rendering of advice, counseling or assistance to human trafficking victims.

"Human trafficking victims' program", any refuge, shelter, office, safe house, institution or center established for the purpose of offering assistance to human trafficking victims through crisis intervention, medical, legal or support counseling.

"Victim", a victim of a violation of section 2, 3, or 4 of chapter 265A and who consults a human trafficking victims' caseworker for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such violation.

(b) A human trafficking victim's caseworker shall not disclose any confidential communication without the prior written consent of the victim, or the victim's guardian in the case of a child, except as hereinafter provided. Such confidential

communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim, or victim's guardian in the case of a child to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is therein contained before allowing such discovery or the introduction of such evidence.

(c) During the initial meeting between the caseworker and victim, the caseworker shall inform the human trafficking victim and any guardian thereof of such confidential communications and the limitations thereto.

Section 20N. At each stage of an investigation and prosecution of an offense involving a human trafficking victim, as defined by section 1 of chapter 265A, the names and identifying information of the victim and the victim's family shall be withheld from public inspection. Once a complaint is filed or an indictment returned, the court shall order that any identifying information of such a victim and family member shall be kept confidential and the court shall impound or redact the names and identifying information of the victim and the victim's family in any such proceeding, unless such victim provides written consent to the court to disclose that information in those records.

SECTION 7. Section 21B of said chapter 233, is hereby amended by inserting after the words "sixty-five", in line 5, the following words :- , section 4 of chapter 265A,-

SECTION 8. Section 3 of chapter 258B of the general laws as so appearing is hereby amended by adding the following clause:- (w) for human trafficking victims, to be provided a copy of an incident or a police report relative to the prosecution of the case. No charge shall be assessed to such victim for such report.

SECTION 9. The General Laws are hereby amended by inserting after chapter 265 the following chapter:-

Chapter 265A

HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

Section 1. The following words and phrases, as used in this section, shall have the following meanings:

"Asset", property of any kind including, but not limited to, real property, things affixed to and found in land and tangible and intangible personal property, including rights, privileges, interests, claims, accounts, and securities.

"Blackmail", any malicious verbal, written, electronic, printed or other form of communication which threatens to accuse another of a crime or offense, to injure the person or property of another or to expose any secret tending to subject any person to hatred, contempt or ridicule.

"Bodily injury", substantial impairment of the physical condition, including, but not limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury which occurs as the result of repeated harm to any bodily function or organ, including human skin.

"Business entity", a corporation, its officers or directors, an association, partnership, limited liability company, limited liability partnership, or other legal entity.

"Child", any person under 18 years of age.

"Coercion", threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process.

"Entice", to lure, induce, persuade, tempt, incite, solicit, coax or invite.

"Financial harm", includes extortion as defined by section 25 of chapter 265, violation of the criminal usury laws as defined by section 49 of chapter 271, or any use or threat to use anything of value or the deprivation or threat of deprivation of anything of value.

"Forced labor or services", means (1) work of economic or financial value or (2) activities performed directly or indirectly, under the supervision of or for the benefit of another including, but not limited to, sexual conduct for a fee or other thing of values, sexually-explicit performances and involvement in the production of pornography. Such work or services shall have been obtained or maintained in whole or in part, through:

- (i) intimidation, fraud, duress or coercion;
- (ii) psychological manipulation;
- (iii) causing or threatening to cause injury to any person;
- (iv) physically restraining or threatening to physically restrain another person;

(v) abusing or threatening to abuse the law or legal process by knowingly providing misinformation as to the adverse legal consequences of a person's actions including, but not limited to, threats of deportation;

(vi) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(vii) the use of blackmail;

(viii) causing or threatening to cause financial harm or to use financial control over any person.

"Human trafficking", means a violation of section 2, 3 or 4.

"Human trafficking victim", any person subjected to a violation of section 2, 3 or 4.

"Intimidation", direct or indirect willful use of force or bodily injury or threats of force or bodily injury to influence or confine another.

"Maintain", means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.

"Serious bodily injury" includes bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ, or substantial risk of death.

"Sexually-explicit performance" is an act involving sexual conduct intended to arouse or satisfy the sexual desires of another and which is: (i) a live and public or private act; or (ii) a photographed, recorded or videotaped act or show.

Section 2. Whoever intentionally subjects another person to forced labor or services shall be guilty of the crime of involuntary servitude and shall be punished by a fine of not less than \$2,000 and by imprisonment in the state prison for not more than 25 years.

Section 3. Whoever (a) intentionally entices, harbors, transports or delivers another, with the intent that the person be subjected to forced labor or services; or (b) intentionally benefits financially or receives anything of value, directly or indirectly, from a violation of this section shall be guilty of trafficking of persons for forced labor or services and shall be punished by a fine of not more than \$2,000 and by imprisonment in the state prison for not more than 20 years.

Section 4. Whoever (a) intentionally entices, harbors, transports or delivers another, with the intent that the person engage in a sexually-explicit performance, the production of pornography or sexual conduct for a fee or other thing of value, whether or not the person is the recipient of the fee or other thing of value; or (b) intentionally benefits financially or receives anything of value, directly or indirectly, from a violation of this section shall be guilty of procuring another for sexual servitude and shall be punished by a fine of not more than \$2,000 and by imprisonment in the state prison for not more than 30 years.

Section 5. Whoever publishes, disseminates or otherwise discloses the location of any human trafficking victim with the intent that such victim suffers bodily injury thereby shall be punished in the state prison for not more than 5 years. Whoever violates this section and thereby causes bodily injury to such victim shall be punished by imprisonment in the state prison for not more than 10 years, or thereby causes serious bodily injury to such victim shall be punished by imprisonment in the state prison for not more than 20 years, or thereby causes the death of such victim shall be punished by imprisonment in the state prison for life or for any term of years.

Section 6. Whoever maliciously publishes, disseminates or otherwise discloses the name of any human trafficking victim who's identity has been the subject of a confidentially order under section 20N of chapter 233, knowing that such victim's name was the subject of such order shall be punished in the house of correction for not more than 2 ½ years and by a \$1,000 fine.

Section 7. (a) Whoever commits a violation of section 2 to 6, inclusive, and the victim thereof is a child shall be punished by imprisonment in the state prison for not more than 15 years. In accordance with section 8A of chapter 279, such sentence shall begin from and after the expiration of the sentence for violation of section 2, 3, 4, 5 or 6.

(b) Whoever commits a violation of section 2, section 3 or section 4 by means of kidnapping, in violation of section 26 of chapter 265, shall be punished by imprisonment in the state prison for not more than 15 years. In accordance with section 8A of chapter 279, such sentence shall begin from and after the expiration of the sentence for violation of section 2, 3 or 4.

(c) Whoever commits a violation of section 2, section 3 or section 4 and: (i) thereby causes bodily injury to the victim of such offense shall be punished by imprisonment in the state prison for not more than 10 years; or (ii) thereby causes serious bodily injury to the victim of such offense shall be punished by imprisonment in the state prison for not more than 15 years. In accordance with section 8A of chapter 279, such sentences shall begin from and after the expiration of the sentence for violation of section 2, 3 or 4.

(d) Whoever commits a violation of section 2, section 3 or section 4 and thereby causes the death of another shall be punished by imprisonment in state prison for life or for any term of years. In accordance with section 8A of chapter 279, such sentence shall begin from and after the expiration of the sentence for violation of section 2, 3 or 4.

(e) Whoever commits a violation of section 2, section 3 or section 4 and the victim thereof was subjected to the provisions of any such section: (i) for between 180 days and 1 year, shall be punished by imprisonment in the state prison for not more than 5 years; or (ii) for more than 1 year, shall be punished by imprisonment in the state prison for not more than 25 years. In accordance with section 8A of chapter 279, such sentences shall begin from and after the expiration of the sentence for violation of section 2, 3 or 4.

Section 8. Whoever violates section 53A of chapter 272 knowing or having reason to know that the person engaging in sexual conduct for a fee or other thing of value is a human trafficking victim shall be punished by imprisonment in state prison for not more than 5 years and by a fine of \$2,000, or if the human trafficking victim is a child, shall be punished by imprisonment in state prison for not more than 10 years and by a fine of \$2,000.

Section 9. Whoever (i) intentionally recruits, entices, harbors, transports, delivers or obtains by any means, another person, or attempts to do so, intending or knowing that the person will have an organ, tissue or other body parts removed for sale; or (ii) intentionally benefits financially or receives anything of value, directly or indirectly, or attempts to do so, from a violation of this section shall be guilty of organ trafficking and punished by imprisonment in the state prison for not more than 20 years and a fine of not less than \$10,000 nor more than \$50,000.

Section 10. Restitution to human trafficking victims shall be ordered by the court in sentences rendered for violations of this chapter. In addition to any other amount of loss identified, the court shall order restitution including the following:

(1) lost income, which includes the greater of: (i) the gross income or value to the defendant of the victim's labor or services; or (ii) the value of the victim's labor or services as guaranteed under the commonwealth's minimum wage and overtime provisions, and interest;

(2) medical and related professional services relating to physical, psychiatric or psychological care;

(3) physical and occupational therapy or rehabilitation;

(4) necessary transportation, temporary housing, and child care expenses;

(5) in the case of an offense resulting in damage or destruction of property, return of the property, or if return is impossible, impracticable or inadequate, payment of the replacement value of the property;

(6) in the case of an offense resulting in death, or bodily injury that results in death, the costs and expenses of necessary funeral and related services;

(7) attorneys' fees and other costs and expenses incurred, including those costs and expenses incurred that are related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(8) compensation for emotional distress, pain, and suffering;

(9) expenses incurred in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items; and

(10) any other losses suffered by the human trafficking victim.

Section 11. (a) Any and all fines collected pursuant to this chapter shall be transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer the monies, from time to time, into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

(b) There shall be an assessment of \$250 against any person who violates any provision of section 2 to 6, inclusive. The assessment shall not be subject to waiver by the court for any reason. If a person is sentenced to a correctional facility and the assessment has not been paid, the court shall note the assessment on the mittimus. The monies collected pursuant to the assessment established by this paragraph shall be transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer the monies into the Victims of Human Trafficking Trust Fund established in said section 66A of said chapter 10. The monies shall then be administered, pursuant to said section 66 of said chapter 10, by the Massachusetts Office of Victim Assistance for the purposes set forth in said section 66A. The assessment paid by an individual into the Victims of Human Trafficking Trust Fund pursuant to this section shall be in addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any other chapter. The administrative office of the trial court shall file a report detailing the amount of funds imposed and collected pursuant to this section to the house and senate committees on ways and means and to the Massachusetts Office of Victim Assistance not later than August 15 of each calendar year.

Section 12. An individual who is a human trafficking victim may bring a civil action for involuntary servitude, trafficking of persons for forced labor or services or sexual servitude. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages may be awarded on proof of actual damages where the defendant's acts were willful and malicious.

Section 13. (a) Any business entity that knowingly aids or participates in involuntary servitude, trafficking of person for forced labor or services or sexual servitude shall be civilly liable for an offense under this section and may be subject to loss of business license in the state.

(b) Upon a finding of responsibility of aiding or participating in involuntary servitude, trafficking of person for forced labor or services or sexual servitude, a business entity shall be assessed a fine of not less than \$10,000 and not more than \$100,000. The assessment shall not be subject to waiver by the court for any reason. The court may:

(i) order its dissolution or reorganization;

(ii) order the suspension or revocation of any license, permit, or prior approval granted to it by a state agency; or

(iii) order the surrender of its charter or the revocation of its certificate to conduct business in the Commonwealth.

Section 14. (a) A civil action for involuntary servitude, trafficking of persons for forced labor or services or sexual servitude shall be commenced within 7 years of the date on which the human trafficking victim was freed from the human trafficking situation, or if the victim was a child when the act of human trafficking against the victim occurred, within 7 years after the date the plaintiff attains the age of 18.

(b) If a person entitled to sue is under a disability at the time the cause of action accrues, such that it is impossible or impracticable for him or her to bring an action, the time during which the plaintiff is under a disability tolls the statute until the disability ceases.

(c) In the event that a child plaintiff is under a disability, the failure of the child's guardian ad litem to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his disability ceases.

(d) A defendant is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or preventing the plaintiff from filing the action or threats made by the defendant that caused duress upon the plaintiff.

(e) The suspension of the statute of limitations due to disability or estoppel applies to all other related claims arising out of the trafficking situation. A criminal action includes investigation and prosecution and remains pending until final adjudication in the trial court. Any legal guardian, family member, representative of the human trafficking victim, or court appointee may represent the human trafficking victim's rights, in the event the human trafficking victim is deceased or otherwise unable to represent his own interests in court.

Section 15. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 2, 3 or 4;

(ii) all books, records, and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 2, 3 or 4;

(iii) all monies, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for involuntary servitude, forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of section 2, 3, 4 or 5; and

(iv) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate any violation of section 2, 3 or 4.

No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture pursuant to clauses (i) to (iv), inclusive, shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under this section.

(c) The court shall order forfeiture of all conveyances and real property subject to forfeiture under this section, except as follows:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that

the owner or other person in charge of such conveyance was a consenting party or privy to a violation of section 2, 3 or 4;

(ii) no conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state; and

(iii) no conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in violation of section 2, 3 or 4.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, monies or other things of value subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under section 2, 3 or 4. In all such suits in which the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (c). The owner of the conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth to give notice by certified or registered mail to the owner of the conveyance, real property, monies or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property, monies or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of section 2, 3 or 4. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property, monies or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as further provided in this section.

(e) The final order of the court shall provide that the monies and the proceeds of any such sale shall be distributed as follows:

(i) half shall be divided equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than 1 department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the police portion equitably among these departments; and

(ii) half shall be deposited into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

(f) All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in the separate special law enforcement trust funds for each district attorney and for the attorney general within the office of the state treasurer, established under paragraph (d) of section 47 of chapter 94C. Each district attorney, the attorney general or the state treasurer shall ensure that proper accounting procedures are in place to account for monies and proceeds received and expended pursuant to this section. All such monies and proceeds shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or for such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may also expend monies and proceeds for human trafficking prevention or to provide victims' services to human trafficking victims. Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in such trust fund to prohibit human trafficking.

(g) All such monies and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(h) Any officer, department, or agency having custody of any property subject to forfeiture under this section or having disposed of the property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of said property, to whom it delivered the property, the date and manner of disposition of the property, and the exact kinds,

quantities and forms of the property. The records shall be open to inspection by all federal and state officers charged with enforcement of federal and state human trafficking laws. Persons making final disposition of the property under court order shall report, under oath, to the court the exact circumstances of such disposition.

(i) (i) During the pendency of the proceedings the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody including, but not limited to: an order that the commonwealth remove the property if possible and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account and; that a substitute custodian be appointed to manage such property. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of the property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution and return thereof shall be subject to the provisions of chapter 276, so far as applicable.

(ii) A district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought, to the division of capital asset management and maintenance office of seized property management, established under section 47 of chapter 94C. The office of seized property management shall preserve and manage the property in a reasonable fashion and dispose of the property upon a judgment ordering forfeiture, and to enter into contracts to preserve, manage and dispose of the property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney under paragraph (f) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in paragraph (d).

(j) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of the principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

(k) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the

parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town wherein the affected real property lies, and a description of the real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district wherein the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

Section 16. In any prosecution of a person who is a human trafficking victim, it shall be an affirmative defense that he was under duress or coerced into committing the offenses for which he is being prosecuted, unless prohibited by the general laws. A human trafficking victim is not criminally liable for any sexual conduct for a fee or other thing of value committed as a direct result of, or incident or related to, being trafficked.

Section 17. Compensation is mandatory under this section. In addition to any other amount of loss identified, the division of victim compensation and assistance in the department of the attorney general shall compensate human trafficking victims including the greater of the following: (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor or services as guaranteed under the commonwealth's minimum wage and overtime provisions; whichever is greater, and interest. Any alleged human trafficking victim will also be eligible for any state funded benefits including, but not limited to, cash assistance and medical insurance.

Section 18. (a) For purposes of this section, human trafficking shall mean a severe form of trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000 . The attorney general, district attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this chapter has begun and that the human trafficking victim is willing to cooperate or is cooperating with the investigation in order to enable that individual, if eligible under federal law, to qualify for a T-Visa or another appropriate visa and to access available federal benefits. Cooperation with law enforcement shall not be required of human trafficking victims who are under 18 years of age. This certification shall be made available to the victim and his designated legal representative.

(b) When a credible report has been made to the police of a crime described in this chapter, and upon request of the victim of that crime, the attorney general, district

attorney, department of social services, or any law enforcement official shall certify in writing to the United States Department of Justice, the United States Department of Homeland Security, including any subset thereof, such as the United States Customs and Immigration Service or the United States Immigration and Customs Enforcement, that the individual making the request is a victim of such crime and that the individual has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution, of that crime in order to enable that individual, if eligible under federal law, to qualify for a U-Visa or another appropriate visa and to access available federal benefits. For the purposes of this section, an individual will be deemed to have been helpful in the investigation or prosecution of the crime if he has filed a credible report of the crime with the police or other law enforcement officials or provided a statement concerning the underlying circumstances of the crime to the police or other law enforcement officials even where that victim has requested that no domestic prosecution occur because of a reasonable fear that harm will come to individuals who reside abroad where local law enforcement cannot provide protection. The certification provided under this subsection, as well as a photocopy of the victim's report of the crime, shall be made available to the victim and the victim's designated representative.

(c) Human trafficking victims may be eligible for continued presence status in the United States subject to the provisions of 28 Code of Federal Regulations 1100.35.

(d) (i) Within 20 business days of the first encounter of a human trafficking victim, law enforcement agencies shall provide brief letters that satisfy the following Law Enforcement Agency Endorsement, hereinafter "LEA", regulations as found in Section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations.

(ii) The LEA must be submitted on Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of Form I-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based, including the dates the human trafficking and victimization occurred, and be signed by a supervising official responsible for the investigation or prosecution of human trafficking. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services or for the purposes of a sexual conduct for a fee or other thing of value.

(iii) Where state or local law enforcement agencies find the grant of an LEA endorsement to be inappropriate for a human trafficking victim, the agency shall within 15 business days provide the human trafficking victim with a letter explaining the grounds for the denial of the LEA . The human trafficking victim may

submit additional evidence to the law enforcement agency, which shall reconsider the denial of the LEA within 5 business days of the receipt of additional evidence.

(iv) Law enforcement agencies that demonstrate a consistent pattern of failing to meet the time limits established in paragraphs (d)(i) and (d)(iii) shall be prohibited from retaining or receiving assets or the proceeds from assets forfeited under section 14 of this chapter. The attorney general and the secretary of health and human services shall jointly determine whether a law enforcement agency has demonstrated a consistent pattern of failing to meet the above mentioned time limits and shall consider reports from human trafficking case workers and other victim service providers as evidence. The attorney general and the secretary of health and human services shall jointly determine whether a law enforcement agency has made sufficient progress in meeting the above mentioned time limits in order to allow such law enforcement agency to retain or receive assets or the proceeds from assets forfeited under section 14 of this chapter. The attorney general and the secretary of health and human services shall consider reports from human trafficking case workers and other victim service providers as evidence in making their determination.

Section 19. Subject to appropriation, the executive office of health and human services shall hereby established a pilot program creating a human trafficking safe house specifically to meet the unique needs of adult human trafficking victims, and the department of social services in consultation with the department of youth services shall hereby establish a pilot program creating a human trafficking safe house specifically to meet the unique needs of child human trafficking victims. The safe houses shall each provide specialized support services to adult or child human trafficking victims that will take into account the age, gender, linguistic capabilities, and special needs of the victims and the victim's dependent children, if any. The safe houses shall also provide 24 hour security on the premises, multilingual trauma trained case management staff, access to healthcare and mental health services, and access to employment and educational services.

Section 20. Subject to appropriation, the department of social services in consultation with the department of youth services shall provide child human trafficking victims with age-appropriate resources and services including, but not limited to, information about their rights, privacy protections, shelter, and psychological counseling. Such services shall include a coordinated multidisciplinary plan by government and non-governmental agencies to minimize the number of child interviews, enhance the provision of services, and best meet the needs of the child.

Section 21. (a) There is hereby established an Anti-Human Trafficking Task Force, co-chaired by the attorney general and the secretary of health and human services or their designees. The task force shall:

(1) collect and organize data on the nature and extent of human trafficking in the commonwealth including the harms and consequences to human trafficking victims;

(2) identify available federal, state, and local programs and licensing bodies that could provide services, benefits or licenses to human trafficking victims including, but not limited to, health care, mental health, human services, housing or shelter services, education, legal assistance, job training or preparation, interpreting services, English-as-a-second-language classes, voluntary repatriation, and victim's compensation, and examine how to move human trafficking victims quickly through the system in order to provide them with timely services;

(3) evaluate approaches to increase public awareness of human trafficking, and offer recommendations for programs and educational and training opportunities for law enforcement and social service providers, including, but not limited to, methods used to identify human trafficking victims including preliminary interviewing and questioning techniques, methods of protecting the special needs of women and child human trafficking victims, developments in state and federal laws regarding human trafficking, and methods to increase effective collaboration between state and local agencies, law enforcement, social service providers and non-governmental organizations;

(4) examine collaborative models between government and nongovernmental organizations for protecting human trafficking victims;

(5) measure and evaluate the progress of the state in preventing human trafficking, protecting and providing assistance to human trafficking victims, and prosecuting persons engaged in human trafficking;

(6) analyze existing state laws and regulations, including the effectiveness of existing victim-witness assistance laws, regulations and services and confidentiality laws, for their adequacy in addressing human trafficking and, if the analysis determines that those statutes are inadequate, recommend revisions to those statutes or the enactment of new statutes that specifically address human trafficking;

(7) consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent human trafficking, to protect and assist human trafficking victims, and to prosecute human traffickers; and

(8) issue an annual report outlining the task force's findings from paragraph (1) to (7), inclusive.

(b) The office of the attorney general and the executive office of health and human services shall provide staff and support for the task force, including, but not limited to, publication and dissemination of the annual report required by this section and posting the report on their websites, to the extent resources are available.

(c) The task force shall be comprised of the following members or their designees:

- (1) the secretary of the executive office of economic development;
- (2) the colonel of the state police;
- (3) a representative of the Massachusetts police chiefs association;
- (4) a representative of the Massachusetts district attorney's association;
- (5) the commissioner of the Boston police department;
- (6) a representative of the Massachusetts police training committee, formerly the Massachusetts criminal justice training counsel;
- (7) a representative from the Interjurisdictional Anti-Human Trafficking Task Force;
- (8) a representative of the Massachusetts Office of Victim Assistance;
- (9) a representative from the Massachusetts office of the child advocate;
- (10) a representative of the Trafficking Victims Outreach and Services network;
- (11) a representative of the Massachusetts Immigrant and Refugee Advocacy Coalition;
- (12) a representative of Jane Doe, Inc.;
- (13) a representative of the Massachusetts Children's Alliance;
- (14) a representative of a coalition dedicated to prevention of and intervention in the trafficking of children;
- (15) a senator appointed by the senate president;
- (16) a senator appointed by the senate minority leader;

- (17) a representative appointed by the speaker of the house;
- (18) a representative appointed by the house minority leader;
- (19) 2 survivors of human trafficking, one domestic and one international, appointed by the governor;
- (20) 2 human trafficking attorneys, one who works with adults and one who works with children, appointed by the governor;
- (21) 2 human trafficking caseworkers, one who works with adults and one who works with children, appointed by the governor;
- (22) a medical professional appointed by the governor;
- (23) 2 mental health professionals, one who works with adults and one who works with children, appointed by the governor;
- (24) a university researcher with a background in human trafficking appointed by the governor;
- (25) a person with a background in child and runaway services appointed by the governor; and
- (26) a representative from the Massachusetts Commission on the Status of Women appointed by the governor.

Section 21. (a) Subject to appropriation, the office of the attorney general shall provide educational or informational materials to state and local employers and their employees who, through the dispatch of their duties, may encounter individuals who either identify themselves as or are suspected of being human trafficking victims, to provide such victims with information and resources concerning human trafficking laws that are available to protect human trafficking victims and services available to such victims.

(b) The office of the attorney general in consultation with the Massachusetts Office of Victims Assistance shall maintain statistics and other relevant information regarding incidents of human trafficking in the commonwealth, including, but not limited to, information from the state police, district attorneys, and local law enforcement. An annual report of said incidents shall be delivered to the joint committee on children and families, the joint committee on the judiciary and the joint committee on public safety and homeland security of the general court.

SECTION 10. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby amended by inserting after the word "sixty-five", in lines 4 and 5

and in line 21, each time it appears, the following words:-, or section 2, section 3, section 4, section 5, section 6 or section 7 of chapter 265A.

SECTION 11. Chapter 119 of the General Laws is hereby amended by inserting after section 39J the following section:

Section 39K. Definitions, as used in sections 39L through 39M:

(a) The term “sexually exploited child” means any person under the age of 18 who has been subject to sexual exploitation because he or she:

(1) is the victim of the crime of sex trafficking as defined in 22 United States Code 7105

(2) engages in any act as defined in chapter 272 section 53A of the General Laws

(3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution as defined by chapter 272 section 4A of the General Laws

(4) engages in acts or conduct described in chapter 272 section 53(a) of the General Laws.

(b) The term “appropriate services” means the assessment, planning and care provided by a state agency or non-governmental organization or entity, provided however that such agency, organization or entity has expertise in providing services to sexually exploited children in accordance with such regulations that the department of children and families may promulgate or policies of said department. These services may be provided through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family based foster care or in the community. These services shall include food, clothing, medical care, counseling and appropriate crisis intervention services.

(c) The term “advocate” means an employee of the service providers referred to in section (b) of this section or similar employee of the department of children and families who has been trained to work and advocate for the needs of sexually exploited children.

SECTION 12. Chapter 119 of the General Laws is hereby amended by inserting after section 39K the following section:

Section 39L. In any delinquency or criminal proceeding against a sexually exploited child alleging that the defendant violated section 53(a) or 53A(a) of chapter 272, there shall be a presumption that the matter should be handled instead as a proceeding under section 24 or 39E of chapter 119. Upon the motion of the defendant, or

as raised sua sponte by the Court, the Court shall hold a hearing at which the prosecuting district attorney's office, the defendant, and other agencies or persons with relevant information may be heard to determine whether the matter shall proceed as a delinquency or criminal proceeding, or whether the delinquency or criminal proceeding should be dismissed and in its stead the Court should institute a child in need of services or care and protection petition. The information that the Court should consider in determining whether the presumption is rebutted should include, but not be limited to: whether child has been previously found to have committed an offense pursuant to section 53A(a) of chapter 272 or, has been previously convicted or adjudicated delinquent under section 53A(a) of chapter 272 and committed to the department of youth services; or, has previously engaged in conduct that, if proved, would constitute a violation of section 53A of chapter 272; or, has previously refused or been unable to cooperate with services offered under section 51B of chapter 119; and, the Court should consider the child's need for services that may be provided by department of children and families or any non-governmental organization that provides services to such children, and the protection of society from the conduct that forms the basis for the proceeding. Whether to continue with the delinquency or criminal proceeding, or to dismiss said proceeding and proceed with a child in need of services or care and protection proceeding shall be within the court's discretion. The necessary findings of fact to support the decision shall be reduced to writing and made part of the court record. If, during the pendency of a child in need of services or care and protection proceeding initiated under this section, the child is not in substantial compliance with a lawful order of the court, or fails to comply with the guidance and services of the department or any designated non-governmental service provider, the court may, in its discretion, vacate the dismissal of the delinquency or criminal proceeding and restore that proceeding to the docket for trial or further proceedings in accordance with the regular course of such proceedings.

SECTION 13. Chapter 119 of the General Laws is hereby amended by inserting after section 39L the following section:

Section 39M. Services for exploited children

(a) Notwithstanding any inconsistent provision of law, the department of children and families shall promulgate regulations and shall provide for the child welfare services needs of sexually exploited children and to the extent that funds are available ensure appropriate services to serve sexually exploited children are available to children residing in the state at the time they are taken into custody by law enforcement, or are identified by the department of children and families as a sexually exploited child, and for the duration of any legal proceeding or proceeding in which they are either the complaining witness, defendant, or the subject child. Further, a sexually exploited child shall have access to an advocate as defined in section 39K (c). The advocate or a member of the multi-disciplinary service team as referenced in section 51D of chapter 119 shall

accompany the child to all court appearances and will serve as a liaison between the service providers and the court.

(b) All of the services created under this article may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, through a court proceeding under this chapter, or through a referral.

(c) In determining the need for and capacity of the services created under this section, the department of children and families shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, where the department of children and families determines that the need exists, to the extent that funds are available, appropriate services shall be made available, while ensuring that an appropriate continuum of services exists.

(d) The commissioner of the department of children and families may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with appropriate non-governmental organizations or entities with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. The department of children and families shall assist in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and/or the office of juvenile justice and delinquency prevention.

SECTION 14. Chapter 119 section 51A(a), as so appearing, is hereby amended by removing the word “or” following the words: neglect, including malnutrition; and by inserting the words “: or (iv) being a ‘sexually exploited child’ as defined in section 39K(a) of this chapter” after the following words: physical dependence upon an addictive drug upon birth.

SECTION 15. Chapter 119 section 21, as so appearing, is hereby amended by inserting the words “; or (e) violates the provisions of chapter 272 sections 53A(a); 4A; 53(a) of The General Laws” after the following words: willfully fails to attend school for more than 8 school days in a quarter.

SECTION 16. Chapter 119 section 51B (k) (3), as so appearing, is hereby amended by inserting the words “; or appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter” after the words “chapter 272;”

SECTION 17. Chapter 119 section 51B (a), as so appearing, is hereby amended by inserting the words “provided, however, that a report that a child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter shall be

investigated without regard to whether the child is living with a parent or guardian or other caretaker or not” after the words “home environment”

SECTION 18. Chapter 119 section 51B (g), as so appearing, is hereby amended by inserting the words “provided, however, that a child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter shall be offered appropriate services to safeguard his or her welfare” after the following words: “whenever possible.”

SECTION 19. Chapter 119 section 51B (g), as so appearing, is hereby amended by inserting the words “If the child who appears to be a ‘sexually exploited child’ as defined in section 39K(a) of this chapter shall decline the services, or is unable or unwilling to participate in the services offered, then the department or any person may file a care and protection petition under section 24 or a child in need of services petition.” after the following words: “section 24.”

SECTION 20. Section 51D of Chapter 119 as so appearing is hereby amended by inserting after the third paragraph the following paragraph:

For 51A reports specifically involving a sexually exploited child as defined in Section 39K (a), the multi-disciplinary service team shall consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of sexually exploited children. The team shall consist of at least the following: a police officer or designee of the Police Department, a representative from the department of children and families, a representative of the appropriate district attorney’s office and a social service provider. The team shall also include a medical professional and mental health professional when necessary.

SECTION 21. Section 51D of Chapter 119 as so appearing is hereby amended by inserting after the fifth paragraph the following paragraph:

For 51B reports specifically involving a sexually exploited child as defined in Section 39K (a), the purpose of the multi-disciplinary service team shall be to determine whether the child has been sexually exploited and to recommend a plan for services to include shelter or placement, mental health and medical care needs, and other social services.