

HOUSE No. 03284

The Commonwealth of Massachusetts

PRESENTED BY:

Geraldine M. Creedon

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 relative to human trafficking.

PETITION OF:

NAME:

Geraldine M. Creedon

DISTRICT/ADDRESS:

11th Plymouth

HOUSE No. 03284

By Ms. Creedon of Brockton, a petition (accompanied by bill, House, No. 3284) of Geraldine Creedon relative to human trafficking. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to human trafficking.

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 under chapter 265A and fines and
6 assessments collected under 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
8 and shall receive, deposit and invest all monies transmitted to the fund under this section under
9 sections 34 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
11 corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of
12 the fund to the victim and witness assistance board, established in section 4 of chapter 258B,

13 from time to time, at the request of the victim witness assistance board. The board shall award
14 and administer grants from the fund, without further appropriation, to public, private non-profit
15 or community-based programs in the commonwealth to provide services to human trafficking
16 victims, as defined in section 1 of said chapter 265A including, but not limited to, social services,
17 housing, job training or victims' compensation and public and private non-profit organizations
18 that assist human trafficking victims. The board shall develop written criteria for the awarding
19 of those grants, which shall be evaluated and, if necessary, revised on an annual basis. In
20 addition, the board shall make available monies from the fund to support the costs of production
21 of certain materials by the attorney general under section 19 of chapter 265A.

22 The board shall file a report detailing the amount of funds collected and expended from the fund
23 along with a copy of the written criteria used to expend the funds to the house and senate
24 committees on ways and means not later than December 1 of each calendar year. An amount not
25 to exceed 5 per cent of the total monies deposited in the fund may be expended by the board for
26 administrative costs directly attributable to the grants and programs funded by the fund
27 including, but not limited to, the costs of clerical and support personnel. Any unexpended
28 monies remaining in the fund at the end of the fiscal year shall not revert to the General Fund but
29 shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure
30 made from the fund shall cause the fund to become deficient at any point.

31 SECTION 2. Section 51A of chapter 119, as appearing in the 2008 Official Edition, is hereby
32 amended by striking out subsection (j) and inserting in place thereof the following subsection:-

33 (j) Any privilege established by sections 135A and 135B of chapter 112 or by sections 20A, 20B
34 or 20M of chapter 233, relating to confidential communications shall not prohibit the filing of a
35 report under this section or a care and protection petition under section 24.

36 SECTION 3. Chapter 231 of the General Laws is hereby amended by inserting, after section
37 59H, the following section:-

38 Section 59I. In a civil action in a court of the commonwealth in which the plaintiff alleges to be
39 a human trafficking victim, as defined in section 1 of chapter 265A, the court shall, upon motion
40 of the plaintiff, advance the proceeding for speedy trial so that it may be heard and determined in
41 a timely manner with a minimum of delay.

42 SECTION 4. Chapter 233 of the General Laws, as appearing, is hereby amended by inserting
43 after section 11 the following section:

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

54 live-video conference, a video-taped record or a transcript of such testimony shall be admissible
55 at trial in any such action or proceeding.

56 SECTION 5. Said chapter 233 is hereby further amended by inserting after section 20L the
57 following 2 sections:-

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

60 “Confidential communication”, information transmitted in confidence by and between a human
61 trafficking victim and a human trafficking victims’ caseworker by a means which does not
62 disclose the information to a person other than a person present for the benefit of the victim, or to
63 those to whom disclosure of such information is reasonably necessary to counseling and assisting
64 such victim; provided, however, that “confidential communication” shall include all information
65 received by the human trafficking victims’ caseworker which arises out of, and in the course of,
66 such counseling and assisting, including, but not limited to, reports, records, working papers and
67 memoranda.

68 “Human trafficking”, human trafficking as defined in section 1 of chapter 265A.

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

74 “Human trafficking victims’ program”, any refuge, or shelter, or office of any kind established
75 for the purpose of offering assistance to human trafficking victims through crisis intervention or
76 counseling.

77 “Victim”, a petitioner who alleges to be the victim of a violation of section 2, 3 or 4 who
78 consults a human trafficking victims’ caseworker for advice, counseling or assistance concerning
79 any issue caused by the violation.

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

90 (c) During the initial meeting between the caseworker and victim, the caseworker shall inform
91 the victim and any guardian of the victim of such confidential communications and the
92 limitations under subsection (b).

93 Section 20N. At each stage of an investigation and prosecution of an offense involving a human
94 trafficking victim, as defined by section 1 of chapter 265A, the names and identifying
95 information of the victim and the victim’s family shall be withheld from public inspection. Once

96 a complaint is filed or an indictment returned, the court shall order that any identifying
97 information of such a victim and family member shall be kept confidential and the court shall
98 impound or redact the names and identifying information of the victim and the victim's family in
99 any such proceeding, unless the victim provides written consent to the court to disclose the
100 information in those records.

101 SECTION 6. Section 21B of said chapter 233, as amended by sections 46 to 48, inclusive, of
102 chapter 267 of the acts of 2010, is hereby further amended by striking out the first sentence and
103 inserting in place thereof the following sentence:- Evidence of the reputation of a victim's sexual
104 conduct shall not be admissible in any investigation or proceeding before a grand jury or any
105 court of the commonwealth for a violation of sections 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A,
106 22B, 22C, 23, 23A, 23B, 24 and 24B of chapter 265, section 4 of chapter 265A or section 5 of
107 chapter 272.

108 SECTION 7. Section 3 of chapter 258B of the General Laws, as so appearing is hereby
109 amended by inserting, after clause (v), the following clause:-
110 (w) for human trafficking victims, to be provided with a copy of an incident or police report
111 relative to the prosecution of the case; provided, however, that no charge shall be assessed to
112 such victim for a copy of the report.

113 SECTION 8. 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. As used in this chapter the following words shall, unless the context clearly requires
118 otherwise, have the following meanings:

119 “Asset”, property including, but not limited to, real property, things affixed to and found in land
120 and tangible and intangible personal property, including rights, privileges, interests, claims,
121 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, a
126 burn, bone fracture, subdural hematoma, injury to an internal organ or an injury which occurs as
127 the result of repeated harm to a bodily function or organ, including human skin.

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

130 “Child”, a person under 18 years of age.

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

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

135 “Financial harm”, includes, but shall not be limited to, extortion as defined by section 25 of
136 chapter 265, a violation of section 49 of chapter 271 or any use or threat to use anything of value
137 or the deprivation or threat of deprivation of anything of value.

138 “Forced labor or services”, work of economic or financial value or activities performed directly
139 or indirectly under the supervision of or for the benefit of another including, but not limited to,
140 sexual conduct for a fee or other thing of value, sexually-explicit performances and involvement
141 in the production of pornography; provided, however, that such work or services shall have been
142 obtained or maintained, in whole or in part, through:

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

144 (ii) psychological manipulation;

145 (iii) causing or threatening to cause injury to a person;

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

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

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

150 (vi) knowingly destroying, concealing, removing, confiscating or possessing any actual or

151 purported passport or other immigration document or any other actual or purported government
152 identification document of another person;

153 (vii) blackmail; or

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

155 “Human trafficking”, (i) the intentional subjection of a person to forced labor or services; (ii) the
156 intentional enticement, harboring, transportation or delivery of a person with the intent that the
157 person be subjected to forced labor or services or intentionally benefiting financially or receiving

158 anything of value, directly or indirectly; (iii) the intentional enticement, harboring, transportation
159 or delivery of another, with the intent that the person engage in a sexually-explicit performance,
160 the production of pornography or sexual conduct for a fee or other thing of value, whether or not
161 a person is the recipient of the fee or other thing of value or intentionally benefits financially or
162 receives anything of value, directly or indirectly.

163 “Human trafficking victim”, a person subjected to forced labor or services, forced engagement in
164 sexually-explicit performance, forced participation in the production of pornography or forced
165 engagement in sexual conduct for a fee or other thing of value or a person otherwise victimized
166 by human trafficking. .

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

169 “Maintain”, to secure continued performance of labor or services, regardless of any initial
170 agreement on the part of the victim to perform such type of service.

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

173 “Sexually-explicit performance”, an act involving sexual conduct intended to arouse or satisfy
174 the sexual desires of another and which is a live and public or private act or a photographed,
175 recorded or videotaped act or show.

176 Section 2. Whoever intentionally subjects another person to forced labor or services shall be
177 guilty of the crime of involuntary servitude and shall be punished by a fine of not less than
178 \$2,000 and by imprisonment in the state prison for not more than 20 years.

179 Section 3. Whoever intentionally: (a) entices, harbors, transports or delivers another, with the
180 intent that the person be subjected to forced labor or services; or (b) benefits financially or
181 receives anything of value, directly or indirectly, from a violation of this section shall be guilty
182 of trafficking of persons for forced labor or services and shall be punished by a fine of not more
183 than \$2,000 and by imprisonment in the state prison for not more than 15 years.

184 Section 4. Whoever intentionally: (a) entices, harbors, transports or delivers another, with the
185 intent that the person engage in a sexually-explicit performance, the production of pornography
186 or sexual conduct for a fee or other thing of value, whether or not the person is the recipient of
187 the fee or other thing of value; or (b) benefits financially or receives anything of value, directly
188 or indirectly, from a violation of this section shall be guilty of procuring another for sexual
189 servitude and shall be punished by a fine of not more than \$2,000 and by imprisonment in the
190 state prison for not more than 25 years.

191 Section 5. Whoever publishes, disseminates or otherwise discloses the location of any human
192 trafficking victim:

193 (a) with the intent that such victim suffers bodily injury as a result, shall be punished by
194 imprisonment in the state prison for not less than 5 years nor more than 10 years; or

195 (b) as a result causes serious bodily injury to such victim shall be punished by imprisonment in
196 the state prison for not more than 25 years; or

197 (c) as a result causes the death of such victim shall be punished by imprisonment in the state
198 prison for life or for any term of years, but not less than 30 years.

199 Section 6. Whoever maliciously publishes, disseminates or otherwise discloses the name of a
200 human trafficking victim, knowing that the victim's identity has been the subject of a
201 confidentiality order under section 20N of chapter 233, shall be punished by imprisonment in a
202 jail or house of correction for not more than 2½ years and by a \$1,000 fine.

203 Section 7. Whoever (i) intentionally recruits, entices, harbors, transports, delivers or obtains by
204 any means, another person, or attempts to do so, intending or knowing that the person will have
205 an organ, tissue or other body parts removed for sale; or (ii) intentionally benefits financially or
206 receives anything of value, directly or indirectly, or attempts to do so, from a violation of this
207 section, shall be guilty of organ trafficking and punished by imprisonment in the state prison for
208 not more than 20 years and a fine of not less than \$10,000 nor more than \$50,000.

209 Section 8. (a) Whoever commits a violation of sections 2 to 6, inclusive, shall be punished by
210 imprisonment in the state prison for not more than 20 years if the victim of that violation is a
211 child. Under section 8A of chapter 279, such sentence shall begin after the expiration of the
212 sentence imposed for a violation of section 2, 3, 4, 5 or 6.

213 (b) Whoever commits a violation of section 2, 3 or 4 by means of kidnapping, in violation of
214 section 26 of chapter 265, shall be punished by imprisonment in the state prison for not more
215 than 20 years. Under section 8A of chapter 279, such sentence shall begin from and after the
216 expiration of the sentence imposed for a violation of section 2, 3 or 4.

217 (c) Whoever commits a violation of section 2, 3 or 4 and, as a result: (i) causes bodily injury to
218 the victim of such offense shall be punished by imprisonment in the state prison for not more
219 than 15 years; or (ii) causes serious bodily injury to the victim of such offense shall be punished
220 by imprisonment in the state prison for not more than 20 years. Under section 8A of chapter

221 279, such sentences shall begin from and after the expiration of the sentence imposed for a
222 violation of section 2, 3 or 4.

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

227 (e) Whoever commits a violation of section 2, 3 or 4 and the victim of that violation was
228 subjected to the violation for: (i) between 180 days and 1 year, shall be punished by
229 imprisonment in the state prison for not more than 5 years; or (ii) more than 1 year, shall be
230 punished by imprisonment in the state prison for not more than 25 years. Under section 8A of
231 chapter 279, such sentences shall begin from and after the expiration of the sentence imposed
232 for a violation of section 2, 3 or 4.

233 Section 9. Whoever violates section 53A of chapter 272 knowing or having reason to know that
234 the person engaging in sexual conduct for a fee or other thing of value is a human trafficking
235 victim shall be punished by imprisonment in the state prison for not more than 5 years and by a
236 fine of \$2,000; or if the human trafficking victim is a child, shall be punished by imprisonment in
237 the state prison for not more than 10 years and by a fine of \$2,000.

238 Section 10. The court shall order restitution to human trafficking victims for violations of this
239 chapter including, in addition to any other amount of loss identified, the following:

240 (a) lost income, which shall include the greater of: (i) the gross income or value to the defendant
241 of the victim's labor or services; or (ii) the value of the victim's labor or services as guaranteed
242 under the commonwealth's minimum wage and overtime laws and interest;

243 (b) medical and related professional services relating to physical, psychiatric or psychological
244 care;

245 (c) physical and occupational therapy or rehabilitation;

246 (d) necessary transportation, temporary housing, and child care expenses;

247 (e) in the case of an offense resulting in damage to or destruction of property, return of the
248 property, or if return is impossible, impracticable or inadequate, payment of the replacement
249 value of the property;

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

252 (g) attorney's fees and other costs and expenses incurred, including those costs and expenses
253 incurred that are related to participation in the investigation or prosecution of the offense or
254 attendance at proceedings related to the offense;

255 (h) compensation for emotional distress, pain, and suffering;

256 (i) expenses incurred in relocating away from the defendant including, but not limited to,
257 deposits for utilities and telephone service, deposits for rental housing, temporary lodging and
258 food expenses, clothing and personal items; and

259 (j) any other losses suffered by the human trafficking victim.

260 Section 11. (a) All fines collected under this chapter shall be transmitted monthly by the courts
261 to the state treasurer who shall then deposit, invest and transfer the monies, from time to time,
262 into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

263 (b) There shall be an assessment of \$250 against any person who violates section 2 to 6,
264 inclusive. No court may waive the assessment for any reason. If a person is sentenced to a
265 correctional facility and the assessment has not been paid, the court shall note the assessment on
266 the mittimus. The monies collected from the assessment established by this paragraph shall be
267 transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer
268 the monies into the Victims of Human Trafficking Trust Fund established in said section 66A of
269 said chapter 10. The monies shall then be administered by the Massachusetts Office of Victim
270 Assistance under said section 66A. The assessment paid by an individual into the Victims of
271 Human Trafficking Trust Fund under this section shall be in addition to, and not in lieu of, any
272 other fee imposed by the court under this chapter or any other chapter. The administrative office
273 of the trial court shall file a report detailing the amount of funds imposed and collected under this
274 section to the house and senate committees on ways and means and to the Massachusetts Office
275 of Victim Assistance not later than December 1 of each calendar year.

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

282 Section 13. (a) A business entity that knowingly aids or participates in involuntary servitude,
283 trafficking of a person for forced labor or services or sexual servitude shall be liable in a civil
284 action for an offense under this section and may be subject to loss of a business license issued by
285 the commonwealth.

286 (b) Upon a finding of responsibility for aiding or participating in involuntary servitude,
287 trafficking of a person for forced labor or services or sexual servitude, a business entity shall be
288 assessed a fine of not less than \$10,000 and not more than \$100,000 for each such violation. No
289 court shall waive the assessment for any reason. The court may, in its discretion, order:

290 (i) the dissolution or reorganization of the business entity;

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

293 (iii) the surrender of its charter or the revocation of its certificate to conduct business in the
294 commonwealth.

295 Section 14. (a) A civil action for involuntary servitude, trafficking of persons for forced labor or
296 services, or sexual servitude shall be commenced within 7 years of the date on which the human
297 trafficking victim was freed from human trafficking, or if the victim was a child when the act of
298 human trafficking occurred, within 7 years after the date the victim attains the age of 18.

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

302 (c) A defendant is estopped from asserting a defense of the statute of limitations when the
303 expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the
304 filing of the action, or preventing the plaintiff from filing the action, including threats made by
305 the defendant that caused duress upon the plaintiff.

306 (d) The suspension of the statute of limitations due to disability or estoppel applies to all other
307 related claims arising out of the trafficking. A criminal action includes investigation and
308 prosecution and remains pending until final adjudication in the trial court. A legal guardian,
309 family member, representative of the human trafficking victim or court appointee may represent
310 the victim's rights, if the victim is deceased or otherwise unable to represent their own interests
311 in court.

312 Section 15. (a) The following property shall be subject to forfeiture to the commonwealth and all
313 property rights in such property shall be in the commonwealth:

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

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

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

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

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

328 (b) Property subject to forfeiture under clauses (i) to (iv), inclusive, shall, upon motion of the
329 attorney general or district attorney be declared forfeited by any court having jurisdiction over
330 the property or having final jurisdiction over any related criminal proceeding brought under this
331 section.

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

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

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

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

344 (d) A district attorney or the attorney general may petition the superior court in the name of the
345 commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real
346 property, monies or other things of value subject to forfeiture under subsection (a). Such petition

347 shall be filed in the court having jurisdiction over the conveyance, real property, monies or other
348 things of value or having final jurisdiction over any related criminal proceeding brought under
349 section 2, 3 or 4. In all such suits in which the property is claimed by any person other than the
350 commonwealth, the commonwealth shall have the burden of proving to the court the existence of
351 probable cause to institute the action and any such claimant shall then have the burden of proving
352 that the property is not subject to forfeiture under subsection (c). The owner of the conveyance
353 or real property or other person claiming an exception under subsections (c) and (j) shall have the
354 burden of proof. The court shall order the commonwealth to give notice by certified or
355 registered mail to the owner of the conveyance, real property, monies or other things of value
356 and to such other persons as appear to have an interest in the conveyance, real property, monies
357 or other things of value, and the court shall promptly, but not less than 2 weeks after notice, hold
358 a hearing on the petition. Upon the motion of the owner of the conveyance, real property,
359 monies or other things of value, the court may continue the hearing on the petition pending the
360 outcome of any criminal trial related to the violation of section 2, 3 or 4. At such hearing the
361 court shall hear evidence and make conclusions of law, and shall issue a final order based upon
362 those conclusions, from which the parties shall have a right of appeal. In all such suits where a
363 final order results in a forfeiture, the final order shall provide for disposition of the conveyance,
364 real property, monies or any other thing of value by the commonwealth or any subdivision of the
365 commonwealth in any manner not prohibited by law, including official use by an authorized law
366 enforcement or other public agency, or sale at public auction or by competitive bidding. The
367 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture
368 proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance of
369 the sale shall be distributed as further provided in this section.

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

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

376 (ii) one-half shall be deposited into the Victims of Human Trafficking Trust Fund established in
377 section 66A of chapter 10.

378 (f) Such monies and proceeds received by a prosecuting district attorney or attorney general shall
379 be deposited in the separate special law enforcement trust funds for each district attorney and for
380 the attorney general within the office of the state treasurer, established under paragraph (d) of
381 section 47 of chapter 94C. Each district attorney, the attorney general or the state treasurer shall
382 ensure that proper accounting procedures are in place to account for monies and proceeds
383 received and expended under this section. All such monies and proceeds shall be expended
384 without further appropriation to defray the costs of protracted investigations, to provide
385 additional technical equipment or expertise, to provide matching funds to obtain federal grants or
386 for such other law enforcement purposes as the district attorney or attorney general deems
387 appropriate. The district attorney or attorney general may also expend monies and proceeds for
388 human trafficking prevention or to provide victims' services to human trafficking victims.
389 Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall
390 file an annual report with the house and senate committees on ways and means on the use of the
391 monies in such trust fund to prohibit human trafficking.

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

399 (h) An officer, department or agency having custody of any property subject to forfeiture under
400 this section or having disposed of the property shall keep and maintain full and complete records
401 showing from whom it received the property, under what authority it held or received or
402 disposed of said property, to whom it delivered the property, the date and manner of disposition
403 of the property and the exact kinds, quantities and forms of the property. The records shall be
404 open to inspection by all federal and state officers charged with enforcement of federal and state
405 human trafficking laws. Persons making final disposition of the property under court order shall
406 report, under oath, to the court the exact circumstances of such disposition.

407 (i) (1) During the pendency of the proceedings the court may issue at the request of the
408 commonwealth ex-parte, any preliminary order or process as is necessary to seize or secure the
409 property for which forfeiture is sought and to provide for its custody including, but not limited
410 to: an order that the commonwealth remove the property if possible and safeguard it in a secure
411 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account;
412 and that a substitute custodian be appointed to manage such property. Property taken or detained
413 under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the

414 custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the
415 court having jurisdiction. Process for seizure of the property shall issue only upon a showing of
416 probable cause and the application for seizure and the issuance, execution and return of such
417 property shall be subject to chapter 276, as applicable.

418 (2) A district attorney or the attorney general may refer any real property and any
419 furnishings, equipment and related personal property located in that property, for which seizure
420 is sought, to the division of capital asset management and maintenance office of seized property
421 management, established under section 47 of chapter 94C. The office of seized property
422 management shall preserve and manage the property in a reasonable fashion and dispose of the
423 property upon a judgment ordering forfeiture, and enter into contracts to preserve, manage and
424 dispose of the property. The office of seized property management may receive initial funding
425 from the special law enforcement trust funds of the attorney general and each district attorney
426 under paragraph (f) and shall subsequently be funded by a portion of the proceeds of each sale of
427 such managed property to the extent provided as payment of reasonable expenses in paragraph
428 (d).

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

436 (k) A forfeiture proceeding affecting the title to real property or the use and occupation of such
437 real property or the buildings on such real property shall not have any effect except against the
438 parties to the proceeding and persons having actual notice of the proceeding, until a
439 memorandum containing the names of the parties to such proceeding, the name of the town in
440 which the affected real property lies, and a description of the real property sufficiently accurate
441 for identification is recorded in the registry of deeds for the county or district in which the real
442 property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal
443 or other final disposition is recorded by the court having jurisdiction over such matter, the clerk
444 of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or
445 other final disposition and such certificate shall be recorded in the registry in which the original
446 memorandum recorded under this section was filed.

447 Section 16. In any prosecution of a person who is a victim of human trafficking, it shall be an
448 affirmative defense that the victim was under duress, or coerced into committing the offenses for
449 which they are being prosecuted, unless prohibited by the General Laws. A human trafficking
450 victim shall not be criminally liable for any sexual conduct for a fee or other thing of value
451 committed as a direct result of, or incident or related to, being trafficked.

452 Section 17. (a) For purposes of this section, human trafficking shall mean a severe form of
453 trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000.
454 The attorney general, district attorney or any law enforcement official shall certify in writing to
455 the United States Department of Justice or other federal agency, such as the United States
456 Department of Homeland Security, that an investigation or prosecution under this chapter has
457 begun and that the human trafficking victim is willing to cooperate or is cooperating with the
458 investigation in order to enable that individual, if eligible under federal law, to qualify for an

459 appropriate visa and to access available federal benefits. Cooperation with law enforcement
460 shall not be required of human trafficking victims who are under 18 years of age. This
461 certification shall be made available to the victim and the victim's designated legal
462 representative.

463 (b) When a credible report has been made to the police of a crime described in this chapter, and
464 upon request of the victim of that crime, the attorney general, district attorney, department of
465 social services or any law enforcement official shall certify in writing to the United States
466 Department of Justice, the United States Department of Homeland Security, including any subset
467 of the Department of Homeland Security, such as the United States Customs and Immigration
468 Service or the United States Immigration and Customs Enforcement, that the individual making
469 the request is a victim of such crime and that the individual has been, is being, or is likely to be
470 helpful in the investigation or prosecution, of that crime in order to enable that individual, if
471 eligible under federal law, to qualify for an appropriate visa and to access available federal
472 benefits. For the purposes of this section, an individual shall be deemed to have been helpful in
473 the investigation or prosecution of the crime if the individual has filed a credible report of the
474 crime with the police or other law enforcement officials or provided a statement concerning the
475 underlying circumstances of the crime to the police or other law enforcement officials even
476 where that victim has requested that no domestic prosecution occur because of a reasonable fear
477 that harm will come to individuals who reside abroad where local law enforcement cannot
478 provide protection. The certification provided under this subsection, as well as a photocopy of
479 the victim's report of the crime, shall be made available to the victim and the victim's designated
480 representative.

481 Section 18. Subject to appropriation, the department of social services, in consultation with the
482 department of youth services, shall provide child human trafficking victims with age-appropriate
483 resources and services including, but not limited to, information about their rights, privacy
484 protections, shelter and psychological counseling. Such services shall include a coordinated
485 multidisciplinary plan by government and non-governmental agencies to minimize the number of
486 child interviews, enhance the provision of services and best meet the needs of the child.

487 Section 19. (a)(1) Subject to funding made available under paragraph (2), the office of
488 the attorney general shall prepare and make available educational or informational materials on
489 human trafficking laws and services that are available to protect or treat victims of human
490 trafficking to state and local employers and their employees who, through the dispatch of their
491 duties, may encounter individuals who either identify themselves as or are suspected of being
492 human trafficking victims.

493 (2) Funds supporting non-personnel-related costs of preparing and distributing said educational
494 or informational materials shall be made available by the victim and witness assistance board, as
495 established in section 4 of chapter 258B, from funds held in the Victims of Human Trafficking
496 Trust Fund established in section 66A of chapter 10.

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

503 SECTION 9. The second sentence of the first paragraph of section 63 of chapter 277 of the
504 General Laws, as amended by section 67 to 69, inclusive, of chapter 267 of the acts of 2010, is
505 hereby further amended by inserting, after the figure “265”, the following words:- ,or section 2,
506 3, 4, 5, 6 or 7 of chapter 265A.

507 SECTION 10. The second paragraph of said section 63 of said chapter is hereby amended by
508 inserting, after the figure “265”, the following words:- ,or section 2, 3, 4, 5, 6 or 7 of chapter
509 265A.