

SENATE No. 58

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Montigny

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relating to anti-human trafficking and protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mark C. Montigny	Second Bristol and Plymouth
Scott P. Brown	Norfolk, Bristol and Middlesex
Richard T. Moore	Worcester and Norfolk
Patricia D. Jehlen	Second Middlesex
Bruce E. Tarr	First Essex and Middlesex
James E. Timilty	Bristol and Norfolk
Thomas M. McGee	Third Essex and Middlesex
Susan C. Tucker	Second Essex and Middlesex
Jennifer L. Flanagan	Worcester and Middlesex
Karen E. Spilka	Second Middlesex and Norfolk
Robert L. Hedlund	Plymouth and Norfolk
John A. Hart, Jr.	First Suffolk
Thomas P. Kennedy	Second Plymouth and Bristol
Stanley C. Rosenberg	Hampshire and Franklin
Brian A. Joyce	Norfolk, Bristol and Plymouth
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Susan C. Fargo	Third Middlesex
James B. Eldridge	Middlesex and Worcester
Michael R. Knapik	Second Hampden and Hampshire

Gale D. Candaras	First Hampden and Hampshire
Stephen M. Brewer	Worcester, Hampden, Hampshire and Franklin
Richard R. Tisei	Middlesex and Essex
Robert A. O'Leary	Cape and Islands
Sonia Chang-Díaz	Second Suffolk
William N. Brownsberger	24th Middlesex
Anne M. Gobi	5th Worcester
Geraldine Creedon	11th Plymouth
Robert M. Koczera	11th Bristol
John F. Quinn	9th Bristol
Barbara A. L'Italien	18th Essex
Byron Rushing	9th Suffolk
Kay Khan	11th Middlesex
Marie P. St. Fleur	5th Suffolk
Carlo P. Basile	1st Suffolk
Tom Sannicandro	7th Middlesex
David P. Linsky	5th Middlesex
Ruth B. Balser	12th Middlesex
Elizabeth A. Malia	11th Suffolk
Cheryl A. Coakley-Rivera	10th Hampden
Lori Ehrlich	8th Essex
Jennifer M. Callahan	18th Worcester
Kathi-Anne Reinstein	16th Suffolk
Mary E. Grant	6th Essex
John W. Scibak	2nd Hampshire
Mark V. Falzone	9th Essex
Denise Provost	27th Middlesex
Stephen R. Canessa	12th Bristol
Antonio F.D. Cabral	13th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00097 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 separate
4 fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of assets
5 forfeited and the proceeds of assets seized and forfeited pursuant to chapter 265A and fines and
6 assessments collected pursuant to said chapter 265A, together with any interest or earnings accrued on such
7 monies through investment or deposit. The state treasurer shall be the custodian of the fund and shall
8 receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34,
9 34A and 38 of chapter 29 in such a manner as to secure the highest rate of return available consistent with
10 the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The
11 state treasurer shall transfer funds from the income and receipts of the fund to the victim and witness
12 assistance board, as established in section 4 of chapter 258B, from time to time, at the request of the office.
13 The board shall award and administer grants from the fund, without further appropriation, to public, private
14 non-profit or community-based programs in the commonwealth to provide services to human trafficking

15 victims, as defined in section 1 of said chapter 265A including, but not limited to, legal and case
16 management services, health care, mental health, social services, housing or shelter services, education, job
17 training or preparation, interpreting services, English-as-a-second-language classes, victims' compensation,
18 and public and private non-profit collaborations to protect and assist human trafficking victims. The board
19 shall develop, in conjunction with the Anti-Human Trafficking Task Force established by section 20 of
20 chapter 265A, written criteria for the awarding of those grants, which shall be evaluated and, if necessary,
21 revised on an annual basis.

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

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

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

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

38 Any privilege established by sections 135A and 138B of chapter 112 or by sections 20A, 20B or

39 20M of chapter 233, relating to confidential communications shall not prohibit the filing of a report
40 pursuant to this section or section 24.

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

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

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

49 Section 11A. Notwithstanding any general or special law to the contrary, in any civil action or
50 other civil judicial proceeding commenced by a person alleging to be a human trafficking victim, as defined
51 in chapter 265A, in which the petitioner is unable to be present in the jurisdiction in order to prosecute such
52 action or proceeding due to the application of the immigration laws of the United States or undue financial
53 or other hardship, testimony of such person may be given under oath before any ambassador or consul
54 general or their respective designee in any embassy or consular office of the United States in any foreign
55 country at which legal counsel for the defendant shall have the opportunity to either (a) be present and
56 cross examine the witness, or (b) see, hear and cross examine the witness by way of video conference or
57 other technology providing defense counsel with the opportunity to see, hear and cross examine the witness
58 in real time. A live-video conference, a video-taped record or a transcript of such testimony shall be
59 admissible at trial in any such action or proceeding.

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

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

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

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

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

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

82 (b) A human trafficking victim’s caseworker shall not disclose any confidential communication
83 without the prior written consent of the victim, or the victim’s guardian in the case of a child, except as
84 hereinafter provided. Such confidential communication shall not be subject to discovery in any civil,

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

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

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

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

104 SECTION 8. Section 3 of chapter 258B of the general laws as so appearing is
105 hereby amended by adding the following clause:-

106 (w) for human trafficking victims, to be provided a copy of an incident or a
107 police report relative to the prosecution of the case. No charge shall be assessed to
108 such victim for such report.

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

111 Chapter 265A

112 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

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

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

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

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

124 “Business entity”, a corporation, its officers or directors, an association, partnership, limited
125 liability company, limited liability partnership, or other legal entity.

126 “Child”, any person under 18 years of age.

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

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

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

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

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

140 (ii) psychological manipulation;

141 (iii) causing or threatening to cause injury to any person;

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

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

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

149 (vii) the use of blackmail;

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

151 “Human trafficking”, means a violation of section 2, 3 or 4.

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

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

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

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

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

162 Section 2. Whoever intentionally subjects another person to forced labor or services shall be
163 guilty of the crime of involuntary servitude and shall be punished by a fine of not less than \$2,000 and by
164 imprisonment in the state prison for not less than 5 years nor more than 25 years.

165 Section 3. Whoever (a) intentionally entices, harbors, transports or delivers another, with the
166 intent that the person be subjected to forced labor or services; or (b) intentionally benefits financially or
167 receives anything of value, directly or indirectly, from a violation of this section shall be guilty of
168 trafficking of persons for forced labor or services and shall be punished by a fine of not more than \$2,000
169 and by imprisonment in the state prison for not less than 10 years nor more than 20 years.

170 Section 4. Whoever (a) intentionally entices, harbors, transports or delivers another, with the
171 intent that the person engage in a sexually-explicit performance, the production of pornography or sexual
172 conduct for a fee or other thing of value, whether or not the person is the recipient of the fee or other thing
173 of value; or (b) intentionally benefits financially or receives anything of value, directly or indirectly, from a
174 violation of this section shall be guilty of procuring another for sexual servitude and shall be punished by a

175 fine of not more than \$2,000 and by imprisonment in the state prison for not less than 20 years nor more
176 than 30 years.

177 Section 5. Whoever publishes, disseminates or otherwise discloses the location of any human
178 trafficking victim with the intent that such victim suffers bodily injury thereby shall be punished in the state
179 prison for not less than 3 years nor more than 5 years. Whoever violates this section and thereby causes
180 bodily injury to such victim shall be punished by imprisonment in the state prison for not less than 5 years
181 nor more than 10 years, or thereby causes serious bodily injury to such victim shall be punished by
182 imprisonment in the state prison for not less than 10 years nor more than 20 years, or thereby causes the
183 death of such victim shall be punished by imprisonment in the state prison for life or for any term of years,
184 but not less than 20 years.

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

189 Section 7. (a) Whoever commits a violation of section 2 to 6, inclusive, and the victim thereof is
190 a child shall be punished by imprisonment in the state prison for not less than 10 years nor more than 15
191 years. In accordance with section 8A of chapter 279, such sentence shall begin from and after the
192 expiration of the sentence for violation of section 2, 3, 4, 5 or 6.

193 (b) Whoever commits a violation of section 2, section 3 or section 4 by means of kidnapping, in
194 violation of section 26 of chapter 265, shall be punished by imprisonment in the state prison for not less
195 than 10 years nor more than 15 years. In accordance with section 8A of chapter 279, such sentence shall
196 begin from and after the expiration of the sentence for violation of section 2, 3 or 4.

197 (c) Whoever commits a violation of section 2, section 3 or section 4 and: (i) thereby causes bodily
198 injury to the victim of such offense shall be punished by imprisonment in the state prison for not less than 5

199 nor more than 10 years; or (ii) thereby causes serious bodily injury to the victim of such offense shall be
200 punished by imprisonment in the state prison for not less than 10 year nor more than 15 years. In
201 accordance with section 8A of chapter 279, such sentences shall begin from and after the expiration of the
202 sentence for violation of section 2, 3 or 4.

203 (d) Whoever commits a violation of section 2, section 3 or section 4 and thereby causes the death
204 of another shall be punished by imprisonment in state prison for life or for any term of years, but not less
205 than 20 years. In accordance with section 8A of chapter 279, such sentence shall begin from and after the
206 expiration of the sentence for violation of section 2, 3 or 4.

207 (e) Whoever commits a violation of section 2, section 3 or section 4 and the victim thereof was
208 subjected to the provisions of any such section: (i) for between 180 days and 1 year, shall be punished by
209 imprisonment in the state prison for not less than 3 years nor more than 5 years; or (ii) for more than 1 year,
210 shall be punished by imprisonment in the state prison for not less than 5 years nor more than 25 years. In
211 accordance with section 8A of chapter 279, such sentences shall begin from and after the expiration of the
212 sentence for violation of section 2, 3 or 4.

213 Section 8. Whoever violates section 53A of chapter 272 knowing or having reason to know that
214 the person engaging in sexual conduct for a fee or other thing of value is a human trafficking victim shall
215 be punished by imprisonment in state prison for not less than 3 years nor more than 5 years and by a fine of
216 \$2,000, or if the human trafficking victim is a child, shall be punished by imprisonment in state prison for
217 not less than 5 years nor more than 10 years and by a fine of \$2,000.

218 Section 9. Restitution to human trafficking victims shall be ordered by the court in sentences
219 rendered for violations of this chapter. In addition to any other amount of loss identified, the court shall
220 order restitution including the following:

- 221 (1) lost income, which includes the greater of: (i) the gross income or value to the defendant of
222 the victim's labor or services; or (ii) the value of the victim's labor or services as guaranteed under
223 the commonwealth's minimum wage and overtime provisions, and interest;
- 224 (2) medical and related professional services relating to physical, psychiatric or psychological
225 care;
- 226 (3) physical and occupational therapy or rehabilitation;
- 227 (4) necessary transportation, temporary housing, and child care expenses;
- 228 (5) in the case of an offense resulting in damage or destruction of property, return of the property,
229 or if return is impossible, impracticable or inadequate, payment of the replacement value of the
230 property;
- 231 (6) in the case of an offense resulting in death, or bodily injury that results in death, the costs and
232 expenses of necessary funeral and related services;
- 233 (7) attorneys' fees and other costs and expenses incurred, including those costs and expenses
234 incurred that are related to participation in the investigation or prosecution of the offense or
235 attendance at proceedings related to the offense;
- 236 (8) compensation for emotional distress, pain, and suffering;
- 237 (9) expenses incurred in relocating away from the defendant, including, but not limited to,
238 deposits for utilities and telephone service, deposits for rental housing, temporary lodging and
239 food expenses, clothing, and personal items; and
- 240 (10) any other losses suffered by the human trafficking victim.

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

244 (b) There shall be an assessment of \$250 against any person who violates any provision of section
245 2 to 6, inclusive. The assessment shall not be subject to waiver by the court for any reason. If a person is
246 sentenced to a correctional facility and the assessment has not been paid, the court shall note the assessment
247 on the mittimus. The monies collected pursuant to the assessment established by this paragraph shall be
248 transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer the
249 monies into the Victims of Human Trafficking Trust Fund established in said section 66A of said
250 chapter 10. The monies shall then be administered, pursuant to said section 66 of said chapter 10, by the
251 Massachusetts Office of Victim Assistance for the purposes set forth in said section 66A. The assessment
252 paid by an individual into the Victims of Human Trafficking Trust Fund pursuant to this section shall be in
253 addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any other
254 chapter. The administrative office of the trial court shall file a report detailing the amount of funds
255 imposed and collected pursuant to this section to the house and senate committees on ways and means and
256 to the Massachusetts Office of Victim Assistance not later than August 15 of each calendar year.

257 Section 11. An individual who is a human trafficking victim may bring a civil action for
258 involuntary servitude, trafficking of persons for forced labor or services or sexual servitude. The court may
259 award actual damages, compensatory damages, punitive damages, injunctive relief, or any other
260 appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages
261 may be awarded on proof of actual damages where the defendant's acts were willful and malicious.

262 Section 12. (a) Any business entity that knowingly aids or participates in involuntary servitude,
263 trafficking of person for forced labor or services or sexual servitude shall be civilly liable for an offense
264 under this section and may be subject to loss of business license in the state.

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

269 (i) order its dissolution or reorganization;

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

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

274 Section 13. (a) A civil action for involuntary servitude, trafficking of persons for forced labor or
275 services or sexual servitude shall be commenced within 7 years of the date on which the human trafficking
276 victim was freed from the human trafficking situation, or if the victim was a child when the act of human
277 trafficking against the victim occurred, within 7 years after the date the plaintiff attains the age of 18.

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

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

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

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

294 Section 14. (a) The following property shall be subject to forfeiture to the commonwealth and all
295 property rights therein shall be in the commonwealth:

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

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

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

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

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

310 (b) Property subject to forfeiture pursuant to clauses (i) to (iv), inclusive, shall, upon motion of

311 the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said
312 property or having final jurisdiction over any related criminal proceeding brought under this section.

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

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

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

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

324 (d) A district attorney or the attorney general may petition the superior court in the name of the
325 commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property,
326 monies or other things of value subject to forfeiture under subsection (a). Such petition shall be filed in the
327 court having jurisdiction over the conveyance, real property, monies or other things of value or having final
328 jurisdiction over any related criminal proceeding brought under section 2, 3 or 4. In all such suits in which
329 the property is claimed by any person, other than the commonwealth, the commonwealth shall have the
330 burden of proving to the court the existence of probable cause to institute the action, and any such claimant
331 shall then have the burden of proving that the property is not forfeitable pursuant to subsection (c). The
332 owner of the conveyance or real property, or other person claiming thereunder shall have the burden of
333 proof as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth to
334 give notice by certified or registered mail to the owner of the conveyance, real property, monies or other

335 things of value and to such other persons as appear to have an interest therein, and the court shall promptly,
336 but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the
337 conveyance, real property, monies or other things of value, the court may continue the hearing on the
338 petition pending the outcome of any criminal trial related to the violation of section 2, 3 or 4. At such
339 hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order,
340 from which the parties shall have a right of appeal. In all such suits where a final order results in a
341 forfeiture, the final order shall provide for disposition of the conveyance, real property, monies or any other
342 thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law,
343 including official use by an authorized law enforcement or other public agency, or sale at public auction or
344 by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the
345 forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance
346 thereof shall be distributed as further provided in this section.

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

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

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

355 (f) All such monies and proceeds received by any prosecuting district attorney or attorney general
356 shall be deposited in the separate special law enforcement trust funds for each district attorney and for the
357 attorney general within the office of the state treasurer, established under paragraph (d) of section 47 of
358 chapter 94C. Each district attorney, the attorney general or the state treasurer shall ensure that proper

359 accounting procedures are in place to account for monies and proceeds received and expended pursuant to
360 this section. All such monies and proceeds shall be expended without further appropriation to defray the
361 costs of protracted investigations, to provide additional technical equipment or expertise, to provide
362 matching funds to obtain federal grants, or for such other law enforcement purposes as the district attorney
363 or attorney general deems appropriate. The district attorney or attorney general may also expend monies
364 and proceeds for human trafficking prevention or to provide victims' services to human trafficking victims.
365 Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall file an
366 annual report with the house and senate committees on ways and means on the use of the monies in such
367 trust fund to prohibit human trafficking.

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

374 (h) Any officer, department, or agency having custody of any property subject to forfeiture under
375 this section or having disposed of the property shall keep and maintain full and complete records showing
376 from whom it received the property, under what authority it held or received or disposed of said property,
377 to whom it delivered the property, the date and manner of disposition of the property, and the exact kinds,
378 quantities and forms of the property. The records shall be open to inspection by all federal and state
379 officers charged with enforcement of federal and state human trafficking laws. Persons making final
380 disposition of the property under court order shall report, under oath, to the court the exact circumstances of
381 such disposition.

382 (i) (i) During the pendency of the proceedings the court may issue at the request of the

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

392 (ii) A district attorney or the attorney general may refer any real property, and any furnishings,
393 equipment and related personal property located therein, for which seizure is sought, to the division of
394 capital asset management and maintenance office of seized property management, established under section
395 47 of chapter 94C. The office of seized property management shall preserve and manage the property in a
396 reasonable fashion and dispose of the property upon a judgment ordering forfeiture, and to enter into
397 contracts to preserve, manage and dispose of the property. The office of seized property management may
398 receive initial funding from the special law enforcement trust funds of the attorney general and each district
399 attorney under paragraph (f) and shall subsequently be funded by a portion of the proceeds of each sale of
400 such managed property to the extent provided as payment of reasonable expenses in paragraph (d).

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

407 (k) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or
408 the buildings thereon shall not have any effect except against the parties thereto and persons having actual
409 notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the
410 town wherein the affected real property lies, and a description of the real property sufficiently accurate for
411 identification is recorded in the registry of deeds for the county or district wherein the real property lies. At
412 any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is
413 recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of
414 the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be
415 recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

416 Section 15. In any prosecution of a person who is a human trafficking victim, it shall be an
417 affirmative defense that he was under duress or coerced into committing the offenses for which he is being
418 prosecuted, unless prohibited by the general laws. A human trafficking victim is not criminally liable for
419 any sexual conduct for a fee or other thing of value committed as a direct result of, or incident or related to,
420 being trafficked.

421 Section 16. Compensation is mandatory under this section. In addition to any other amount of
422 loss identified, the division of victim compensation and assistance in the department of the attorney general
423 shall compensate human trafficking victims including the greater of the following: (1) the gross income or
424 value to the defendant of the victim's labor or services or (2) the value of the victim's labor or services as
425 guaranteed under the commonwealth's minimum wage and overtime provisions; whichever is greater, and
426 interest. Any alleged human trafficking victim will also be eligible for any state funded benefits including,
427 but not limited to, cash assistance and medical insurance.

428 Section 17. (a) For purposes of this section, human trafficking shall mean a
429 severe form of trafficking under Section 7102(8) of Title 22 of the United States
430 Code on October 28, 2000. The attorney general, district attorney, or any law

431 enforcement official shall certify in writing to the United States Department of Justice
432 or other federal agency, such as the United States Department of Homeland Security,
433 that an investigation or prosecution under this chapter has begun and that the
434 human trafficking victim is willing to cooperate or is cooperating with the
435 investigation in order to enable that individual, if eligible under federal law, to qualify
436 for a T-Visa or another appropriate visa and to access available federal benefits.
437 Cooperation with law enforcement shall not be required of human trafficking victims
438 who are under 18 years of age. This certification shall be made available to the
439 victim and his designated legal representative.

440 (b) When a credible report has been made to the police of a crime described
441 in this chapter, and upon request of the victim of that crime, the attorney general,
442 district attorney, department of social services, or any law enforcement official shall
443 certify in writing to the United States Department of Justice, the United States
444 Department of Homeland Security, including any subset thereof, such as the United
445 States Customs and Immigration Service or the United States Immigration and
446 Customs Enforcement, that the individual making the request is a victim of such
447 crime and that the individual has been helpful, is being helpful, or is likely to be
448 helpful in the investigation or prosecution, of that crime in order to enable that
449 individual, if eligible under federal law, to qualify for a U-Visa or another appropriate
450 visa and to access available federal benefits. For the purposes of this section, an
451 individual will be deemed to have been helpful in the investigation or prosecution of
452 the crime if he has filed a credible report of the crime with the police or other law
453 enforcement officials or provided a statement concerning the underlying
454 circumstances of the crime to the police or other law enforcement officials even

455 where that victim has requested that no domestic prosecution occur because of a
456 reasonable fear that harm will come to individuals who reside abroad where local law
457 enforcement cannot provide protection. The certification provided under this
458 subsection, as well as a photocopy of the victim's report of the crime, shall be made
459 available to the victim and the victim's designated representative.

460 (c) Human trafficking victims may be eligible for continued presence status in
461 the United States subject to the provisions of 28 Code of Federal Regulations
462 1100.35.

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

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

478 (iii) Where state or local law enforcement agencies find the grant of an LEA
479 endorsement to be inappropriate for a human trafficking victim, the agency shall
480 within 15 business days provide the human trafficking victim with a letter explaining
481 the grounds for the denial of the LEA. The human trafficking victim may submit
482 additional evidence to the law enforcement agency, which shall reconsider the denial
483 of the LEA within 5 business days of the receipt of additional evidence.

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

499 Section 18. Subject to appropriation, the executive office of health and human services shall
500 hereby established a pilot program creating a human trafficking safe house specifically to meet the unique
501 needs of adult human trafficking victims, and the department of social services in consultation with the

502 department of youth services shall hereby establish a pilot program creating a human trafficking safe house
503 specifically to meet the unique needs of child human trafficking victims. The safe houses shall each
504 provide specialized support services to adult or child human trafficking victims that will take into account
505 the age, gender, linguistic capabilities, and special needs of the victims and the victim's dependent children,
506 if any. The safe houses shall also provide 24 hour security on the premises, multilingual trauma trained
507 case management staff, access to healthcare and mental health services, and access to employment and
508 educational services.

509 Section 19. Subject to appropriation, the department of social services in consultation with the
510 department of youth services shall provide child human trafficking victims with age-appropriate resources
511 and services including, but not limited to, information about their rights, privacy protections, shelter, and
512 psychological counseling. Such services shall include a coordinated multidisciplinary plan by government
513 and non-governmental agencies to minimize the number of child interviews, enhance the provision of
514 services, and best meet the needs of the child.

515 Section 20. (a) There is hereby established an Anti-Human Trafficking Task Force, co-chaired by
516 the attorney general and the secretary of health and human services or their designees. The task force
517 shall:

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

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

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

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

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

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

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

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

548 (b) The office of the attorney general and the executive office of health and human services shall
549 provide staff and support for the task force, including, but not limited to, publication and dissemination of

550 the annual report required by this section and posting the report on their websites, to the extent resources
551 are available.

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

553 (1) the secretary of the executive office of economic development;

554 (2) the colonel of the state police;

555 (3) a representative of the Massachusetts police chiefs association;

556 (4) a representative of the Massachusetts district attorney's association;

557 (5) the commissioner of the Boston police department;

558 (6) a representative of the Massachusetts police training committee, formerly the Massachusetts
559 criminal justice training counsel;

560 (7) a representative from the Interjurisdictional Anti-Human Trafficking Task Force;

561 (8) a representative of the Massachusetts Office of Victim Assistance;

562 (9) a representative from the Massachusetts office of the child advocate;

563 (10) a representative of the Trafficking Victims Outreach and Services network;

564 (11) a representative of the Massachusetts Immigrant and Refugee Advocacy Coalition;

565 (12) a representative of Jane Doe, Inc.;

566 (13) a representative of the Massachusetts Children's Alliance;

567 (14) a representative of a coalition dedicated to prevention of and intervention in the trafficking
568 of children;

569 (15) a senator appointed by the senate president;

570 (16) a senator appointed by the senate minority leader;

- 571 (17) a representative appointed by the speaker of the house;
- 572 (18) a representative appointed by the house minority leader;
- 573 (19) 2 survivors of human trafficking, one domestic and one international, appointed by the
574 governor;
- 575 (20) 2 human trafficking attorneys, one who works with adults and one who works with children,
576 appointed by the governor;
- 577 (21) 2 human trafficking caseworkers, one who works with adults and one who works with
578 children, appointed by the governor;
- 579 (22) a medical professional appointed by the governor;
- 580 (23) 2 mental health professionals, one who works with adults and one who works with children,
581 appointed by the governor;
- 582 (24) a university researcher with a background in human trafficking appointed by the governor;
- 583 (25) a person with a background in child and runaway services appointed by the governor; and
- 584 (26) a representative from the Massachusetts Commission on the Status of Women appointed by
585 the governor.

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

592 (b) The office of the attorney general in consultation with the Massachusetts Office of Victims
593 Assistance shall maintain statistics and other relevant information regarding incidents of human trafficking

594 in the commonwealth, including, but not limited to, information from the state police, district attorneys, and
595 local law enforcement. An annual report of said incidents shall be delivered to the joint committee on
596 children and families, the joint committee on the judiciary and the joint committee on public safety and
597 homeland security of the general court.

598 SECTION 10. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
599 amended by inserting after the word “sixty-five”, in lines 4 and 5 and in line 21, each time it appears, the
600 following words: -“, or section 2, section 3, section 4, section 5, section 6 or section 7 of chapter 265A.