

SENATE No. 01950

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

SECTION 1. The definition of “sex offense” in section 178C of chapter 6 of the General Laws, as most recently amended by section 3 of chapter 267 of the acts of 2010, is hereby further amended by inserting after the words “enticing a child under the age of 16 for the purposes of committing a crime under section 26C of said chapter 265” the following words:- ; trafficking of persons for sexual servitude under subsection (a) of section 50 of said chapter 265.

SECTION 2. The definition of "sex offense involving a child" in said section 178C of said chapter 6, as most recently amended by said section 3 of said chapter 267, is hereby further amended by inserting after the words “enticing a child under the age of 16 for the purposes of committing a crime under section 26C of said chapter 265” the following words:- ; trafficking of persons for sexual servitude upon a person under 18 years of age under subsection (b) of section 50 of chapter said 265.

SECTION 3. The definition of "sexually violent offense" in said section 178C of said chapter 6, as most recently amended by section 2 of said chapter 267, is hereby further amended by inserting after the words “assault of a child with intent to commit rape under section 24B of said chapter 265” the following words:- ; trafficking of persons for sexual servitude under subsection (a) of section 50 of chapter 265; trafficking of persons for sexual servitude upon a person under 18 years of age under subsection (b) of said section 50 of said chapter 265.

SECTION 4. The definition of "sexual assault" in section 1 of chapter 9A of the General Laws, as most recently amended by section 9 of said chapter 267, is hereby further amended by striking out the words “and 24B of chapter 265” and inserting in place thereof the following words:- , 24B and 50 of chapter 265.

SECTION 5. Chapter 10 of the General Laws is hereby amended by inserting after section 66 the following section:-

Section 66A. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of proceeds of assets seized and forfeited pursuant to section 57 of chapter 265 and fines and assessments collected pursuant to sections 50, 51 and 54 of said chapter 265, together with any interest or earnings accrued on such monies through investment or deposit. The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34, 34A and 38 of chapter 29 in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of the fund to the victim and witness assistance board, as established in section 4 of chapter 258B, from time to time, at the request of the board. The board shall award and administer grants from the fund, without further appropriation, to public, private non-profit or community-based programs in the commonwealth to provide services to victims of offenses under said sections 50 and 51 of said chapter 265 including, but not limited to, legal and case management services, health care, mental health, social services, housing or shelter services, education, job training or preparation, interpreting services, English-as-a-second-language classes, victims' compensation, and public and private non-profit collaborations to protect and assist human trafficking victims. The board shall develop, in conjunction with the Anti-Human Trafficking Task Force established by section 11N of chapter 12, written criteria for the awarding of those grants, which shall be evaluated and, if necessary, revised on an annual basis.

The board shall file a report detailing the amount of funds collected and expended from the fund, along with a copy of the written criteria used to expend the funds, to the house and senate committees on ways and means not later than August 15 of each calendar year. Administrative and operational expenses directly attributable to the grants and programs funded by the fund including, but not limited to, the costs of clerical and support personnel, shall not exceed 5 per cent of the total assets of the fund in any 1 fiscal year. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

SECTION 6. Chapter 12 of the General Laws is hereby amended by inserting after section 11L the following 2 sections:-

Section 11M. (a) Subject to funding made available under paragraph (b), the attorney general shall prepare and make available educational or informational materials on human trafficking laws and services to protect or treat victims of human trafficking to state and local employers and their employees who, through the dispatch of their duties, may encounter individuals who either identify themselves as, or are suspected of, being human trafficking victims.

(b) Funds supporting non-personnel-related costs of preparing and distributing such educational or informational materials may be made available by the victim and witness assistance board, as established in section 4 of chapter 258B, with funds from the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

Section 11N. (a) There is hereby established an Anti-Human Trafficking Task Force, co-chaired by the attorney general and the secretary of health and human services or their designees. The task force shall:

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

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

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

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

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

(6) analyze existing state laws and regulations, including the effectiveness of existing victim-witness assistance laws, regulations and services and confidentiality laws, for their adequacy in addressing human trafficking and, if the analysis indicates that such statutes are inadequate, recommend legislation to specifically address human trafficking;

(7) examine existing first offender prostitution solicitation programs in the commonwealth, and in other states, and identify grants that may be used to develop and implement statewide first offender prostitution solicitation programs for the commonwealth;

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

(9) issue an annual report outlining the task force's findings pursuant to clauses (1) to (8), inclusive.

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

(c) The task force shall be comprised of the following members or their designees: the secretary of the executive office of economic development; the colonel of state police; a representative of the Massachusetts police chiefs association; a representative of the Massachusetts district attorney's association; the commissioner of the Boston police department; a representative of the Massachusetts police training committee; a representative from the Interjurisdictional Anti-Human Trafficking Task Force; a representative of the Massachusetts office of victim assistance; a representative from the Massachusetts office of the child advocate; a representative of the Trafficking Victims Outreach and Services network; a representative of the Massachusetts Immigrant and Refugee Advocacy Coalition; a representative of Jane Doe, Inc.; a representative of the Massachusetts Children's Alliance; a representative of a coalition dedicated to prevention of and intervention in the trafficking of children; a senator appointed by the senate president; a senator appointed by the senate minority leader; a representative appointed by the speaker of the house; a representative appointed by the house minority leader; 2 survivors of human trafficking, one domestic and one international, appointed

by the governor; 2 human trafficking attorneys, one who works with adults and one who works with children, appointed by the governor; 2 human trafficking caseworkers, one who works with adults and one who works with children, appointed by the governor;) a medical professional appointed by the governor; 2 mental health professionals, one who works with adults and one who works with children, appointed by the governor; a university researcher with a background in human trafficking appointed by the governor; a person with a background in child and runaway services appointed by the governor; and a representative from the Massachusetts Commission on the Status of Women appointed by the governor.

SECTION 7. The first sentence of the first paragraph of section 37 of chapter 22C of the General Laws, as amended by section 10 of chapter 267 of the acts of 2010, is hereby further amended by striking out the words “or twenty-two to twenty-four, inclusive,” and inserting in place thereof the following words:- , 22 to 24, inclusive, or 50.

SECTION 8. Section 21 of chapter 119 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of “51A report”, the following 2 definitions:-

“Appropriate services”, the assessment, planning and care provided by a state agency or non-governmental organization or entity; provided, however, that such agency, organization or entity has expertise in providing services to sexually exploited children in accordance with such regulations that the department of children and families may adopt or the policies of such department. These services may be provided through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family based foster care or the community. These services shall include food, clothing, medical care, counseling and appropriate crisis intervention services.

“Advocate”, an employee of a non-governmental organization or entity providing appropriate services, or a similar employee of the department of children and families who has been trained to work and advocate for the needs of sexually exploited children.

SECTION 9. The definition of “child in need of services” in said section 21 of said chapter 119, as so appearing, is hereby amended by striking out the words “or (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter” and inserting in place thereof the following words :- ; (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter; or (e) is induced into prostitution pursuant to a violation of subsection (a) of section 4A of chapter 272, or violates section 53 of chapter 272 or subsection (a) of section 53A of said chapter 272.

SECTION 10. Said section 21 of said chapter 119, as so appearing, is hereby further amended by inserting after the definition of “relative” the following definition:-

“Sexually exploited child”, any person under the age of 18 who has been subject to sexual exploitation because such person:

(1) is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;

(2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272;

(3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution as defined by section 4A of chapter 272; or

(4) engages in acts or conduct prohibited by section 53 of chapter 272.

SECTION 11. Said chapter 119 is hereby amended by inserting after section 39J the following 2 sections:-

Section 39K. (a) Notwithstanding any general or special law to the contrary, and subject to appropriation, the department of children and families shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law enforcement, or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) the department shall provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child’s welfare. If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24. Subject to appropriation, sexually exploited children shall have access to an advocate as defined in section 21. The advocate or a member of the multi-disciplinary service team established under section 51D may accompany the child to all court appearances and may serve as a liaison between the service providers and the court.

(b) All of the services that may be provided under this section may be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral.

(c) In determining the need for and capacity of the services that may be provided under this section, the department of children and families shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, if the

department of children and families determines that the need exists, to the extent that funds are available, appropriate services shall be made available, while ensuring that an appropriate continuum of services exists.

(d) The commissioner of the department may, subject to appropriation, contract with non-governmental organizations or entities with experience working with sexually exploited children to train law enforcement officials likely to encounter sexually exploited children in the course of their law enforcement duties. The training shall include, but not be limited to, the provisions of this section, identification and access to services for sexually-exploited children and any other services the department deems necessary.

(e) The department may apply for grants from the victim and witness assistance board under section 66A of chapter 10, grants from the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention or any other federal agency, or grants from any other private source to fund the law enforcement training and services for sexually-exploited children.

(f) The department shall adopt regulations to carry out the purposes of this section.

Section 39L. (a) In any delinquency or criminal proceeding against a sexually exploited child alleging that such juvenile or such defendant violated section 53 of chapter 272 or subsection (a) of section 53A of said chapter 272, upon motion of the defendant, the commonwealth, or as raised sua sponte by the court, the court shall hold a hearing at which the commonwealth, the juvenile or defendant and other agencies or persons with relevant information shall be heard to determine whether the child is an appropriate candidate for the matter to be dismissed without prejudice to the commonwealth and, in lieu of delinquency or criminal proceedings, a care and protection petition or a child in need of services petition may be filed and heard; provided, however, that no delinquency or criminal proceeding shall be dismissed over the objection of the commonwealth.

(b) The court shall consider the following factors in determining whether or not to dismiss the matter without prejudice: (i) whether the child has been previously found to have violated section 53A of chapter 272; (ii) whether the child has been previously found to have violated section 53A of said chapter 272 and committed to the department of youth services; (iii) whether the child has previously engaged in conduct that, if proved, would constitute a violation of section 53A of chapter 272; (iv) whether the child has previously refused or been unable to cooperate with services offered under section 51B; (v) whether the child's need for services may be provided by department of children and families or any non-governmental organization that provides services to such

children; and (vi) the protection of society from the conduct that forms the basis for the proceeding.

(c) The necessary findings of fact to support the decision shall be reduced to writing and made part of the court record.

(d) If, during the pendency of a child in need of services or care and protection proceedings initiated under this section, the district attorney determines that the child is not in substantial compliance with a lawful order of the court, or if the district attorney determines that the child has failed to comply with the guidance and services of the department or any designated non-governmental service provider, it may petition the court to vacate the dismissal of the delinquency or criminal proceeding and restore that proceeding to the docket for trial or further proceedings in accordance with the regular course of such proceedings. Upon receipt of said petition, the court shall restore that proceeding to the docket or allow the commonwealth to refile charges or reindict.

SECTION 12. The first paragraph of subsection (a) of section 51A of said chapter 119, as appearing in the 2008 Official Edition, is hereby amended by striking out the words “or (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect” and inserting in place thereof the following words:- ; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child.

SECTION 13. The first sentence of subsection (j) of said section 51A of said chapter 119, as so appearing, is hereby amended by striking out the words “20A and 20B” and inserting in place thereof the following words:- 20A, 20B or 20M.

SECTION 14. Subsection (a) of section 51B of said chapter 119, as so appearing, is hereby amended by adding the following sentence:- The department shall immediately report to the district attorney and local law enforcement authorities, in accordance with subsection (k) a child reasonably believed to be a sexually exploited child, regardless of whether the child is living with a parent, guardian or other caretaker.

SECTION 15. Clause (3) of the second paragraph of subsection (k) of said section 51B of said chapter 119, as so appearing, is hereby amended by inserting after the words “chapter 272” the following words:- or is a sexually exploited child;

SECTION 16. Section 51D of said chapter 119, as so appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

For 51A reports specifically involving a sexually exploited child, the multi-disciplinary service team may consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of sexually exploited children including, but not limited to, a police officer, as defined by section 1 of chapter 90C, or other person designated by a police chief, as defined in said section 1 of said chapter 90C, an employee of the department of children and families, a representative of the appropriate district attorney, a social service provider, a medical professional or a mental health professional.

SECTION 17. Said section 51D of said chapter 119, as so appearing, is hereby further amended by inserting after the fifth paragraph the following paragraph:-

For 51B reports specifically involving a sexually exploited child, the purpose of the multi-disciplinary service team shall be to determine whether the child has been sexually exploited and to recommend a plan for services to the department that may include, but shall not be limited to, shelter or placement, mental health and medical care needs and other social services.

SECTION 18. The first paragraph of section 55B of said chapter 119, as most recently amended by section 16 of chapter 267 of the acts of 2010, is hereby further amended by inserting after the figure “23B,” the following words:- or section 50.

SECTION 19. The first paragraph of section 58 of said chapter 119, as most recently amended by section 19 of said chapter 267, is hereby further amended by striking out the words “or section 23,” and inserting in place thereof the following words:- , section 23 or section 50.

SECTION 20. Section 12 of chapter 120 of the General Laws, as most recently amended by section 22 of said chapter 267, is hereby further amended by inserting after the words “section 13B3/4 of said chapter 265” the following words:- ; or trafficking of persons for sexual servitude in violation of subsection (a) of section 50 of chapter 265; or trafficking of persons for sexual servitude upon a person under 18 years of age in violation of subsection (b) of section 50 of chapter 265.

SECTION 21. The first paragraph of section 90A of chapter 127 of the General Laws, as most recently amended by section 39 of said chapter 267, is hereby further amended by striking out the words “or section twenty-six,” and inserting in place thereof the following words:- , section 26 or section 50.

SECTION 22. Section 133E of said chapter 127, as most recently amended by section 42 of said chapter 267, is hereby further amended by inserting after the words “kidnapping of a child under section 26 of said chapter 265” the following words:- ; trafficking of persons for sexual servitude under subsection (a) of section 50 of chapter

265; trafficking of persons for sexual servitude upon a person under 18 years of age under subsection (b) of said section 50 of said chapter 265.

SECTION 23. The fifth paragraph of section 152 of said chapter 127, as most recently amended by section 45 of said chapter 267, is hereby further amended by striking out the words “and twenty-six,” and inserting in place thereof the following words:- , 26 and 50.

SECTION 24. Chapter 233 of the General Laws is hereby amended by inserting after section 20L the following section:-

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

"Confidential communication", information transmitted in confidence by and between a victim and a victim's caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term shall include all information received by a victim's caseworker which arises out of and in the course of such counseling and assisting including, but not limited to, reports, records, working papers or memoranda.

"Human trafficking victims' caseworker," a person who is employed by or volunteers with a program serving human trafficking victims, who has undergone a minimum of 25 hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a human trafficking victim program, and whose primary purpose is the rendering of advice, counseling or assistance to human trafficking victims.

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

"Human trafficking victim" or “victim”, a victim of a violation of section 50 or 51 of chapter 265 and who consults a human trafficking victims' caseworker for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such violation.

(b) A human trafficking victims' caseworker shall not disclose any confidential communication without the prior written consent of the victim, or the victim's guardian in the case of a child, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim, or victim's guardian in the case of a child,

to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is therein contained before allowing such discovery or the introduction of such evidence.

(c) During the initial meeting between a caseworker and victim, the caseworker shall inform the human trafficking victim and any guardian thereof of the confidentiality of communications between a caseworker and victim and the limitations thereto.

SECTION 25. Section 21B of said chapter 233, as most recently amended by section 48 of chapter 267 of the acts of 2010, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- Evidence of the reputation of a victim's sexual conduct shall not be admissible in an investigation or proceeding before a grand jury or a court of the commonwealth for a violation of sections 13B, 13F, 13H, 22, 22A, 23, 24, 24B or 50 of chapter 265, or section 5 of chapter 272.

SECTION 26. Section 3 of chapter 258B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following clause:-

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

SECTION 27. The second paragraph of section 4C of chapter 260 of the General Laws, as most recently amended by section 51 of chapter 267 of the acts of 2010, is hereby further amended by striking out the words "or twenty-four B," and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 28. Chapter 260 of the General Laws is hereby amended by inserting after section 4C the following section:-

Section 4D. (a) A victim of trafficking of persons for sexual servitude under section 50 of chapter 265 or of trafficking of persons for forced services under section 51 of said chapter 265 may bring a civil action for trafficking of persons for forced labor or services or sexual servitude. The court may award actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages may be awarded on proof of actual damages if the defendant's acts were willful and malicious.

(b) A civil action for trafficking of persons for forced labor or services or sexual servitude shall be commenced within 3 years of the date on which the human trafficking

victim was freed from human trafficking, or if the victim was a child during the commission of the offense, within 3 years after the date the plaintiff attains the age of 18.

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

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

(e) A defendant shall be estopped from asserting a defense of the statute of limitations if the expiration of the statute is due to the defendant inducing the plaintiff to delay the filing of the action, preventing the plaintiff from filing the action or threats made by the defendant that caused duress upon the plaintiff.

(f) Any legal guardian, family member, representative of the human trafficking victim, or court appointee may represent the human trafficking victim's rights, in the event the human trafficking victim is deceased or otherwise unable to represent his own interests in court.

SECTION 29. The definition of "sexual abuse" in section 13L of chapter 265 of the General Laws, as most recently amended by section 54 of chapter 267 of the acts of 2010, is hereby further amended by striking out the words "and assault of a child with intent to commit rape under section 24B," and inserting in place thereof the following words:- , assault of a child with intent to commit rape under section 24B; and trafficking in persons for the purpose of sexual servitude under subsection (b) of section 50.

SECTION 30. Section 24A of said chapter 265, as most recently amended by section 57 of said chapter 267, is hereby further amended by striking out the words "or twenty-four B," and inserting in place thereof the following words:- , 24B or 50.

SECTION 31. The first paragraph of section 24C of said chapter 265, as most recently amended by section 60 of said chapter 267, is hereby further amended by inserting after the words "of chapter two hundred and sixty-five" the following words:- , or an arrest, investigation or complaint for trafficking of persons under section 50 of said chapter 265.

SECTION 32. Said chapter 265 is hereby further amended by inserting after section 48, inserted by section 119 of chapter 256 of the acts of 2010, the following 10 sections:-

Section 49. As used in sections 50 to 51, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commercial sexual activity”, any sexual act exchanged for anything of value that is given, promised to or received by any person.

“Financial harm”, a decrease in the value of a person’s assets as a result of another person’s illegal act including, but not limited to, extortion as defined by section 25, a violation of section 49 of chapter 271 or illegal employment contracts.

"Forced services", services performed or provided by a person that are obtained or maintained by another person by means of: (i) causing or threatening to cause serious harm to any person; (ii) physically restraining or threatening to physically restrain another person; (iii) abusing or threatening to abuse the law or legal process; (iv) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) use of extortion as defined by section 25; or (vi) causing or threatening to cause financial harm to any person.

"Services", acts performed by a person under the supervision of or for the benefit of another including, but not limited to, commercial sexual activity and sexually-explicit performances.

“Sexually-explicit performance”, an unlawful live or public act or show intended to arouse or satisfy the sexual desires of a viewer or to appeal to the prurient interests thereof.

Section 50. (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not more than 15 years, but not less than 5 years, and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years. No prosecution commenced under this section be continued without a finding or placed on file.

(c) A business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000. A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred or where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under this section.

Section 51. (a) Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of trafficking of persons for forced services and shall be punished by imprisonment in the state prison for not more than 15 years, but not less than 5 years, and by a fine of not more than \$25,000,. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) A business entity that commits trafficking of persons for forced labor services shall be punished by a fine of not more than \$1,000,000. A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred or where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of person for forced labor or services shall be civilly liable for an offense under this section.

(c) Whoever commits the crime of trafficking of persons for forced services upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years. No prosecution commenced under this section shall be continued without a finding or placed on file.

Section 52. (a) Whoever, after having been convicted or adjudicated delinquent of a violation of section 50 or 51, commits a second or subsequent violation of either section 50 or 51, shall be punished by imprisonment in the state prison for life or for any

term of years, but not less than 10 years. Such sentence shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. No prosecutions commenced under this section shall be continued without a finding or placed on file.

(b) In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

Section 53. Whoever: (i) recruits, entices, harbors, transports, delivers or obtains by any means, another person, intending or knowing that the an organ, tissue or other body part of such person will be removed for sale, against such person's will; or (ii) knowingly receives anything of value, directly or indirectly as a result of a violation of this section shall be guilty of organ trafficking and punished by imprisonment in the state prison for not more than 10 years, a fine of not more than \$50,000, or both.

Section 54. The court shall transmit fines collected pursuant to sections 50 and 51 to the state treasurer. The treasurer shall deposit such fines into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

Section 55. All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B.

Section 56. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 50 or 51;

(ii) all books, records, and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 50 or 51;

(iii) all negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all negotiable instruments and securities used or intended to be used to facilitate any violation of section 50 or 51; and

(iv) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate any violation of section 50 or 51.

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

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

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

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of section 50 or 51;

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

(iii) no conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in violation of section 50 or 51.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property or other things of value subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real

property or other things of value or having final jurisdiction over any related criminal proceeding brought under section 50 or 51. In all such suits in which the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (c). The owner of the conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth to give notice by certified or registered mail to the owner of the conveyance, real property or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of sections 50 or 51. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as further provided in this section.

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

(i) half shall be divided equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than 1 department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the police portion equitably among these departments; and (ii) half shall be deposited into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

(f) All such proceeds received by any prosecuting district attorney or attorney general shall be deposited in the separate special law enforcement trust funds for each district attorney and for the attorney general within the office of the state treasurer, established under paragraph (d) of section 47 of chapter 94C. Each district attorney, the attorney general or the state treasurer shall ensure that proper accounting procedures are in place to account for proceeds received and expended pursuant to this section. All such proceeds shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide

matching funds to obtain federal grants, or for such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may also expend proceeds for human trafficking prevention or to provide victims' services to human trafficking victims. Each district attorney and the attorney general shall, within 90 days of the close of the fiscal year, file an annual report with the house and senate committees on ways and means on the use of the monies in such trust fund to prohibit human trafficking.

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

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

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

(ii) A district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought, to the division of capital asset management and maintenance office of seized

property management, established under section 47 of chapter 94C. The office of seized property management shall preserve and manage the property in a reasonable fashion and dispose of the property upon a judgment ordering forfeiture, and to enter into contracts to preserve, manage and dispose of the property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney under paragraph (f) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in paragraph (d).

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

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

Section 57. (a) For purposes of this section, human trafficking shall mean a severe form of trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000. The attorney general, district attorney or any law enforcement official may certify in writing to the United States Department of Justice, United States Department of Homeland Security or other federal agency, that an investigation or prosecution under this chapter has begun and that a human trafficking victim may cooperate or is currently cooperating with an investigation in order to enable that individual, if eligible under federal law, to qualify for an appropriate visa and to access available federal benefits. The attorney general, district attorney or any other law enforcement official may provide this certification to the victim or the victim's designated legal representative.

(b) The attorney general, district attorney, department of children and families or any law enforcement official may certify in writing to the United States Department of Justice, the United States Department of Homeland Security, including any subset of the Department of Homeland Security, such as the United States Customs and Immigration Service or the United States Immigration and Customs Enforcement, that a person making a request is a victim of a crime, and that the person has assisted, is assisting, or is likely to assist in the investigation or prosecution of a crime, in order to enable that person, if eligible under federal law, to qualify for an appropriate visa or to access available federal benefits. The attorney general, district attorney or any other law enforcement official may provide this certification to the victim or the victim's designated legal representative.

Section 58. In any prosecution or juvenile delinquency proceeding of a person who is a human trafficking victim, as defined by section 20M of chapter 233, it shall be an affirmative defense that while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have commenced .

SECTION 33. Chapter 272 of the General Laws is hereby amended by striking out section 8, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 8. Whoever solicits or receives compensation for soliciting for a prostitute shall be punished by imprisonment in a house of correction for not more than 2 and one-half years, or by a fine of not more than \$5,000 or by both such imprisonment and fine.

SECTION 34. Said chapter 272 is hereby further amended by striking out section 53A, as so appearing, and inserting in place thereof the following section:-

Section 53A. (a) Whoever engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, shall be punished by imprisonment in the house of correction for not more than 1 year or by a fine of not more than \$500, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

(b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct or to agree to engage in sexual conduct with another person, shall be punished by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not less than \$500 and not more than \$5,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

(c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to

pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18, shall be punished by imprisonment in state prison for not more than 10 years, or in the house of correction for not more than 2 and one-half years, and by a fine of not less than \$3,000 and not more than \$10,000, whether such sexual conduct occurs or not. No prosecution commenced under this section shall be continued without a finding or placed on file.

SECTION 35. Section 87 of chapter 276 of the General Laws, as amended by section 66 of said chapter 267, is hereby further amended by striking out the words “or twenty-four B” and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 36. The first paragraph of section 63 of chapter 277 of the General Laws, as most recently amended by section 69 of said chapter 267, is hereby further amended by striking out the words “or 24B,” and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 37. Said first paragraph of said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out the words “and 24” and inserting in place thereof the following words:- , 24 or subsection (a) of section 50.

SECTION 38. The second paragraph of said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out the words “or 26A” and inserting in place thereof the following words:- , 26A or 50.

SECTION 39. Section 16D of chapter 278 of the General Laws, as most recently amended by section 74 of said chapter 267, is hereby further amended by striking out the words “or twenty-four B” and inserting in place thereof the following words:- , 24B or 50.