

SENATE No. 820

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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

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

An Act relating to anti-human trafficking and protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Mark C. Montigny</i>	
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>
<i>Geraldine M. Creedon</i>	<i>11th Plymouth</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Michael O. Moore</i>	
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>

<i>Michael F. Rush</i>	<i>Suffolk and Norfolk</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Bruce E. Tarr</i>	
<i>Stephen R. Canessa</i>	<i>12th Bristol</i>
<i>James B. Eldridge</i>	
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Robert L. Hedlund</i>	
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Richard T. Moore</i>	
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>James E. Timilty</i>	
<i>Steven A. Baddour</i>	
<i>Gale D. Candaras</i>	
<i>Harriette L. Chandler</i>	
<i>Sonia Chang-Diaz</i>	
<i>Susan C. Fargo</i>	
<i>Jennifer L. Flanagan</i>	
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol, and Plymouth</i>
<i>Stanley C. Rosenberg</i>	<i>Hampshire and Franklin</i>
<i>Karen E. Spilka</i>	

SENATE No. 820

By Mr. Montigny, petition (accompanied by bill, Senate, No. 820) of Mark C. Montigny, Louis L. Kafka, Antonio F. D. Cabral and other members of the General Court for legislation relative to anti-human trafficking and protection [Joint Committee on the Judiciary].

The Commonwealth of Massachusetts

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

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
2 after section 66 the following section:-

3 Section 66A. There shall be established and set up on the books of the
4 commonwealth a separate fund to be known as the Victims of Human Trafficking Trust Fund.
5 The fund shall consist of assets forfeited and the proceeds of assets seized and forfeited pursuant
6 to chapter 265A and fines and assessments collected pursuant to said chapter 265A, together
7 with any interest or earnings accrued on such monies through investment or deposit. The state
8 treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies
9 transmitted to him under this section in accordance with sections 34, 34A and 38 of chapter 29 in
10 such a manner as to secure the highest rate of return available consistent with the safety of the
11 fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state
12 treasurer shall transfer funds from the income and receipts of the fund to the victim and witness
13 assistance board, as established in section 4 of chapter 258B, from time to time, at the request of

14 the office. The board shall award and administer grants from the fund, without further
15 appropriation, to public, private non-profit or community-based programs in the commonwealth
16 to provide services to human trafficking victims, as defined in section 1 of said chapter 265A
17 including, but not limited to, legal and case management services, health care, mental health,
18 social services, housing or shelter services, education, job training or preparation, interpreting
19 services, English-as-a-second-language classes, victims' compensation, and public and private
20 non-profit collaborations to protect and assist human trafficking victims. The board shall
21 develop, in conjunction with the Anti-Human Trafficking Task Force established by section 20
22 of chapter 265A, written criteria for the awarding of those grants, which shall be evaluated and,
23 if necessary, revised on an annual basis.

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

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

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

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

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

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

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

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

51 Section 11A. Notwithstanding any general or special law to the contrary, in
52 any civil action or other civil judicial proceeding commenced by a person alleging to be a human
53 trafficking victim, as defined in chapter 265A, in which the petitioner is unable to be present in
54 the jurisdiction in order to prosecute such action or proceeding due to the application of the
55 immigration laws of the United States or undue financial or other hardship, testimony of such

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

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

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

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

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

77 human trafficking victims? program, and whose primary purpose is the rendering of advice,
78 counseling or assistance to human trafficking victims.

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

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

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

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

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

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

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

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

133 "Child", any person under 18 years of age.

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

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

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

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

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

148 (ii) psychological manipulation;

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

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

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

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

157 (vii) the use of blackmail;

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

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

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

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

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

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

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

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

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

184 Section 4. Whoever (a) intentionally entices, harbors, transports or delivers
185 another, with the intent that the person engage in a sexually-explicit performance, the production
186 of pornography or sexual conduct for a fee or other thing of value, whether or not the person is
187 the recipient of the fee or other thing of value; or (b) intentionally benefits financially or receives
188 anything of value, directly or indirectly, from a violation of this section shall be guilty of
189 procuring another for sexual servitude and shall be punished by a fine of not more than \$2,000
190 and by imprisonment in the state prison for not less than 20 years nor more than 30 years.

191 Section 5. Whoever publishes, disseminates or otherwise discloses the
192 location of any human trafficking victim with the intent that such victim suffers bodily injury
193 thereby shall be punished in the state prison for not less than 3 years nor more than 5 years.
194 Whoever violates this section and thereby causes bodily injury to such victim shall be punished
195 by imprisonment in the state prison for not less than 5 years nor more than 10 years, or thereby
196 causes serious bodily injury to such victim shall be punished by imprisonment in the state prison
197 for not less than 10 years nor more than 20 years, or thereby causes the death of such victim shall
198 be punished by imprisonment in the state prison for life or for any term of years, but not less than
199 20 years.

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

205 Section 7. (a) Whoever commits a violation of section 2 to 6, inclusive, and
206 the victim thereof is a child shall be punished by imprisonment in the state prison for not less
207 than 10 years nor more than 15 years. In accordance with section 8A of chapter 279, such
208 sentence shall begin from and after the expiration of the sentence for violation of section 2, 3, 4,
209 5 or 6.

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

215 (c) Whoever commits a violation of section 2, section 3 or section 4 and: (i)
216 thereby causes bodily injury to the victim of such offense shall be punished by imprisonment in
217 the state prison for not less than 5 nor more than 10 years; or (ii) thereby causes serious bodily
218 injury to the victim of such offense shall be punished by imprisonment in the state prison for not
219 less than 10 year nor more than 15 years. In accordance with section 8A of chapter 279, such
220 sentences shall begin from and after the expiration of the sentence for violation of section 2, 3 or
221 4.

222 (d) Whoever commits a violation of section 2, section 3 or section 4 and
223 thereby causes the death of another shall be punished by imprisonment in state prison for life or
224 for any term of years, but not less than 20 years. In accordance with section 8A of chapter 279,
225 such sentence shall begin from and after the expiration of the sentence for violation of section 2,
226 3 or 4.

227 (e) Whoever commits a violation of section 2, section 3 or section 4 and the
228 victim thereof was subjected to the provisions of any such section: (i) for between 180 days and
229 1 year, shall be punished by imprisonment in the state prison for not less than 3 years nor more
230 than 5 years; or (ii) for more than 1 year, shall be punished by imprisonment in the state prison
231 for not less than 5 years nor more than 25 years. In accordance with section 8A of chapter 279,
232 such sentences shall begin from and after the expiration of the sentence for violation of section 2,
233 3 or 4.

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

240 Section 9. Whoever (i) intentionally recruits, entices, harbors, transports,
241 delivers or obtains by any means, another person, or attempts to do so, intending or knowing that
242 the person will have an organ, tissue or other body parts removed for sale; or (ii) intentionally
243 benefits financially or receives anything of value, directly or indirectly, or attempts to do so,

244 from a violation of this section shall be guilty of organ trafficking and punished by imprisonment
245 in the state prison for not more than 20 years and a fine of not less than \$10,000 nor more than
246 \$50,000.

247 Section 10. Restitution to human trafficking victims shall be ordered by the
248 court in sentences rendered for violations of this chapter. In addition to any other amount of loss
249 identified, the court shall order restitution including the following:

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

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

256 (3) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

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

276 (b) There shall be an assessment of \$250 against any person who violates any
277 provision of section 2 to 6, inclusive. The assessment shall not be subject to waiver by the court
278 for any reason. If a person is sentenced to a correctional facility and the assessment has not been
279 paid, the court shall note the assessment on the mittimus . The monies collected pursuant to the
280 assessment established by this paragraph shall be transmitted monthly by the courts to the state
281 treasurer who shall then deposit, invest and transfer the monies into the Victims of Human
282 Trafficking Trust Fund established in said section 66A of said chapter10. The monies shall then
283 be administered, pursuant to said section 66 of said chapter 10, by the Massachusetts Office of
284 Victim Assistance for the purposes set forth in said section 66A. The assessment paid by an
285 individual into the Victims of Human Trafficking Trust Fund pursuant to this section shall be in

286 addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any
287 other chapter. The administrative office of the trial court shall file a report detailing the amount
288 of funds imposed and collected pursuant to this section to the house and senate committees on
289 ways and means and to the Massachusetts Office of Victim Assistance not later than August 15
290 of each calendar year.

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

297 Section 13. (a) Any business entity that knowingly aids or participates in
298 involuntary servitude, trafficking of person for forced labor or services or sexual servitude shall
299 be civilly liable for an offense under this section and may be subject to loss of business license in
300 the state.

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

305 (i) order its dissolution or reorganization;

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

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

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

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

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

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

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

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

331 Section 15. (a) The following property shall be subject to forfeiture to the
332 commonwealth and all property rights therein shall be in the commonwealth:

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

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

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

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

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

347 (b) Property subject to forfeiture pursuant to clauses (i) to (iv), inclusive,
348 shall, upon motion of the attorney general or district attorney, be declared forfeit by any court

349 having jurisdiction over said property or having final jurisdiction over any related criminal
350 proceeding brought under this section.

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

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

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

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

365 (d) A district attorney or the attorney general may petition the superior court in
366 the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a
367 conveyance, real property, monies or other things of value subject to forfeiture under subsection
368 (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real
369 property, monies or other things of value or having final jurisdiction over any related criminal
370 proceeding brought under section 2, 3 or 4. In all such suits in which the property is claimed by

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

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

392 (i) half shall be divided equally between the prosecuting district
393 attorney or attorney general and the city, town or state police department involved in the seizure.

394 If more than 1 department was substantially involved in the seizure, the court having jurisdiction
395 over the forfeiture proceeding shall distribute the police portion equitably among these
396 departments; and

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

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

413 (g) All such monies and proceeds received by any police department shall be
414 deposited in a special law enforcement trust fund and shall be expended without further
415 appropriation to defray the costs of protracted investigations, to provide additional technical

416 equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such
417 other law enforcement purposes as the chief of police of such city or town, or the colonel of state
418 police deems appropriate, but such funds shall not be considered a source of revenue to meet the
419 operating needs of such department.

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

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

438 execution and return thereof shall be subject to the provisions of chapter 276, so far as
439 applicable.

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

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

458 (k) A forfeiture proceeding affecting the title to real property or the use and
459 occupation thereof or the buildings thereon shall not have any effect except against the parties

460 thereto and persons having actual notice thereof, until a memorandum containing the names of
461 the parties to such proceeding, the name of the town wherein the affected real property lies, and a
462 description of the real property sufficiently accurate for identification is recorded in the registry
463 of deeds for the county or district wherein the real property lies. At any time after a judgment on
464 the merits, or after the discontinuance, dismissal or other final disposition is recorded by the
465 court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the
466 fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate
467 shall be recorded in the registry in which the original memorandum recorded pursuant to this
468 section was filed.

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

474 Section 17. Compensation is mandatory under this section. In addition to any
475 other amount of loss identified, the division of victim compensation and assistance in the
476 department of the attorney general shall compensate human trafficking victims including the
477 greater of the following: (1) the gross income or value to the defendant of the victim's labor or
478 services or (2) the value of the victim's labor or services as guaranteed under the
479 commonwealth's minimum wage and overtime provisions; whichever is greater, and interest.
480 Any alleged human trafficking victim will also be eligible for any state funded benefits
481 including, but not limited to, cash assistance and medical insurance.

482 Section 18. (a) For purposes of this section, human trafficking shall mean a
483 severe form of trafficking under Section 7102(8) of Title 22 of the United States Code on
484 October 28, 2000 . The attorney general, district attorney, or any law enforcement official shall
485 certify in writing to the United States Department of Justice or other federal agency, such as the
486 United States Department of Homeland Security, that an investigation or prosecution under this
487 chapter has begun and that the human trafficking victim is willing to cooperate or is cooperating
488 with the investigation in order to enable that individual, if eligible under federal law, to qualify
489 for a T-Visa or another appropriate visa and to access available federal benefits. Cooperation
490 with law enforcement shall not be required of human trafficking victims who are under 18 years
491 of age. This certification shall be made available to the victim and his designated legal
492 representative.

493 (b) When a credible report has been made to the police of a crime described in
494 this chapter, and upon request of the victim of that crime, the attorney general, district attorney,
495 department of social services, or any law enforcement official shall certify in writing to the
496 United States Department of Justice, the United States Department of Homeland Security,
497 including any subset thereof, such as the United States Customs and Immigration Service or the
498 United States Immigration and Customs Enforcement, that the individual making the request is a
499 victim of such crime and that the individual has been helpful, is being helpful, or is likely to be
500 helpful in the investigation or prosecution, of that crime in order to enable that individual, if
501 eligible under federal law, to qualify for a U-Visa or another appropriate visa and to access
502 available federal benefits. For the purposes of this section, an individual will be deemed to have
503 been helpful in the investigation or prosecution of the crime if he has filed a credible report of
504 the crime with the police or other law enforcement officials or provided a statement concerning

505 the underlying circumstances of the crime to the police or other law enforcement officials even
506 where that victim has requested that no domestic prosecution occur because of a reasonable fear
507 that harm will come to individuals who reside abroad where local law enforcement cannot
508 provide protection. The certification provided under this subsection, as well as a photocopy of
509 the victim's report of the crime, shall be made available to the victim and the victim's designated
510 representative.

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

513 (d) (i) Within 20 business days of the first encounter of a human
514 trafficking victim, law enforcement agencies shall provide brief letters that satisfy the following
515 Law Enforcement Agency Endorsement, hereinafter "LEA", regulations as found in Section
516 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations.

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

527 (iii) Where state or local law enforcement agencies find the grant of
528 an LEA endorsement to be inappropriate for a human trafficking victim, the agency shall within
529 15 business days provide the human trafficking victim with a letter explaining the grounds for
530 the denial of the LEA . The human trafficking victim may submit additional evidence to the law
531 enforcement agency, which shall reconsider the denial of the LEA within 5 business days of the
532 receipt of additional evidence.

533 (iv) Law enforcement agencies that demonstrate a consistent pattern
534 of failing to meet the time limits established in paragraphs (d)(i) and (d)(iii) shall be prohibited
535 from retaining or receiving assets or the proceeds from assets forfeited under section 14 of this
536 chapter. The attorney general and the secretary of health and human services shall jointly
537 determine whether a law enforcement agency has demonstrated a consistent pattern of failing to
538 meet the above mentioned time limits and shall consider reports from human trafficking case
539 workers and other victim service providers as evidence. The attorney general and the secretary
540 of health and human services shall jointly determine whether a law enforcement agency has
541 made sufficient progress in meeting the above mentioned time limits in order to allow such law
542 enforcement agency to retain or receive assets or the proceeds from assets forfeited under section
543 14 of this chapter. The attorney general and the secretary of health and human services shall
544 consider reports from human trafficking case workers and other victim service providers as
545 evidence in making their determination.

546 Section 19. Subject to appropriation, the executive office of health and human
547 services shall hereby established a pilot program creating a human trafficking safe house
548 specifically to meet the unique needs of adult human trafficking victims, and the department of
549 social services in consultation with the department of youth services shall hereby establish a pilot

550 program creating a human trafficking safe house specifically to meet the unique needs of child
551 human trafficking victims. The safe houses shall each provide specialized support services to
552 adult or child human trafficking victims that will take into account the age, gender, linguistic
553 capabilities, and special needs of the victims and the victim's dependent children, if any. The
554 safe houses shall also provide 24 hour security on the premises, multilingual trauma trained case
555 management staff, access to healthcare and mental health services, and access to employment
556 and educational services.

557 Section 20. Subject to appropriation, the department of social services in
558 consultation with the department of youth services shall provide child human trafficking victims
559 with age-appropriate resources and services including, but not limited to, information about their
560 rights, privacy protections, shelter, and psychological counseling. Such services shall include a
561 coordinated multidisciplinary plan by government and non-governmental agencies to minimize
562 the number of child interviews, enhance the provision of services, and best meet the needs of the
563 child.

564 Section 21. (a) There is hereby established an Anti-Human Trafficking Task Force, co-
565 chaired by the attorney general and the secretary of health and human services or their designees.
566 The task force shall:

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

570 (2) identify available federal, state, and local programs and licensing
571 bodies that could provide services, benefits or licenses to human trafficking victims including,

572 but not limited to, health care, mental health, human services, housing or shelter services,
573 education, legal assistance, job training or preparation, interpreting services, English-as-a-
574 second-language classes, voluntary repatriation, and victim's compensation, and examine how to
575 move human trafficking victims quickly through the system in order to provide them with timely
576 services;

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

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

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

590 (6) analyze existing state laws and regulations, including the
591 effectiveness of existing victim-witness assistance laws, regulations and services and
592 confidentiality laws, for their adequacy in addressing human trafficking and, if the analysis

593 determines that those statutes are inadequate, recommend revisions to those statutes or the
594 enactment of new statutes that specifically address human trafficking;

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

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

600 (b) The office of the attorney general and the executive office of health and
601 human services shall provide staff and support for the task force, including, but not limited to,
602 publication and dissemination of the annual report required by this section and posting the report
603 on their websites, to the extent resources are available.

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

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

607 (2) the colonel of the state police;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

630 (17) a representative appointed by the speaker of the house;

631 (18) a representative appointed by the house minority leader;

632 (19) 2 survivors of human trafficking, one domestic and one
633 international, appointed by the governor;

634 (20) 2 human trafficking attorneys, one who works with adults and
635 one who works with children, appointed by the governor;

636 (21) 2 human trafficking caseworkers, one who works with adults
637 and one who works with children, appointed by the governor;

638 (22) a medical professional appointed by the governor;

639 (23) 2 mental health professionals, one who works with adults and
640 one who works with children, appointed by the governor;

641 (24) a university researcher with a background in human trafficking
642 appointed by the governor;

643 (25) a person with a background in child and runaway services
644 appointed by the governor; and

645 (26) a representative from the Massachusetts Commission on the
646 Status of Women appointed by the governor.

647 Section 21. (a) Subject to appropriation, the office of the attorney general shall
648 provide educational or informational materials to state and local employers and their employees
649 who, through the dispatch of their duties, may encounter individuals who either identify
650 themselves as or are suspected of being human trafficking victims, to provide such victims with

651 information and resources concerning human trafficking laws that are available to protect human
652 trafficking victims and services available to such victims.

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

660 SECTION 10. Section 63 of chapter 277 of the General Laws, as so
661 appearing, is hereby amended by inserting after the word "sixty-five", in lines 4 and 5 and in line
662 21, each time it appears, the following words:-, or section 2, section 3, section 4, section 5,
663 section 6 or section 7 of chapter 265A.