HOUSE DOCKET, NO. 2819 FILED ON: 2/18/2011

HOUSE . . . . . No. 3284

The Commonwealth of Massachusetts

PRESENTED BY:

Geraldine M. Creedon

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

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

An Act relative to human trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Geraldine M. Creedon	*11th Plymouth*

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HOUSE . . . . . No. 3284

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

The Commonwealth of Massachusetts

An Act relative to human trafficking.

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

SECTION 1. 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 assets forfeited and the proceeds of assets seized and forfeited under chapter 265A and fines and assessments collected under said chapter 265A, 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 the fund under this section under sections 34 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, established in section 4 of chapter 258B, from time to time, at the request of the victim witness assistance 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 human trafficking victims, as defined in section 1 of said chapter 265A including, but not limited to, social services, housing, job training or victims' compensation and public and private non-profit organizations that assist human trafficking victims. The board shall develop written criteria for the awarding of those grants, which shall be evaluated and, if necessary, revised on an annual basis. In addition, the board shall make available monies from the fund to support the costs of production of certain materials by the attorney general under section 19 of chapter 265A.

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 December 1 of each calendar year. An amount not to exceed 5 per cent of the total monies deposited in the fund may be expended by

26 the board for administrative costs directly attributable to the grants and programs funded by the
27 fund including, but not limited to, the costs of clerical and support personnel. Any unexpended
28 monies remaining in the fund at the end of the fiscal year shall not revert to the General Fund but
29 shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure
30 made from the fund shall cause the fund to become deficient at any point.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 SECTION 7. Section 3 of chapter 258B of the General Laws, as so appearing is hereby
110 amended by inserting, after clause (v), the following clause:-

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

114 SECTION 8. The General Laws are hereby amended by inserting after chapter 265 the
115 following chapter:-

116 Chapter 265A

117 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

118 Section 1. As used in this chapter the following words shall, unless the context clearly
119 requires otherwise, have the following meanings:

120 "Asset", property including, but not limited to, real property, things affixed to and found
121 in land and tangible and intangible personal property, including rights, privileges, interests,
122 claims, accounts and securities.

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

127 "Bodily injury", substantial impairment of the physical condition, including, but not
128 limited to, a burn, bone fracture, subdural hematoma, injury to an internal organ or an injury
129 which occurs as the result of repeated harm to a bodily function or organ, including 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”, a person under 18 years of age.

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

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

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

141 “Forced labor or services”, work of economic or financial value or activities performed
142 directly or indirectly under the supervision of or for the benefit of another including, but not
143 limited to, sexual conduct for a fee or other thing of value, sexually-explicit performances and
144 involvement in the production of pornography; provided, however, that such work or services
145 shall 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 a 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) blackmail; or

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

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

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

167 "Human trafficking victim", a person subjected to forced labor or services, forced
168 engagement in sexually-explicit performance, forced participation in the production of
169 pornography or forced engagement in sexual conduct for a fee or other thing of value or a person
170 otherwise victimized by human trafficking. .

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

173 "Maintain", to secure continued performance of labor or services, regardless of any initial
174 agreement on the part of the victim to perform such type of service.

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

178 "Sexually-explicit performance", an act involving sexual conduct intended to arouse or
179 satisfy the sexual desires of another and which is a live and public or private act or a
180 photographed, recorded or videotaped act or show.

181 Section 2. Whoever intentionally subjects another person to forced labor or services shall
182 be guilty of the crime of involuntary servitude and shall be punished by a fine of not less than
183 $2,000 and by imprisonment in the state prison for not more than 20 years.

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

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

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

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

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

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

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

208 Section 7. Whoever (i) intentionally recruits, entices, harbors, transports, delivers or
209 obtains by any means, another person, or attempts to do so, intending or knowing that the person
210 will have an organ, tissue or other body parts removed for sale; or (ii) intentionally benefits
211 financially or receives anything of value, directly or indirectly, or attempts to do so, from a
212 violation of this section, shall be guilty of organ trafficking and punished by imprisonment in the
213 state prison for not more than 20 years and a fine of not less than $10,000 nor more than
214 $50,000.

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

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

223 (c) Whoever commits a violation of section 2, 3 or 4 and, as a result: (i) causes bodily
224 injury to the victim of such offense shall be punished by imprisonment in the state prison for not
225 more than 15 years; or (ii) causes serious bodily injury to the victim of such offense shall be
226 punished by imprisonment in the state prison for not more than 20 years. Under section 8A of
227 chapter 279, such sentences shall begin from and after the expiration of the sentence imposed for
228 a violation of section 2, 3 or 4.

229 (d) Whoever commits a violation of section 2, 3 or 4 and as a result causes the death of
230 another, shall be punished by imprisonment in the state prison for life or for any term of years,

231 but for not less than 20 years. Under section 8A of chapter 279, such sentence shall begin from
232 and after the expiration of the sentence imposed for a violation of section 2, 3 or 4.

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

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

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

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

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

251 (c) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

266 Section 11. (a) All fines collected under this chapter shall be transmitted monthly by the
267 courts to the state treasurer who shall then deposit, invest and transfer the monies, from time to
268 time, into the Victims of Human Trafficking Trust Fund established in section 66A of chapter
269 10.

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

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

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

293 (b) Upon a finding of responsibility for aiding or participating in involuntary servitude,
294 trafficking of a 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 for each such violation. No
296 court shall waive the assessment for any reason. The court may, in its discretion, order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

341 (i) no conveyance used by any person as a common carrier in the transaction of business
342 as a common carrier shall be forfeited unless it shall appear that the owner or other person in
343 charge of such conveyance was a consenting party or had knowledge of a violation of section 2,
344 3 or 4;

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

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

352 (d) A district attorney or the attorney general may petition the superior court in the name
353 of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance,
354 real property, monies or other things of value subject to forfeiture under subsection (a). Such
355 petition shall be filed in the court having jurisdiction over the conveyance, real property, monies
356 or other things of value or having final jurisdiction over any related criminal proceeding brought
357 under section 2, 3 or 4. In all such suits in which the property is claimed by any person other
358 than the commonwealth, the commonwealth shall have the burden of proving to the court the
359 existence of probable cause to institute the action and any such claimant shall then have the
360 burden of proving that the property is not subject to forfeiture under subsection (c). The owner
361 of the conveyance or real property or other person claiming an exception under subsections (c)
362 and (j) shall have the burden of proof. The court shall order the commonwealth to give notice by
363 certified or registered mail to the owner of the conveyance, real property, monies or other things
364 of value and to such other persons as appear to have an interest in the conveyance, real property,
365 monies or other things of value, and the court shall promptly, but not less than 2 weeks after

366 notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real
367 property, monies or other things of value, the court may continue the hearing on the petition
368 pending the outcome of any criminal trial related to the violation of section 2, 3 or 4. At such
369 hearing the court shall hear evidence and make conclusions of law, and shall issue a final order
370 based upon those conclusions, from which the parties shall have a right of appeal. In all such
371 suits where a final order results in a forfeiture, the final order shall provide for disposition of the
372 conveyance, real property, monies or any other thing of value by the commonwealth or any
373 subdivision of the commonwealth in any manner not prohibited by law, including official use by
374 an authorized law enforcement or other public agency, or sale at public auction or by competitive
375 bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the
376 forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the
377 balance of the sale shall be distributed as further provided in this section.

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

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

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

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

400 (g) All such monies and proceeds received by a police department shall be deposited in a
401 special law enforcement trust fund and shall be expended without further appropriation to: defray
402 the costs of protracted investigations; provide additional technical equipment or expertise;

403 provide matching funds to obtain federal grants; or accomplish such other law enforcement
404 purposes as the chief of police of such city or town, or the colonel of state police deems
405 appropriate, but such funds shall not be considered a source of revenue to meet the operating
406 needs of such department.

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

415 (i) (1) During the pendency of the proceedings the court may issue at the request of the

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

426 (2) A district attorney or the attorney general may refer any real property and any

427 furnishings, equipment and related personal property located in that property, for which
428 seizure is sought, to the division of capital asset management and maintenance office of seized
429 property management, established under section 47 of chapter 94C. The office of seized
430 property management shall preserve and manage the property in a reasonable fashion and
431 dispose of the property upon a judgment ordering forfeiture, and enter into contracts to preserve,
432 manage and dispose of the property. The office of seized property management may receive
433 initial funding from the special law enforcement trust funds of the attorney general and each
434 district attorney under paragraph (f) and shall subsequently be funded by a portion of the
435 proceeds of each sale of such managed property to the extent provided as payment of reasonable
436 expenses in paragraph (d).

437 (j) The owner of any real property which is the principal domicile of the immediate
438 family of the owner and which is subject to forfeiture under this section may file a petition for
439 homestead exemption with the court having jurisdiction over such forfeiture. The court may, in

440 its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of
441 chapter 188. The value of the balance of the principal domicile, if any, shall be forfeited as
442 provided in this section. Such homestead exemption may be acquired on only 1 principal
443 domicile for the benefit of the immediate family of the owner.

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

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

460 Section 17. (a) For purposes of this section, human trafficking shall mean a severe form
461 of trafficking under Section 7102(8) of Title 22 of the United States Code on October 28, 2000.
462 The attorney general, district attorney or any law enforcement official shall certify in writing to
463 the United States Department of Justice or other federal agency, such as the United States
464 Department of Homeland Security, that an investigation or prosecution under this chapter has
465 begun and that the human trafficking victim is willing to cooperate or is cooperating with the
466 investigation in order to enable that individual, if eligible under federal law, to qualify for an
467 appropriate visa and to access available federal benefits. Cooperation with law enforcement
468 shall not be required of human trafficking victims who are under 18 years of age. This
469 certification shall be made available to the victim and the victim's designated legal
470 representative.

471 (b) When a credible report has been made to the police of a crime described in this
472 chapter, and upon request of the victim of that crime, the attorney general, district attorney,
473 department of social services or any law enforcement official shall certify in writing to the
474 United States Department of Justice, the United States Department of Homeland Security,
475 including any subset of the Department of Homeland Security, such as the United States
476 Customs and Immigration Service or the United States Immigration and Customs Enforcement,
477 that the individual making the request is a victim of such crime and that the individual has been,

478 is being, or is likely to be helpful in the investigation or prosecution, of that crime in order to
479 enable that individual, if eligible under federal law, to qualify for an appropriate visa and to
480 access available federal benefits. For the purposes of this section, an individual shall be deemed
481 to have been helpful in the investigation or prosecution of the crime if the individual has filed a
482 credible report of the crime with the police or other law enforcement officials or provided a
483 statement concerning the underlying circumstances of the crime to the police or other law
484 enforcement officials even where that victim has requested that no domestic prosecution occur
485 because of a reasonable fear that harm will come to individuals who reside abroad where local
486 law enforcement cannot provide protection. The certification provided under this subsection, as
487 well as a photocopy of the victim's report of the crime, shall be made available to the victim and
488 the victim's designated representative.

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

496 Section 19. (a)(1) Subject to funding made available under paragraph (2), the office of

497 the attorney general shall prepare and make available educational or informational
498 materials on human trafficking laws and services that are available to protect or treat victims of
499 human trafficking to state and local employers and their employees who, through the dispatch of
500 their duties, may encounter individuals who either identify themselves as or are suspected of
501 being human trafficking victims.

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

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

512 SECTION 9. The second sentence of the first paragraph of section 63 of chapter 277 of
513 the General Laws, as amended by section 67 to 69, inclusive, of chapter 267 of the acts of 2010,

514 is hereby further amended by inserting, after the figure “265”, the following words:- ,or section
515 2, 3, 4, 5, 6 or 7 of chapter 265A.

516 SECTION 10. The second paragraph of said section 63 of said chapter is hereby amended
517 by inserting, after the figure “265”, the following words:- ,or section 2, 3, 4, 5, 6 or 7 of chapter
518 265A.