

HOUSE No. 02834

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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

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

An Act relating to anti-human trafficking and protection

.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Thomas P. Kennedy</i>	<i>Second Plymouth and Bristol</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>

HOUSE No. 02834

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 04963 OF 2009-2010.]

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 after section 66 the
2 following section:-

3 Section 66A. There shall be established and set up on the books of the commonwealth a separate
4 fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of
5 assets forfeited and the proceeds of assets seized and forfeited pursuant to chapter 265A and
6 fines and assessments collected pursuant to said chapter 265A, together with any interest or
7 earnings accrued on such monies through investment or deposit. The state treasurer shall be the
8 custodian of the fund and shall receive, deposit and invest all monies transmitted to him under

9 this section in accordance with sections 34, 34A and 38 of chapter 29 in such a manner as to
10 secure the highest rate of return available consistent with the safety of the fund, and shall credit
11 interest and earnings on the trust fund corpus to the trust fund. The state treasurer shall transfer
12 funds from the income and receipts of the fund to the victim and witness assistance board, as
13 established in section 4 of chapter 258B, from time to time, at the request of the office. The
14 board shall award and administer grants from the fund, without further appropriation, to public,
15 private non-profit or community-based programs in the commonwealth to provide services to
16 human trafficking victims, as defined in section 1 of said chapter 265A including, but not limited
17 to, legal and case management services, health care, mental health, social services, housing or
18 shelter services, education, job training or preparation, interpreting services, English-as-a-
19 second-language classes, victims' compensation, and public and private non-profit collaborations
20 to protect and assist human trafficking victims. The board shall develop, in conjunction with the
21 Anti-Human Trafficking Task Force established by section 20 of chapter 265A, written criteria
22 for the awarding of those grants, which shall be evaluated and, if necessary, revised on an annual
23 basis.

24 The board shall file a report detailing the amount of funds collected and expended from the fund
25 along with a copy of the written criteria used to expend the funds to the house and senate
26 committees on ways and means not later than August 15 of each calendar year. An amount not
27 to exceed 5 per cent of the total funds deposited in the fund may be expended by the office for
28 administrative costs directly attributable to the grants and programs funded by the fund
29 including, but not limited to, the costs of clerical and support personnel. Any unexpended
30 balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but

31 shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure
32 made from the fund shall cause the fund to become deficient at any point during a fiscal year.

33 SECTION 2. Section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended
34 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 chapter
36 265A, pursuant to an action for involuntary servitude, trafficking of persons for forced labor or
37 services or sexual servitude.

38 SECTION 3. Section 51A of chapter 119, as so appearing, is hereby amended by striking the
39 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, 20B or
41 20M of chapter 233, relating to confidential communications shall not prohibit the filing of a
42 report pursuant to this section or section 24.

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

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

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

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

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

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

67 “Confidential communication”, information transmitted in confidence by and between a human
68 trafficking victim and a human trafficking victims’ caseworker by a means which does not
69 disclose the information to a person other than a person present for the benefit of the victim, or to
70 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 program
75 serving human trafficking, who has undergone a minimum of 25 hours of training and who
76 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 or
80 center established for the purpose of offering assistance to human trafficking victims through
81 crisis intervention, medical, legal or support counseling.

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

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

94 exculpatory information is therein contained before allowing such discovery or the introduction
95 of such evidence.

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

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

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

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

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

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

115 Chapter 265A

116 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

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

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

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

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

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

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

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

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

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

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

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

146 (ii) psychological manipulation;

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

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

149 (v) abusing or threatening to abuse the law or legal process by knowingly providing

150 misinformation as to the adverse legal consequences of a person’s actions including, but not
151 limited to, threats of deportation;

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

155 (vii) the use of blackmail;

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

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

158 “Human trafficking victim”, any person subjected to a violation of section 2, 3 or
159 4.

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

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

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

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

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

175 Section 3. Whoever (a) intentionally entices, harbors, transports or delivers
176 another, with the intent that the person be subjected to forced labor or services; or (b)

177 intentionally benefits financially or receives anything of value, directly or indirectly, from a
178 violation of this section shall be guilty of trafficking of persons for forced labor or services and
179 shall be punished by a fine of not more than \$2,000 and by imprisonment in the state prison for
180 not less than 10 years nor more than 20 years.

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

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

196 Section 6. Whoever maliciously publishes, disseminates or otherwise discloses the name of any
197 human trafficking victim who's identity has been the subject of a confidentially order under

198 section 20N of chapter 233, knowing that such victim's name was the subject of such order shall
199 be punished in the house of correction for not less than 2 ½ years and by a \$1,000 fine.

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

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

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

216 (d) Whoever commits a violation of section 2, section 3 or section 4 and thereby
217 causes the death of another shall be punished by imprisonment in state prison for life or for any
218 term of years, but not less than 20 years. In accordance with section 8A of chapter 279, such

219 sentence shall begin from and after the expiration of the sentence for violation of section 2, 3 or
220 4.

221 (e) Whoever commits a violation of section 2, section 3 or section 4 and the
222 victim thereof was subjected to the provisions of any such section: (i) for between 180 days and
223 1 year, shall be punished by imprisonment in the state prison for not less than 3 years nor more
224 than 5 years; or (ii) for more than 1 year, shall be punished by imprisonment in the state prison
225 for not less than 5 years nor more than 25 years. In accordance with section 8A of chapter 279,
226 such sentences shall begin from and after the expiration of the sentence for violation of section 2,
227 3 or 4.

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

231 (g) Whoever solicits or receives compensation for soliciting for prostitute shall be punished by
232 imprisonment in a house of correction for not more than 2½ years, or by a fine of not more than
233 \$7,000, or by both such imprisonment and fine.

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

241 purpose of engaging in what would be commercial sexual abuse of a minor or promoting
242 commercial sexual abuse, if occurring in this state shall be punished by imprisonment in the state
243 prison for not more than 10 years.

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

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

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

252 3) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

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

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

284 ways and means and to the Massachusetts Office of Victim Assistance not later than August 15
285 of each calendar year.

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

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

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

299 (i) order its dissolution or reorganization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

357 (d) A district attorney or the attorney general may petition the superior court in the name of the
358 commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real
359 property, monies or other things of value subject to forfeiture under subsection (a). Such petition
360 shall be filed in the court having jurisdiction over the conveyance, real property, monies or other
361 things of value or having final jurisdiction over any related criminal proceeding brought under
362 section 2, 3 or 4. In all such suits in which the property is claimed by any person, other than the
363 commonwealth, the commonwealth shall have the burden of proving to the court the existence of
364 probable cause to institute the action, and any such claimant shall then have the burden of
365 proving that the property is not forfeitable pursuant to subsection (c). The owner of the
366 conveyance or real property, or other person claiming thereunder shall have the burden of proof

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

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

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

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

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

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

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

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

430 (ii) A district attorney or the attorney general may refer any real property, and any furnishings,
431 equipment and related personal property located therein, for which seizure is sought, to the
432 division of capital asset management and maintenance office of seized property management,
433 established under section 47 of chapter 94C. The office of seized property management shall

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

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

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

456 recorded in the registry in which the original memorandum recorded pursuant to this section was
457 filed.

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

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

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

477 SECTION 10. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
478 amended by inserting after the word "sixty-five", in lines 4 and 5 and in line 21, each time it
479 appears, the following words:-", or section 2, section 3, section 4, section 5, section 6 or section
480 7 of chapter 265A.

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

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