



<b>Acts</b>
<b>2011</b>
<b>CHAPTER 178</b> AN ACT RELATIVE TO THE COMMERCIAL EXPLOITATION OF PEOPLE.

*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. The definition of "sex offense" in [section 178C of chapter 6 of the General Laws](#), as appearing in the 2010 Official Edition, is hereby amended by inserting after the words "chapter 265", in line 72, the following words:- ; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under [section 26D of said chapter 265](#); trafficking of persons for sexual servitude under section 50 of said chapter 265; a second or subsequent violation of human trafficking for sexual servitude under [section 52 of chapter 265](#).

SECTION 2. The definition of "sex offense involving a child" in said [section 178C of said chapter 6](#), as so appearing, is hereby amended by inserting after the words "chapter 265", in line 105, the following words:- ; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under [section 26D of said chapter 265](#); trafficking of persons for sexual servitude upon a person under 18 years of age under subsection (b) of [section 50 of said chapter 265](#).

SECTION 3. The definition of "sexually violent offense" in said [section 178C of said chapter 6](#), as so appearing, is hereby amended by inserting after the words "chapter 265", in line 129, the following words:- ; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under [section 26D of said chapter 265](#); trafficking of persons for sexual servitude under section 50 of chapter 265; a second or subsequent violation of human trafficking for sexual servitude under [section 52 of chapter 265](#).

SECTION 4. The definition of "sexual assault" in [section 1 of chapter 9A of the General Laws](#), as so appearing, is hereby amended by striking out, in line 19, the words "and 24B of chapter 265" and inserting in place thereof the following words:- , 24B, 26D and 50 of chapter 265.

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

Section 66A. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of proceeds of assets seized and forfeited pursuant to sections 55 and 56 of chapter 265 and fines and assessments collected pursuant to [sections 50, 51 and 54 of said chapter 265](#), together with any interest or earnings accrued on such monies through investment or deposit. The state treasurer shall

be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with [sections 34 and 38 of chapter 29](#) in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of the fund to the victim and witness assistance board, as established in section 4 of chapter 258B, from time to time, at the request of the board. The board shall award and administer grants from the fund, without further appropriation, to public, private non-profit or community-based programs in the commonwealth to provide services to victims of offenses under said [sections 50 and 51 of said chapter 265](#).

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

SECTION 6. [Section 21 of chapter 119 of the General Laws](#), as appearing in the 2010 Official Edition, is hereby amended by inserting after the definition of "51A report", the following 2 definitions:-

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

"Appropriate services", the assessment, planning and care provided by a state agency or non-governmental organization or entity, through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family-based foster care or the community, including food, clothing, medical care, counseling and appropriate crisis intervention services, provided: (i) that such agency, organization or entity has expertise in providing services to sexually exploited children or children who are otherwise human trafficking victims; and (ii) that such services are provided in accordance with such regulations that the department of children and families may adopt or the policies of such department.

SECTION 7. The definition of "child in need of services" in said [section 21 of said chapter 119](#), as so appearing, is hereby amended by striking out the words "or (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter" and inserting in place thereof the following words :- (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter; or (e) is a sexually exploited child.

SECTION 8. Said [section 21 of said chapter 119](#), as so appearing, is hereby further amended by inserting after the definition of "Serious bodily injury", the following definition:-

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

- (1) is the victim of the crime of sexual servitude pursuant to [section 50 of chapter 265](#) or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
- (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
- (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or
- (4) engages in common night walking or common streetwalking under section 53 of chapter 272.

SECTION 9. Said [chapter 119](#) is hereby further amended by inserting after section 39J the following 2 sections:-

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

(b) The services that shall be provided under this section shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person.

(c) In determining the need for and capacity of the services that may be provided under this section, the department of children and families shall recognize that sexually exploited youth have separate and distinct service needs according to gender and appropriate services shall be made available while ensuring that an appropriate continuum of services exists.

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

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

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

Section 39L. (a) Before or after arraignment in any juvenile delinquency or criminal proceeding against a sexually exploited child alleging that such juvenile or such defendant violated the prohibition against common night walking or common streetwalking under section 53 of chapter 272 or the provisions of subsection (a) of section 53A of said chapter 272, there shall be a presumption that a care and protection petition on behalf of such child, or a child in need of services petition under section 39E, shall be filed. Any person, including the juvenile, may file a care and protection petition on behalf of such child, including a petition for emergency commitment under section 24, or a parent or a police officer may file a child in need of services petition under section 39E.

(b) The court may appoint a guardian ad litem and shall hold a hearing on such petition. The court may allow a reasonable delay in the proceedings, including any arraignment, to consider the petition. The necessary findings of fact to support the court's decision shall be reduced to writing and made part of the court record.

(c) Upon a motion by a party to the juvenile delinquency or criminal proceeding or by a guardian ad litem, unless the district attorney or the attorney general objects, and upon a finding that a child alleged to be a juvenile delinquent by reason of violating section 53 of chapter 272 or subsection (a) of section 53A of said chapter 272 is a child in need of care and protection or a child in need of services, the court shall, if arraignment has not yet occurred, indefinitely stay arraignment and place the proceeding on file. If the court finds that the child has failed to substantially comply with the requirements of services or that the child's welfare or safety so requires, the court may remove the proceeding from file, arraign the child and restore the delinquency or criminal complaint to the docket for trial or further proceedings in accordance with the regular course of such proceedings. If arraignment has already occurred, unless the district attorney or the attorney general objects, the court shall place the child on pretrial probation under section 87 of chapter 276. If appropriate, the conditions of such probation shall include, but not be limited to, requiring the child to substantially comply with all lawful orders of the court, including orders relating to any care and protection or child in need of services proceeding, and the child shall also comply with the guidance and services of the department or any designated non-governmental service provider. If the child fails to substantially comply with the conditions of probation or if the child's welfare or safety so requires, the court may in its discretion restore the delinquency or criminal complaint to the docket for trial or further proceedings in accordance with the regular course of such proceedings.

SECTION 10. Section 51A of said chapter 119, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 5 to 9, inclusive, the words "or (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect" and inserting in

place thereof the following words:-; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

SECTION 11. Subsection (a) of section 51B of said chapter 119, as so appearing, is hereby amended by adding the following sentence:- The department shall immediately report to the district attorney and local law enforcement authorities, a sexually exploited child or a child who is otherwise a human trafficking victim, regardless of whether the child is living with a parent, guardian or other caretaker.

SECTION 12. Clause (3) of the second paragraph of subsection (k) of said section 51B of said chapter 119, as so appearing, is hereby amended by inserting after the words "chapter 272" the following words:- or is a sexually exploited child or a child who is otherwise a human trafficking victim.

SECTION 13. Section 51D of said chapter 119, as so appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

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

SECTION 14. Said section 51D of said chapter 119, as so appearing, is hereby further amended by inserting after the fifth paragraph the following paragraph:-

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

SECTION 15. Section 55B of said chapter 119, as so appearing, is hereby amended by inserting after the figure "23B", in line 17, the following words:- or section 50.

SECTION 16. Section 58 of said chapter 119, as so appearing, is hereby amended by striking out, in line 13, the words "or section 23B" and inserting in place thereof the following words:- , section 23B or section 50.

SECTION 17. Chapter 233 of the General Laws is hereby amended by inserting after section 20L the

following section:-

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

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

"Human trafficking victim" or "victim", a person who is subjected to the conduct prohibited under sections 50 or 51 of chapter 265.

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

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

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

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

SECTION 18. Section 21B of said chapter 233, as appearing in the 2010 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Evidence of the reputation of a victim's sexual conduct shall not be admissible in an investigation or proceeding before a grand jury or a court of the commonwealth for a violation of sections 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 50 or 51 of chapter 265.

SECTION 19. Section 4C of chapter 260 of the General Laws, as so appearing, is hereby amended by

striking out, in line 12, the words “or twenty-four B” and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 20. Said chapter 260 of the General Laws is hereby further amended by inserting after section 4C the following section:-

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

(b) A civil action for trafficking of persons for forced labor or services or sexual servitude shall be commenced within 3 years of the date on which the human trafficking victim was freed from human trafficking or, if the victim was a child during the commission of the offense, within 3 years after the date the plaintiff attains the age of 18.

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

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

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

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

SECTION 21. Section 24C of chapter 265 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “sixty-five”, in line 7 , the following words:- , or an arrest, investigation or complaint for trafficking of persons under section 50 of said chapter 265.

SECTION 22. Said chapter 265 is hereby further amended by inserting after section 26C the following section:-

Section 26D. (a) As used in this section, the term "entice" shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.

(b) As used in this section, the term “electronic communication” shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.

(c) Whoever, by electronic communication, knowingly entices a child under the age of 18 years, to

engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so, shall be punished by imprisonment in a house of correction for not more than 2 ½ years or in the state prison for not more than 5 years or by a fine of not less than \$2,500, or by both such fine and imprisonment.

(d) Whoever, after having been convicted of, or adjudicated delinquent by reason of a violation of this section, commits a second or subsequent such violation, shall be punished by imprisonment in the state prison for not less than 5 years and by a fine of not less than \$10,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release or furlough or receive any deduction from the sentence for good conduct until that person has served 5 years of such sentence.

SECTION 23. Said chapter 265 of the General Laws is hereby amended by adding after section 48 the following 9 sections:-

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

“Commercial sexual activity”, any sexual act on account of which anything of value is given, promised to or received by any person.

“Financial harm”, a detrimental position in relation to wealth, property or other monetary benefits that occurs as a result of another person’s illegal act including, but not limited to, extortion under by section 25, a violation of section 49 of chapter 271 or illegal employment contracts.

"Forced services", services performed or provided by a person that are obtained or maintained by another person who: (i) causes or threatens to cause serious harm to any person; (ii) physically restrains or threatens to physically restrain another person; (iii) abuses or threatens to abuse the law or legal process; (iv) knowingly destroys, conceals, removes, confiscates or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) engages in extortion under section 25; or (vi) causes or threatens to cause financial harm to any person.

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

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

Section 50. (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be

reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.

(c) A business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000.

(d) A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under this section.

Section 51. (a) Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of trafficking of persons for forced services and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for forced services upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.

(c) A business entity that commits trafficking of persons for forced labor services shall be punished by a fine of not more than \$1,000,000.

(d) A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of person for forced labor or services shall be civilly liable for an offense under this section.

Section 52. (a) Whoever, after having been convicted of or adjudicated delinquent by reason of a violation of section 50 or 51, commits a second or subsequent violation of either section 50 or 51, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. Such sentence shall not be reduced to less than 10 years, or suspended, nor shall any person

convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. No prosecutions commenced under this section shall be continued without a finding or placed on file.

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

Section 53. (a) Whoever: (i) recruits, entices, harbors, transports, delivers or obtains by any means, another person, intending or knowing that an organ, tissue or other body part of such person will be removed for sale, against such person's will; or (ii) knowingly receives anything of value, directly or indirectly as a result of a violation of clause (i) shall be guilty of organ trafficking and punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, or both.

(b) Whoever commits the crime of organ trafficking upon a person under 18 years of age shall be punished by imprisonment in the state prison for 5 years. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from such sentence for good conduct until having served 5 years of such sentence.

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

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

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

- (i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 50 or 51;
- (ii) all books, records and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 50 or 51;
- (iii) all negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all negotiable instruments

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

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

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

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

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

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

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

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property or other things of value subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real property or other things of value or having final jurisdiction over any related criminal proceeding brought under section 50 or 51. In all such suits in which the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (c). The owner of the conveyance or real property, or other person claiming thereunder, shall have the burden of proof as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth to give notice by certified or registered mail to the owner of the conveyance, real property or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of sections 50 or 51. At such hearing, the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order from which the parties shall have a right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property or any other thing of value by the commonwealth or any subdivision thereof

in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as further provided in this section.

(e) The final order of the court shall be deposited into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

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

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

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

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

exemption may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

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

Section 57. In any prosecution or juvenile delinquency proceeding of a person who is a human trafficking victim, as defined by section 20M of chapter 233, it shall be an affirmative defense to charges of engaging in common night walking or common streetwalking in violation of section 53 of chapter 272 and to a violation of section 53A of said chapter 272 that, while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have commenced.

SECTION 24. Chapter 272 of the General Laws is hereby amended by striking out section 8, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 8. Whoever solicits or receives compensation for soliciting for a prostitute shall be punished by imprisonment in a house of correction for not more than 2 and one-half years, or by a fine of not less than \$1,000 and not more than \$5,000 or by both such imprisonment and fine.

SECTION 25. Said chapter 272 is hereby further amended by striking out section 53A, as so appearing, and inserting in place thereof the following section:-

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

(b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct, or to agree to engage in sexual conduct with another person, shall be punished by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not less than \$1,000 and not more than \$5,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

(c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18, shall be punished by imprisonment in the state prison for not more than 10 years, or in the house of correction for not more than 2 and one-half years and by a fine of not less than

\$3,000 and not more than \$10,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not; provided, however, that a prosecution commenced under this section shall not be continued without a finding or placed on file.

SECTION 26. Section 87 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 11, the words "or twenty-four B" and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 27. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words "or 24B," and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 28. Said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out, in line 12, the words "and 24" and inserting in place thereof the following words:- , 24 or subsection (a) of section 50.

SECTION 29. Said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out, in line 25, the words "or 26A" and inserting in place thereof the following words:- 26A or 50.

SECTION 30. Section 16D of chapter 278 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words "or twenty-four B" and inserting in place thereof the following words:- , 24B or 50.

SECTION 31. (a) There shall be an interagency task force to address all aspects of human trafficking, including sex trafficking and labor trafficking. The task force shall consist of the attorney general or the attorney general's designee, who shall serve as the chair, the colonel of state police or the colonel's designee, a representative of the Massachusetts police chiefs association, a representative of the Massachusetts district attorneys' association, the commissioner of the Boston police department or the commissioner's designee, the director of the division of professional licensure or the director's designee, a representative of the Massachusetts office for victim assistance, the director of the department of labor standards or the director's designee, the commissioner of the department of children and families or the commissioner's designee, the secretary of the executive office of public safety or the secretary's designee, the commissioner of the office of probation or the commissioner's designee; a representative of a group dedicated to immigrant and refugee issues appointed by the governor; a representative of a group dedicated to the prevention of violence against women appointed by the governor; a representative of an entity dedicated to prevention of and intervention in the trafficking of children appointed by the governor; a survivor of human trafficking appointed by the governor; a human trafficking attorney appointed by the governor; a human trafficking caseworker appointed by the governor; a mental health professional appointed by the governor and a university researcher with a background in human trafficking appointed by the governor.

(b) Subject to appropriation, the task force shall:

- (i) coordinate the collection and sharing of human trafficking data among government agencies; provided, however, that such data collection shall respect the privacy of victims of human trafficking; coordinate strategies and make recommendations for law enforcement to share information for the purposes of detecting individuals and groups engaged in human trafficking;
- (ii) review and recommend policies and procedures to enable state government to work with non-governmental organizations and other elements of civil society to prevent human trafficking and to protect and provide assistance to victims of trafficking;
- (iii) identify and review the existing services and facilities that meet the needs of victims of human trafficking including, but not limited to, health and mental health services, housing, education and job training, legal services and victim compensation;
- (iv) evaluate approaches to increase public awareness of human trafficking and offer recommendations for programs and educational and training opportunities for law enforcement and social service providers including, but not limited to, methods used to identify human trafficking victims including preliminary interviewing and questioning techniques, methods of protecting the special needs of women and child human trafficking victims, developments in state and federal laws regarding human trafficking and methods to increase effective collaboration between state and local agencies, law enforcement, social service providers and non-governmental organizations;
- (v) examine ways to curtail the demand side of trafficking such as self sustaining first offender diversion programs;
- (vi) examine the costs associated with establishing a safe house pilot program for adult and child victims of human trafficking and identify public and private funding sources that may be used to develop and implement a safe house pilot program;
- (vii) examine cost-effective notices, announcements or advertisements that may be displayed in public places, such as airports, train stations, bus stations, hotels, massage parlors, spas, strip clubs and other sexually-oriented businesses providing information relating to services for human trafficking victims;
- (viii) recommend strategy and relevant methodologies for training providers in health and human services in the recognition of signs and circumstances indicating that an individual is the victim of human trafficking and the appropriate steps to report the individual to the appropriate law enforcement personnel or agencies;
- (ix) recommend ways to develop and promulgate educational materials and health curricula that may be used by school administrators and educators to identify human trafficking victims and the appropriate actions to be undertaken when such victims are identified and to educate school officials as to the scope and magnitude of human trafficking in the nation and the commonwealth including, but not limited to, how to prevent it and developing a parent guide and teacher training material on internet safety and methods of preventing the exploitation of minors over the internet; and
- (x) submit a report of its findings and recommendations to the clerks of the senate and the house of representatives who shall forward the report to the chairs of the joint committee on the judiciary not later than 18 months after the effective date of this act. The task force shall determine if subsequent reports are necessary in order to properly address human trafficking.

*Approved, November 21, 2011.*

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