

SENATE No. 00820

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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

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

An Act relating to anti-human trafficking and protection.

PETITION OF:

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

<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Michael F. Rush</i>	<i>Suffolk and Norfolk</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Stephen R. Canessa</i>	<i>12th Bristol</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>Steven A. Baddour</i>	<i>First Essex</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol, and Plymouth</i>
<i>Stanley C. Rosenberg</i>	<i>Hampshire and Franklin</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>

SENATE No. 00820

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relating to anti-human trafficking and protection.

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

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

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

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

24 The board shall file a report detailing the amount of funds collected and expended from
25 the fund along with a copy of the written criteria used to expend the funds to the house and
26 senate committees on ways and means not later than August 15 of each calendar year. An
27 amount not to exceed 5 per cent of the total funds deposited in the fund may be expended by the
28 office for 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
34 amended by inserting after the word "year", in line 179, the following subparagraph:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 "Asset", property of any kind including, but not limited to, real property, things affixed to
120 and 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
123 communication which threatens to accuse another of a crime or offense, to injure the person or
124 property of another or to expose any secret tending to subject any person to hatred, contempt or
125 ridicule.

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

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

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

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

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

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

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

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

147 (ii) psychological manipulation;

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

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

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

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

156 (vii) the use of blackmail;

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

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

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

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

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

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

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

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

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

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

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

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

197 Section 6. Whoever maliciously publishes, disseminates or otherwise discloses the
198 name of any human trafficking victim who's identity has been the subject of a confidentially
199 order under section 20N of chapter 233, knowing that such victim's name was the subject of

200 such order shall be punished in the house of correction for not less than 2 ? years and by a \$1,000
201 fine.

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

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

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

217 (d) Whoever commits a violation of section 2, section 3 or section 4 and thereby
218 causes the death of another shall be punished by imprisonment in state prison for life or for any
219 term of years, but not less than 20 years. In accordance with section 8A of chapter 279, such
220 sentence shall begin from and after the expiration of the sentence for violation of section 2, 3 or
221 4.

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

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

235 Section 9. Whoever (i) intentionally recruits, entices, harbors, transports, delivers or
236 obtains by any means, another person, or attempts to do so, intending or knowing that the person
237 will have an organ, tissue or other body parts removed for sale; or (ii) intentionally benefits
238 financially or receives anything of value, directly or indirectly, or attempts to do so, from a
239 violation of this section shall be guilty of organ trafficking and punished by imprisonment in the
240 state prison for not more than 20 years and a fine of not less than \$10,000 nor more than
241 \$50,000.

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

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

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

250 (3) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

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

269 (b) There shall be an assessment of \$250 against any person who violates any
270 provision of section 2 to 6, inclusive. The assessment shall not be subject to waiver by the court
271 for any reason. If a person is sentenced to a correctional facility and the assessment has not been
272 paid, the court shall note the assessment on the mittimus . The monies collected pursuant to the
273 assessment established by this paragraph shall be transmitted monthly by the courts to the state
274 treasurer who shall then deposit, invest and transfer the monies into the Victims of Human
275 Trafficking Trust Fund established in said section 66A of said chapter10. The monies shall then
276 be administered, pursuant to said section 66 of said chapter 10, by the Massachusetts Office of
277 Victim Assistance for the purposes set forth in said section 66A. The assessment paid by an
278 individual into the Victims of Human Trafficking Trust Fund pursuant to this section shall be in
279 addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any
280 other chapter. The administrative office of the trial court shall file a report detailing the amount
281 of funds imposed and collected pursuant to this section to the house and senate committees on

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

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

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

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

297 (i) order its dissolution or reorganization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

357 (d) A district attorney or the attorney general may petition the superior court in the
358 name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a
359 conveyance, real property, monies or other things of value subject to forfeiture under subsection
360 (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real
361 property, monies or other things of value or having final jurisdiction over any related criminal
362 proceeding brought under section 2, 3 or 4. In all such suits in which the property is claimed by
363 any person, other than the commonwealth, the commonwealth shall have the burden of proving
364 to the court the existence of probable cause to institute the action, and any such claimant shall

365 then have the burden of proving that the property is not forfeitable pursuant to subsection (c).
366 The owner of the conveyance or real property, or other person claiming thereunder shall have the
367 burden of proof as to all exceptions set forth in subsections (c) and (j). The court shall order the
368 commonwealth to give notice by certified or registered mail to the owner of the conveyance, real
369 property, monies or other things of value and to such other persons as appear to have an interest
370 therein, 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
383 such sale shall be distributed as follows:

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

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

390 (f) All such monies and proceeds received by any prosecuting district attorney or
391 attorney general shall be deposited in the separate special law enforcement trust funds for each
392 district attorney and for the attorney general within the office of the state treasurer, established
393 under paragraph (d) of section 47 of chapter 94C. Each district attorney, the attorney general or
394 the state treasurer shall ensure that proper accounting procedures are in place to account for
395 monies and proceeds received and expended pursuant to this section. All such monies and
396 proceeds shall be expended without further appropriation to defray the costs of protracted
397 investigations, to provide additional technical equipment or expertise, to provide matching funds
398 to obtain federal grants, or for such other law enforcement purposes as the district attorney or
399 attorney general deems appropriate. The district attorney or attorney general may also expend
400 monies 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
405 in a special law enforcement trust fund and shall be expended without further appropriation to
406 defray the costs of protracted investigations, to provide additional technical equipment or
407 expertise, to provide matching funds to obtain federal grants, or to accomplish such other law
408 enforcement purposes as the chief of police of such city or town, or the colonel of state police
409 deems appropriate, but such funds shall not be considered a source of revenue to meet the
410 operating needs of such department.

411 (h) Any officer, department, or agency having custody of any property subject to
412 forfeiture under this section or having disposed of the property shall keep and maintain full and
413 complete records showing from whom it received the property, under what authority it held or
414 received or disposed of said property, to whom it delivered the property, the date and manner of
415 disposition of the property, and the exact kinds, quantities and forms of the property. The
416 records shall be open to inspection by all federal and state officers charged with enforcement of
417 federal and state human trafficking laws. Persons making final disposition of the property under
418 court order shall 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
420 of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure
421 the property for which forfeiture is sought and to provide for its custody including, but not
422 limited to: an order that the commonwealth remove the property if possible and safeguard it in a
423 secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow
424 account 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,
431 and any furnishings, equipment and related personal property located therein, for which seizure
432 is sought, to the division of capital asset management and maintenance office of seized property
433 management, established under section 47 of chapter 94C. The office of seized property

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

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

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

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

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

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

472 Section 18. (a) For purposes of this section, human trafficking shall mean a severe
473 form of trafficking under Section 7102(8) of Title 22 of the United States Code on October 28,
474 2000 . The attorney general, district attorney, or any law enforcement official shall certify in
475 writing to the United States Department of Justice or other federal agency, such as the United
476 States Department of Homeland Security, that an investigation or prosecution under this chapter
477 has begun and that the human trafficking victim is willing to cooperate or is cooperating with the
478 investigation in order to enable that individual, if eligible under federal law, to qualify for a T-

479 Visa or another appropriate visa and to access available federal benefits. Cooperation with law
480 enforcement shall not be required of human trafficking victims who are under 18 years of age.
481 This certification shall be made available to the victim and his designated legal representative.

482 (b) When a credible report has been made to the police of a crime described in this
483 chapter, and upon request of the victim of that crime, the attorney general, district attorney,
484 department of social services, or any law enforcement official shall certify in writing to the
485 United States Department of Justice, the United States Department of Homeland Security,
486 including any subset thereof, such as the United States Customs and Immigration Service or the
487 United States Immigration and Customs Enforcement, that the individual making the request is a
488 victim of such crime and that the individual has been helpful, is being helpful, or is likely to be
489 helpful in the investigation or prosecution, of that crime in order to enable that individual, if
490 eligible under federal law, to qualify for a U-Visa or another appropriate visa and to access
491 available federal benefits. For the purposes of this section, an individual will be deemed to have
492 been helpful in the investigation or prosecution of the crime if he has filed a credible report of
493 the crime with the police or other law enforcement officials or provided a statement concerning
494 the underlying circumstances of the crime to the police or other law enforcement officials even
495 where that victim has requested that no domestic prosecution occur because of a reasonable fear
496 that harm will come to individuals who reside abroad where local law enforcement cannot
497 provide protection. The certification provided under this subsection, as well as a photocopy of
498 the victim's report of the crime, shall be made available to the victim and the victim's designated
499 representative.

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

502 (d) (i) Within 20 business days of the first encounter of a human trafficking
503 victim, law enforcement agencies shall provide brief letters that satisfy the following Law
504 Enforcement Agency Endorsement, hereinafter "LEA", regulations as found in Section
505 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations.

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

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

522 (iv) Law enforcement agencies that demonstrate a consistent pattern of
523 failing to meet the time limits established in paragraphs (d)(i) and (d)(iii) shall be prohibited

524 from retaining or receiving assets or the proceeds from assets forfeited under section 14 of this
525 chapter. The attorney general and the secretary of health and human services shall jointly
526 determine whether a law enforcement agency has demonstrated a consistent pattern of failing to
527 meet the above mentioned time limits and shall consider reports from human trafficking case
528 workers and other victim service providers as evidence. The attorney general and the secretary
529 of health and human services shall jointly determine whether a law enforcement agency has
530 made sufficient progress in meeting the above mentioned time limits in order to allow such law
531 enforcement agency to retain or receive assets or the proceeds from assets forfeited under section
532 14 of this chapter. The attorney general and the secretary of health and human services shall
533 consider reports from human trafficking case workers and other victim service providers as
534 evidence in making their determination.

535 Section 19. Subject to appropriation, the executive office of health and human
536 services shall hereby established a pilot program creating a human trafficking safe house
537 specifically to meet the unique needs of adult human trafficking victims, and the department of
538 social services in consultation with the department of youth services shall hereby establish a pilot
539 program creating a human trafficking safe house specifically to meet the unique needs of child
540 human trafficking victims. The safe houses shall each provide specialized support services to
541 adult or child human trafficking victims that will take into account the age, gender, linguistic
542 capabilities, and special needs of the victims and the victim's dependent children, if any. The
543 safe houses shall also provide 24 hour security on the premises, multilingual trauma trained case
544 management staff, access to healthcare and mental health services, and access to employment
545 and educational services.

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

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

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

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

564 (3) evaluate approaches to increase public awareness of human trafficking,
565 and offer recommendations for programs and educational and training opportunities for law
566 enforcement and social service providers, including, but not limited to, methods used to identify
567 human trafficking victims including preliminary interviewing and questioning techniques,

568 methods of protecting the special needs of women and child human trafficking victims,
569 developments in state and federal laws regarding human trafficking, and methods to increase
570 effective collaboration between state and local agencies, law enforcement, social service
571 providers and non-governmental organizations;

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

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

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

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

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

587 (b) The office of the attorney general and the executive office of health and human
588 services shall provide staff and support for the task force, including, but not limited to,

589 publication and dissemination of the annual report required by this section and posting the report
590 on their websites, to the extent resources are available.

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

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

593 (2) the colonel of the state police;

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

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

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

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

599 (7) a representative from the Interjurisdictional Anti-Human Trafficking
600 Task Force;

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

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

603 (10) a representative of the Trafficking Victims Outreach and Services
604 network;

605 (11) a representative of the Massachusetts Immigrant and Refugee Advocacy
606 Coalition;

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

- 608 (13) a representative of the Massachusetts Children's Alliance;
- 609 (14) a representative of a coalition dedicated to prevention of and
610 intervention in the trafficking of children;
- 611 (15) a senator appointed by the senate president;
- 612 (16) a senator appointed by the senate minority leader;
- 613 (17) a representative appointed by the speaker of the house;
- 614 (18) a representative appointed by the house minority leader;
- 615 (19) 2 survivors of human trafficking, one domestic and one international,
616 appointed by the governor;
- 617 (20) 2 human trafficking attorneys, one who works with adults and one who
618 works with children, appointed by the governor;
- 619 (21) 2 human trafficking caseworkers, one who works with adults and one
620 who works with children, appointed by the governor;
- 621 (22) a medical professional appointed by the governor;
- 622 (23) 2 mental health professionals, one who works with adults and one who
623 works with children, appointed by the governor;
- 624 (24) a university researcher with a background in human trafficking
625 appointed by the governor;

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

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

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

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

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