

**HOUSE . . . . . No. 03284**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Geraldine Creedon*

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

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

An Act relative to human trafficking.

\_\_\_\_\_  
PETITION OF:

NAME:

*Geraldine Creedon*

DISTRICT/ADDRESS:

*11th Plymouth*

# HOUSE . . . . . No. 03284

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

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to human trafficking.

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

1 SECTION 1. Chapter 10 of the General Laws is hereby amended by inserting after section 66 the  
2 following section:-  
3 Section 66A. There shall be established and set up on the books of the commonwealth a separate  
4 fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of  
5 assets forfeited and the proceeds of assets seized and forfeited under chapter 265A and fines and  
6 assessments collected under said chapter 265A, together with any interest or earnings accrued on  
7 such monies through investment or deposit. The state treasurer shall be the custodian of the fund  
8 and shall receive, deposit and invest all monies transmitted to the fund under this section under  
9 sections 34 and 38 of chapter 29 in such a manner as to secure the highest rate of return available  
10 consistent with the safety of the fund and shall credit interest and earnings on the trust fund  
11 corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of  
12 the fund to the victim and witness assistance board, established in section 4 of chapter 258B,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101 SECTION 6. Section 21B of said chapter 233, as amended by sections 46 to 48, inclusive, of  
102 chapter 267 of the acts of 2010, is hereby further amended by striking out the first sentence and  
103 inserting in place thereof the following sentence:- Evidence of the reputation of a victim's sexual  
104 conduct shall not be admissible in any investigation or proceeding before a grand jury or any  
105 court of the commonwealth for a violation of sections 13B, 13B  $\frac{1}{2}$ , 13B  $\frac{3}{4}$ , 13F, 13H, 22, 22A,  
106 22B, 22C, 23, 23A, 23B, 24 and 24B of chapter 265, section 4 of chapter 265A or section 5 of  
107 chapter 272.

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

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

115 Chapter 265A

116 HUMAN TRAFFICKING CRIMES AND PROTECTION FOR VICTIMS.

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

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

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

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

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

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

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

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

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

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

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

144 (ii) psychological manipulation;

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

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

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

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

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

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

153 (vii) blackmail; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 (c) physical and occupational therapy or rehabilitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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