

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Montigny

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

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

An Act relating to anti-human trafficking and protection.

PETITION OF:

NAME:

Mr. Montigny

DISTRICT/ADDRESS:

Second Bristol and Plymouth

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATING TO ANTI-HUMAN TRAFFICKING AND PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 10 of the General Laws is hereby amended by inserting after section
2 66 the following section:-

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

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

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

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

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

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

38 Any privilege established by sections 135A and 138B of chapter 112 or by sections 20A, 20B or
39 20M of chapter 233, relating to confidential communications shall not prohibit the filing of a report
40 pursuant to this section or section 24.

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

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

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

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

58 cross examine the witness in real time. A live-video conference, a video-taped record or a transcript of
59 such testimony shall be admissible at trial in any such action or proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

110 Chapter 265A

111 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

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

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

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

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

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

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

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

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

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

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

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

140 (ii) psychological manipulation;

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

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

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

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

149 (vii) the use of blackmail;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 (3) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

241 Section 10. (a) Any and all fines collected pursuant to this chapter shall be transmitted
242 monthly by the courts to the state treasurer who shall then deposit, invest and transfer the monies,
243 from time to time, into the Victims of Human Trafficking Trust Fund established in section 66A of chapter
244 10.

245 (b) There shall be an assessment of \$250 against any person who violates any provision of
246 section 2 to 6, inclusive. The assessment shall not be subject to waiver by the court for any reason. If a
247 person is sentenced to a correctional facility and the assessment has not been paid, the court shall note
248 the assessment on the mittimus. The monies collected pursuant to the assessment established by this
249 paragraph shall be transmitted monthly by the courts to the state treasurer who shall then deposit, invest

250 and transfer the monies into the Victims of Human Trafficking Trust Fund established in said section 66A
251 of said chapter 10. The monies shall then be administered, pursuant to said section 66 of said chapter 10,
252 by the Massachusetts Office of Victim Assistance for the purposes set forth in said section 66A. The
253 assessment paid by an individual into the Victims of Human Trafficking Trust Fund pursuant to this section
254 shall be in addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or
255 any other chapter. The administrative office of the trial court shall file a report detailing the amount of
256 funds imposed and collected pursuant to this section to the house and senate committees on ways and
257 means and to the Massachusetts Office of Victim Assistance not later than August 15 of each calendar
258 year.

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

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

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

271 (i) order its dissolution or reorganization;

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

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

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

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

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

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

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

294 member, representative of the human trafficking victim, or court appointee may represent the human
295 trafficking victim's rights, in the event the human trafficking victim is deceased or otherwise unable to
296 represent his own interests in court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406 (j) The owner of any real property which is the principal domicile of the immediate family of the
407 owner and which is subject to forfeiture under this section may file a petition for homestead exemption

408 with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition
409 exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of
410 the principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption
411 may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

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

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

427 Section 16. Compensation is mandatory under this section. In addition to any other amount of
428 loss identified, the division of victim compensation and assistance in the department of the attorney
429 general shall compensate human trafficking victims including the greater of the following: (1) the gross
430 income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor or

431 services as guaranteed under the commonwealth's minimum wage and overtime provisions; whichever is
432 greater, and interest. Any alleged human trafficking victim will also be eligible for any state funded
433 benefits including, but not limited to, cash assistance and medical insurance.

434 Section 17. (a) For purposes of this section, human trafficking shall mean a severe form of
435 trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000. The attorney
436 general, district attorney, or any law enforcement official shall certify in writing to the United States
437 Department of Justice or other federal agency, such as the United States Department of Homeland
438 Security, that an investigation or prosecution under this chapter has begun and that the human trafficking
439 victim is willing to cooperate or is cooperating with the investigation in order to enable that individual, if
440 eligible under federal law, to qualify for a T-Visa or another appropriate visa and to access available
441 federal benefits. Cooperation with law enforcement shall not be required of human trafficking victims
442 who are under 18 years of age. This certification shall be made available to the victim and his designated
443 legal representative.

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

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

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

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

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

475 (iii) Where state or local law enforcement agencies find the grant of an LEA endorsement to be
476 inappropriate for a human trafficking victim, the agency shall within 15 business days provide the human
477 trafficking victim with a letter explaining the grounds for the denial of the LEA. The human trafficking

478 victim may submit additional evidence to the law enforcement agency, which shall reconsider the denial
479 of the LEA within 5 business days of the receipt of additional evidence.

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

492 Section 18. Subject to appropriation, the executive office of health and human services shall
493 hereby established a pilot program creating a human trafficking safe house specifically to meet the unique
494 needs of adult human trafficking victims, and the department of social services in consultation with the
495 department of youth services shall hereby establish a pilot program creating a human trafficking safe
496 house specifically to meet the unique needs of child human trafficking victims. The safe houses shall each
497 provide specialized support services to adult or child human trafficking victims that will take into account
498 the age, gender, linguistic capabilities, and special needs of the victims and the victim's dependent
499 children, if any. The safe houses shall also provide 24 hour security on the premises, multilingual trauma

500 trained case management staff, access to healthcare and mental health services, and access to
501 employment and educational services.

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

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

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

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

519 (3) evaluate approaches to increase public awareness of human trafficking, and offer
520 recommendations for programs and educational and training opportunities for law enforcement
521 and social service providers, including, but not limited to, methods used to identify human

522 trafficking victims including preliminary interviewing and questioning techniques, methods of
523 protecting the special needs of women and child human trafficking victims, developments in
524 state and federal laws regarding human trafficking, and methods to increase effective
525 collaboration between state and local agencies, law enforcement, social service providers and
526 non-governmental organizations;

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

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

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

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

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

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

- 545 (c) The task force shall be comprised of the following members or their designees:
- 546 (1) the secretary of the executive office of economic development;
- 547 (2) the colonel of the state police;
- 548 (3) a representative of the Massachusetts police chiefs association;
- 549 (4) a representative of the Massachusetts district attorney's association;
- 550 (5) the commissioner of the Boston police department;
- 551 (6) a representative of the Massachusetts police training committee, formerly the
- 552 Massachusetts criminal justice training counsel;
- 553 (7) a representative from the Interjurisdictional Anti-Human Trafficking Task Force;
- 554 (8) a representative of the Massachusetts Office of Victim Assistance;
- 555 (9) a representative from the Massachusetts office of the child advocate;
- 556 (10) a representative of the Trafficking Victims Outreach and Services network;
- 557 (11) a representative of the Massachusetts Immigrant and Refugee Advocacy Coalition;
- 558 (12) a representative of Jane Doe, Inc.;
- 559 (13) a representative of the Massachusetts Children's Alliance;
- 560 (14) a representative of a coalition dedicated to prevention of and intervention in the trafficking
- 561 of children;
- 562 (15) a senator appointed by the senate president;
- 563 (16) a senator appointed by the senate minority leader;
- 564 (17) a representative appointed by the speaker of the house;

- 565 (18) a representative appointed by the house minority leader;
- 566 (19) 2 survivors of human trafficking, one domestic and one international, appointed by the
567 governor;
- 568 (20) 2 human trafficking attorneys, one who works with adults and one who works with
569 children, appointed by the governor;
- 570 (21) 2 human trafficking caseworkers, one who works with adults and one who works with
571 children, appointed by the governor;
- 572 (22) a medical professional appointed by the governor;
- 573 (23) 2 mental health professionals, one who works with adults and one who works with
574 children, appointed by the governor;
- 575 (24) a university researcher with a background in human trafficking appointed by the governor;
- 576 (25) a person with a background in child and runaway services appointed by the governor; and
- 577 (26) a representative from the Massachusetts Commission on the Status of Women appointed
578 by the governor.

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

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

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

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