HOUSE DOCKET, NO. 3400 FILED ON: 1/21/2011

HOUSE . . . . . No. 2834

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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:

An Act relating to anti-human trafficking and protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kay Khan	*11th Middlesex*
Chris Walsh	*6th Middlesex*
Byron Rushing	*9th Suffolk*
Carolyn C. Dykema	*8th Middlesex*
Bruce E. Tarr	☐ *[District]* ☐
George T. Ross	*2nd Bristol*
Jason M. Lewis	*31st Middlesex*
Tom Sannicandro	*7th Middlesex*
William N. Brownsberger	☐ *[District]* ☐
Thomas P. Kennedy	☐ *[District]* ☐
Ruth B. Balser	*12th Middlesex*
Jennifer E. Benson	*37th Middlesex*

Gloria L. Fox	*7th Suffolk*
Christine E. Canavan	*10th Plymouth*
Denise Andrews	*2nd Franklin*
Ann-Margaret Ferrante	*5th Essex*

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HOUSE . . . . . No. 2834

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 2834) of Kay Khan and others for legislation to establish a fund to provide services for victims of human trafficking. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *4963* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

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

19 as-a-second-language classes, victims' compensation, and public and private non-profit
20 collaborations to protect and assist human trafficking victims. The board shall develop, in
21 conjunction with the Anti-Human Trafficking Task Force established by section 20 of chapter
22 265A, written criteria for the awarding of those grants, which shall be evaluated and, if
23 necessary, revised on an annual basis.

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 funds deposited in the fund may be expended by the
28 office for administrative costs directly attributable to the grants and programs funded by the fund
29 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 during a fiscal year.

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

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

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

40 Any privilege established by sections 135A and 138B of chapter 112 or by sections 20A,
41 20B or 20M of chapter 233, relating to confidential communications shall not prohibit the filing
42 of a report pursuant to this section or section 24.

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

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

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

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

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

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

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

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

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

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

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

85 (b) A human trafficking victim's caseworker shall not disclose any confidential
86 communication without the prior written consent of the victim, or the victim's guardian in the
87 case of a child, except as hereinafter provided. Such confidential communication shall not be
88 subject to discovery in any civil, legislative or administrative proceeding without the prior
89 written consent of the victim, or victim's guardian in the case of a child to whom such

90 confidential communication relates. In criminal actions such confidential communication shall
91 be subject to discovery and shall be admissible as evidence but only to the extent of information
92 contained therein which is exculpatory in relation to the defendant; provided, however, that the
93 court shall first examine such confidential communication and shall determine whether or not
94 such exculpatory information is therein contained before allowing such discovery or the
95 introduction of such evidence.

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

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

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

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

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

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

116 Chapter 265A

117 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

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

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

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

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

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

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

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

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

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

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

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

148 (ii) psychological manipulation;

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

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

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

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

157 (vii) the use of blackmail;

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

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

161 "Human trafficking victim", any person subjected to a violation of section 2, 3 or
162 4.

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

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

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

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

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

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

184 Section 4. Whoever (a) intentionally entices, harbors, transports or delivers
185 another, with the intent that the person engage in a sexually-explicit performance, the production
186 of pornography or sexual conduct for a fee or other thing of value, whether or not the person is
187 the recipient of the fee or other thing of value; or (b) intentionally benefits financially or receives

188 anything of value, directly or indirectly, from a violation of this section shall be guilty of
189 procuring another for sexual servitude and shall be punished by a fine of not less than $2,000 and
190 by imprisonment in the state prison for not less than 20 years nor more than 30 years.

191 Section 5. Whoever publishes, disseminates or otherwise discloses the location of any
192 human trafficking victim with the intent that such victim suffers bodily injury thereby shall be
193 punished in the state prison for not less than 3 years nor more than 5 years. Whoever violates
194 this section and thereby causes bodily injury to such victim shall be punished by imprisonment in
195 the state prison for not less than 5 years nor more than 10 years, or thereby causes serious bodily
196 injury to such victim shall be punished by imprisonment in the state prison for not less than 10
197 years nor more than 20 years, or thereby causes the death of such victim shall be punished by
198 imprisonment in the state prison for life or for any term of years, but not less than 20 years.

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

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

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

213 (c) Whoever commits a violation of section 2, section 3 or section 4 and: (i)
214 thereby causes bodily injury to the victim of such offense shall be punished by imprisonment in
215 the state prison for not less than 5 nor more than10 years; or (ii) thereby causes serious bodily
216 injury to the victim of such offense shall be punished by imprisonment in the state prison for not
217 less than 10 year nor more than 15 years. In accordance with section 8A of chapter 279, such
218 sentences shall begin from and after the expiration of the sentence for violation of section 2, 3 or
219 4.

220 (d) Whoever commits a violation of section 2, section 3 or section 4 and thereby
221 causes the death of another shall be punished by imprisonment in state prison for life or for any
222 term of years, but not less than 20 years. In accordance with section 8A of chapter 279, such
223 sentence shall begin from and after the expiration of the sentence for violation of section 2, 3 or
224 4.

225 (e) Whoever commits a violation of section 2, section 3 or section 4 and the
226 victim thereof was subjected to the provisions of any such section: (i) for between 180 days and
227 1 year, shall be punished by imprisonment in the state prison for not less than 3 years nor more
228 than 5 years; or (ii) for more than 1 year, shall be punished by imprisonment in the state prison
229 for not less than 5 years nor more than 25 years. In accordance with section 8A of chapter 279,
230 such sentences shall begin from and after the expiration of the sentence for violation of section 2,
231 3 or 4.

232 (f)Whoever engages, agrees to engage, or offers to engage in sexual conduct with another
233 person in return for a fee, or shall be punished a fine of not more than $500 whether there was
234 sexual conduct or not.

235 (g) Whoever solicits or receives compensation for soliciting for prostitute shall be
236 punished by imprisonment in a house of correction for not more than 2½ years, or by a fine of
237 not more than $7,000, or by both such imprisonment and fine.

238 Section 8. Whoever violates section 53A of chapter 272 knowing or having reason to
239 know that the person engaging in sexual conduct for a fee or other thing of value is a human
240 trafficking victim shall be punished by imprisonment in state prison for not less than 3 years nor
241 more than 5 years and by a fine of $2,000, or if the human trafficking victim is a child, shall be
242 punished by imprisonment in state prison for not less than 5 years nor more than 10 years and by
243 a fine of $2,000. Whoever commits the offense of promoting travel for commercial sexual abuse
244 of a minor if he or she sells or offers to sell travel services that include or facilitate travel for the
245 purpose of engaging in what would be commercial sexual abuse of a minor or promoting
246 commercial sexual abuse, if occurring in this state shall be punished by imprisonment in the state
247 prison for not more than 10 years.

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

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

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

256 3) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

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

275 (b) There shall be an assessment of $250 against any person who violates any provision
276 of section 2 to 6, inclusive. The assessment shall not be subject to waiver by the court for any
277 reason. If a person is sentenced to a correctional facility and the assessment has not been paid,
278 the court shall note the assessment on the mittimus. The monies collected pursuant to the
279 assessment established by this paragraph shall be transmitted monthly by the courts to the state
280 treasurer who shall then deposit, invest and transfer the monies into the Victims of Human
281 Trafficking Trust Fund established in said section 66A of said chapter10. The monies shall then
282 be administered, pursuant to said section 66 of said chapter 10, by the Massachusetts Office of
283 Victim Assistance for the purposes set forth in said section 66A. The assessment paid by an
284 individual into the Victims of Human Trafficking Trust Fund pursuant to this section shall be in
285 addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any
286 other chapter. The administrative office of the trial court shall file a report detailing the amount
287 of funds imposed and collected pursuant to this section to the house and senate committees on
288 ways and means and to the Massachusetts Office of Victim Assistance not later than August 15
289 of each calendar year.

290 Section 11. An individual who is a human trafficking victim may bring a civil action for
291 involuntary servitude, trafficking of persons for forced labor or services or sexual servitude. The
292 court may award actual damages, compensatory damages, punitive damages, injunctive relief, or

293 any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and
294 costs. Treble damages may be awarded on proof of actual damages where the defendant's acts
295 were willful and malicious.

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

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

303 (i) order its dissolution or reorganization;

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

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

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

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

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

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

323 (e) The suspension of the statute of limitations due to disability or estoppel applies to all
324 other related claims arising out of the trafficking situation. A criminal action includes
325 investigation and prosecution and remains pending until final adjudication in the trial court. Any
326 legal guardian, family member, representative of the human trafficking victim, or court

327 appointee may represent the human trafficking victim's rights, in the event the human trafficking
328 victim is deceased or otherwise unable to represent his own interests in court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

394 (f) All such monies and proceeds received by any 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 pursuant to this section. All such monies and proceeds
400 shall be expended without further appropriation to defray the costs of protracted investigations,
401 to provide additional technical equipment or expertise, to provide matching funds to obtain
402 federal grants, or for such other law enforcement purposes as the district attorney or attorney
403 general deems appropriate. The district attorney or attorney general may also expend monies
404 and proceeds for human trafficking prevention or to provide victims' services to human
405 trafficking victims. Within 90 days of the close of the fiscal year, each district attorney and the
406 attorney general shall file an annual report with the house and senate committees on ways and
407 means on the use of the monies in such trust fund to prohibit human trafficking.

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

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

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

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

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

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

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

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

468 Section 16. Compensation is mandatory under this section. In addition to any other
469 amount of loss identified, the division of victim compensation and assistance in the department
470 of the attorney general shall compensate human trafficking victims including the greater of the
471 following: (1) the gross income or value to the defendant of the victim's labor or services or (2)
472 the value of the victim's labor or services as guaranteed under the commonwealth’s minimum
473 wage and overtime provisions; whichever is greater, and interest. Any alleged human trafficking

474 victim will also be eligible for any state funded benefits including, but not limited to, cash
475 assistance and medical insurance.

476 Section 17. The office of the attorney general in consultation with the Massachusetts
477 Office of Victims Assistance shall maintain statistics and other relevant information regarding
478 incidents of human trafficking in the commonwealth, including, but not limited to, information
479 from the state police, district attorneys, and local law enforcement. An annual report of said
480 incidents shall be delivered to the joint committee on children and families, the joint committee
481 on the judiciary and the joint committee on public safety and homeland security of the general
482 court.

483 SECTION 10. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
484 amended by inserting after the word “sixty-five”, in lines 4 and 5 and in line 21, each time it
485 appears, the following words:-“, or section 2, section 3, section 4, section 5, section 6 or section
486 7 of chapter 265A.

487 SECTION 11. Section 8 of chapter 272 of the General Laws, are hereby amended by
488 adding, the following new section:

489 First-time offenders arrested for soliciting should be given the option of enrolling in a
490 first offender program commonly referred to as a "John School".These programs shall be paid for
491 by fees from offenders.