

HOUSE No. 4963

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 bill:

An Act Relating To Anti-Human Trafficking And Protection.

PETITION OF:

NAME:

Kay Khan

DISTRICT/ADDRESS:

11th Middlesex

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 hereby amended
105 by adding the following clause:-

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

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

110 Chapter 265A

111 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

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

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

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

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

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

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

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

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

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

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

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

139 (ii) psychological manipulation;

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

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

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

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

148 (vii) the use of blackmail;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

225 3) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

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

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

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

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

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

268 (i) order its dissolution or reorganization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

427 Section 17. (a) For purposes of this section, human trafficking shall mean a severe form of
428 trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000. The attorney
429 general, district attorney, or any law enforcement official shall certify in writing to the United States
430 Department of Justice or other federal agency, such as the United States Department of Homeland Security,

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

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

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

455 (d) (i) Within 20 business days of the first encounter of a human trafficking victim, law

456 enforcement agencies shall provide brief letters that satisfy the following Law Enforcement Agency
457 Endorsement, hereinafter “LEA”, regulations as found in Section 214.11(f)(1) of Chapter 8 of the Code of
458 Federal Regulations.

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

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

473 (iv) Law enforcement agencies that demonstrate a consistent pattern of failing to meet the time
474 limits established in paragraphs (d)(i) and (d)(iii) shall be prohibited from retaining or receiving assets or
475 the proceeds from assets forfeited under section 14 of this chapter. The attorney general and the secretary
476 of health and human services shall jointly determine whether a law enforcement agency has demonstrated a
477 consistent pattern of failing to meet the above mentioned time limits and shall consider reports from human
478 trafficking case workers and other victim service providers as evidence. The attorney general and the
479 secretary of health and human services shall jointly determine whether a law enforcement agency has made

480 sufficient progress in meeting the above mentioned time limits in order to allow such law enforcement
481 agency to retain or receive assets or the proceeds from assets forfeited under section 14 of this chapter. The
482 attorney general and the secretary of health and human services shall consider reports from human
483 trafficking case workers and other victim service providers as evidence in making their determination.

484 Section 18. The office of the attorney general in consultation with the Massachusetts Office of
485 Victims Assistance shall maintain statistics and other relevant information regarding incidents of human
486 trafficking in the commonwealth, including, but not limited to, information from the state police, district
487 attorneys, and local law enforcement. An annual report of said incidents shall be delivered to the joint
488 committee on children and families, the joint committee on the judiciary and the joint committee on public
489 safety and homeland security of the general court.

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

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