

Senate, No. 2589

[Senate, July 31, 2010 - Substituted by amendment by the Senate (Ways and Means) for Senate, No. 58.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT RELATING TO ANTI-HUMAN TRAFFICKING AND PROTECTION.

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 10 of the General Laws is hereby amended by inserting after
2 section 66 the following section:-

3 Section 66A. There shall be established and set up on the books of the commonwealth a
4 separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall
5 consist of assets forfeited and the proceeds of assets seized and forfeited under chapter 265A and
6 fines and assessments collected under said chapter 265A, together with any interest or earnings
7 accrued on such monies through investment or deposit. The state treasurer shall be the custodian
8 of the fund and shall receive, deposit and invest all monies transmitted to the fund under this
9 section under sections 34 and 38 of chapter 29 in such a manner as to secure the highest rate of

10 return available consistent with the safety of the fund and shall credit interest and earnings on the
11 trust fund corpus to the trust fund. The state treasurer shall transfer funds from the income and
12 receipts of the fund to the victim and witness assistance board, established in section 4 of chapter
13 258B, from time to time, at the request of the victim witness assistance board. The board shall
14 award and administer grants from the fund, without further appropriation, to public, private non-
15 profit or community-based programs in the commonwealth to provide services to human
16 trafficking victims, as defined in section 1 of said chapter 265A including, but not limited to,
17 legal and case management services, health care, mental health, social services, housing or
18 shelter services, education, job training or preparation, interpreting services, English-as-a-
19 second-language classes, victims' compensation and public and private non-profit collaborations
20 to protect and assist human trafficking victims. The board shall develop written criteria for the
21 awarding of those grants, which shall be evaluated and, if necessary, revised on an annual basis.
22 In addition, the board shall make available monies from the fund to support the costs of
23 production of certain materials by the attorney general under section 19 of chapter 265A.

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

33 **SECTION 2.** Section 51A of chapter 119, as appearing in the 2008 Official Edition, is
34 hereby amended by striking out subsection (j) and inserting in place thereof the following
35 subsection:-

36 (j) Any privilege established by sections 135A and 135B of chapter 112 or by sections
37 20A, 20B or 20M of chapter 233, relating to confidential communications shall not prohibit the
38 filing of a report under this section or section 24.

39 **SECTION 3.** Chapter 231 of the General Laws is hereby amended by inserting, after
40 section 59H, the following section:-

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

45 **SECTION 4.** Chapter 233 of the General Laws, as appearing, is hereby amended by
46 inserting after section 11 the following section:

47 Section 11A. Notwithstanding any general or special law to the contrary, in a civil action
48 or other civil judicial proceeding in which the petitioner alleges to be a human trafficking victim,
49 as defined in chapter 265A, and is unable to be present in the jurisdiction in order to prosecute
50 such action or proceeding due to the application of the immigration laws of the United States or
51 undue financial or other hardship, testimony of such petitioner may be given under oath before
52 an ambassador or consul general or the ambassador's or consul general's designee in an embassy
53 or consular office of the United States in any foreign country; provided, however, that legal
54 counsel for the defendant shall have the opportunity to either (a) be present and cross examine

55 the witness; or (b) see, hear and cross examine the witness by way of video conference or other
56 technology providing defense counsel with the opportunity to see, hear and cross examine the
57 witness in real time. A live-video conference, a video-taped record or a transcript of such
58 testimony shall be admissible at trial in any such action or proceeding.

59 **SECTION 5.** Said chapter 233 is hereby further amended by inserting after section 20L
60 the following 2 sections:-

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

63 “Confidential communication”, information transmitted in confidence by and between a
64 human trafficking victim and a human trafficking victims’ caseworker by a means which does
65 not disclose the information to a person other than a person present for the benefit of the victim,
66 or to those to whom disclosure of such information is reasonably necessary to the counseling and
67 assisting of such victim; provided, however, that “confidential communication” shall include all
68 information received by the human trafficking victims’ caseworker which arises out of, and in
69 the course of, such counseling and assisting, including, but not limited to, reports, records,
70 working papers and memoranda.

71 “Human trafficking”, human trafficking as defined in section 1 of chapter 265A.

72 “Human trafficking victims’ caseworker”, a person who is employed or volunteers in a
73 program serving human trafficking, who has undergone a minimum of 25 hours of training and
74 who reports to and is under the direct control and supervision of a direct service supervisor of a

75 human trafficking victims' program and whose primary purpose is the rendering of advice,
76 counseling or assistance to human trafficking victims.

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

80 "Victim", a petitioner who alleges to be the victim of a violation of section 2, 3 or 4 of
81 chapter 265A, who consults a human trafficking victims' caseworker to secure advice,
82 counseling or assistance concerning a mental, physical or emotional condition caused by such
83 violation.

84 (b) A human trafficking victim's caseworker shall not disclose any confidential
85 communication without the prior written consent of the victim, or the victim's guardian in the
86 case of a child, except as provided in this section. Such confidential communication shall not be
87 subject to discovery in any civil, legislative or administrative proceeding without the prior
88 written consent of the victim, or victim's guardian in the case of a child to whom such
89 confidential communication relates. In criminal actions such confidential communication shall
90 be subject to discovery and shall be admissible as evidence so long as the information is
91 exculpatory in relation to the defendant; provided, however, that the court shall first examine
92 such confidential communication and shall determine whether such exculpatory information is
93 contained within the communication before allowing such discovery or the introduction of such
94 evidence.

95 (c) During the initial meeting between the caseworker and victim, the caseworker shall
96 inform the victim and any guardian of the victim of such confidential communications and the
97 limitations under subsection (b).

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

106 **SECTION 6.** Section 21B of said chapter 233, as appearing in the 2008 Official Edition,
107 is hereby amended by striking out the first sentence and inserting in place thereof the following
108 sentence:- Evidence of the reputation of a victim's sexual conduct shall not be admissible in an
109 investigation or proceeding before a grand jury or a court of the commonwealth for a violation of
110 sections 13B, 13F, 13H, 22, 22A, 23, 24 and 24B of chapter 265, , section 4 of chapter 265A or
111 section 5 of chapter 272.

112 **SECTION 7.** Section 3 of chapter 258B of the General Laws, as so appearing is hereby
113 amended by adding the following clause:-

114 (w) for human trafficking victims, to be provided a copy of an incident or a police report
115 relative to the prosecution of the case; provided, however, that no charge shall be assessed to
116 such victim for such report.

138 in serious harm to or physical restraint against a person; the abuse or threatened abuse of the
139 legal process.

140 “Entice”, lure, induce, persuade, tempt, incite, solicit, coax or invite.

141 “Financial harm”, includes, but shall not be limited to, extortion as defined by section 25
142 of chapter 265, a violation of section 49 of chapter 271 or any use or threat to use anything of
143 value or the deprivation or threat of deprivation of anything of value.

144 “Forced labor or services”, work of economic or financial value or activities performed
145 directly or indirectly under the supervision of or for the benefit of another including, but not
146 limited to, sexual conduct for a fee or other thing of value, sexually-explicit performances and
147 involvement in the production of pornography; provided, however, that such work or services
148 shall have been obtained or maintained, in whole or in part, through:

149 (i) intimidation, fraud, duress or coercion;

150 (ii) psychological manipulation;

151 (iii) causing or threatening to cause injury to a person;

152 (iv) physically restraining or threatening to physically restrain another person;

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

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

159 (vii) blackmail; or

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

162 “Human trafficking”, (i) the intentional subjection of a person to forced labor or services;
163 (ii) the intentional enticement, harboring, transportation or delivery of a person with the intent
164 that the person be subjected to forced labor or services or intentionally benefiting financially or
165 receiving anything of value, directly or indirectly; (iii) the intentional enticement, harboring,
166 transportation or delivery of another, with the intent that the person engage in a sexually-explicit
167 performance, the production of pornography or sexual conduct for a fee or other thing of value,
168 whether or not a person is the recipient of the fee or other thing of value or intentionally benefits
169 financially or receives anything of value, directly or indirectly.

170 “Human trafficking victim”, a person subjected to forced labor or services, forced
171 engagement in sexually-explicit performance, forced participation in the production of
172 pornography or forced engagement in sexual conduct for fee or other thing of value or a person
173 otherwise victimized by human trafficking. .

174 “Intimidation”, direct or indirect willful use of force or bodily injury or threats of force or
175 bodily injury to influence or confine another.

176 “Maintain”, to secure continued performance of labor or services, regardless of an initial
177 agreement on the part of the victim to perform such type of service.

178 “Serious bodily injury”, includes bodily injury which results in a permanent
179 disfigurement, protracted loss or impairment of a bodily function, limb or organ or substantial
180 risk of death.

181 “Sexually-explicit performance”, an act involving sexual conduct intended to arouse or
182 satisfy the sexual desires of another and which is a live and public or private act or a
183 photographed, recorded or videotaped act or show.

184 Section 2. Whoever intentionally subjects another person to forced labor or services shall
185 be guilty of the crime of involuntary servitude and shall be punished by a fine of not less than
186 \$2,000 and by imprisonment in the state prison for not more than 30 years.

187 Section 3. Whoever intentionally: (a) entices, harbors, transports or delivers another,
188 with the intent that the person be subjected to forced labor or services; or (b) benefits financially
189 or receives anything of value, directly or indirectly, from a violation of this section shall be
190 guilty of trafficking of persons for forced labor or services and shall be punished by a fine of not
191 more than \$2,000 and by imprisonment in the state prison for not more than 25 years.

192 Section 4. Whoever intentionally: (a) entices, harbors, transports or delivers another,
193 with the intent that the person engage in a sexually-explicit performance, the production of
194 pornography or sexual conduct for a fee or other thing of value, whether or not the person is the
195 recipient of the fee or other thing of value; or (b) benefits financially or receives anything of
196 value, directly or indirectly, from a violation of this section shall be guilty of procuring another

197 for sexual servitude and shall be punished by a fine of not more than \$2,000 and by
198 imprisonment in the state prison for not more than 35 years.

199 Section 5. Whoever publishes, disseminates or otherwise discloses the location of any
200 human trafficking victim:

201 (a) with the intent that such victim suffers bodily injury as a result, shall be punished by
202 imprisonment in the state prison for not less than 5 years nor more than 10 years; or

203 (b) as a result causes serious bodily injury to such victim shall be punished by
204 imprisonment in the state prison for not more than 25 years; or

205 (c) as a result causes the death of such victim shall be punished by imprisonment in the
206 state prison for life or for any term of years, but not less than 30 years.

207 Section 6. Whoever maliciously publishes, disseminates or otherwise discloses the name
208 of a human trafficking victim whose identity has been the subject of a confidentially order under
209 section 20N of chapter 233, knowing that such victim's name was the subject of such order shall
210 be punished in the house of correction for not more than 2½ years and by a \$1,000 fine.

211 Section 7. Whoever (i) intentionally recruits, entices, harbors, transports, delivers or
212 obtains by any means, another person, or attempts to do so, intending or knowing that the person
213 will have an organ, tissue or other body parts removed for sale; or (ii) intentionally benefits
214 financially or receives anything of value, directly or indirectly, or attempts to do so, from a
215 violation of this section shall be guilty of organ trafficking and punished by imprisonment in the
216 state prison for not more than 20 years and a fine of not less than \$10,000 nor more than
217 \$50,000.

218 Section 8. (a) Whoever commits a violation of sections 2 to 6, inclusive, shall be
219 punished by imprisonment in the state prison for not more than 20 years if the victim of that
220 violation is a child. Under section 8A of chapter 279, such sentence shall begin after the
221 expiration of the sentence for a violation of section 2, 3, 4, 5 or 6.

222 (b) Whoever commits a violation of section 2, 3 or 4 by means of kidnapping, in violation
223 of section 26 of chapter 265, shall be punished by imprisonment in the state prison for not more
224 than 20 years. Under section 8A of chapter 279, such sentence shall begin from and after the
225 expiration of the sentence for a violation of section 2, 3 or 4.

226 (c) Whoever commits a violation of section 2, 3 or 4 and: (i) as a result causes bodily
227 injury to the victim of such offense shall be punished by imprisonment in the state prison for not
228 more than 15 years; or (ii) as a result causes serious bodily injury to the victim of such offense
229 shall be punished by imprisonment in the state prison for not more than 20 years. Under section
230 8A of chapter 279, such sentences shall begin from and after the expiration of the sentence for a
231 violation of section 2, 3 or 4.

232 (d) Whoever commits a violation of section 2, 3 or 4 and as a result causes the death of
233 another shall be punished by imprisonment in state prison for life or for any term of years, but
234 not less than 20 years. Under section 8A of chapter 279, such sentence shall begin from and after
235 the expiration of the sentence for a violation of section 2, 3 or 4.

236 (e) Whoever commits a violation of section 2, 3 or 4 and the victim of that violation was
237 subjected to any such section: (i) for between 180 days and 1 year, shall be punished by
238 imprisonment in the state prison for not more than 5 years; or (ii) for more than 1 year, shall be
239 punished by imprisonment in the state prison for not more than 25 years. Under section 8A of

240 chapter 279, such sentences shall begin from and after the expiration of the sentence for a
241 violation of section 2, 3 or 4.

242 Section 9. Whoever violates section 53A of chapter 272 knowing or having reason to
243 know that the person engaging in sexual conduct for a fee or other thing of value is a human
244 trafficking victim shall be punished by imprisonment in state prison for not more than 5 years
245 and by a fine of \$2,000, or if the human trafficking victim is a child, shall be punished by
246 imprisonment in state prison for not more than 10 years and by a fine of \$2,000.

247 Section 10. The court shall order restitution to human trafficking victims for violations
248 of this chapter including, in addition to any other amount of loss identified, the following:

249 (a) lost income, which shall include the greater of: (i) the gross income or value to the
250 defendant of the victim's labor or services; or (ii) the value of the victim's labor or services as
251 guaranteed under the commonwealth's minimum wage and overtime laws and interest;

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

254 (c) physical and occupational therapy or rehabilitation;

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

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

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

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

264 (h) compensation for emotional distress, pain, and suffering;

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

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

269 Section 11. (a) All fines collected under this chapter shall be transmitted monthly by the
270 courts to the state treasurer who shall then deposit, invest and transfer the monies, from time to
271 time, into the Victims of Human Trafficking Trust Fund established in section 66A of chapter
272 10.

273 (b) There shall be an assessment of \$250 against a person who violates section 2 to 6,
274 inclusive. No court may waive the assessment for any reason. If a person is sentenced to a
275 correctional facility and the assessment has not been paid, the court shall note the assessment on
276 the mittimus. The monies collected from the assessment established by this paragraph shall be
277 transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer
278 the monies into the Victims of Human Trafficking Trust Fund established in said section 66A of
279 said chapter 10. The monies shall then be administered, under said section 66 of said chapter 10,
280 by the Massachusetts Office of Victim Assistance under said section 66A. The assessment paid
281 by an individual into the Victims of Human Trafficking Trust Fund under this section shall be in
282 addition to, and not in lieu of, any other fee imposed by the court under this chapter or any other

283 chapter. The administrative office of the trial court shall file a report detailing the amount of
284 funds imposed and collected under this section to the house and senate committees on ways and
285 means and to the Massachusetts Office of Victim Assistance not later than August 15 of each
286 calendar year.

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

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

297 (b) Upon a finding of responsibility of aiding or participating in involuntary servitude,
298 trafficking of person for forced labor or services or sexual servitude, a business entity shall be
299 assessed a fine of not less than \$10,000 and not more than \$100,000. No court shall waive the
300 assessment for any reason. The court may:

301 (i) order its dissolution or reorganization;

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

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

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

311 (b) If a person entitled to sue is under a disability at the time the cause of action accrues,
312 such that it is impossible or impracticable for the person to bring an action, the time during
313 which the person is under a disability shall toll the statute until the disability ceases.

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

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

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

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

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

330 (iii) monies, negotiable instruments, securities or other things of value furnished or
331 intended to be furnished by a person in exchange for involuntary servitude, forced
332 labor or services or sexual servitude, all proceeds traceable to such an exchange,
333 including real estate and any other thing of value and monies, negotiable instruments
334 and securities used or intended to be used to facilitate a violation of section 2, 3, 4 or
335 5; and

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

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

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

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

347 (i) no conveyance used by any person as a common carrier in the transaction of business
348 as a common carrier shall be forfeited unless it shall appear that the owner or other
349 person in charge of such conveyance was a consenting party or privy to a violation of
350 section 2, 3 or 4;

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

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

359 (d) A district attorney or the attorney general may petition the superior court in the name
360 of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance,
361 real property, monies or other things of value subject to forfeiture under subsection (a). Such
362 petition shall be filed in the court having jurisdiction over the conveyance, real property, monies
363 or other things of value or having final jurisdiction over any related criminal proceeding brought
364 under section 2, 3 or 4. In all such suits in which the property is claimed by any person, other
365 than the commonwealth, the commonwealth shall have the burden of proving to the court the
366 existence of probable cause to institute the action and any such claimant shall then have the
367 burden of proving that the property is not forfeitable under subsection (c). The owner of the
368 conveyance or real property or other person claiming an exception under subsections (c) and (j)

369 shall have the burden of proof. The court shall order the commonwealth to give notice by
370 certified or registered mail to the owner of the conveyance, real property, monies or other things
371 of value and to such other persons as appear to have an interest in the conveyance, real property,
372 monies or other things of value, and the court shall promptly, but not less than 2 weeks after
373 notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real
374 property, monies or other things of value, the court may continue the hearing on the petition
375 pending the outcome of any criminal trial related to the violation of section 2, 3 or 4. At such
376 hearing the court shall hear evidence and make conclusions of law, and shall issue a final order
377 based on those conclusions, from which the parties shall have a right of appeal. In all such suits
378 where a final order results in a forfeiture, the final order shall provide for disposition of the
379 conveyance, real property, monies or any other thing of value by the commonwealth or any
380 subdivision of the commonwealth in any manner not prohibited by law, including official use by
381 an authorized law enforcement or other public agency, or sale at public auction or by competitive
382 bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the
383 forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the
384 balance of the sale shall be distributed as further provided in this section.

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

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

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

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

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

415 (h) An officer, department or agency having custody of any property subject to forfeiture
416 under this section or having disposed of the property shall keep and maintain full and complete
417 records showing from whom it received the property, under what authority it held or received or
418 disposed of said property, to whom it delivered the property, the date and manner of disposition
419 of the property and the exact kinds, quantities and forms of the property. The records shall be
420 open to inspection by all federal and state officers charged with enforcement of federal and state
421 human trafficking laws. Persons making final disposition of the property under court order shall
422 report, under oath, to the court the exact circumstances of such disposition.

423 (i) (1) During the pendency of the proceedings the court may issue at the request of the
424 commonwealth ex parte any preliminary order or process as is necessary to seize or
425 secure the property for which forfeiture is sought and to provide for its custody including,
426 but not limited to: an order that the commonwealth remove the property if possible and
427 safeguard it in a secure location in a reasonable fashion; that monies be deposited in an
428 interest-bearing escrow account; and that a substitute custodian be appointed to manage
429 such property. Property taken or detained under this section shall not be repleviable, but
430 once seized shall be deemed to be lawfully in the custody of the commonwealth pending
431 forfeiture, subject only to the orders and decrees of the court having jurisdiction. Process
432 for seizure of the property shall issue only upon a showing of probable cause and the
433 application for seizure and the issuance, execution and return of such property shall be
434 subject to chapter 276, as applicable.

435 (2) A district attorney or the attorney general may refer any real property and any
436 furnishings, equipment and related personal property located in that property, for which
437 seizure is sought, to the division of capital asset management and maintenance office of

438 seized property management, established under section 47 of chapter 94C. The office of
439 seized property management shall preserve and manage the property in a reasonable
440 fashion and dispose of the property upon a judgment ordering forfeiture, and enter into
441 contracts to preserve, manage and dispose of the property. The office of seized property
442 management may receive initial funding from the special law enforcement trust funds of
443 the attorney general and each district attorney under paragraph (f) and shall subsequently
444 be funded by a portion of the proceeds of each sale of such managed property to the
445 extent provided as payment of reasonable expenses in paragraph (d).

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

453 (k) A forfeiture proceeding affecting the title to real property or the use and occupation of
454 such real property or the buildings on such real property shall not have any effect except against
455 the parties to the proceeding and persons having actual notice of the proceeding, until a
456 memorandum containing the names of the parties to such proceeding, the name of the town in
457 which the affected real property lies, and a description of the real property sufficiently accurate
458 for identification is recorded in the registry of deeds for the county or district in which the real
459 property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal
460 or other final disposition is recorded by the court having jurisdiction over such matter, the clerk

461 of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or
462 other final disposition and such certificate shall be recorded in the registry in which the original
463 memorandum recorded under this section was filed.

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

469 Section 17. (a) For purposes of this section, human trafficking shall mean a severe form
470 of trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000.
471 The attorney general, district attorney or any law enforcement official shall certify in writing to
472 the United States Department of Justice or other federal agency, such as the United States
473 Department of Homeland Security, that an investigation or prosecution under this chapter has
474 begun and that the human trafficking victim is willing to cooperate or is cooperating with the
475 investigation in order to enable that individual, if eligible under federal law, to qualify for an
476 appropriate visa and to access available federal benefits. Cooperation with law enforcement
477 shall not be required of human trafficking victims who are under 18 years of age. This
478 certification shall be made available to the victim and the victim's designated legal
479 representative.

480 (b) When a credible report has been made to the police of a crime described in this
481 chapter, and upon request of the victim of that crime, the attorney general, district attorney,
482 department of social services or any law enforcement official shall certify in writing to the
483 United States Department of Justice, the United States Department of Homeland Security,

484 including any subset of the Department of Homeland Security, such as the United States
485 Customs and Immigration Service or the United States Immigration and Customs Enforcement,
486 that the individual making the request is a victim of such crime and that the individual has been
487 helpful, is being helpful, or is likely to be helpful in the investigation or prosecution, of that
488 crime in order to enable that individual, if eligible under federal law, to qualify for an appropriate
489 visa and to access available federal benefits. For the purposes of this section, an individual shall
490 be deemed to have been helpful in the investigation or prosecution of the crime if the individual
491 has filed a credible report of the crime with the police or other law enforcement officials or
492 provided a statement concerning the underlying circumstances of the crime to the police or other
493 law enforcement officials even where that victim has requested that no domestic prosecution
494 occur because of a reasonable fear that harm will come to individuals who reside abroad where
495 local law enforcement cannot provide protection. The certification provided under this
496 subsection, as well as a photocopy of the victim's report of the crime, shall be made available to
497 the victim and the victim's designated representative.

498 Section 18. Subject to appropriation, the department of social services, in consultation
499 with the department of youth services, shall provide child human trafficking victims with age-
500 appropriate resources and services including, but not limited to, information about their rights,
501 privacy protections, shelter and psychological counseling. Such services shall include a
502 coordinated multidisciplinary plan by government and non-governmental agencies to minimize
503 the number of child interviews, enhance the provision of services and best meet the needs of the
504 child.

505 Section 19. (a)(1) Subject to funding made available under paragraph (2), the office of
506 the attorney general shall prepare and make available educational or informational

507 materials on human trafficking laws and services that are available to protect or treat
508 victims of human trafficking to state and local employers and their employees who,
509 through the dispatch of their duties, may encounter individuals who either identify
510 themselves as or are suspected of being human trafficking victims.

511 (2) Funds supporting non-personnel-related costs of preparing and distributing said
512 educational or informational materials shall be made available by the victim and witness
513 assistance board, as established in section 4 of chapter 258B, from funds held in the
514 Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

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

521 **SECTION 9.** Section 63 of chapter 277 of the General Laws, as appearing in the 2008
522 Official Edition, is hereby amended by inserting after the figure “265”, in lines 4 and 25, each
523 time it appears, the following words:- “, or section 2, 3, 4, 5, 6 or 7 of chapter 265A.

524 **SECTION 10.** There is hereby established, subject to appropriation, a special
525 commission on Anti-Human Trafficking, co-chaired by the attorney general, or the attorney
526 general’s designee and the secretary of health and human services, or the secretary’s designee,
527 for the purpose of making a review and study of human trafficking in the commonwealth.

528 The commission shall (i) collect and organize data on the nature and extent of human
529 trafficking in the commonwealth, including the harms and consequences to human trafficking
530 victims; (ii) identify available federal, state and local programs and licensing bodies that could
531 provide services, benefits or licenses to human trafficking victims including, but not limited to,
532 health care, mental health, human services, housing or shelter services, education, legal
533 assistance, job training or preparation, interpreting services, English-as-a-second-language
534 classes, voluntary repatriation and victim's compensation and examine how to expedite human
535 trafficking victims access to such services; (iii) evaluate approaches to increase public awareness
536 of human trafficking and offer recommendations for programs and educational and training
537 opportunities for law enforcement and social service providers including, but not limited to,
538 methods used to identify human trafficking victims, including preliminary interviewing and
539 questioning techniques, methods of protecting the special needs of women and child human
540 trafficking victims, developments in state and federal laws regarding human trafficking and
541 methods to increase effective collaboration between state and local agencies, law enforcement,
542 social service providers and non-governmental organizations; (iv) examine collaborative models
543 between government and nongovernmental organizations for protecting human trafficking
544 victims; (v) measure and evaluate the progress of the state in preventing human trafficking,
545 protecting and providing assistance to human trafficking victims and prosecuting persons
546 engaged in human trafficking; (vi) analyze existing state laws and regulations, including the
547 effectiveness of existing victim-witness assistance laws, regulations and services and
548 confidentiality laws, for their adequacy in addressing human trafficking and, if the analysis
549 determines that those statutes are inadequate, recommend revisions to those statutes or the
550 enactment of new statutes that specifically address human trafficking; and (vii) consult with

551 governmental and nongovernmental organizations in developing recommendations to strengthen
552 state and local efforts to prevent human trafficking, to protect and assist human trafficking
553 victims, and to prosecute human traffickers.

554 The commission shall comprise: 2 member of the senate, 1 of whom shall be appointed
555 by the minority leader; 2 members of the house of representatives, 1 of whom shall be appointed
556 by the minority leader; and 15 members appointed by the governor, 1 of whom shall be a
557 representative of a coalition dedicated to prevention of and intervention in the trafficking of
558 children, 2 of whom shall be survivors of human trafficking, 1 domestic and 1 international; 2 of
559 whom shall be human trafficking attorneys, 1 who works with adults and 1 who works with
560 children; 2 of whom shall be human trafficking caseworkers, 1 who works with adults and 1 who
561 works with children; 1 of whom shall be a medical professional; 2 of whom shall be mental
562 health professionals, 1 who works with adults and 1 who works with children; 1 of whom shall
563 be a university researcher with a background in human trafficking; 1 of whom shall be a person
564 with a background in child and runaway services; 1 of whom shall be a law enforcement
565 professional with experience in human trafficking; 1 of whom shall be a representative of the
566 Massachusetts Police Chief Association; and 1 of whom shall be a victims advocate

567 During the course of its study, the consult with the following agencies and organizations:
568 (i) the secretary of economic development; (ii) the colonel of the state police; (iii) the
569 Massachusetts district attorneys association; (iv) the commissioner of the Boston police
570 department; (v) the Massachusetts police training committee; (vi) the Interjurisdictional Anti-
571 Human Trafficking Task Force; (vii) the Massachusetts Office of Victim Assistance; (viii) the
572 Massachusetts office of the child advocate; (ix) the Trafficking Victims Outreach and Services
573 network; (x) the Massachusetts Immigrant and Refugee Advocacy Coalition; (xi) Jane Doe, Inc.;

574 (xii) the Massachusetts Children’s Alliance; (xiii) the Massachusetts Commission on the Status
575 of Women; (xiv) the Massachusetts Bar Association; (xv) the Boston Bar Association; (xvi) the
576 Women’s Bar Association of Massachusetts, Inc.; (xvii) the Massachusetts Medical Society
577 Alliance, Inc.; (xviii) the department of mental health; (xix) the department of children and
578 families; (xx) the department of youth services; and (xxi) any other agency or organization
579 necessary for the commission to complete the review and study.

580 The commission shall report to the general court the results of its review and study, and
581 its recommendations, if any, together with drafts of legislation necessary to carry out its
582 recommendations, by filing the same with the clerk of the house of representatives and the clerk
583 of the senate not later than December 31, 2012. Subsequent to the filing of said report, the
584 commission shall continue to review and study human trafficking in the commonwealth and shall
585 report any further recommendations to the clerk of the house of representatives and the clerk of
586 the senate.