

HOUSE No. 3808

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 1951) of the House Bill relative to the commercial exploitation of people (House, No. 3483), reports recommending passage of the accompanying bill (House, No. 3808).

For the committee,

Eugene L. O'Flaherty

<i>Eugene L. O'Flaherty</i>	<i>Mark C. Montigny</i>
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HOUSE No. 3808

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The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act relative to the commercial exploitation of people.

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.** The definition of “sex offense” in section 178C of chapter 6 of the General
2 Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the words “
3 chapter 265”, in line 72, the following words:- ; enticing a child under 18 via electronic
4 communication to engage in prostitution, human trafficking or commercial sexual activity under
5 section 26D of said chapter 265; trafficking of persons for sexual servitude under section 50 of
6 said chapter 265; a second or subsequent violation of human trafficking for sexual servitude
7 under section 52 of chapter 265.

8 **SECTION 2.** The definition of "sex offense involving a child" in said section 178C of
9 said chapter 6, as so appearing, is hereby amended by inserting after the words “chapter 265”, in
10 line 105, the following words:- ; enticing a child under 18 via electronic communication to

11 engage in prostitution, human trafficking or commercial sexual activity under section 26D of
12 said chapter 265; trafficking of persons for sexual servitude upon a person under 18 years of age
13 under subsection (b) of section 50 of said chapter 265.

14 **SECTION 3.** The definition of "sexually violent offense" in said section 178C of said
15 chapter 6, as so appearing, is hereby amended by inserting after the words "chapter 265", in line
16 129, the following words:- ; enticing a child under 18 via electronic communication to engage in
17 prostitution, human trafficking or commercial sexual activity under section 26D of said chapter
18 265; trafficking of persons for sexual servitude under section 50 of chapter 265; a second or
19 subsequent violation of human trafficking for sexual servitude under section 52 of chapter 265.

20 **SECTION 4.** The definition of "sexual assault" in section 1 of chapter 9A of the General
21 Laws, as so appearing, is hereby amended by striking out, in line 19, the words "and 24B of
22 chapter 265" and inserting in place thereof the following words:- , 24B, 26D and 50 of chapter
23 265.

24 **SECTION 5.** Chapter 10 of the General Laws is hereby amended by inserting after
25 section 66 the following section:-

26 Section 66A. There shall be established and set up on the books of the commonwealth a
27 separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall
28 consist of proceeds of assets seized and forfeited pursuant to sections 55 and 56 of chapter 265
29 and fines and assessments collected pursuant to sections 50, 51 and 54 of said chapter 265,
30 together with any interest or earnings accrued on such monies through investment or deposit.
31 The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all
32 monies transmitted to him under this section in accordance with sections 34 and 38 of chapter 29

33 in such a manner as to secure the highest rate of return available consistent with the safety of the
34 fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state
35 treasurer shall transfer funds from the income and receipts of the fund to the victim and witness
36 assistance board, as established in section 4 of chapter 258B, from time to time, at the request of
37 the board. The board shall award and administer grants from the fund, without further
38 appropriation, to public, private non-profit or community-based programs in the commonwealth
39 to provide services to victims of offenses under said sections 50 and 51 of said chapter 265.

40 The board shall file a report detailing the amount of funds collected and expended from
41 the fund, along with a copy of the written criteria used to expend the funds, to the house and
42 senate committees on ways and means not later than August 15 of each calendar year.

43 Administrative and operational expenses directly attributable to the grants and programs funded
44 by the fund including, but not limited to, the costs of clerical and support personnel, shall not
45 exceed 5 per cent of the total assets of the fund in any 1 fiscal year. Any unexpended balance of
46 monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall
47 remain available for expenditure from such fund in subsequent fiscal years. No expenditure
48 made from the fund shall cause the fund to become deficient at any point during a fiscal year.

49 **SECTION 6.** Section 21 of chapter 119 of the General Laws, as appearing in the 2010
50 Official Edition, is hereby amended by inserting after the definition of "51A report", the
51 following 2 definitions:-

52 "Advocate", an employee of a governmental or non-governmental organization or entity
53 providing appropriate services, or a similar employee of the department of children and families
54 who has been trained to work and advocate for the needs of sexually exploited children.

55 "Appropriate services", the assessment, planning and care provided by a state agency or
56 nongovernmental organization or entity, through congregate care facilities, whether publicly or
57 privately funded, emergency residential assessment services, family-based foster care or the
58 community, including food, clothing, medical care, counseling and appropriate crisis
59 intervention services, provided: (i) that such agency, organization or entity has expertise in
60 providing services to sexually exploited children or children who are otherwise human
61 trafficking victims; and (ii) that such services are provided in accordance with such regulations
62 that the department of children and families may adopt or the policies of such department.

63 **SECTION 7.** The definition of "child in need of services" in said section 21 of said
64 chapter 119, as so appearing, is hereby amended by striking out the words "or (d) when not
65 otherwise excused from attendance in accordance with lawful and reasonable school regulations,
66 willfully fails to attend school for more than 8 school days in a quarter" and inserting in place
67 thereof the following words :- (d) when not otherwise excused from attendance in accordance
68 with lawful and reasonable school regulations, willfully fails to attend school for more than 8
69 school days in a quarter; or (e) is a sexually exploited child.

70 **SECTION 8.** Said section 21 of said chapter 119, as so appearing, is hereby further
71 amended by inserting after the definition of "Serious bodily injury", the following definition:-

72 "Sexually exploited child", any person under the age of 18 who has been subjected to
73 sexual exploitation because such person:

74 (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or
75 is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;

76 (2) engages, agrees to engage or offers to engage in sexual conduct with another person
77 in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for
78 food, shelter, clothing, education or care;

79 (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into
80 prostitution under by section 4A of chapter 272; or

81 (4) engages in common night walking or common streetwalking under section 53 of
82 chapter 272.

83 **SECTION 9.** Said chapter 119 is hereby further amended by inserting after section 39J
84 the following 2 sections:-

85 Section 39K. (a) Notwithstanding any general or special law to the contrary, the
86 department of children and families, in collaboration with the department of mental health and
87 other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually
88 exploited children including, but not limited to, services for sexually-exploited children residing
89 in the commonwealth at the time they are taken into custody by law enforcement or are identified
90 by the department as sexually-exploited children, for the duration of any legal or administrative
91 proceeding in which they are either the complaining witness, defendant or the subject child; and
92 (ii) provide appropriate services to a child reasonably believed to be a sexually exploited child in
93 order to safeguard the child's welfare. If a child reasonably believed to be a sexually exploited
94 child declines services or is unable or unwilling to participate in the services offered, the
95 department or any person may file a care and protection petition under section 24. Sexually
96 exploited children shall have access to an advocate. The advocate or a member of the multi-

97 disciplinary service team established under section 51D shall accompany the child to all court
98 appearances and may serve as a liaison between the service providers and the court.

99 (b) The services that shall be provided under this section shall be available to all sexually
100 exploited children, whether they are accessed voluntarily, through a court proceeding under this
101 section or through a referral, which may be made by any person.

102 (c) In determining the need for and capacity of the services that may be provided under
103 this section, the department of children and families shall recognize that sexually exploited youth
104 have separate and distinct service needs according to gender and appropriate services shall be
105 made available while ensuring that an appropriate continuum of services exists.

106 (d) The commissioner of the department may, subject to appropriation, contract with non-
107 governmental organizations or entities with experience working with sexually exploited children
108 to train law enforcement officials likely to encounter sexually exploited children in the course of
109 their law enforcement duties. The training shall include, but not be limited to, awareness and
110 compliance with the provisions of this section, identification of, access to, and the provision of
111 services for sexually-exploited children and any other services the department deems necessary.

112 (e) The department may apply to the victim and witness assistance board for grants from
113 the Victims of Human Trafficking Trust Fund, established in section 66A of chapter 10,, grants
114 from the United States Department of Justice's Office of Juvenile Justice and Delinquency
115 Prevention or any other federal agency, or grants from any other private source to fund the law
116 enforcement training and services for sexually-exploited children.

117 (f) The department shall adopt regulations to carry out this section.

118 Section 39L. (a) Before or after arraignment in any juvenile delinquency or criminal
119 proceeding against a sexually exploited child alleging that such juvenile or such defendant
120 violated the prohibition against common night walking or common streetwalking under section
121 53 of chapter 272 or the provisions of subsection (a) of section 53A of said chapter 272, there
122 shall be a presumption that a care and protection petition on behalf of such child, or a child in
123 need of services petition under section 39E, shall be filed. Any person, including the juvenile,
124 may file a care and protection petition on behalf of such child, including a petition for emergency
125 commitment under section 24, or a parent or a police officer may file a child in need of services
126 petition under section 39E.

127 (b) The court may appoint a guardian ad litem and shall hold a hearing on such petition.
128 The court may allow a reasonable delay in the proceedings, including any arraignment, to
129 consider the petition. The necessary findings of fact to support the court's decision shall be
130 reduced to writing and made part of the court record.

131 (c) Upon a motion by a party to the juvenile delinquency or criminal proceeding or by a
132 guardian ad litem, unless the district attorney or the attorney general objects, and upon a finding
133 that a child alleged to be a juvenile delinquent by reason of violating section 53 of chapter 272 or
134 subsection (a) of section 53A of said chapter 272 is a child in need of care and protection or a
135 child in need of services, the court shall, if arraignment has not yet occurred, indefinitely stay
136 arraignment and place the proceeding on file. If the court finds that the child has failed to
137 substantially comply with the requirements of services or that the child's welfare or safety so
138 requires, the court may remove the proceeding from file, arraign the child and restore the
139 delinquency or criminal complaint to the docket for trial or further proceedings in accordance
140 with the regular course of such proceedings. If arraignment has already occurred, unless the

141 district attorney or the attorney general objects, the court shall place the child on pretrial
142 probation under section 87 of chapter 276. If appropriate, the conditions of such probation shall
143 include, but not be limited to, requiring the child to substantially comply with all lawful orders of
144 the court, including orders relating to any care and protection or child in need of services
145 proceeding, and the child shall also comply with the guidance and services of the department or
146 any designated non-governmental service provider. If the child fails to substantially comply with
147 the conditions of probation or if the child's welfare or safety so requires, the court may in its
148 discretion restore the delinquency or criminal complaint to the docket for trial or further
149 proceedings in accordance with the regular course of such proceedings.

150 **SECTION 10.** Section 51A of said chapter 119, as appearing in the 2010 Official
151 Edition, is hereby amended by striking out, in lines 5 to 9, inclusive, the words "or (iii) physical
152 dependence upon an addictive drug at birth, shall immediately communicate with the department
153 orally and, within 48 hours, shall file a written report with the department detailing the suspected
154 abuse or neglect" and inserting in place thereof the following words:-; (iii) physical dependence
155 upon an addictive drug at birth, shall immediately communicate with the department orally and,
156 within 48 hours, shall file a written report with the department detailing the suspected abuse or
157 neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as
158 defined by section 20M of chapter 233.

159 **SECTION 11.** Subsection (a) of section 51B of said chapter 119, as so appearing, is
160 hereby amended by adding the following sentence:- The department shall immediately report to
161 the district attorney and local law enforcement authorities, a sexually exploited child or a child
162 who is otherwise a human trafficking victim, regardless of whether the child is living with a
163 parent, guardian or other caretaker.

164 **SECTION 12.** Clause (3) of the second paragraph of subsection (k) of said section 51B
165 of said chapter 119, as so appearing, is hereby amended by inserting after the words "chapter
166 272" the following words:- or is a sexually exploited child or a child who is otherwise a human
167 trafficking victim.

168 **SECTION 13.** Section 51D of said chapter 119, as so appearing, is hereby amended by
169 inserting after the third paragraph the following paragraph:-

170 For 51A reports specifically involving a sexually exploited child or a child who is
171 otherwise a human trafficking victim, the multi-disciplinary service team may consist of a team
172 of professionals trained or otherwise experienced and qualified to assess the needs of sexually
173 exploited children or children who are otherwise human trafficking victims including, but not
174 limited to, a police officer, as defined by section 1 of chapter 90C, or other person designated by
175 a police chief, as defined in said section 1 of said chapter 90C, an employee of the department of
176 children and families, a representative of the appropriate district attorney, a social service
177 provider, a medical professional or a mental health professional.

178 **SECTION 14.** Said section 51D of said chapter 119, as so appearing, is hereby further
179 amended by inserting after the fifth paragraph the following paragraph:-

180 For 51B reports specifically involving a sexually exploited child, the purpose of the
181 multi-disciplinary service team shall be to determine whether the child has been sexually
182 exploited or is otherwise a human trafficking victim and to recommend a plan for services to the
183 department that may include, but shall not be limited to, shelter or placement, mental health and
184 medical care needs and other social services.

185 **SECTION 15.** Section 55B of said chapter 119, as so appearing, is hereby amended by
186 inserting after the figure “23B”, in line 17, the following words:- or section 50.

187 **SECTION 16.** Section 58 of said chapter 119, as so appearing, is hereby amended by
188 striking out, in line 13, the words “or section 23B” and inserting in place thereof the following
189 words:- , section 23B or section 50.

190 **SECTION 17.** Chapter 233 of the General Laws is hereby amended by inserting after
191 section 20L the following section:-

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

194 "Confidential communication", information transmitted in confidence by and between a
195 victim and a victim’s caseworker by a means which does not disclose the information to a person
196 other than a person present for the benefit of the victim, or to those to whom disclosure of such
197 information is reasonably necessary to the counseling and assisting of such victim. The term
198 confidential communication shall include all information received by a victim’s caseworker
199 which arises out of and in the course of such counseling and assisting including, but not limited
200 to, reports, records, working papers or memoranda.

201 "Human trafficking victim" or “victim”, a person who is subjected to the conduct
202 prohibited under sections 50 or 51 of chapter 265.

203 "Human trafficking victims’ caseworker,” a person who is employed by or volunteers
204 with a program serving human trafficking victims, who has undergone a minimum of 25 hours of
205 training and who reports to and is under the direct control and supervision of a direct service

206 supervisor of a human trafficking victim program, and whose primary purpose is the rendering of
207 advice, counseling or assistance to human trafficking victims.

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

211 (b) A human trafficking victims' caseworker shall not disclose any confidential
212 communication without the prior written consent of the victim, or the victim's guardian in the
213 case of a child, except as hereinafter provided. Such confidential communication shall not be
214 subject to discovery in any civil, legislative or administrative proceeding without the prior
215 written consent of the victim, or victim's guardian in the case of a child, to whom such
216 confidential communication relates. In criminal actions such confidential communication shall
217 be subject to discovery and shall be admissible as evidence but only to the extent of information
218 contained therein which is exculpatory in relation to the defendant; provided, however, that the
219 court shall first examine such confidential communication and shall determine whether or not
220 such exculpatory information is contained in the communication before allowing such discovery
221 or the introduction of such evidence.

222 (c) During the initial meeting between a caseworker and victim, the caseworker shall
223 inform the human trafficking victim and any guardian thereof of the confidentiality of
224 communications between a caseworker and victim and the limitations thereto.

225 **SECTION 18.** Section 21B of said chapter 233, as appearing in the 2010 Official
226 Edition, is hereby amended by striking out the first sentence and inserting in place thereof the
227 following sentence:- Evidence of the reputation of a victim's sexual conduct shall not be

228 admissible in an investigation or proceeding before a grand jury or a court of the commonwealth
229 for a violation of sections 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24,
230 24B, 50 or 51 of chapter 265.

231 **SECTION 19.** Section 4C of chapter 260 of the General Laws, as so appearing, is hereby
232 amended by striking out, in line 12, the words “or twenty-four B” and inserting in place thereof
233 the following words:- , 24B or subsection (b) of section 50.

234 **SECTION20.** Said chapter 260 of the General Laws is hereby further amended by
235 inserting after section 4C the following section:-

236 Section 4D. (a) A victim of trafficking of persons for sexual servitude under section 50 of
237 chapter 265 or of trafficking of persons for forced services under section 51 of said chapter 265
238 may bring a civil action for trafficking of persons for forced labor or services or sexual servitude.
239 The court may award actual damages, compensatory damages, punitive damages, injunctive
240 relief or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees
241 and costs. Treble damages may be awarded on proof of actual damages if the defendant's acts
242 were willful and malicious.

243 (b) A civil action for trafficking of persons for forced labor or services or sexual
244 servitude shall be commenced within 3 years of the date on which the human trafficking victim
245 was freed from human trafficking or, if the victim was a child during the commission of the
246 offense, within 3 years after the date the plaintiff attains the age of 18.

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

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

253 (e) A defendant shall be estopped from asserting a defense of the statute of limitations if
254 the expiration of the statute is due to the defendant inducing the plaintiff to delay the filing of the
255 action, preventing the plaintiff from filing the action or threats made by the defendant that caused
256 duress upon the plaintiff.

257 (f) Any legal guardian, family member, representative of the human trafficking victim or
258 court appointee may represent the human trafficking victim's rights, in the event the human
259 trafficking victim is deceased or otherwise unable to represent his own interests in court.

260 **SECTION 21.** Section 24C of chapter 265 of the General Laws, as appearing in the 2010
261 Official Edition, is hereby amended by inserting after the word "sixty-five", in line 7 , the
262 following words:- , or an arrest, investigation or complaint for trafficking of persons under
263 section 50 of said chapter 265.

264 **SECTION 22.** Said chapter 265 is hereby further amended by inserting after section 26C
265 the following section:-

266 Section 26D. (a) As used in this section, the term "entice" shall mean to lure, induce,
267 persuade, tempt, incite, solicit, coax or invite.

268 (b) As used in this section, the term "electronic communication" shall include, but not
269 be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any

270 nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or
271 photo-optical system.

272 (c) Whoever, by electronic communication, knowingly entices a child under the age of
273 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272,
274 human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as
275 defined in section 49, or attempts to do so, shall be punished by imprisonment in a house of
276 correction for not more than 2 ½ years or in the state prison for not more than 5 years or by a
277 fine of not less than \$2,500, or by both such fine and imprisonment.

278 (d) Whoever, after having been convicted of, or adjudicated delinquent by reason of a
279 violation of this section, commits a second or subsequent such violation, shall be punished by
280 imprisonment in the state prison for not less than 5 years and by a fine of not less than \$10,000.
281 Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person
282 convicted under this subsection be eligible for probation, parole, work release or furlough or
283 receive any deduction from the sentence for good conduct until that person has served 5 years of
284 such sentence.

285 **SECTION 23.** Said chapter 265 of the General Laws is hereby amended by adding after
286 section 48 the following 9 sections:-

287 Section 49. As used in sections 50 to 51, inclusive, the following words shall, unless the
288 context clearly requires otherwise, have the following meanings:

289 “Commercial sexual activity”, any sexual act on account of which anything of value is
290 given, promised to or received by any person.

291

292 “Financial harm”, a detrimental position in relation to wealth, property or other monetary
293 benefits that occurs as a result of another person’s illegal act including, but not limited to,
294 extortion under by section 25, a violation of section 49 of chapter 271 or illegal employment
295 contracts.

296 "Forced services", services performed or provided by a person that are obtained or
297 maintained by another person who: (i) causes or threatens to cause serious harm to any person;
298 (ii) physically restrains or threatens to physically restrain another person; (iii) abuses or threatens
299 to abuse the law or legal process; (iv) knowingly destroys, conceals, removes, confiscates or
300 possesses any actual or purported passport or other immigration document, or any other actual or
301 purported government identification document, of another person; (v) engages in extortion under
302 section 25; or (vi) causes or threatens to cause financial harm to any person.

303 "Services", acts performed by a person under the supervision of or for the benefit of
304 another including, but not limited to, commercial sexual activity and sexually-explicit
305 performances.

306 “Sexually-explicit performance”, an unlawful live or public act or show intended to
307 arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

308 Section 50. (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits,
309 entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice,
310 harbor, transport, provide or obtain by any means, another person to engage in commercial
311 sexual activity, a sexually-explicit performance or the production of unlawful pornography in
312 violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-
313 explicit performance or the production of unlawful pornography in violation of said chapter 272;
314 or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause

315 (i), shall be guilty of the crime of trafficking of persons for sexual servitude and shall be
316 punished by imprisonment in the state prison for not less than 5 years but not more than 20 years
317 and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years,
318 or suspended, nor shall any person convicted under this section be eligible for probation, parole,
319 work release or furlough or receive any deduction from his sentence for good conduct until he
320 shall have served 5 years of such sentence. No prosecution commenced under this section shall
321 be continued without a finding or placed on file.

322 (b) Whoever commits the crime of trafficking of persons for sexual servitude upon a
323 person under 18 years of age shall be punished by imprisonment in the state prison for life or for
324 any term of years, but not less than 5 years. No person convicted under this subsection shall be
325 eligible for probation, parole, work release or furlough or receive any deduction from his
326 sentence for good conduct until he shall have served 5 years of such sentence.

327 (c) A business entity that commits trafficking of persons for sexual servitude shall be
328 punished by a fine of not more than \$1,000,000.

329 (d) A victim of subsection (a) may bring an action in tort in the superior court in any
330 county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the
331 defendant resides or has a place of business. Any business entity that knowingly aids or is a joint
332 venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under
333 this section.

334 Section 51. (a) Whoever knowingly: (i) subjects, or attempts to subject, another person to
335 forced services, or recruits, entices, harbors, transports, provides or obtains by any means, or
336 attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person,

337 intending or knowing that such person will be subjected to forced services; or (ii) benefits,
338 financially or by receiving anything of value, as a result of a violation of clause (i), shall be
339 guilty of trafficking of persons for forced services and shall be punished by imprisonment in the
340 state prison for not less than 5 years but not more than 20 years and by a fine of not more than
341 \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any
342 person convicted under this section be eligible for probation, parole, work release or furlough or
343 receive any deduction from his sentence for good conduct until he shall have served 5 years of
344 such sentence. No prosecution commenced under this section shall be continued without a
345 finding or placed on file.

346 (b) Whoever commits the crime of trafficking of persons for forced services upon a
347 person under 18 years of age shall be punished by imprisonment in the state prison for life or for
348 any term of years, but not less than 5 years. No person convicted under this subsection shall be
349 eligible for probation, parole, work release or furlough or receive any deduction from his
350 sentence for good conduct until he shall have served 5 years of such sentence.

351 (c) A business entity that commits trafficking of persons for forced labor services shall be
352 punished by a fine of not more than \$1,000,000.

353 (d) A victim of subsection (a) may bring an action in tort in the superior court in any
354 county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the
355 defendant resides or has a place of business. Any business entity that knowingly aids or is a joint
356 venturer in trafficking of person for forced labor or services shall be civilly liable for an offense
357 under this section.

358 Section 52. (a) Whoever, after having been convicted of or adjudicated delinquent by
359 reason of a violation of section 50 or 51, commits a second or subsequent violation of either
360 section 50 or 51, shall be punished by imprisonment in the state prison for life or for any term of
361 years, but not less than 10 years. Such sentence shall not be reduced to less than 10 years, or
362 suspended, nor shall any person convicted under this section be eligible for probation, parole,
363 work release or furlough or receive any deduction from his sentence for good conduct until he
364 shall have served 10 years of such sentence. No prosecutions commenced under this section shall
365 be continued without a finding or placed on file.

366 (b) In any prosecution commenced pursuant to this section, introduction into evidence of
367 a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested
368 copies of original court papers, or certified attested copies of the defendant's biographical and
369 informational data from records of the department of probation, any jail or house of correction or
370 the department of correction, shall be prima facie evidence that the defendant before the court
371 has been convicted previously by a court of the commonwealth or any other jurisdiction. Such
372 documentation shall be self-authenticating and admissible, after the commonwealth has
373 established the defendant's guilt on the primary offense, as evidence in any court of the
374 commonwealth to prove the defendant's prior conviction described therein. The commonwealth
375 shall not be required to introduce any additional corroborating evidence or live witness testimony
376 to establish the validity of such prior conviction.

377 Section 53. (a) Whoever: (i) recruits, entices, harbors, transports, delivers or obtains by
378 any means, another person, intending or knowing that an organ, tissue or other body part of such
379 person will be removed for sale, against such person's will; or (ii) knowingly receives anything
380 of value, directly or indirectly as a result of a violation of clause (i) shall be guilty of organ

381 trafficking and punished by imprisonment in the state prison for not more than 15 years or by a
382 fine of not more than \$50,000, or both.

383 (b) Whoever commits the crime of organ trafficking upon a person under 18 years of age
384 shall be punished by imprisonment in the state prison for 5 years. Such sentence shall not be
385 reduced to less than 5 years, or suspended, nor shall any person convicted under this subsection
386 be eligible for probation, parole, work release, or furlough or receive any deduction from such
387 sentence for good conduct until having served 5 years of such sentence.

388 Section 54. The court shall transmit fines collected pursuant to sections 50 and 51 to the
389 state treasurer. The treasurer shall deposit such fines into the Victims of Human Trafficking
390 Trust Fund established in section 66A of chapter 10.

391 Section 55. All monies furnished or intended to be furnished by any person in exchange
392 for forced labor or services or sexual servitude, and all monies used or intended to be used to
393 facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and
394 shall be made available by the court to any victim ordered restitution by the court pursuant to
395 section 3 of chapter 258B.

396 Section 56. (a) The following property shall be subject to forfeiture to the commonwealth
397 and all property rights therein shall be in the commonwealth:

398 (i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to
399 transport, conceal or otherwise facilitate a violation of section 50 or 51;

400 (ii) all books, records and research, including microfilm, tapes and data which are used,
401 or intended for use, in violation of section 50 or 51;

402

403 (iii) all negotiable instruments, securities or other things of value furnished or intended to
404 be furnished by any person in exchange for forced labor or services or sexual servitude, all
405 proceeds traceable to such an exchange, including real estate and any other thing of value, and all
406 negotiable instruments and securities used or intended to be used to facilitate any violation of
407 section 50 or 51; and

408 (iv) all real property, including any right, title and interest in the whole of any lot or tract
409 of land and any appurtenances or improvements thereto, which is used in any manner or part to
410 commit or to facilitate any violation of section 50 or 51.

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

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

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

419 (i) no conveyance used by any person as a common carrier in the transaction of business
420 as a common carrier shall be forfeited unless it shall appear that the owner or other person in
421 charge of such conveyance was a consenting party or privy to a violation of section 50 or 51;

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

426 (iii) no conveyance or real property shall be subject to forfeiture unless the owner thereof
427 knew or should have known that such conveyance or real property was used in violation of
428 section 50 or 51.

429 (d) A district attorney or the attorney general may petition the superior court in the name
430 of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance,
431 real property or other things of value subject to forfeiture under subsection (a). Such petition
432 shall be filed in the court having jurisdiction over the conveyance, real property or other things
433 of value or having final jurisdiction over any related criminal proceeding brought under section
434 50 or 51. In all such suits in which the property is claimed by any person, other than the
435 commonwealth, the commonwealth shall have the burden of proving to the court the existence of
436 probable cause to institute the action, and any such claimant shall then have the burden of
437 proving that the property is not forfeitable pursuant to subsection (c). The owner of the
438 conveyance or real property, or other person claiming thereunder, shall have the burden of proof
439 as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth
440 to give notice by certified or registered mail to the owner of the conveyance, real property or
441 other things of value and to such other persons as appear to have an interest therein, and the court
442 shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the
443 motion of the owner of the conveyance, real property or other things of value, the court may
444 continue the hearing on the petition pending the outcome of any criminal trial related to the
445 violation of sections 50 or 51. At such hearing, the court shall hear evidence and make
446 conclusions of law, and shall thereupon issue a final order from which the parties shall have a
447 right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall
448 provide for disposition of the conveyance, real property or any other thing of value by the

449 commonwealth or any subdivision thereof in any manner not prohibited by law, including
450 official use by an authorized law enforcement or other public agency, or sale at public auction or
451 by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable
452 expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and
453 notice and the balance thereof shall be distributed as further provided in this section.

454 (e) The final order of the court shall be deposited into the Victims of Human Trafficking
455 Trust Fund established in section 66A of chapter 10.

456 (f) Any officer, department, or agency having custody of any property subject to
457 forfeiture under this section or having disposed of the property shall keep and maintain full and
458 complete records showing from whom it received the property, under what authority it held or
459 received or disposed of said property, to whom it delivered the property, the date and manner of
460 disposition of the property, and the exact kinds, quantities and forms of the property. The records
461 shall be open to inspection by all federal and state officers charged with enforcement of federal
462 and state human trafficking laws. Persons making final disposition of the property under court
463 order shall report, under oath, to the court the exact circumstances of such disposition.

464 (g) During the pendency of the proceedings, the court may issue at the request of the
465 commonwealth ex parte any preliminary order or process as is necessary to seize or secure the
466 property for which forfeiture is sought and to provide for its custody including, but not limited
467 to: an order that the commonwealth remove the property if possible and safeguard it in a secure
468 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account;
469 and that a substitute custodian be appointed to manage such property. Property taken or detained
470 under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the
471 custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the

472 court having jurisdiction thereof. Process for seizure of the property shall issue only upon a
473 showing of probable cause, and the application therefore and the issuance, execution and return
474 thereof shall be subject to chapter 276, so far as applicable.

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

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

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

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

504 Section 57. In any prosecution or juvenile delinquency proceeding of a person who is a
505 human trafficking victim, as defined by section 20M of chapter 233, it shall be an affirmative
506 defense to charges of engaging in common night walking or common streetwalking in violation
507 of section 53 of chapter 272 and to a violation of section 53A of said chapter 272 that, while a
508 human trafficking victim, such person was under duress or coerced into committing the offenses
509 for which such person is being prosecuted or against whom juvenile delinquency proceedings
510 have commenced.

511 **SECTION 24.** Chapter 272 of the General Laws is hereby amended by striking out
512 section 8, as appearing in the 2010 Official Edition, and inserting in place thereof the following
513 section:-

514 Section 8. Whoever solicits or receives compensation for soliciting for a prostitute shall
515 be punished by imprisonment in a house of correction for not more than 2 and one-half years, or

516 by a fine of not less than \$1,000 and not more than \$5,000 or by both such imprisonment and
517 fine.

518 **SECTION 25.** Said chapter 272 is hereby further amended by striking out section 53A,
519 as so appearing, and inserting in place thereof the following section:-

520 Section 53A. (a)Whoever engages, agrees to engage or offers to engage in sexual
521 conduct with another person in return for a fee, shall be punished by imprisonment in the house
522 of correction for not more than 1 year or by a fine of not more than \$500, or by both such
523 imprisonment and fine, whether such sexual conduct occurs or not.

524 (b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual
525 conduct, or to agree to engage in sexual conduct with another person, shall be punished by
526 imprisonment in the house of correction for not more than 2 and one-half years or by a fine of
527 not less than \$1,000 and not more than \$5,000, or by both such imprisonment and fine, whether
528 such sexual conduct occurs or not.

529 (c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in
530 sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a
531 third person be paid in return for aiding a person who intends to engage in sexual conduct with a
532 child under the age of 18, shall be punished by imprisonment in the state prison for not more
533 than 10 years, or in the house of correction for not more than 2 and one-half years and by a fine
534 of not less than \$3,000 and not more than \$10,000, or by both such imprisonment and fine,
535 whether such sexual conduct occurs or not; provided, however, that a prosecution commenced
536 under this section shall not be continued without a finding or placed on file.

537 **SECTION 26.** Section 87 of chapter 276 of the General Laws, as so appearing, is hereby
538 amended by striking out, in line 11, the words “or twenty-four B” and inserting in place thereof
539 the following words:- , 24B or subsection (b) of section 50.

540 **SECTION 27.** Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
541 amended by striking out, in line 4, the words “or 24B,” and inserting in place thereof the
542 following words:- , 24B or subsection (b) of section 50.

543 **SECTION 28.** Said section 63 of said chapter 277, as so appearing, is hereby further
544 amended by striking out, in line 12, the words “and 24” and inserting in place thereof the
545 following words:- , 24 or subsection (a) of section 50.

546 **SECTION 29.** Said section 63 of said chapter 277, as so appearing, is hereby further
547 amended by striking out, in line 25, the words “or 26A” and inserting in place thereof the
548 following words:- 26A or 50.

549 **SECTION 30.** Section 16D of chapter 278 of the General Laws, as so appearing, is
550 hereby amended by striking out, in lines 6 and 7, the words “or twenty-four B” and inserting in
551 place thereof the following words:- , 24B or 50.

552 **SECTION 31.** (a) There shall be an interagency task force to address all aspects of
553 human trafficking, including sex trafficking and labor trafficking. The task force shall consist of
554 the attorney general or the attorney general’s designee, who shall serve as the chair, the colonel
555 of state police or the colonel’s designee, a representative of the Massachusetts police chiefs
556 association, a representative of the Massachusetts district attorneys’ association, the
557 commissioner of the Boston police department or the commissioner’s designee, the director of
558 the division of professional licensure or the director’s designee, a representative of the

559 Massachusetts office for victim assistance, the director of the department of labor standards or
560 the director's designee, the commissioner of the department of children and families or the
561 commissioner's designee, the secretary of the executive office of public safety or the secretary's
562 designee, the commissioner of the office of probation or the commissioner's designee; a
563 representative of a group dedicated to immigrant and refugee issues appointed by the governor; a
564 representative of a group dedicated to the prevention of violence against women appointed by the
565 governor; a representative of an entity dedicated to prevention of and intervention in the
566 trafficking of children appointed by the governor; a survivor of human trafficking appointed by
567 the governor; a human trafficking attorney appointed by the governor; a human trafficking
568 caseworker appointed by the governor; a mental health professional appointed by the governor
569 and a university researcher with a background in human trafficking appointed by the governor.

570 (b) Subject to appropriation, the task force shall:

571 (i) coordinate the collection and sharing of human trafficking data among government
572 agencies; provided, however, that such data collection shall respect the privacy of victims of
573 human trafficking; coordinate strategies and make recommendations for law enforcement to
574 share information for the purposes of detecting individuals and groups engaged in human
575 trafficking;

576 (ii) review and recommend policies and procedures to enable state government to work
577 with non-governmental organizations and other elements of civil society to prevent human
578 trafficking and to protect and provide assistance to victims of trafficking;

579 (iii) identify and review the existing services and facilities that meet the needs of victims
580 of human trafficking including, but not limited to, health and mental health services, housing,
581 education and job training, legal services and victim compensation;

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

590 (v) examine ways to curtail the demand side of trafficking such as self sustaining first
591 offender diversion programs;

592 (vi) examine the costs associated with establishing a safe house pilot program for adult
593 and child victims of human trafficking and identify public and private funding sources that may
594 be used to develop and implement a safe house pilot program;

595 (vii) examine cost-effective notices, announcements or advertisements that may be
596 displayed in public places, such as airports, train stations, bus stations, hotels, massage parlors,
597 spas, strip clubs and other sexually-oriented businesses providing information relating to services
598 for human trafficking victims;

599 (viii) recommend strategy and relevant methodologies for training providers in health and
600 human services in the recognition of signs and circumstances indicating that an individual is the

601 victim of human trafficking and the appropriate steps to report the individual to the appropriate
602 law enforcement personnel or agencies;

603 (ix) recommend ways to develop and promulgate educational materials and health
604 curricula that may be used by school administrators and educators to identify human trafficking
605 victims and the appropriate actions to be undertaken when such victims are identified and to
606 educate school officials as to the scope and magnitude of human trafficking in the nation and the
607 commonwealth including, but not limited to, how to prevent it and developing a parent guide and
608 teacher training material on internet safety and methods of preventing the exploitation of minors
609 over the internet; and

610 (x) submit a report of its findings and recommendations to the clerks of the senate and the
611 house of representatives who shall forward the report to the chairs of the joint committee on the
612 judiciary not later than 18 months after the effective date of this act. The task force shall
613 determine if subsequent reports are necessary in order to properly address human trafficking.