A Guide to Human Trafficking for State Courts

July 2014

HUMAN TRAFFICKING
AND THE STATE COURTS COLLABORATIVE

This Guide to Addressing Human Trafficking in the State Courts (*HT Guide*) was made possible by funding from the State Justice Institute (SJI) under grant number SJI-13-P-095, Human Trafficking and the State Courts Collaborative. The points of view expressed in this *HT Guide* are those of the authors and do not necessarily represent the official positions or policies of SJI.

Contributors 1

Chapter 1 | Addressing Human Trafficking in the State Courts: Background and Approach 5
John A. Martin, Center for Public Policy Studies

Chapter 2 | Community Courts, Specialized Dockets, and Other Approaches to Address Sex Trafficking 37
Katie Crank, Center for Court Innovation

Chapter 3 | Human Trafficking and Immigrant Victims: What Can State Courts Do? 47
Steven Weller, Center for Public Policy Studies
Angie Junck, Immigrant Legal Resource Center

Chapter 4 | Child Trafficking Victims and the State Courts 77
Miriam Goodman, Center for Court Innovation
Julie Laurence, Girls Educational Mentoring Services

Chapter 5 | Identifying and Responding to Sex Trafficking 89
Miriam Goodman and Robyn Mazur, Center for Court Innovation

Chapter 6 | Ethical Issues for Judges and Court Practitioners in Human Trafficking-Involved Cases 101
Steven Weller, Center for Public Policy Studies
Judge Elizabeth Lee, San Mateo County, California, Superior Court
Judge Dana Leigh Marks, President, National Association of Immigration Judges

Chapter 7 | The Affordable Care Act: Assisting Victims of Human Trafficking in Rebuilding Their Lives 129
Peter Coolsen, Cook County Illinois Circuit Court

Chapter 8 | Tribal Justice and Sex Trafficking 135
Kathryn Ford, Center for Court Innovation

Chapter 9 | Addressing the Complexities of Language and Culture in Human Trafficking-Involved Cases 141
John A. Martin, Center for Public Policy Studies

Chapter 10 | Labor Trafficking 167
Steve Weller, Center for Public Policy Studies
John A. Martin, Center for Public Policy Studies

Chapter 11 | Human Trafficking Educational Resources for Judges and Court Practitioners 183
William J. Brunson, The National Judicial College
Steven Weller, Center for Public Policy Studies
Marie Komisar, National Association of Women Judges
John A. Martin, Center for Public Policy Studies

Contributors to the NACM Guide to Addressing Human Trafficking in the State Courts.

William J. Brunson is the director of special projects for the National Judicial College (NJC). For over 20 years he has provided business development, conducted faculty workshops, managed international programs, and overseen numerous grant projects primarily targeting the needs of judges and court practitioners. He also developed the 2013-released education curriculum, *Human Trafficking: What Judges Need to Know*. William received his J.D. from Willamette University College of Law and is the co-author of *HT Guide* ***Chapter 11***.

Peter Coolsen is Court Administrator of the Criminal Division, Circuit Court of Cook County, the largest unified court system in the United States. He is a Fellow of the Institute for Court Management, National Center for State Courts and a former board member of the National Association for Court Management. He currently serves on the board of the World Engagement Institute and represented them at *Toward Peace Building in Iraq*, a rule of law conference held in 2011 in Erbil, Iraq. Peter authored ***Chapter 7*** of the *HT Guide* and represented NACM in the development of this publication.

Kathryn Ford, LCSW, is the Children and Families Specialist for the Tribal Justice Exchange and Domestic Violence Programs at the Center for Court Innovation. For the past ten years, she has worked with state and tribal jurisdictions on strengthening their justice systems and improving responses to violence and victimization issues. Ms. Ford earned her Masters in Social Work at the Columbia University School of Social Work. Kathryn authored *HT Guide* ***Chapter 8***.

Katie Crank is the Coordinator of Domestic Violence Programs at the Center for Court Innovation. She provides technical assistance to courts and community stakeholders wishing to improve their response to domestic violence, sexual assault, and trafficking. Prior to her work with the Center for Court Innovation, Katie worked with domestic violence shelters and legal aid organizations in Ghana (West Africa), Indiana, Missouri, and Illinois. She earned her B.A. from Indiana University-Bloomington, and received her J.D. and M.S.W. from Washington University in St. Louis. Katie authored ***Chapter 2***.

Miriam Goodman is the coordinator of trafficking programs at the Center for Court Innovation. Currently, she is involved in creating the Human Trafficking Courts in New York State, providing training to judges, court practitioners, and clinicians about trauma and working with trafficking survivors. A trained therapist, she received her M.S.W. from the Silver School of Social Work at New York University. Miriam co-authored ***Chapters 4*** and ***5***.

Angie Junck is a Supervising Attorney at the Immigrant Legal Resource Center (ILRC) in San Francisco, California, where she focuses on immigrant youth issues, immigration consequences of crime and delinquency, and immigration enforcement. She regularly provides training and technical assistance on these issues and is an author of numerous immigration legal publications including ILRC's Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth. She sits on the American Bar Association's Immigration Commission and is the co-chair of the Immigration Committee of the ABA's Criminal Justice Section. Angie co-authored ***Chapter 3***.

Marie Komisar, Executive Director of the National Association of Women Judges, has over 30 years of experience working with not for profit organizations including the executive directorships of the Fairfax County Bar Association (VA), the Dutchess County Bar Association (NY) and the National Organization of Young Audiences, Inc. (NY). Marie has a B.A. in Communications, and a Paralegal Degree from Marist College as well as a Masters in Finance and Management from the Wagner School at New York University. Marie co-authored *Chapter 11* of the *HT Guide*.

Elizabeth Lee is a Judge on the Superior Court of San Mateo County in California where she has presided over delinquency and dependency matters. She is the Chair of San Mateo County's Blue Ribbon Commission on Foster Care Youth. She is also a member of the California Judicial Council's Advisory Committee on Collaborative Justice Courts. She is currently the Chair of the Human Trafficking Subcommittee for the National Association of Women Judges. Prior to joining the bench, Lee worked as an Assistant United States Attorney for the U.S. Attorney's Office in the Northern District of California where she handled a number of criminal investigations involving human trafficking. She served as the Deputy Chief of the Organized Crime Strike Force from 1999 – 2005. Lee earned her J.D. from Columbia University in 1983 and a B.A. from the University of California at Berkeley in 1979. Judge Lee co-authored *Chapter 6*.

Julie Laurence is Chief Program Officer and a member of the GEMS Executive Leadership Team. Ms. Laurence oversees all program and service delivery and works with GEMS external partners. She is a social work professional with over 18 years of experience in mental health counseling, program development, and non-profit management and advocating for disenfranchised youth and young adults and social justice. Having provided clinical support, supervision and program implementation for 10 years at GEMS, Ms. Laurence brings a unique understanding of transformational relationships and survivor-leadership vital to the provision of services to commercially sexually-exploited and trafficked youth. She received her Master's Degree in Social Work from Hunter College and her Bachelor of Arts Degree from Loyola University and is a graduate of Columbia University Graduate school of Business Senior Leaders Program for Nonprofit Professionals. Julie co-authored *Chapter 4*.

Dana Leigh Marks is currently serving her 12th year as President of the National Association of Immigration Judges. She has been a full-time Immigration Judge in San Francisco since 1987. Previously Judge Marks was a private practitioner in the field of immigration law for ten years, and successfully orally argued the landmark asylum case of INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). Judge Marks frequently speaks, writes and teaches various aspects of immigration law and policy to judges, lawyers and journalists. Judge Marks co-authored *Chapter 6*.

John A. Martin, from the Center for Public Policy Studies in Denver, is the Director of the Human Trafficking and the State Courts Collaborative. For over 40 years he has worked as a planning, policy, and management consultant with courts, justice, and human service organizations across the nation. Dr. Martin earned his Ph.D. at the School of Public Affairs of the University of Colorado. John authored or co-authored *HT Guide* *Chapters 1*, *9*, *10*, and *11* and also served as over all editor of the *HT Guide*.

Robyn Mazur is currently the Director of Special Projects, Violence Against Women at the Center for Court Innovation in New York City. In this capacity, Ms. Mazur provides technical assistance and strategic planning advice to courts and communities who are interested in enhancing their response to trafficking and domestic and sexual violence by supplying best-practice information, written materials, needs assessments, trainings and consultation. Ms. Mazur is an attorney with extensive experience in the field of violence against women. Prior to working at the Center, she was a Staff Attorney at the National Network to End Domestic Violence and was the Staff Director of the Mayor's Commission on Violence Against Women both in Washington, DC. She was also an attorney at the House of Ruth Shelter, Domestic Violence Legal Clinic in Baltimore, MD. Ms. Mazur is a graduate of Tulane University and the University of Baltimore School of Law. Robyn co-authored *Chapter 5*.

David Price is the President and co-founder of the Center for Public Policy Studies. David has 38 years of experience working with public sector organizations across the country—including courts, human service agencies, foundations, and non-profits—conducting research, improving organizational performance, facilitating planning processes, and documenting project outcomes. He received his Ph.D. in International Studies from the University of Denver. David served as an editor and administered the production of the *HT Guide*.

Steve Weller, from the Center for Public Policy Studies, is the Senior Consultant with the Human Trafficking and the State Courts Collaborative. He has more than 39 years of experience working at improving different aspects of the justice system and developing responses to public policy problems, both in the United States and internationally. Weller holds a J.D. from Yale Law School and a Ph.D. in Political Science from Cornell University. Steve co-authored *Chapters 3*, *6*, *10*, and *11* of the *HT Guide*.

Carey Abraham is a design and creative consultant who has worked with the Center for Public Policy Studies for 7 years. She has more than 25 years of experience designing in non-profit, agency, and corporate environments. Carey holds a B.F.A. from the California Institute of the Arts and is a member of AIGA – professional association for design. Carey designed and produced this *HT Guide*.

Chapter 1

Addressing Human Trafficking in the State Courts: Background and Approach

John A. Martin
Center for Public Policy Studies

I. Introducing the NACM Human Trafficking Guide

Purpose and Format

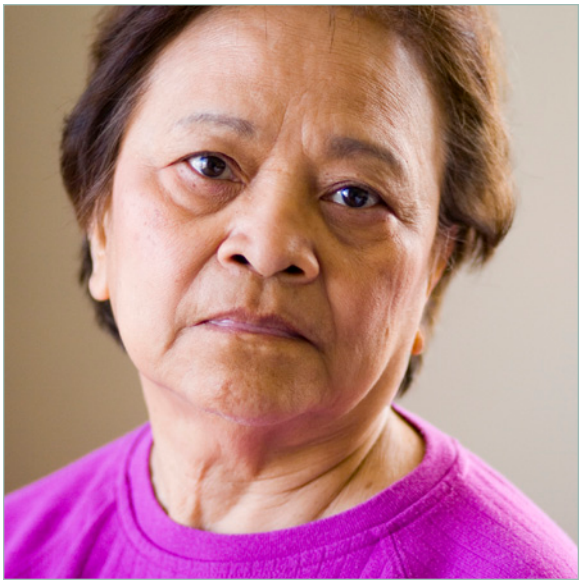
The National Association for Court Management Guide to Addressing Human Trafficking in the State Courts (*HT Guide*) provides state court practitioners a comprehensive resource for:

- clarifying the types and dynamics of sex and labor human trafficking involving U.S. citizens and foreign nationals present in jurisdictions across the nation;
- identifying how traffickers and victims might appear in different types of state court cases, including criminal, family, juvenile, child protection, ordinance violation, and civil cases;
- accessing tools and guidelines for using the tools to help courts identify and process cases where trafficking is involved; and
- accessing links to other resources to help courts address trafficking-related problems.

Moreover, as suggested in the purpose statement, the *HT Guide* is intended to support the efforts of courts not only in their traditional role of independent adjudicators, but also in their role as justice system and community leaders. Consequently, even though state court judges and personnel are the primary audience for the *HT Guide*, we are confident that numerous other groups concerned about human trafficking—such as health and human service organizations, law enforcement agencies, and victim advocates—should find it valuable too.

In large part, because the role of state courts in addressing human trafficking is a recent topic to many court practitioners, the *HT Guide* includes considerable background and context-defining information about numerous aspects of human trafficking as well as practical guidelines and tools for directly assisting court practitioners in cases involving traffickers and trafficking victims. In particular, each of the chapters in the *HT Guide* includes:

- a context-defining topic discussion;
- a review of the operational, practice, and policy implications of the topic for the state courts;
- tools for addressing the topic and guidelines for using the tools; and
- links to additional tools and resources for further exploring the complexities of human trafficking and how it might be addressed.



The *HT Guide* is available in two formats—a hard copy format for printing and an electronic format. The primary difference between the two formats is that the electronic version includes more readily accessible internal and external hypertext links to references, tools, and additional resources.

The Human Trafficking and the State Courts Collaborative

The *HT Guide* was prepared by the recently established Human Trafficking and the State Courts Collaborative in partnership with NACM. Beginning in early 2013, the State Justice Institute (SJI) provided initial funding to form a Human Trafficking and the State Courts Collaborative consisting of the Center for Public Policy Studies (CPPS), the Center for Court Innovation (CCI) and the National Judicial College (NJC), as one response to addressing the impacts of human trafficking on the state courts. Within a year, the National Association of Women Judges, Legal Momentum, and the National Council of Juvenile and Family Court Judges joined the Collaborative. All six organizations are now collectively working to address the following strategic priorities:

- increase understanding and awareness about the challenges faced by state courts in dealing with cases involving trafficking victims and their families, and traffickers;
- develop and test state and local approaches for assessing and addressing the impact of human trafficking victims and defendants in the state courts;
- enhance state and local court capacity to improve court services affected by human trafficking-related case processing demands; and
- build effective national, state, and local partnerships for addressing the impacts of human trafficking case processing in the state courts.

Figure 1 lists a few of the most challenging operational, policy, legal and service delivery topics being addressed by the Human Trafficking and the State Courts Collaborative while Figure 2 outlines the effort's primary information dissemination, technical assistance, and training tasks.

HT Guide Contents Overview

The *HT Guide* is divided into eleven chapters. This chapter continues with discussion of:

- why state courts need to be concerned about human trafficking;
- definitions of human trafficking and the numerous forms of labor and sex trafficking;
- the dynamics of human trafficking;
- approaches to addressing human trafficking; and
- the general implications on the state courts of human trafficking and responses to it.

Chapter 2 – **Community Courts, Specialized Dockets, and Other Approaches to Address Sex Trafficking**, examines:

- the philosophy and goals of community court and specialized docket approaches for addressing human trafficking;
- the features of the Midtown Community Court, New York approach and its applicability to other jurisdictions;
- the features of the New Castle County, Delaware and Queens County, New York specialized docket approaches and their applicability to other jurisdictions;

- the role of the court in prosecutor-led responses to human trafficking; and
- the general lessons learned so far from the community court and specialized docket experiences.

Chapter 3 – **Human Trafficking and Immigrant Victims**, discusses:

- the potential benefits for immigrant human trafficking victims under federal immigration law;
- the state court role in assisting human trafficking victims who have been coerced into committing criminal acts;
- the uses of state court records by federal immigration authorities when addressing human trafficking victimization;
- ethical issues involving immigrant trafficking victims; and
- the indicators of potential immigrant human trafficking involvement.

Chapter 4 – **Child Trafficking Victims and the State Courts**, examines:

- definition of commercially sexually exploited children (CSEC);
- size and needs of CSEC population;
- the impacts of trauma and victimization on children;
- intersections among court, education, heath and human service, and other organizations in addressing the needs of sexually exploited children; and
- an agenda for improving court performance when working with commercially sexually exploited children.

Chapter 5 – **Identifying and Responding to Sex Trafficking**, addresses:

- the duality of the victim-defendant dynamic often involved in sex trafficking victimization and the consequences of this duality for the courts;
- the impacts of victimization and the needs and challenges victim-defendants face;
- steps for increasing court capacity to identify trafficking victims;
- the adequacy of existing assessment tools when working with sex trafficking victims; and
- key elements in a court strategy for enhancing the effectiveness of responses to sex trafficking.

Chapter 6 – **Ethical Issues for Judges and Court Practitioners in Human Trafficking-Involved Cases**, examines:

- the ethical issues judges might face in the adjudicative process and in extra judicial activities;
- the ethical issues court managers and other court practitioners might face in human-trafficking involved cases;
- exemplary ethics opinions; and
- model codes that can serve as resources for addressing trafficking-related ethical concerns.

Chapter 7 – **The Affordable Care Act: Assisting Victims of Human Trafficking in Rebuilding Their Lives**, reviews:

- the scope and essential features of the Patient Protection and Affordable Care Act (ACA) and how the ACA can help the state courts; and
- steps to take to get the most out of the ACA when addressing the needs of human trafficking victims.

Chapter 8 – **Tribal Justice and Sex Trafficking**, describes:

- the scope and dynamics of sex trafficking involving Native Americans;
- the complexities of tribal justice;
- the intersections among tribal justice, the state courts, and human-trafficking involved cases; and
- lessons for state courts and tribal justice systems for working collaboratively to address sex trafficking of Native Americans.

Chapter 9 – **Addressing the Complexities of Language and Culture in Human Trafficking-Involved Cases**, examines:

- how views about procedural justice can help courts address the complicated nexus of human trafficking dynamics, language, culture, and immigration status; and
- how courts can institutionalize mechanisms to help victims, witnesses, and others in human trafficking involved cases navigate the court and justice system, make good choices, and acknowledge and follow court orders and other forms of sound guidance.

Chapter 10 – **Labor Trafficking**, examines:

- the legal rights and protections of labor trafficking victims;
- the characteristics of labor trafficking-involved cases and how they might appear in state courts; and
- strategies for identifying and assisting labor trafficking victims.

Chapter 11 – **Human Trafficking Educational Resources for Judges and Court Practitioners,** describes:

- the purpose of educational programs for judges and court practitioners about human trafficking;
- the topics that should be addressed and contents of educational programs; and
- tools and resources to support programs.

Chapter 1 Contents Overview

This chapter continues in Section II with a discussion of reasons why state courts need to be concerned about human trafficking. Section III begins with a detailed definition of human trafficking, catalogs the numerous forms of sex and labor trafficking, and provides estimates of the numbers of people involved in the various types of trafficking as either victims or traffickers. The inventory encompasses the types and dynamics of sex and labor trafficking involving adults and children of U.S. and non-U.S. citizens in the United States.

We continue in Section IV first by outlining the key assumptions and characteristics of criminal law, human rights, labor, and public-health focused approaches to human trafficking and then by synthesizing these approaches into a state court-focused approach to addressing human trafficking. Our review of the state court-focused approach stresses the need to build a comprehensive state court capacity to address human trafficking capable of punishing and altering the behavior of traffickers, protecting and empowering victims, assuring procedural justice, and preventing and deterring trafficking within communities and throughout society generally. Section III continues with an overview of a framework to help organize court efforts to assess and address human trafficking. Chapter 1 concludes in Section IV with an inventory of both the general implications of human trafficking on the state courts and implications for the different types of criminal, child protection, juvenile, family, civil, and other cases when trafficking might be present.

Also in Section V, we (1) highlight a series of HT information cards for court practitioners, (2) provide a planning and implementation workbook, and (3) offer links to additional resources, including the reference materials used in preparing this chapter.

II. Human Trafficking and the State Courts

Why Should State Courts Be Concerned About Human Trafficking?

Over the past few years numerous global, national, state and local economic, social, technological, and public and private policy trends have converged to create four compelling reasons why there is considerable need and opportunity for state courts to begin to better understand and address human trafficking.

Best estimates of the scope of human trafficking suggest that tens of thousands of U.S. citizens and non-U.S. citizens located across the nation are trafficked for a vast range of commercial sex purposes, such as pimp controlled prostitution, escort services, residential and underground brothels, pornography production and cyber-pornography, and cantina, karaoke and other types of bars or clubs. Similarly, many tens of thousands more people in the United States are forced or coerced into involuntary servitude, peonage, debt bondage or other forms of trafficking for labor purposes in numerous parts of the economy, but especially in domestic servitude, peddling rings, and the construction, agriculture, fishing, forestry, restaurant and hospitality industries.

First, establishing an appropriate state court role in addressing the numerous and complicated forms of modern human trafficking is one the most difficult challenges likely to confront state courts and their justice partners in the coming decade.

Moreover, while human trafficking is widespread and growing across the nation, the manifestations of trafficking in the state court setting remain unclear, and what state courts can do to adjudicate cases involving trafficking victims and traffickers remains elusive. Even as state legislators across the nation have been passing human trafficking laws, the potential impacts of these laws on state court operations have rarely been contemplated adequately. State court practitioners are just beginning to see trafficking cases under new state laws appearing in court, and, as state court practitioner awareness of the complexity of modern day human trafficking increases, there is increased concern about the links between human trafficking and the many vulnerable populations who appear in courts. For example, it is now becoming apparent that many of the tens of thousands of juvenile and adult prostitutes who have contact with state courts may be trafficking victims. Similarly, court practitioners are now becoming aware that human trafficking can manifest itself in a variety of court settings such as drug sales, theft, and peddling by individuals who may be trafficking victims, as well as in child protection cases.

Finally, state courts are just beginning to recognize the different types of human traffickers that may appear in state courts. Although now more often than in the recent past, traffickers are being charged with trafficking offenses under state human trafficking laws. Still, in the typical state court, traffickers today are more likely to be charged for violations under long-standing state codes governing health standards, restaurants, housing, or state laws addressing prostitution, pimping, or pandering. Complicating matters further, it is becoming more apparent that some traffickers are also trafficking victims, especially in instances where sex-trafficked victims are forced to recruit other victims or engage in other criminal activity. Perhaps most distressing, state courts and their justice partners also are becoming increasingly aware that many of the mechanisms that have been used traditionally to help individuals (e.g., foster care, group homes, juvenile detention facilities) have become important places for traffickers to find and recruit future trafficking victims.

Second, there is vast disparity between the substantial attention directed at trafficking concerns by international, federal, state, executive and legislative branch entities, and the lack of systematic and comprehensive attention paid to human trafficking-related issues by the state courts.

At the national level, for example, the January 2014 *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017* provides an inventory of what every agency in the U.S. executive branch is expected to do to address the following four anti-human trafficking goals:

- *Goal 1*. Align Efforts – promote a strategic, coordinated approach to the provision of services for victims of human trafficking at the federal, regional, state, territorial, tribal, and local levels.
- *Goal 2*. Improve Understanding – expand and coordinate human trafficking-related research, data, and evaluation to support evidence-based practices in victim services.
- *Goal 3*. Expand Access to Services – provide and promote outreach, training, and technical assistance to increase victim identification and expand the availability of services.
- *Goal 4*. Improve Outcomes – promote effective, culturally-appropriate, trauma-informed services that improve the short-and long-term health, safety, and well-being of victims.

At the state level, all 50 U.S. states now have anti-trafficking laws with many states having passed

Figure1: Human Trafficking and the State Courts Collaborative Topics

Operations

- How state courts and their justice partners can effectively identify the presence of human trafficking in different types of cases.
- The general effects on court policy and operations of state human trafficking laws and how they are implemented.

Policy

- State court record keeping and the uses of state court records in federal human trafficking proceedings.
- The mechanics of promising approaches, such as specialty prostitution and girls' courts, for addressing human trafficking victims involved in ordinance and criminal violations.
- Addressing human trafficking in other types of specialty courts, including drug and mental health courts.

Law

- The general effects on court policy and operations of state human trafficking laws and how they are implemented.
- Treaty and convention agreements, access to services, and working across international borders in trafficking cases.
- How state courts can use federal law protections for immigrant juvenile and adult trafficking victims, such as U and T visas and special immigrant juvenile status, to help in state court cases.
- The benefits, challenges, and processes associated with using state human trafficking laws, as opposed to other state laws that court practitioners are more familiar with, such as unlawful imprisonment, rape, pandering, prostitution, or kidnapping.

Service Delivery

- How to link trafficking victims to appropriate services.

Figure 2: Human Trafficking and the State Courts Collaborative Activities

General Information/Communication

- Establishing a web-based resource network and clearinghouse.
- Identifying the major challenges and opportunities that courts need to address when dealing with trafficking victims and traffickers in the courts.
- Preparing topical publications targeting court practitioners.
- Establishing and facilitating an ongoing federal/state dialog to promote better collaboration between federal and state courts and justice organizations when addressing human trafficking issues that affect the state courts.

Training

- Establishing and coordinating a nationwide training network.
- Developing and conducting courses for judges and court personnel for addressing human trafficking-related cases.

Developing Tools/Approaches

- Preparing bench cards, best practice guidelines, tool kits, and other resources to help court practitioners and their justice partners address human trafficking cases.
- Developing and testing replicable approaches to providing technical assistance in diverse court jurisdictions for addressing the challenges courts face in cases involving human trafficking.

laws only within the past few years. Several national organizations also have anti-trafficking initiatives, including:

- The National Association of Attorneys General (NAAG) 2011-12 priority initiative "Pillars of Hope: Attorneys General Unite Against Human Trafficking," has advocated and provided guidance for strong state and local efforts.
- The President of the American Bar Association (ABA) has made human trafficking her priority.
- The Uniform Law Commission recently completed model human trafficking laws for the states.

Human trafficking initiatives similar in scope to those of the ABA and NAAG have been undertaken by numerous other justice partners, especially by international, national, state, and local law enforcement, child protection, and human service and health agencies. As a result, courts are finding themselves without the knowledge, expertise, processes, and basic infrastructure needed to keep up with changes in law enforcement and social service priorities, policies and practices, as well as state statistical reporting and service mandates. At the same time, the courts are the last recourse for trafficking victims who have not been identified by other parts of the justice system.

Finally, there has been increased federal enforcement of national trafficking laws and immigration laws involving traffickers and victims in recent years. For example, federally-sponsored efforts have encompassed everything from working on an international level to stem the flow of victims and increasing the protections for trafficked immigrants, to sponsoring state- and local-level human trafficking task forces.

Third, now is the right time for addressing human trafficking in the state courts systematically and comprehensively.

Over the past few years, public awareness, along with local and national media coverage about human trafficking incidents and the numerous types of human trafficking, have increased greatly. Addressing human trafficking is one of the few topics with bi-partisan support at both the federal and state levels as evidenced by the recent trafficking-focused efforts of the White House, the U.S. Congress, state legislators, and national, state, and local interest groups from across the ideological landscape. Moreover, current efforts to assess the implications of the Affordable Care Act for courts and justice systems reveal potential opportunities to increase services often needed by human trafficking victims, such as substance abuse and mental health services.

Fourth, developing effective state court strategies for resolving cases involving human trafficking reinforces the essential role and values of courts in addressing complicated issues in a changing society.

Figure 3: Defining Severe Forms of Human Trafficking

Human trafficking occurs when an individual or an organization induces or recruits or harbors or transports or provides or obtains a person by force or fraud or coercion for the purposes of involuntary servitude or peonage or debt bondage or slavery or a commercial sex act.

Action/Process:	Means	For the Purposes of
Was an individual: ■ induced ■ recruited ■ harbored ■ transported ■ provided ■ obtained?	**By:** ■ **Force** – causing serious harm or physical restraint ■ **Fraud** – using false promises, lying, deceitful behavior ■ **Coercion** – threats of serious harm to, or physical restraint ■ **Coercion** – abuse or threatened abuse of law or legal process ■ **Coercion** – any scheme, plan, or pattern intended to cause a belief that harm will come to the victim	**Commercial Sex Acts such as:** ■ pimp controlled prostitution, escort services, residential and underground brothels, pornography production and cyber-pornography, or cantina, karaoke and other types of bars or clubs. **Labor or Services including:** ■ **Involuntary Servitude, Peonage, and Slavery** – people fear physical, emotional, and/or legal consequences if they attempt to escape their conditions. ■ **Debt Bondage** – labor is demanded as a means of loan or service repayment but terms and conditions have not been defined or the value of the victim's service has not been reasonably assessed or is not applied to the liquidation of the debt.

Failing to effectively address cases involving human trafficking undermines the values, credibility and role of state courts in society both today and into the future. Human trafficking cases, as evidenced in the chapters of this *HT Guide*, pose fundamental challenges to court operations, notions of procedural justice, and many of the desired values and outcomes for state court action. For example:

- How can courts be expected to help link victims to needed services when victims fear being identified as victims and might not see themselves as victims?
- How can state courts close cases when some participants in those cases might be foreign nationals subject to removal from the country even prior to state court adjudication of cases even though federal immigration protections might be available but never identified?
- How can state courts work with large populations of trafficking victims who are also defendants in prostitution, substance abuse, theft, and other types of cases?
- How can state courts make good sentencing, placement, and treatment decisions when it is becoming increasingly apparent that without additional safeguards, many of the places traditionally used to help protect children (e.g., foster care, group homes, juvenile detention facilities) are also places where future trafficking victims are readily recruited?

III. Definitions, Types, and Dynamics of Human Trafficking

Definition of Human Trafficking

Federal and state law definitions of severe forms of human trafficking typically stress that human trafficking occurs when an individual or an organization induces, recruits, harbors, transports, provides or obtains a person by force, fraud, or coercion for the purposes of involuntary servitude, peonage, debt bondage, slavery, or a commercial sex act. In other words, as summarized in Figure 3, federal and state legal definitions of human trafficking typically specify types of **actions and processes** taken against an individual (e.g., induced, recruited) by **means** (e.g., force, fraud) **for the purposes of** commercial sex acts or labor. In addition, under federal law, any child under 18 years of age that is induced to perform a commercial sex act is considered a victim of a severe form of human trafficking. Most states have similar laws protecting children from coerced sex.

The Magnitude, Types, and Dynamics of Human Trafficking

Magnitude

Worldwide, best estimates indicate that between 10 million to 30 million people are human trafficking victims (Tanneeru, 2011). After drug trafficking, human trafficking is the second largest criminal industry, generating over 32 billion dollars annually (ILO, 2005). In the United States, estimates for the number of trafficking victims range from 300,000 to 2 million people, both U.S. citizens and non-U.S. citizens. The U.S. Department of State has estimated that the number of people trafficked into the U.S. annually is between 14,500 and 50,000. The data for the number of people trafficked within the U.S. is limited, but there is a sizeable at-risk population (Clawson, et al., 2009). A large proportion of these individuals are trafficked for commercial sex purposes, such as pimp-controlled prostitution, escort services, residential and underground brothels, pornography production, cyber-pornography, and cantina, karaoke, strip-clubs, and other types of bars or clubs. An even greater proportion are forced or coerced into involuntary servitude, peonage, debt bondage, or other forms of trafficking for labor purposes. This includes trafficking for domestic servitude, peddling rings, and the construction, agriculture, forestry, restaurant, and hospitality industries (Texas Advisory Commission to the U.S. Commission on Civil Rights, 2011; Polaris Project, 2010).

Moreover, between 100,000 and 300,000 children in the United States, including tens of thousands of juveniles labeled "prostitutes" who have contact with state courts, are at risk of becoming trafficking victims (Estes and Weiner, 2002). Similarly, court practitioners are now becoming aware that human trafficking can manifest itself in a variety of court settings, including (1) drug sales by individuals who may be trafficking victims, (2) child thieves who are part of trafficker-controlled organizations, and (3) abused and neglected children in a variety of settings. In short, only now are state courts becoming aware that many people in our courts may have been induced, recruited, harbored, obtained, or transported by force, fraud, or coercion, for commercial sex or labor.

Types and Dynamics of Human Trafficking

Globally and across the United States, human trafficking appears in many forms. As shown in Figure 4, trafficking both children and adults for commercial sex assumes a vast range of forms including pornography production and numerous types of prostitution and "entertainment" in bars and clubs. The types of labor trafficking are perhaps even more numerous, encompassing everything from household domestic servitude, localized sales crews and peddling rings to very large nation-wide construction, agricultural, fishing, and factory work.

Moreover, as also shown in Figure 4, the characteristics and dynamics, as well as the risks for victims and society, of human trafficking are extensive, encompassing emotional and physical abuse, exposure to disease and environmental hazards, and even death. In addition, for some groups, such as foreign national trafficking victims, the tools of control and coercion can include not only numerous forms of physical and emotional abuse but also the threat of deportation.

Figure 4: Forms and Dynamics of Human Trafficking

Commercial Sex	Labor
Common Types ■ Pornography production in a variety of settings. ■ Pimp-controlled prostitution in a variety of settings including hotel/model based, internet based, escort-service based, streets, truck stops, and clubs and bars. ■ Residential brothels in a variety of settings including apartments, massage parlors, homes, hotels/motels, mobile homes, and RV parks. ■ Escort services in a variety of settings including bars, hotels, internet, private parties, boat cruises, outdoor tours, and phone chat lines. ■ Hostess bars and clubs, including cantina bars, karaoke clubs, strip and gentleman's clubs.	**Common Types** ■ Sales crews and peddling rings for products such as flowers, candy, magazines. ■ Domestic workers such as nannies, housekeepers, cooks, and maids. ■ Small business, sub-contractor operations, particularly for landscaping, hotels/motels, restaurants and bars, dance, strip and gentlemen's clubs, construction, home and industrial cleaning, and nail salons. ■ Large scale agricultural, construction, factory, fishing, and forestry work such as farm and ranch labor, garment work, food processing, and parts assembly.

Figure 4: Forms and Dynamics of Human Trafficking

Commercial Sex	Labor
Characteristics, Dynamics, Risks	**Characteristics, Dynamics, Risks**
■ Exposure to sexually transmitted disease. ■ Forced use/addiction to drugs and alcohol. ■ Forced to steal, sell drugs, recruit other trafficking victims, and other activities that will increase exposure to criminal justice system. ■ Rationed access to personal hygiene and medical care for purposes of control. ■ Use of false promises; verbal and physical abuse; exorbitant fees and payroll deductions for room, board, products for personal hygiene and health; exorbitant fees with accruing interest rates; withheld documents; surveilled work settings; monitored movement; threat of harm; detainment; armed guards; withholding of food or no food; and retaliatory firing. ■ Deceiving victims about potential consequences of leaving. ■ Deceiving victims about potential benefits and rewards of remaining a victim. ■ Work-place/trafficking induced physical injuries, especially bruises and broken bones, and malnutrition. ■ Work-place/trafficking induced exposure to infectious and communicable diseases. ■ Work-place/trafficking induced exposure to environmental hazards. ■ Workplace/trafficking induced mental health problems, including post-traumatic stress disorder, feelings of low self-esteem, anxiety, depression, isolation, shame, self-blame, hopelessness and resignation. ■ Following repeated victimization, victim beliefs that their exploitation is somehow "normal," that no one cares, and that there are no resources to help them	■ Use of false promises; verbal and physical abuse; exposure to pesticides and other hazardous materials; exorbitant fees and payroll deductions for room, board, and work-related tools; exorbitant fees with accruing interest rates; withheld documents; surveilled labor camps; monitored movement; threat of harm; detainment; armed guards; eviction; condemned housing; contaminated water; withholding of food or no food; and retaliatory firing. ■ Deceiving victims about potential consequences of leaving. ■ Deceiving victims about potential benefits and rewards of remaining a victim. ■ Work-place/trafficking induced physical injuries, such as mouth and teeth injuries, bruises and broken bones, head wounds, stab and puncture wounds, and malnutrition. ■ Work-place/trafficking induced exposure to infectious and communicable diseases. ■ Work-place/trafficking induced exposure to environmental hazards, such as exposure to chemicals, other irritants and carcinogens contributing to acute and chronic respiratory disease, poisoning, cancer, and skin ailments. ■ Workplace/trafficking induced mental health problems, including post-traumatic stress disorder, feelings of low self-esteem, anxiety, depression, isolation, shame, self-blame, hopelessness and resignation. ■ Following repeated victimization, victim beliefs that their exploitation is somehow "normal," that no one cares, and that there are no resources to help them

Figure 4: Forms and Dynamics of Human Trafficking

Commercial Sex	Labor
Special Issues ■ **For foreign nationals** – threat of deportation; withheld passports, social security, and other documents; threats of arrest; brought to US under false promises; fear of the unknown; fear of reprisals against family members, including members remaining in country or region trafficked from; and numerous culture- and language-based barriers to obtaining help to exit trafficking settings. ■ **For foreign nationals** – risks to obtaining T visas, Special Immigrant Juvenile Status, and other federal immigration status protections for foreign trafficking victims because of presence of state court prostitution, drug, theft, and other charges and convictions.	**Special Issues** ■ **For foreign nationals** – threat of deportation; withheld passports, social security, and other documents; threats of arrest; brought to US under false promises; fear of the unknown; fear of reprisals against family members, including members remaining in country or region trafficked from; and numerous culture- and language-based barriers to obtaining help to exit trafficking settings. ■ **For foreign nationals** – risks to obtaining T visas, Special Immigrant Juvenile Status, and other federal immigration status protections for foreign trafficking victims because of presence of state court prostitution, drug, theft, and other charges and convictions.

IV. Approaches for Addressing Human Trafficking

Combining Criminal Law, Labor, Human Rights, and Public-Health Approaches to Addressing Human Trafficking to Form a State Court-Focused Approach

Views about human trafficking and the responses to human trafficking have evolved rapidly over the past few decades and today reflect numerous different streams of thought about the causes and solutions to modern day slavery. Moreover, different international, national, state and local organizations, including organizations that collectively form state and local justice systems, incorporate, sometimes explicitly but likely more often implicitly, elements of differing perspectives about human trafficking. As one result, to implement effective responses for addressing human trafficking as it appears in state courts, state court practitioners should:

- understand the key features of varying criminal law, labor, human rights, and public-health perspectives on human trafficking;
- feel confident about synthesizing key components from the perspectives into a state court-focused approach; and
- use a comprehensive improvement framework when establishing court and justice system responses.

As shown in Figure 5, criminal law approaches to HT stress that human trafficking is dependent on "bad actors" who pry on vulnerable populations and that human trafficking can be deterred by criminalizing trafficking and punishing predators. Responsive strategies in criminal law approaches to human trafficking, perhaps not too surprisingly, stress:

- creating comprehensive frameworks of international, federal, and state laws and sanctions prohibiting trafficking.

- identifying and breaking-up trafficking networks and arresting and prosecuting traffickers; and
- identifying, rescuing, and aiding victims.

In contrast, human-rights approaches to addressing human trafficking emphasize broader societal forces, including that human trafficking persists when societies tolerate denials of the dignity and humanity of vulnerable individuals and where poverty creates vulnerability to forms of exploitation. Labor approaches to addressing human trafficking also stress broader global- and societal-level forces as the preconditions if not causes of human trafficking; forces such as extreme profits being the primary motivator of trafficking and that end consumers of human trafficking, especially consumers of goods and services provided by labor trafficking, pay relatively little, financially, for the many benefits they receive.

In turn, responses to labor-focused approaches to human trafficking stress the need to regulate labor markets and work contracts and increase access to better employment opportunities.

Finally, public-health approaches to human trafficking emphasize that human trafficking:

- exacts a significant, sometimes life-threatening, toll on its victims;
- contributes to declines in general public health by increasing the presence of violence, illness, injury, and infectious disease within and across communities and nations; and
- thrives on societal attitudes that encourage risky, unhealthy behaviors.

Given these assumptions about the sources of human trafficking, the responses for addressing human trafficking in public-health approaches tend to focus on preventing human trafficking using multiple means, and addressing broader societal, as well as population-specific attitudes and behaviors.

Figure 5: Approaches to Addressing Human Trafficking

Approach	Key Assumptions	Characteristics of Responsive Strategies
Criminialization	■ HT is caused by predator/criminals that are "bad actors" who pry on vulnerable populations. ■ HT can be deterred or combated by punishing predators. ■ HT can be deterred by protecting victims and potential victims. ■ "Other cultures," as opposed to "our" culture, are more likely to contribute to HT.	■ Establish comprehensive frameworks of international, federal and state laws, and sanctions prohibiting trafficking. ■ Identify and break-up trafficking networks. ■ Arrest and prosecute traffickers. ■ Identify, rescue, and aid victims, including the provision of services for protecting victims and meeting their often multiple health, housing, and other service needs. ■ Secure and control national borders. ■ Punish consumers/beneficiaries of benefits derived from trafficking victims, especially in the sex trafficking arena.

Figure 5: Approaches to Addressing Human Trafficking

Approach	Key Assumptions	Characteristics of Responsive Strategies
Human Rights	■ HT persists, in part, when societies tolerate denials of the dignity and humanity of vulnerable individuals. ■ Lack of rights and meaningful access to health care, education, birth registration, employment, and other aspects of well-being and social legitimacy, contribute to human trafficking. ■ Racial, gender, national, ethnic, religious, economic inequity and discrimination contribute to HT. ■ Poverty plays a significant role in vulnerability to all forms of exploitation, including HT.	■ Assess whether rights have been violated. ■ Provide remedies for those whose rights are violated. ■ Provide access to employment, better working conditions, education, health care, and other human rights. ■ Empower individuals, especially individuals from historically marginalized groups, to participate fully in society.
Labor	■ Profits are the primary motivator of HT. ■ Structural labor market conditions and practices that shape workers' vulnerability and inferior bargaining power in the workplace contribute to HT. ■ HT is a form of exploitation, and exploitation occurs on a continuum that ranges from voluntary, safe, secure employment settings, where rights are protected to settings where severe forms of exploitation can occur. ■ End consumers pay relatively little direct costs for the many benefits gained from human trafficking.	■ Ensure that vulnerable workers have access to the justice system without fear of deportation or criminalization. ■ Ensure that the applicable visa regime does not formally or effectively bind workers to one specific employer. ■ Regulate against work contracts structured around insurmountable debt. ■ Extend the application of protective employment law to sectors susceptible to trafficking. ■ Guarantee the right to unionize for vulnerable workers. ■ Increase access to employment opportunities.
Public Health	■ Human trafficking exacts a significant, sometimes life-threatening, toll on its victims. ■ Human trafficking contributes to declines in general public health by increasing the presence of violence, illness, injury, and infectious disease within and across communities and nations. ■ Societal attitudes contribute to risky, unhealthy behavior. ■ There is often limited individual health risk to consumers benefiting from the potentially significant rewards gained from many forms of labor trafficking.	■ Develop and implement evidence-based approaches to addressing HT that: (a) define the problem; (b) identify risk factors, (c) develop fact-supported interventions, (d) implement proven interventions, and (e) assess cost-effectiveness. ■ Focus on prevention using multiple means. ■ Address broader societal, as well as population-specific attitudes and behaviors. ■ Engage all essential partners and multiple stakeholders.

Our attempt at combining all of these diverse views about human trafficking into a unified approach for state courts appears in Figure 6. The state court-focused approach to addressing human trafficking incorporates elements from differing criminal law, human rights, labor, and public-health views about human trafficking by stressing that punishment and deterrence, along with protecting, healing, making victims whole, empowering victims and witnesses, and prevention all need to be considered important functions for the state courts when processing cases involving human trafficking. As also shown in Figure 6, the practical implications of this multi-functional state court approach to addressing human trafficking are numerous, encompassing everything from identifying cases of all types where trafficking might be present, to helping to provide methods for protecting victims while their cases move forward, and maintaining state court records of sufficient quality that they can be used in concurrent or subsequent federal human trafficking, immigration, or labor adjudication.

Using a Framework for Assessing and Addressing Human Trafficking in Your Jurisdiction

The state court human trafficking assessment, implementation, and measurement framework outline in Figure 7 includes a set of concepts and vocabulary designed to help courts think and communicate about how international, federal, state, and local law, policy, and practice might affect the work of the courts and how the courts can improve services for addressing human trafficking. In addition, Figure 7 includes suggestions for how courts can measure how well they serve human trafficking victims and the impacts that processing trafficking-related cases might have on court costs and operations.

The structure of the framework presented in Figure 7 stresses that state courts need to:

- understand the numerous factors shaping human trafficking-related needs and demands on the courts;
- have a clear, commonly-shared set of goals and values regarding how trafficking cases will be processed and how trafficking victims should be served by the courts;
- have a clear commonly-shared understanding of the desired outcomes of state court case processing of cases involving human trafficking;
- have reached agreement among court policy makers regarding the strategic choices listed above;
- be clear about how the needs of trafficking victims and the complexities of federal, state, and local human trafficking law, policy, and practice affect the numerous work processes used in criminal, civil, family, juvenile, and probate case processing; and
- provide court and justice infrastructure that supports effective case processing in cases involving human trafficking.

There are a variety of assumptions about the relationships among the five key components built into the framework. Specifically, the logic of the framework stresses that human trafficking-related needs and demands on the courts need to be accounted for in the strategic goals and values and other aspects of the court's strategic direction. In turn, the characteristics of work processes should reflect the court's chosen strategic direction, and work processes should result in well-articulated outcomes.

The framework also stresses that both inter-organizational justice system and court-specific infrastructure should support work processes and reflect fundamental strategic goals and values.

The assessment and performance measurement summary presented in Figure 8 identifies the four key performance measurement questions courts need to address when dealing with human trafficking and offers some sample measures for addressing each of the four key questions.

Finally, as shown in Figure 9, a variety of hard- and soft-court, and justice-system infrastructures for effectively supporting case processing involving human trafficking are incorporated in the final component of the assessment and measurement framework. Hard infrastructure includes the technology, equipment, and facilities required to support human trafficking-involved case processing that is both efficient and consistent with the values, strategic direction, and outcomes courts have chosen to guide them when serving immigrants in court. Soft infrastructure includes the budgeting and finance, policy-making, dispute resolution, staffing, training, communications, coordination, leadership, and management required to support case processing involving human trafficking in a manner consistent with chosen values, strategic policies, and desired outcomes.

Figure 6: Characteristics of a State Court-Focused Approach to Addressing Human Trafficking

Function	Components	State Court Strategies
Punishment	**Case Adjudication** ■ Process cases where traffickers are charged with trafficking offenses. ■ Process cases where traffickers are charged with non-trafficking offenses, such as cases involving partner or family violence against women and children, procuring and compelling prostitution, unlawful imprisonment, and code/ordinance violations. ■ Process cases where offenders charged with prostitution peddling, drug dealing, theft, and other offenses might be trafficking victims. ■ Process cases involving consumers of services provided by trafficking victims, such as solicitation of prostitution. ■ Process cases involving foreign-national trafficking victims where state court actions can affect immigration status and eligibility for federal HT protections. ■ Process cases expeditiously to help protect victims. **Justice System and Community Leadership** Work with justice and community partners, and policy-makers to: ■ establish laws and sanctions for addressing human trafficking; and ■ establish and maintain court, agency, and justice-network infrastructure for supporting human trafficking case processing.	■ Maintain state court records of sufficient quality so that they can be used readily in concurrent or subsequent federal human trafficking, immigration or other proceedings. ■ Provide methods for protecting the safety of human trafficking victims to enable them to testify against their traffickers. ■ Where permitted under law, limit pretrial release for persons charged with human trafficking offenses. ■ Assure speedy trials for human traffickers by eliminating unnecessary delays. ■ Sentence offenders charged with human trafficking crimes appropriately according to the harm done to their victims and the risk of offenders re-victimizing their victims.

Figure 6: Characteristics of a State Court-Focused Approach to Addressing Human Trafficking

Function	Components	State Court Strategies
Protection, Healing, Making Whole	**Case Adjudication** ■ Connect trafficking victims with a range of appropriate services. ■ Require restitution to victims from traffickers. **Justice and Community Leadership** ■ Reduce the risks for trafficking-vulnerable individuals and populations. ■ Establish restorative approaches for addressing the needs of victims, holding offenders accountable for the harm they have done. ■ Address the harm to communities and society from human trafficking.	■ Identify human trafficking victims who might be present in different types of cases that may involve elements of human trafficking. ■ Make pretrial release decisions for persons charged with human trafficking offenses in a way that protects victims. ■ Make or allow appropriate use of continuances when it appears that a human trafficking victim may be involved in a case, either as a victim or a defendant. ■ Sentence human traffickers in a way that prevents them from reconnecting with their victims. ■ Take appropriate steps to allow immigrant victims to receive legal advice on their immigration rights as trafficking victims.
Empowerment, Adequate Representation, Procedural Justice	**Case Adjudication, Justice System, and Community Leadership** ■ Assure procedural fairness for all trafficking victim, offenders who benefit from the services of trafficking, and traffickers, particularly: ***Respect*** – People react positively when: ■ they feel they are treated with politeness, dignity, and respect; ■ their rights are respected; and ■ they understand how things work and what they are expected to do. ***Voice*** – People want the opportunity to: ■ tell their side of the story; ■ explain their situation/views; and have their stories told to an authority who listens carefully. ***Neutrality*** – People are more likely to accept court decisions when those in authority do things that both are, and are perceived as, fair and neutral.	■ Take appropriate steps to assure competent interpretation services for offenders, victims, and witnesses. ■ Take appropriate steps to assure competent legal representation and advice for offenders and victims. ■ Assure that offenders charged with trafficking crimes, trafficking victims charged with crimes related to their victimization, other victims, and witnesses are treated with respect by all court staff and other justice-system personnel. ■ Assure that offenders charged with trafficking crimes, trafficking victims charged with crimes related to their victimization, other victims, and witnesses are provided a full opportunity to be heard in a safe forum.

Figure 6: Characteristics of a State Court-Focused Approach to Addressing Human Trafficking

Function	Components	State Court Strategies
Empowerment, Adequate Representation, Procedural Justice (continued)	***Trust*** – People observe behavior or look for actions to indicate they can trust the character and sincerity of those in authority, and those in authority are aware of and sincerely concerned with their needs. ■ Work with justice partners and community to establish health, safe housing, education, employment, and other options for trafficking victims, and trafficking-vulnerable populations.	
Prevention and Deterrence	**Case Adjudication** ■ Identify potentially trafficking-vulnerable, at risk, individuals across a range of criminal, civil, family, guardianship juvenile, and child protection case types. ■ Follow-up on sentencing and service effctiveness in cases involving trafficking victims, potential victims, and traffickers. **Justice System and Community Leadership** Work with a broad range of justice and community partners to: ■ Increase awareness among all court and justice actors and communities about trafficking types, dynamics, and reduction strategies. ■ Enhance regulation of, and vigilance over, trafficking risky settings and employment sectors such as massage, hair, and manicure parlors, strip clubs, restaurants, bars, pornography production, and the domestic service, construction, agriculture, forestry, and hospitality industries. ■ Implement evidence-based approaches to addressing human trafficking. ■ Address broader societal, as well as population-specific attitudes and behaviors.	■ Become familiar with case types that might have a human-trafficking component and individual risk factors for potential victims. ■ Make custody and placement decisions for juveniles at risk of becoming human trafficking victims to minimize their vulnerability to human trafficking. ■ Make appropriate use of incarceration and intensive probation to prevent convicted traffickers from engaging in further human trafficking activity.

Figure 7: Human Trafficking Assessment Framework

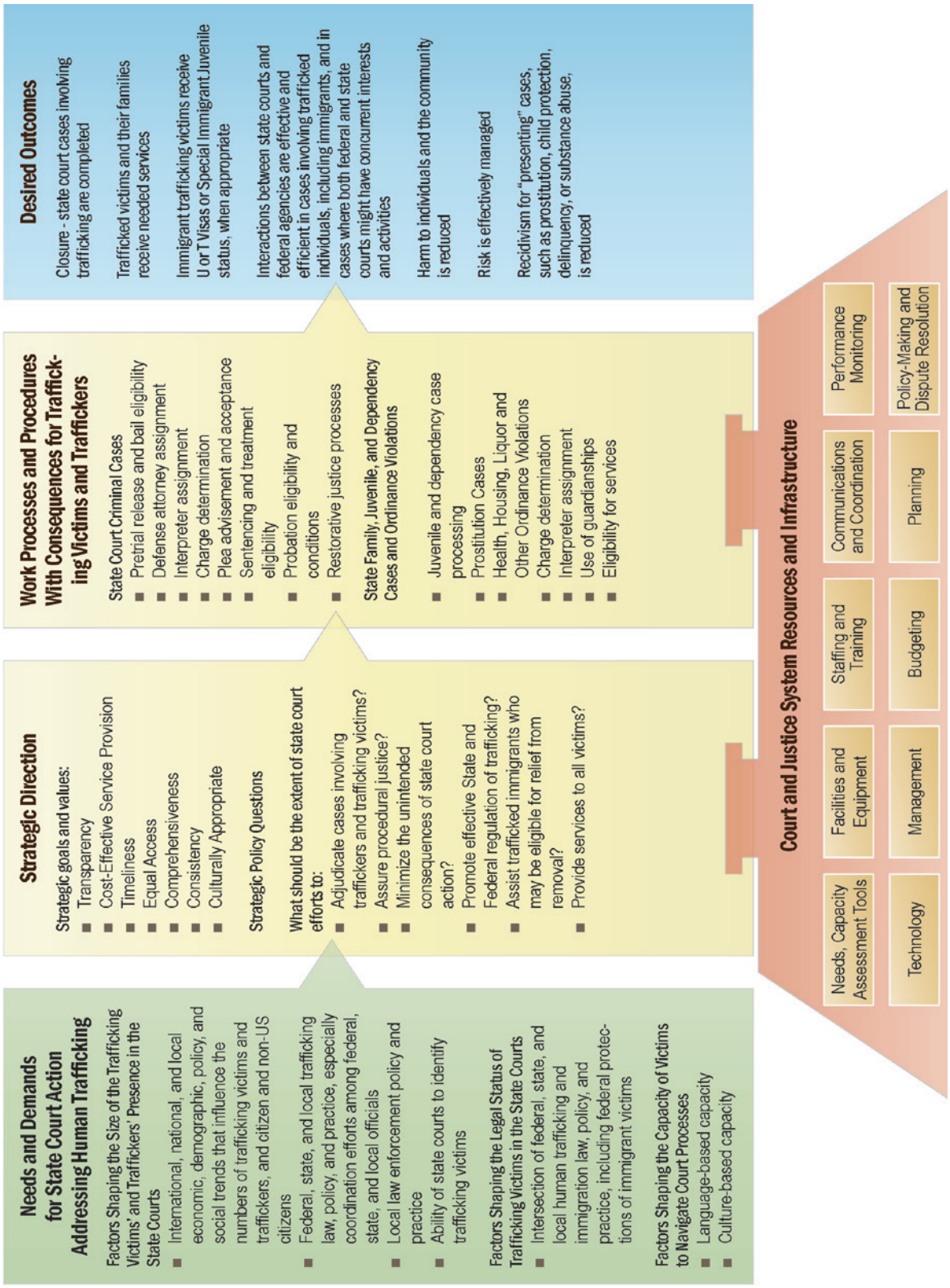


Figure 8: Human Trafficking and the State Courts Assessment and Performance Measurement Summary

Measurement Questions	Example Measures
Human Trafficking-Related Workload Demands on the State Courts ■ What is the size and composition of the trafficking victims and trafficker populations? What is the size and composition of the potential, at risk, trafficking victim population? What are the compositions of the foreign national trafficking victim and trafficker populations? What are the levels of language proficiency within the foreign national trafficking victim and trafficker populations? What are the education levels within the trafficking victim population? What are the magnitudes of the cultural gaps between trafficking victims and trafficker populations and the court workforce?	■ Estimated numbers of trafficking victims and traffickers. Age, gender, ethnicity, region, country of origin, immigration status and other characteristics of trafficking victims and traffickers. ■ Trafficking case filings. ■ Trafficking-related case filings, including cases with suspected trafficking element, such as prostitution cases, drug sales, health and other ordinance violations. ■ Number of trafficking victim and trafficker populations with limited English proficiency.
Support for Court Values and Outcomes ■ What should be the extent of a court's efforts to support fundamental and traditional public service values when serving trafficking victims, especially foreign national victims, in court? These values might include transparency, cost-effective service provision, timeliness, equal access and consistency, comprehensiveness, and cultural appropriateness.	■ **Closure rates** – Cases involving trafficking are completed. ■ **Service rates** – Trafficking victims receive needed services. ■ **Compliance rates** – Traffickers and trafficking victims convicted of crimes comply with court orders. ■ **Participation rates** – Individuals within communities report trafficking and cooperate with law enforcement, such as serving as witnesses, and report to authorities when harm is observed.
■ What are the outcomes of cases involving trafficking victims and traffickers? Are cases involving trafficking completed at the same rates as are cases for other groups of court users? Do trafficking victims receive needed services at rates comparable to other court users? Do traffickers and trafficking victims charged with crimes, comply with court orders at rates comparable to other court users? Is the harm to individuals and communities attributable to trafficking at rates comparable to other court users?	■ Trafficking victims are identified through a range of contacts with justice organizations, including the courts.

Figure 8: Human Trafficking and the State Courts Assessment and Performance Measurement Summary

Measurement Questions	Example Measures
Addressing Key Human Trafficking and the State Courts Policy Questions ■ What should be the extent of a court's efforts to: Identify trafficking victims? Consider trafficking victimization as a factor in cases such as prostitution, drug sales, or theft? Adjudicate cases involving undocumented immigrant trafficking victims and traffickers? Assure procedural justice for trafficking victims and traffickers, including non-US citizens? Minimize the unintended consequences of state court action in cases involving trafficking? Provide services to trafficking victims? Work with the federal government in addressing trafficking issues?	■ Court participant satisfaction with the courts, especially whether the process was seen as understandable, timely, and fair. ■ Court participant views about whether they were treated with respect, and that their voice was heard and views considered. ■ Court participant and stakeholder views about whether court was undertaking an appropriate role in addressing human trafficking and how well it performed that role.
Assessing Service Delivery Costs, Efficiency, and Effectiveness ■ What are the workload, caseload, and caseflow impacts of cases involving human trafficking, for both U.S citizens and foreign nationals? Do cases involving trafficking, particularly cases involving foreign nationals, take longer to process than cases involving other court users? Are more hearings required per case? Are additional types of hearings required? Are trials demanded more often? Do cases involving trafficking complicate evidentiary practices? Are more interpreters required? Are different forms of treatment and probation monitoring required? Are others types of court services more frequently required?	■ Case processing times ■ Number of events per case ■ Case filings involving same trafficking victims or traffickers ■ Incidence of compliance with court orders ■ Ability of court to connect victims with needed services ■ Performance of victims in service programs ■ For foreign nationals, success rates for obtaining T visas, Special Immigrant Juvenile Status, or other federal protections for trafficking victims ■ Language and culture assistance services provided ■ Interpreter services provided

Figure 9: Infrastructure Required to Support Courts and Justice Partners in Human Trafficking Cases

Resources

- Safe housing away from traffickers while their cases move through the system
- Assistance with transportation to specialized programs, medical services, counseling, interviews, and the court
- Access to medical care and substance abuse treatment
- Range of options for short- and long-term care
- Specialized mental-health treatment
- Life skills and vocational training
- New social security numbers

Assessment Tools

- Risk- and needs-assessment tools tailored for trafficking victims

Technology

- Information systems for determining the identities of trafficking victims and traffickers
- Management information systems capable of exchanging information about identity, litigant location, and case status between local, state, and federal agencies about trafficking case status and information about cases that may involve trafficking victims
- Multi-system-wide case tracking technology
- Valid, best-practice based, and readily accessible assessment and treatment tools that are applicable to trafficked populations
- Management information systems that share definitions, standards and guidelines across local, state, and federal, agencies, and treatment/service providers

Equipment

- Accessible and well maintained multi-systems hardware and software

Facilities

- Safe places for trafficking victims
- Dispersed, community-based facilities
- Sufficient space for co-locating local, state, and federal system partners throughout communities

Budgeting and Finance

- Sufficient, predictable, and stable resources for providing assistance, treatment and other services for trafficking victims
- Flexibility to change during a budget cycle and over the long term to meet changing demands and needs including increasing resource and modifying expenditures as needed in light of changes in size of trafficking-related populations
- Budget, service procurement, and other business processes that encourage health care, treatment, detention, probation, and other resource sharing across local, state, and federal agencies and organizations
- Fiscal processes that allow flexible use of funds, moving resources across agencies and organizations when needed
- Funding set aside for multi-system-wide innovation and improvements
- Predictable long-term financing that permits long-term system and multi-system budgeting and planning.
- Resources available to track decision outcomes across multiple agencies

Figure 9: Infrastructure Required to Support Courts and Justice Partners in Human Trafficking Cases

Planning

- Operational planning to ensure consistent responses across agencies and personnel
- Multi-system-wide, long-range, and operational planning to create linkages among agencies.

Policy Making and Dispute Resolution

- Capacity to address disputes among federal, state, and local court and justice agencies
- Policy based on research, national practices, and best practices
- A decision-making structure at the multi-system leadership level that is educated on the roles of all system partners
- Policies for establishing and maintaining consistent decision-making practices across agencies and organizations
- Transparent decision-making processes

Staffing / Training

- Multi-system, federal, state, and local training of all the personnel involved in case processing involving trafficking
- Cultural competency training
- Training about specific tools such as assessment and evaluation tools designed for trafficked populations
- Capacity to cross train staff through coordination of staff development efforts
- Staff available with decision-making authority to help trafficking victims navigate successfully through multiple systems

Communication and Coordination

- Timely access to information across agencies about cases involving trafficking
- Capacity to communicate the results of assessments and evaluations with appropriate personnel across multiple systems
- Capacity to track case progress within and across agencies and systems
- Capacity to monitor caseloads across agencies and systems
- Shared case-management planning that addresses the multiple needs of victims and meets the mandates of system organizational partners
- Development of multiple system-wide performance measurements for both processes and outcomes

Leadership and Management

- Multiple system-wide and agency leaders to: (1) establish long-term strategic direction for systems as well as individual agencies and organizations regarding trafficking policies and practices; (2) develop long-term system capacity to provide services; (3) establish and monitor inter-agency, multiple-system infrastructure for supporting services; (4) establish and maintain effective inter-organizational work processes; (5) monitor multiple-system performance; and (6) work cooperatively to establish a strong fiscal foundation for on-going service delivery
- Capacity to work across multiple systems and agencies collaboratively and proactively
- Capacity of the inter-agency management structure to insure fair workload distribution

Challenges for the State Courts Resulting from Human Trafficking

The collective work to date of all the organizations that form the Human Trafficking and the State Courts Collaborative, buttressed by an extensive and expanding body of literature about the types and dynamics of human trafficking, reveal that four of the more significant challenges human trafficking pose for state courts are:

- identifying and understanding the numerous types of human trafficking victims, traffickers, and trafficking;
- determining how cases which potentially involve trafficking might appear on court dockets;
- linking trafficking victims with appropriate resources; and
- institutionalizing comprehensive, sustainable court, justice system, and community partnerships for addressing human trafficking.

Although numerous aspects of each of these challenges are addressed throughout this *HT Guide*, a few highlights are worth noting here. In particular, with regard to how human trafficking might appear in state courts, our experience and the practitioner literature has revealed four major trends. First, state court trafficking cases currently prosecuted under trafficking laws are very few proportionate to the scope of trafficking for a variety of reasons, including:

- local prosecutors often prefer to prosecute cases involving trafficking under other more familiar laws, such as rape, kidnapping, procuring, prostitution, and unlawful imprisonment, rather than newer state human trafficking laws (Farrell, et al., 2012);
- state human trafficking laws are often more difficult to enforce than other state laws that carry similar penalties (Farrell, et al., 2012);
- law enforcement, social services, the courts and other justice partners are often unfamiliar with how to address human trafficking (Farrell, et al., 2012);
- the background characteristics of some trafficking victims can make prosecution challenging (Polaris, 2010, In Their Shoes);
- trafficking victims often are reluctant to testify (Polaris, 2010, In Their Shoes);
- trafficking, especially labor trafficking, often is viewed as a federal matter, and thus potential state cases are routinely referred to the Department of Homeland Security rather than considered locally (Farrell, et al., 2012); and
- federal T and U visas and other potential federal protections for non-U.S. citizen trafficking victims are often unfamiliar to state court practitioners (Farrell, et al., 2012).

Second, trafficking victims are perhaps more easily identifiable in prostitution cases, but trafficking victims may also be present in numerous other case types including theft, drug offenses, health code violations, and juvenile and dependency cases (Farrell, et al., 2012). *Chapters 2*, *3*, and *4* address these concerns.

Third, there are a number of indicators of human trafficking that might assist court personnel and other justice partners, including a variety of behaviors that reveal a mindset of fear, distrust, denial, and conflicting loyalties. For example, as described in *Chapter 5*, trafficking victims often:

- develop general feelings of helplessness, shame, guilt, self-blame, and humiliation;
- suffer from shock and denial, or display symptoms of post-traumatic stress disorder, phobias, panic attacks, anxiety, and depression;
- suffer from sleep or eating disorders;
- become addicted to drugs and alcohol as a way to cope with or "escape" their situation, or as a method of control used by their traffickers;
- become emotionally numb, detached, and disassociated from the physical and psychological trauma and display "flat affect;" or
- experience "trauma bonding" with the trafficker, positively identifying with the trafficker and believing that, despite repeated abuse, the trafficker is a loving boyfriend, spouse, or parent (Polaris, 2010, Potential Trafficking Indicators).

Fourth, as discussed in *Chapters 7* and *10*, many trafficking victims suffer serious health issues, including:

- signs of physical abuse, such as bruises, broken bones, burns, and scarring;
- chronic back, visual, or hearing problems from work in agriculture, construction, or manufacturing;
- skin or respiratory problems caused by exposure to agricultural or other chemicals;
- infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation;
- untreated chronic illnesses, such as diabetes or cardiovascular disease; or
- reproductive health problems, including sexually-transmitted diseases, urinary tract infections, pelvic pain and injuries from sexual assault, or forced abortions (Polaris, 2010, Potential Trafficking Indicators).

Moreover, with regard to linking trafficking victims with appropriate resources, summary information presented in Figure 9 reveals that trafficking victims need the types of services available to crime victims generally (e.g., housing, mental health and medical care) as well as access to more specialized resources (e.g., new social security numbers because traffickers often keep the social security cards and other identification documents of their victims in order to track the location of their victims when they flee). Also, differences in language and culture, as shown in *Chapters 8* and *9*, create additional challenges for providing adequate case adjudication and support services.

Finally, as evidenced throughout this *HT Guide*, institutionalizing sustainable court, justice system, and community partnerships for addressing human trafficking is perhaps the single biggest challenge facing courts in the coming years. Not only does human trafficking pose numerous operational and policy challenges for state courts, but effective responses to modern day slavery globally, nationally, and locally, will require state courts to engage in and at times lead efforts to:

- establish a vision and long-term strategic direction for the court, justice system, and community about how to address HT;
- develop long-term system and community capacity to provide services;
- establish and monitor court, inter-agency and system infrastructure for supporting services;
- assure that effective inter-agency work processes are established and maintained;
- monitor system performance; and
- work cooperatively and collectively to establish a strong fiscal foundation for ongoing service delivery.

V. Additional Tools and Resources for Understanding the Types, Scope, and Dynamics of Human Trafficking

A series of *human trafficking information cards* are listed below. They are also available from the resource section at *www.htcourts.org*. These cards are:

- *Definitions, Forms, and Dynamics of Human Trafficking*
- *Identifying Cases That May Involve Human Trafficking*
- *Approaches to Addressing Human Trafficking*
- *Characteristics of a State Court-Focused Approach to Addressing Human Trafficking*
- *Human Trafficking Assessment and Measurement Framework*
- *Infrastructure Required to Support Courts and Justice Partners in Human Trafficking Cases*
- *Human Trafficking and Criminal Defendants*
- *Dealing With Human Trafficking Victims in a Juvenile Case*
- *Immigration Rights of Victims of Human Trafficking*

Human Trafficking Workbook

A *human trafficking assessment and planning workbook* is also linked to this PDF of the *HT Guide* and is available in the training materials section at *www.htcourts.org.*
The workbook includes materials for determining:

- The Human Trafficking-Related Needs and Demands on Your Court
- The Values Your Court Should Stress When Processing Human Trafficking Cases
- The Court's Strategic Priorities When Addressing Human Trafficking Cases
- Work Process Implications of Human Trafficking Case Processing
- Infrastructure Required to Address Human Trafficking Cases in Your Court

The *Human Trafficking Workbook* also includes information for assessing the implications of the jobs of different types of court personnel when addressing human trafficking and guidelines for implementing improvement strategies.

References and Other Resource Links

Listed below are the resources used in preparing this chapter.

- Banks, D. and T. Kyckelhahn. "Characteristics of Suspected Human Trafficking Incidents," 2008-2010: *http://www.bjs.gov/content/pub/pdf/cshti0810.pdf*
- Clawson, H. J., N. Dutch, A. Solomon and L. G. Grace. "Human Trafficking Into and Within the United States: A Review of the Literature." (Washington D.C.: U.S)
- Clinton, H. R. "Trafficking in Persons Report: June 2012." (Washington D.C.: U.S. Department of State, 2012), accessed January 8, 2013, *http://www.state.gov/documents/organization/192587.pdf*
- Estes, R. J. and N. A. Weiner. "The Commercial Exploitation of Children in the U.S., Canada and Mexico" *http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf*
- Farrell, A., J. McDevitt, R. Pfeffer, S. Fahy, C. Owens, M. Dank. "Identifying the Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases" *https://www.ncjrs.gov/pdffiles1/nij/grants/238795.pdf*
- Hepburn, S. and R. Simon. "Human Trafficking Around the World: Hidden in Plain Sight." (New York: Columbia University Press, 2013).
- International Labour Organization. "Forced Labour and Human Trafficking: Estimating the Profits" *http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor*
- Polaris Project. "Annual Report – 2011 An Analysis of Call Data from the National Human Trafficking hotline" *http://www.zonta-district11.org/docs/advocacy/NHTRC%20Annual%20Report%202011.pdf*
- Polaris Project. "How Does Your State Rate on Human Trafficking Laws in 2012?" (Washington D.C. *http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws*
- Polaris Project. "Human Trafficking Statistics." (Washington D.C., Polaris Project, 2010),
- Polaris Project. "In Their Shoes: Understanding Victims Mindsets and Common Barriers to Victim Identification." *http://www.cicatelli.org/titlex/downloadable/Understanding%20Victims'%20Mindsets.pdf*
- Polaris Project. "Introducing Human Trafficking to Runaway and Homeless Youth Programs" *https://na4.salesforce.com/sfc/p/300000006E4SYUMzUo3ODvehzb2q_E1E7kBFqeo=*
- Polaris Project. "Potential Trafficking Indicators: Identifying Victims of Human Trafficking" *http://www.polarisproject.org/resources/resources-by-topic/human-trafficking*
- Shamir, H.,"A labor Paradigm for Human Trafficking," *UCLA Law Review*, (Vol. 60:76), *http://llrn.utilisaction.eu/sites/default/files/papers/Shamir%20Labor%20Trafficking%20UCLA%20vol%2060.pdf*
- Swecker, C. "Chris Swecker's Testimony on the FBI's Efforts to Address the Exploitation of Children and Others in the United States."

- Tanneeru, M. "The Challenges of Counting a 'Hidden Population.'" (U.S.: CNN, 2011), accessed January 7,2013, *http://thecnnfreedomproject.blogs.cnn.com/2011/03/09/slavery-numbers/*
- Todres, J. "The Private Sector's Pivotal Role in Combating Human Trafficking," *California Law Review* *http://www.californialawreview.org/assets/circuit/Todres_3-80.pdf*
- Todres, J., "Assessing Public Health Strategies for Advancing Child Protection: Human Trafficking as a Case Study," *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200456*
- Todres, J. "Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking," *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1742953*
- Todres, J. "Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking," *http://www.mjilonline.org/wordpress/wp-content/uploads/2012/06/v33n1-Todres.pdf*
- Todres, J. "Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation," *http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Todres_camera_ready_final-_2_.pdf*
- Todres, J. "Law, Otherness, and Human Trafficking," *http://digitalcommons.law.scu.edu/lawreview/vol49/iss3/1/*
- Texas Advisory Committee to U.S. Commission on Civil Rights. "Human Trafficking in Texas: More Resources and Resolve Needed to Stem Surge of Modern Day Slavery." *http://www.usccr.gov/pubs/TX_HT_Report--ver%2050--FINAL.pdf*

Chapter 2

Community Courts, Specialized Dockets, and Other Approaches to Address Sex Trafficking

Katie Crank
Center for Court Innovation

I. Introduction

In recent years, staff in many community courts and specialized dockets have been developing an expertise in identifying trafficking victims and responding to their needs by connecting them to social services and other supports. Unlike victims of labor trafficking, whose work may not be in and of itself illegal, victims of sex trafficking are often induced to engage in illegal activities and therefore are more likely to be arrested and treated as criminals.

One common query from jurisdictions interested in improving their response to trafficking is whether or not the level of services or intervention differs based on whether or not a defendant/victim fits the federal or state definition of a "trafficking victim." The answer is no. Underlying all of the examples below is an assumption that each defendant with prostitution or related charges should be offered the same degree of service; even if a defendant does not meet the legal standard for sex trafficking,[1] she or he has still potentially experienced trauma. Further, a common goal is to help prevent defendants from cycling through the justice system, and the approaches described below may help victim-defendants find safe pathways out of the sex trade, potentially avoiding future re-arrests and jail time. Following are several examples of ways in which courts can better respond to victims of sex trafficking.

II. Community Courts as Vehicles for Addressing Prostitution/Trafficking Cases

Community courts, with their complementary goals of reducing crime and incarceration while improving public trust in justice, differ from traditional criminal courts in that they see low-level crimes as opportunities to offer help to defendants rather than as isolated incidents best treated with a short-term jail sentence.

Midtown Community Court

One community court, called the Midtown Community Court, is near Times Square in Manhattan. Before its inception, prostitution was a major issue in the court's catchment area. The court, through partnerships with community-based service providers, domestic violence agencies, a nonprofit defender organization, and the prosecutor's office, decided to focus on the underlying victimization faced by many women and transgender defendants entering the criminal justice system. Such partnerships required intentional nurturing.

The Midtown Community Court recognized that the same women were cycling through the system again and again, unable to escape "the life" of prostitution. A multitude of issues, such as coercive control by abusers, trauma, substance abuse, economic powerlessness, and immigration status, among other challenges, kept these women from leaving a pimp, trafficker, or "the life." Importantly, the court recognized that many adult victims entered into prostitution as minors and were still being arrested as adults.

[1] 22 USC §7102; *http://www.state.gov/j/tip/laws/*.

During the fall of 2013, the Midtown Community Court saw approximately 80 prostitution cases. Since the inception of the prostitution diversion docket, the court has found that over 80 percent of women arrested for prostitution have histories of victimization and trauma—including domestic violence, sexual assault, childhood sexual abuse, or physical assaults.[2] In the hope of helping these women increase their safety and support systems, and possibly exit "the life," the court built partnerships and a comprehensive assessment that would help the court identify needs and respond with appropriate referrals and sanctions.

> *"Collaboration between the judge, district attorney's office, and defense bar is crucial in prostitution cases. A partnership approach, which relies heavily on the engagement of social service agencies and their trauma-focused practices, allows me to make more informed decisions and, in many cases, seems to help people find safety or leave 'the life' instead of appearing before the court time and time again."*
>
> Judge Felicia Mennin, Midtown Community Court

To identify the myriad needs of women arrested for prostitution, staff at the Midtown Community Court developed a comprehensive psychosocial assessment, which focuses on criminogenic needs as well as past and/or current victimization. The assessment, as well as the services that follow, is trauma-informed, meaning that a centerpiece of the interaction with a defendant is to establish rapport, help develop a sense of safety, and listen for symptoms of trauma, including re-experiencing, avoidance, or arousal (i.e., hypervigilance or exaggerated startle response).[3]

The practice of using an in-depth assessment allows a judge to make a more informed and nuanced decision about an appropriate alternative sanction. At the Midtown Community Court, the most common mandate involves participation in an on-site evidence-based, psychoeducational program known as WISE—Women's Independence, Safety and Empowerment. Through a partnership with a local domestic violence agency (STEPS to End Family Violence), a combination of group and individual sessions address topics such as safety, trauma reactions, healthy coping, relationships, financial literacy, and other important concerns, such as human trafficking, legal, employment, and housing issues. Offered as either a 5- or 10-session program, WISE not only provides a safe space for women to support each

[2] Schweig, S., D. Malangone, and M. Goodman (2012), "*Prostitution Diversion Programs*" (Center for Court Innovation, New York, NY). Available at www.courtinnovation.org.

[3] For more information on comprehensive assessments for women and transgender individuals arrested for prostitution, please see *Chapter 5*, "*Identifying and Responding to Sex Trafficking.*"

other, but it also allows Midtown Community Court and STEPS staff to engage in goal-oriented case management and aftercare planning. Adaptations of WISE, including a Spanish-speaking curriculum as well as a group for transgender women, have been added since the program's inception. Further, partnerships with community domestic violence agencies serving Mandarin- and Korean-speaking victims have allowed defendants to receive assessment, counseling, and other services in their own language.

Importantly, the specially trained judge who presides over the Midtown Community Court still responds consistently to noncompliance for defendants who have been identified as victims; the response is simply tailored to the goal of reducing the use of incarceration. The judge takes into account the common barriers that prostituted women face in leaving "the life"—similar to those who are addicted to substances, women may suffer setbacks, such as re-arrest, before successfully achieving safety or leaving "the life." The judge often uses graduated sanctions, such as mandating additional services or increasing the frequency of court visits, to encourage compliance, rather than sentencing a defendant to jail. Women arrested for prostitution also meet with Midtown Community Court staff and partners regularly so that non-compliance can be identified early and responded to quickly. The judge's response is aided by the presence of a dedicated prosecutor and defense attorney. These stakeholders, who also have specialized training, collaborate with the judge to help ensure that trafficking victims are not convicted of crimes for which they are not culpable.

Applications in Other Settings

This emphasis on compliance is applicable to other criminal court settings; consistency, accountability, and the provision of services tailored to the offense are all fairly universal goals. Indeed, the National Center for State Courts (NCSC) identified the clear and rigorous monitoring in community courts as a practice that could be successfully adapted by traditional courts.[4] Following are several specific ways in which courts can adapt their compliance practices to fit the needs of sex trafficking victims.

- Mainstream courts could adapt the practice used in the Midtown Community Court of responding swiftly to noncompliance, and emphasizing social services and frequent court appearances, if necessary, rather than jail. This reliance on alternative sanctions is another community court practice that NCSC identified as ripe for adoption by mainstream courts.
- NCSC emphasized that procedural justice in community courts is a practice that is readily applicable to traditional courts. Procedural justice seeks to improve perceptions of fairness in the justice system by encouraging judges, attorneys and other court staff to treat defendants, victims and the public with dignity and respect. Research indicates that community courts have been particularly successful at this—and that improved perceptions of fairness lead to improved compliance with court orders (and the law generally). Prostitution and trafficking cases are no exception to this common practice in community courts, and judges in mainstream courts should be mindful of the level of respect afforded defendants who may be victims of traumatic experiences, including sex trafficking.

[4] Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel and R. Curtis (2013) *A Comprehensive Evaluation of the Red Hook Community Justice Center* (Williamsburg, Virgina: National Center for State Courts).

- NCSC identified the use of information technology as an effective case monitoring tool. Specially designed systems can include detailed information on an individual's treatment needs, compliance, treatment progress, and clinical recommendations. This information is then easily shared among stakeholders during collaborative meetings, such as case conferences, which are used to review an individual's progress and recommended strategies in advance of compliance hearings.

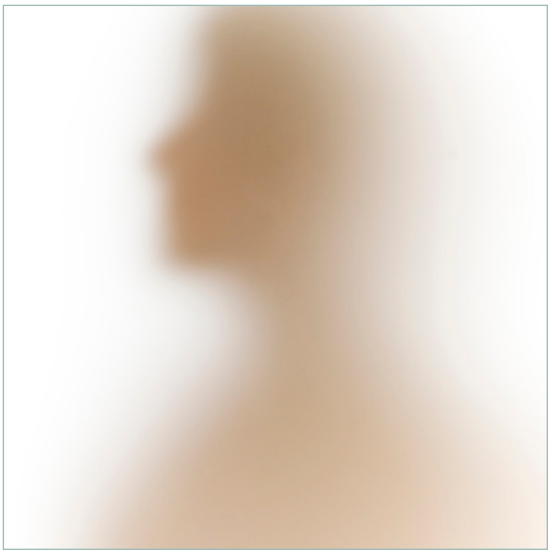
The support system created at the Midtown Community Court is one that can be developed in other urban, suburban, or rural courts. The emphasis on collaboration between court and community stakeholders, such as public defenders, prosecutors, domestic violence agencies, and other social service providers is key in identifying and responding to prostitution and trafficking cases. Further, the development of a mandate that is tailored to the experiences of prostituted women and transgender individuals (such as WISE) is crucial for courts wishing to adapt their response to victims of trafficking.

III. Specialized Dockets as a Vehicle for Addressing Prostitution/ Trafficking Cases

For many jurisdictions, specialized dockets may be more familiar than community courts; models such as drug courts, mental health courts, and domestic violence courts might already exist in the community. Such specialized dockets can serve as important intercept points for defendants who have experienced trauma and, in some cases, trafficking. Two specialized court models—one in New Castle County, Delaware, and the other in Queens, New York—provide examples of how existing dockets can play a crucial role in identifying and responding to trafficking cases.

New Castle County, Delaware

In Wilmington, Delaware, court staff and stakeholders recognized an opportunity for collaboration between their felony mental health court and a pilot misdemeanor court focused on defendants who were victims of trauma and violence, and in many cases had a history of prostitution. Stakeholders saw the overlap between women with mental health diagnoses who appeared in the felony-level court, and those with trauma histories who were part of the Trauma-Informed Probation (misdemeanor-level) court. Further, an existing coalition of stakeholders spent a year researching best practices in responding to prostitution cases, and the information that this group gleaned contributed to a fruitful collaboration between the felony and misdemeanor-level problem-solving courts. One of the assumptions fueling this collaboration was that a failure by the court to adequately address the trauma of female defendants can lead to inappropriate treatment referrals, and might ultimately increase the risk of recidivism.



There are several key components of the specialized court adaptation in Delaware, known as the Victim Advocacy and Safety Enhancement project, from which other courts might benefit. One staff position that greatly aided the project in Wilmington is that of a coordinator (sometimes called a resource coordinator or case coordinator). The coordinator in Delaware:

- focuses on the implementation of a screening tool tailored to trauma and prostitution issues;
- identifies and coordinates services and trauma-informed care for defendants; and
- arranges training for judges on the needs of justice-involved women who are victims of sexual abuse, domestic violence, and pimp-controlled prostitution/trafficking.

Further, the project in Wilmington added the services of a victim advocate, similar to the Midtown Community Court's model in Manhattan. In Wilmington, the victim advocate:

- focuses on screening for victimization;
- conducts a needs assessment for defendants;
- provides education to survivors;
- conducts advocacy in court;
- engages in prevention efforts and safety planning with survivors; and
- collaborates with existing treatment and service providers so as to make appropriate referrals.

Several pre-existing practices in the mental health court in Wilmington contributed to the successful collaboration on behalf of victimized women with prostitution histories. First, robust case conferences set the stage for court stakeholders, treatment providers, and other community agencies (such as domestic violence agencies) to engage in similar case reviews on behalf of the women identified for the Victim Advocacy and Safety Enhancement project.

Another strength in Wilmington was the wide variety of social services at the court's disposal, as well as an established coalition of agencies willing to address trauma, domestic violence, sexual assault, and prostitution among justice-involved women.

> *"Each woman deserves to be treated with respect and dignity, regardless of her background in prostitution. The reality is that most, if not all, of these adult defendants began as child victims of abuse (often sexual abuse) and have continued to be victims of abuse and violence as adults. We try to focus on their underlying treatment needs, such as substance abuse and mental health, including trauma counseling, along with the practical needs of housing, ID cards, jobs, etc. to help them get out of the so-called "life." Rarely, if ever, do we even use the terms "sex worker" or "prostitute" in court as it is clear those terms make the women uncomfortable given the stigma attached to them. The sad reality is that the amount of trauma in these women's lives, first as children and now as adults, is simply overwhelming. I expect that one of the first steps to healing from this trauma is for each woman to realize that she really does deserve to be treated better; she deserves to be treated with respect and dignity."*
>
> *Commissioner Mary McDonough, New Castle County, Delaware*

Adapting the model

The Wilmington model is instructive in a number of ways for other courts wishing to adapt their existing specialized dockets.

- First, court stakeholders had to work to implement identification practices for potential victims of prostitution/trafficking, especially since prostitution charges were not common in the jurisdiction. As a result, staff had to begin looking for related arrest histories, such as for "loitering." Beyond identification, stakeholders had to adapt existing screening forms to specifically address issues related to prostitution and other victimization/trauma. Not only did such assessments need to be adapted in the court setting, but treatment providers in the community, through training and collaboration with the court, adapted their intake/assessment tools to include such questions.
- Additionally, stakeholders in Wilmington focused on training judges, court staff and stakeholders on the overlap between prostitution, trafficking, domestic violence, sexual assault, and trauma. Such trainings also included information on the effectiveness of lower levels of care—challenging the assumption in some settings that longer mandates always equal better outcomes. Training for these stakeholders also helped to spark conversation about additional methods for identification and assessment, including working with front-end partners (e.g., law enforcement, defense counsel) on identification, as well as studying and adapting evidence-based assessment tools. Finally, trainings included methods for effectively engaging women with prostitution/trauma histories who are mandated to treatment in the community.

Queens, New York

In Queens, New York, several specialty dockets, including a drug court, mental health court, and domestic violence court—all handling misdemeanor cases—existed at the time of implementation of a new specialized response to prostitution and trafficking. The prostitution diversion court (now known as the Human Trafficking Intervention Court) was developed in Queens by a judge who saw that many of the same defendants cycled through the system again and again. He developed initial partnerships with community-based service providers to address the underlying needs of these women arrested for prostitution. Since its inception, the Human Trafficking Intervention Court has addressed over 1,800 cases—many of which benefited from these partnerships. The court later applied for and received funding from the Office on Violence Against Women to coordinate a response focused on female and transgender defendants in mental health court, drug court, and the Human Trafficking Intervention Court.

This coordinated approach builds on the existing resources that are available to defendants in each of these specialized courts. The coordinator for the project screens all women and transgender defendants in the drug court and mental health court, and screens defendants referred by the judge or prosecutor in the Human Trafficking Intervention Court for underlying issues of past or present trauma. Similar to the Midtown Community Court model, this initial assessment is focused on

identifying trauma, domestic violence, and sexual assault so that defendants can receive appropriate interventions that address these issues, rather than continue to cycle through the system.

One important component of the Queens collaboration among these several specialized courts is that the presiding judge oversees each of the three dockets. Because the judge is specially trained in issues of trauma, prostitution/sex trafficking, domestic violence, and sexual assault, she is able to respond to defendants in a more informed way. Similar to the Midtown Community Court model, a dedicated prosecutor and defense attorney work closely with the judge to help ensure that mandates are appropriate and do not re-victimize defendants who are already victims of trafficking or trauma.

Adapting the model

Several strategies employed by the judge and staff in the Queens project can be adapted in other jurisdictions:

- A new resource aiding the collaboration in Queens is a Women's Services Coordinator position. Having a court-based individual who screens female and transgender defendants for trauma and victimization, and who creates linkages among providers, is critical. Other jurisdictions, however, might consider ways that existing staff—such as a resource coordinator in a specialty court—might be able to engage in similar tasks. Further, jurisdictions that have developed a coordinated community response through their domestic violence court may be able to build on existing networks to expand service options available to victims of trafficking.
- The team in Queens has built partnerships with community agencies by providing trainings on trauma, sex trafficking, domestic violence, and sexual assault for mental health and substance abuse providers. While these agencies have expertise in their respective fields, training them in issues related to trauma and sex trafficking expands the capacity of the court to respond appropriately to women and transgender individuals who have been identified as needing services.

IV. The Role of the Court in a Prosecutor-Led Response

In order to respond to prostitution in Portland, Oregon, the Multnomah County prosecutor's office gave one neighborhood-based prosecutor jurisdiction over all prostitution-related crimes. This neighborhood-based prosecutor developed a new approach. Rather than view women arrested for prostitution in Portland as criminals, the prosecutor's office began to view them as victims—and to build a collaborative response with that approach in mind.

Importantly, the approach in Portland mirrors the goals of a community court, in that the prosecutor works with the court to create alternatives to the business-as-usual approach of sentencing defendants to short-term jail. Instead, women are offered probation with the condition that they engage in free services at a local community-based service provider. This service provider offers interventions specific to the experience of prostitution, including a survivor-led mentor program, but also provides a comprehensive set of related services, such as mental health counseling, drug treatment, case management, and referrals for other basic needs such as educational and housing services.

> *"The collaboration is why this works. Without it, the women would not participate in or have access to these services. These women need an interdisciplinary team of people that know how to engage them and that can work together effectively."*
>
> Carey Cogswell, clinical supervisor for community-based treatment provider New Options for Women in Portland

Though this approach is prosecutor-led, the court plays a crucial role through its ability to monitor women who are offered probation. With a goal of helping participants stay safe from pimp control and adhere to treatment, judges have the power to revoke defendants' probation, and further, can re-sentence defendants for up to a year in jail, with the possibility of early release if they agree to further treatment. The hope is that by continuing to make rehabilitative options available, and by responding swiftly to noncompliance, victims will be helped in the goal of not returning to "the life."

Developing close collaboration among a variety of agencies has been one of the keys to the success of the model in Portland. Because the dedicated prosecutor in this project is based at a local police precinct, he was able to partner closely with officers, detectives, and federal agents to address trafficking victims. Further, the prosecutor works closely with law enforcement to identify and return women to court who have gone back to "the life." Additionally, the prosecutor works with the County Sheriff's Office, which oversees the local jail and helps to monitor all jail correspondence, making sure that victims are not being intimidated or threatened.

The prosecutor's office paid particular attention to developing relationships with service providers in the community, who now meet weekly with the police and the prosecutor to review progress reports and probation status. Building on these relationships, the prosecutor's office has also begun to partner with local domestic violence agencies. Since domestic violence organizations often have existing expertise in victimization, power, and control issues, this is an important aspect of a robust collaboration with community partners.

Whether pursuing a court-based or a prosecutor-based response to prostitution and trafficking, the lessons from Multnomah County are applicable: the victim-centered approach, close collaboration with law enforcement and community partners, and treatment that is specific to the experience of prostitution and sex trafficking are all relevant to jurisdictions seeking to improve their approach to this issue.

References and Other Resource Links

- 22 USC §7102; *http://www.state.gov/j/tip/laws/*.
- Schweig, S., D. Malangone, and M. Goodman (2012), "Prostitution Diversion Programs," Center for Court Innovation, New York, NY, available at *www.courtinnovation.org*.
- For more information on comprehensive assessments for women and transgender individuals arrested for prostitution, please see *Chapter 5*, *Identifying and Responding to Sex Trafficking: A Guide for Courts*.
- Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013). "A Comprehensive Evaluation of the Red Hook Community Justice Center." Williamsburg VA: National Center for State Courts.
- For more information on risk and needs assessments, see *Chapter 5*, *Identifying and Responding to Sex Trafficking: A Guide for Courts*.

Chapter 3

Human Trafficking and Immigrant Victims: What Can State Courts Do?

Steven Weller
Center for Public Policy Studies

Angie Junck
Immigrant Legal Resource Center

I. Chapter Overview

This chapter discusses the immigration benefits available for human trafficking victims under federal immigration law and how state court matters might affect an immigrant human trafficking victim's eligibility for those benefits. In particular, state criminal court cases involving immigrant human trafficking victims can either negate the victim's eligibility for benefits or provide opportunities for the state courts to assist those victims in obtaining benefits.

Along with all the **means of coercion available to traffickers** discussed in other chapters of this *HT Guide*, non-citizen status can potentially provide a trafficker with an additional means of coercion through the threat of deportation. Undocumented immigrants are at the greatest risk of being deported, but even non-citizens who are in the United States lawfully may become deportable under federal immigration law in a variety of ways, including by conviction of one of a long list of crimes, some of which may be misdemeanors under state law, overstaying a visa, leaving an employer specified in a temporary work visa, and engaging in certain other activities.

Federal immigration law contains benefits that can provide protection for immigrant human trafficking victims. For undocumented immigrants, the immigration benefits for human trafficking victims provide a pathway to temporary lawful status and ultimately lawful permanent resident (LPR) status. In addition, human trafficking victims who are in the United States lawfully on the basis of temporary status (e.g., holders of temporary work visas and other non-immigrant temporary visas, refugees) may be eligible for benefits to protect them from deportation and to put them on a path to lawful permanent resident status.

This chapter discusses those benefits, their eligibility requirements, and how state court cases can affect a victim's ability to meet those requirements. The remainder of this chapter is divided into the following sections:

- Section II presents an overview of benefits for human trafficking victims under federal immigration law. This section will discuss: (1) Continued Presence, (2) T non-immigrant status (the T visa), (3) U non-immigrant status (the U visa), (4) Violence Against Women Act (VAWA) self-petitioner, and (5) Special Immigrant Juvenile Status (SIJS). It also describes certain limitations and consequences for immigrant human trafficking victims under federal laws. This will discuss: (1) eligibility to work; (2) eligibility for public benefits; and (3) the effects of state criminal convictions on immigration status and eligibility for federal immigration benefits.
- Section III addresses: (1) the court's role in assisting human trafficking victims who have been coerced into committing criminal acts; (2) assuring that immigrants receive appropriate and effective legal assistance; (3) the uses of court records; (4) the court's role in documenting eligibility for federal immigration protections; (5) referral to services; (6) issues of safety for trafficking victims in court; and (7) ethical issues in assisting trafficking victims.
- Section IV presents indicators for recognizing a potential immigrant human trafficking situation and how judges and other justice system officials might determine whether an individual in court is a potential trafficking victim.

- Section V provides links to additional tools and resources, including:
  - a series of information cards developed by the Human Trafficking and the State Courts Collaborative aimed at providing judges and other justice system officials an overview of definitions and forms of human trafficking, approaches to addressing human trafficking, strategies for state courts to deal with traffickers and victims, assessing and measuring the effects of human trafficking cases on the courts, identifying human trafficking cases, protections for immigrant human trafficking victims, assisting trafficking victims facing criminal charges, and assisting juvenile trafficking victims;
  - forms and instructions provided by the United States Citizenship and Immigration Services (USCIS) for immigrant human trafficking victims applying for immigration protections;
  - websites of related organizations specializing in researching and analyzing human trafficking issues;
  - websites of organizations working with immigrants; and
  - the website of the *Human Trafficking and the State Courts Collaborative* and the separate websites of the members of the collaborative.

II. Federal Immigration Protections for Human Trafficking Victims

The following discussion presents the eligibility requirements for the primary protections in federal immigration law for victims of human trafficking. The protections all allow the victim to remain in the United States on a temporary basis and, with the exception of continued presence, provide a defined pathway for the victim to apply for lawful permanent resident status and eventual citizenship.

Continued Presence 22 U.S.C. § 7105(c)(3)

A federal law enforcement official may request a grant of Continued Presence for an immigrant by application to the Law Enforcement Parole Branch (LEPB) of Immigration Customs Enforcement (ICE) stating that the immigrant is a victim of a severe form of trafficking who may be a potential witness to such trafficking. The application may be filed by a Federal law enforcement official on behalf of a state or local law enforcement official. Continued Presence is initially granted for one year and may be renewed in one-year increments.

T Non-Immigrant Status (T Visas) 8 U.S.C. § 1101(a)(15)(T)

T non-immigrant status, also referred to as the T visa, is a non-immigrant status available for individuals who have been victims of human trafficking and meet the following requirements. The person:

- is or has been the victim of severe trafficking, as defined below;
- is physically present in the United States or its territories as a result of the trafficking;
- if 18 years of age or above, is complying with any reasonable request for assistance in the investigation or prosecution of traffickers; and
- would suffer extreme hardship involving unusual and severe harm upon removal.

The T visa requires application to the USCIS. There is no specific requirement in federal immigration law that the applicant for a T visa obtain a certification from a state court judge that the person is a victim of human trafficking. Such a certification, however, is recommended by USCIS, and may serve as primary evidence that the applicant is a victim of trafficking and has complied with reasonable requests from law enforcement, to support a determination that the applicant meets the requirements to be eligible for a T visa. It may be particularly important if the trafficker is being prosecuted under a lesser charge.

To be eligible for a T visa, the applicant must also meet the requirements of admissibility. The requirements for admissibility are discussed later in this chapter. Federal immigration law permits USCIS to waive most of the requirements of admissibility, and in particular requirements based on criminal convictions rendering the person inadmissible that were caused by or related to victimization as a result of the trafficking. See 8 U.S.C. § 1182(d)(13). Some requirements may not be waived, including some security-related grounds, international abduction, and renunciation of citizenship by a former citizen to avoid taxation.

The T visa also allows certain family members accompanying or following to join the victim to enter as well, including parents if the victim is under the age of 21.

The maximum length of stay under the T visa status is four years unless extended. The holder of a T visa is eligible to apply for lawful permanent resident status if he or she has been continuously in the U.S. in T visa status for three years, is admissible and of good moral character, has suffered extreme hardship, and is complying with requests for help from law enforcement. See 8 U.S.C. § 1255(l)(1)(B).

Under U.S. federal law, sex trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, 22 U.S.C. § 7102(9).

The term "severe forms of trafficking in persons," as required for a T visa, means:

- sex trafficking in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age, 22 U.S.C. § 7102 (8)(A); or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery, 22 U.S.C. § 7102(8)(B).

Under the Trafficking Victims Protection Act, a person under the age of 18 who is induced to perform a commercial sex act is considered a victim of severe trafficking.

The term "coercion" is defined in 22 U.S.C. § 7102 (2) as:

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

There is no definition of "fraud" in 22 U.S.C. § 7102, but the federal crime of fraud is defined in 18 U.S.C. § 1001 as, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully:

- falsifying, concealing, or covering up by any trick, scheme, or device a material fact;
- making any materially false, fictitious, or fraudulent statement or representation; or
- making or using any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Generally under state law, fraud is defined as the intentional and knowing concealment or false representation of fact by words or conduct to induce another to act to his or her legal detriment.

U Non-Immigrant Status (U Visas) 8 U.S.C. § 1101(a)(15)(U)

A victim of human trafficking may also qualify for U non-immigrant status, also referred to as a U visa, in some circumstances, on application to USCIS. The U visa is a non-immigrant visa available to undocumented individuals who meet the following requirements:

- the individual has suffered severe physical or mental abuse as a result of being a victim of certain enumerated criminal activity (see below);
- the individual has information about the criminal activity and has been, is being, or is likely to be of help to a federal, state, or local investigation or prosecution of the criminal activity; and
- the individual has certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in investigating or prosecuting the criminal activity that he or she has been, is being, or is likely to be of help to the investigation or prosecution of the criminal activity. **State court judges should be particularly aware that they can provide the certification.**

To be eligible for a U visa, the applicant must also meet the requirements of admissibility. The requirements for admissibility are discussed later in this chapter. Federal immigration law permits USCIS to waive most of the requirements of admissibility in determining eligibility for the U visa, and the waiver is not limited to convictions for crimes related to victimization from human trafficking. See 8 U.S.C. § 1182(d)(14). Some requirements may not be waived, including some security-related grounds, international abduction, and renunciation of citizenship by a former citizen to avoid taxation.

The rights of the U visa holder include the following:

- The maximum length of the U visa is four years unless extended.
- The U visa holder may apply for any other immigration benefit or status for which he or she is eligible.
- The holder of a U visa is eligible to apply for lawful permanent resident status after three years of continuous residence in U visa status. To be eligible for a change in status to lawful permanent resident, a U visa holder must also meet the requirements for admissibility under federal immigration law, not refuse to cooperate with reasonable requests for assistance by law enforcement, and the change must be justifiable on humanitarian grounds. A variety of criminal convictions can make a person inadmissible.
- The U visa holder may apply for certain qualifying family members to obtain U visa status as well.

The U visa applies to the following specified list of crimes, many of which could be involved with human trafficking: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; stalking; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

VAWA Self-Petitioner 8 U.S.C. § 1101(a)(51) and 8 U.S.C § 1154(a)

Immigration law provides that an immigrant married to an abusive U.S. citizen or lawful permanent resident (LPR), a child of an abusive U.S. citizen or LPR, or the parent of an abusive U.S. citizen son or daughter may self-petition for LPR status without the cooperation of the U.S. citizen or LPR spouse, parent, son or daughter if:

- the spouse has been battered or subjected to extreme cruelty by citizen or lawful permanent resident spouse;
- the child has been battered or subjected to extreme cruelty by citizen or lawful permanent resident parent;
- the child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse;
- the parent has been battered or subjected to extreme cruelty by a U.S. citizen son or daughter;
- the act or threatened act was one of extreme cruelty, including physical violence, sexual abuse, forced detention, emotional abuse, or psychological abuse against the petitioner;

- the abused family member lived at some point in time with the abuser, in or out of the United States;
- if the petitioner is self-petitioning based on abuse by a spouse, the marriage must have been legal and valid in the location in which it took place;
- for abused children, they must be unmarried and under the age of 21, although certain exceptions are available for abused children to self-petition up to age 25; and
- the petitioner is of good moral character.

VAWA protection can apply to an immigrant human trafficking victim if the extreme cruelty is due to being a victim of human trafficking.

Special Immigrant Juvenile Status (SIJS) 8 U.S.C. § 1101(a)(27)(J)

A trafficked juvenile who is also an undocumented immigrant may be eligible for lawful permanent residence through Special Immigrant Juvenile status (SIJS) under certain conditions specified by Federal immigration law. The juvenile must file an application with the USCIS for the grant of SIJS, and the granting of status is discretionary with USCIS. Any unmarried person under the age of 21 who meets the conditions listed below may apply for SIJS.

For eligibility for SIJS, there must be findings entered and signed by a court in the United States with juvenile jurisdiction that:

- the juvenile is declared dependent on the court or is legally placed in the custody of an agency or department of a state or is legally committed to the care of an individual or entity appointed by the state or a juvenile court located in the United States;
- reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis found under state law; and
- it would not be in the best interest of the juvenile to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence.

The law defines a juvenile court as a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. This means that a variety of courts can fit this definition including courts that handle dependency, delinquency, guardianship, and adoption proceedings.

A juvenile applying for SIJS must also apply for adjustment to lawful permanent resident status, so most of the grounds for inadmissibility also apply. An immigrant juvenile who engages in any of the following areas of conduct may be ineligible for adjustment of status:

- known or reasonably believed to have engaged in drug trafficking, unless coerced;
- being a drug addict or abuser;
- having engaged in prostitution;
- violation of a protection order;
- false claim to U.S. citizenship; or
- behavior showing a physical or mental condition that poses a current threat to self or others.

Most of these grounds, however, may be waived. Other conduct such as violent offenses, sex offenses, and gang activity are particularly problematic, as they often can lead to discretionary denial of SIJS and other immigration protections.

Because traffickers may force the victims into committing these and other crimes, including selling drugs for the trafficker, stealing, or even assisting the trafficker in recruiting other victims, it turns the trafficking victim into a trafficker as well. This makes it difficult to recognize juvenile criminal behavior that is the result of victimization rather than criminal intent. If a trafficked girl also engages in other illegal activities for her traffickers, such as selling drugs or recruiting other girls for prostitution, that additional criminal behavior, if admitted to in a delinquency hearing, could also make the victim ineligible for SIJS or discretionary immigration benefits, including naturalization after the juvenile attains the age of 18 years.

The above eligibility requirements for adjustment of status can become especially problematic in circumstances where the state court is unable to provide services to a juvenile offender unless the court has an adjudication on which to justify requiring the juvenile to enter a treatment program. For example, there may be no secure housing available for a juvenile victim of sex trafficking unless the juvenile is adjudicated for prostitution and sentenced to a juvenile detention facility. The adjudication, which is aimed at protecting the juvenile, may end up making an immigrant juvenile ineligible for SIJS or other discretionary immigration benefits, including naturalization after the juvenile attains the age of 18 years.

Some states have options for certain juveniles charged with prostitution to be classified as sexually exploited juveniles and sent to diversion programs rather than being adjudicated delinquent of prostitution. New Jersey, for example, makes it an affirmative defense to a charge of prostitution that the defendant was either a victim of human trafficking or under the age of 18 at the time of commission of the act.

Eligibility to Work

The following are the most common types of immigrants who are authorized to or can seek authorization to work as an employee in the United States. See 8 C.F.R. 274a.12 for the complete list of categories of immigrants whose authority to work is either inherent in their status, or who may apply for an employment authorization document that permits them to work as an employee in the U.S. Note that a grant of any of the forms of relief for victims of human trafficking described earlier provides work authorization.

The following are categories of immigrants for whom a grant of legal status also provides eligibility to work.

- Lawful permanent residents
- Conditional immigrants
- Refugees and Asylees
- Immigrants paroled by DHS into the U.S. as refugees
- Juveniles who have been approved by DHS for Special Immigrant Juvenile (SIJ) status
- VAWA self-petitioners whose application has been approved
- Immigrants granted a T visa or T non-immigrant status
- Immigrants granted a U visa or U non-immigrant status
- Immigrants granted continued presence

The following are some of the categories of immigrants whose immigration status enables them to apply for discretionary authorization to work.

- Conditional immigrants who fail to file a timely application for LPR status pending request for waiver if removal proceedings have been stayed
- Immigrants paroled into the U.S. for humanitarian reasons or for public benefit to pursue an application for admission
- Immigrants who have applied for asylum or withholding of removal may apply for employment authorization 150 days after completing the application for asylum
- Immigrants who have applied for adjustment to LPR status

Eligibility for Federal Public Benefits

Where the victim is an immigrant, the victim's immigration status will affect his or her eligibility for services and may substantially limit what a court or human service agency can do for the victim. Federal law limits the eligibility of immigrants for many

benefits, including: SSI, SNAP (food stamps), TANF, Medicaid, CHIP, and other federal benefits. Immigrant eligibility for some benefits also may vary depending on the state or locality. The restrictions do not apply to certain specified benefits such as:

- emergency medical assistance;
- short-term, non-cash, in-kind emergency disaster relief;
- assistance for immunizations or treatment for symptoms of communicable diseases;
- programs identified by the Attorney General that are available without regard to an individual's income or resources, and are necessary to protect life or safety;
- Women, Infants, and Children (WIC);
- school lunch/breakfast; and
- services provided by community clinics.

With regard to eligibility for benefits, there are two classes of immigrants, qualified and non-qualified non-citizens. Temporary visa holders and undocumented immigrants are non-qualified non-citizens. An immigrant generally must be "qualified" to be eligible for certain federal public benefits. A federal public benefit is defined as:

- any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

Each federal agency is charged with determining whether the benefits under its jurisdiction fall within this definition, or meet one of the many exceptions to this definition. Only some federal agencies have made these determinations.

The following list summarizes which non-citizens are qualified immigrants for the purposes of eligibility for certain federal public benefits. See 8 U.S.C. § 1641. Note that U visa holders are not defined as qualified aliens.

- An immigrant who is lawfully admitted for permanent residence
- An immigrant who is granted asylum
- A refugee who is admitted to the United States
- An immigrant who is paroled into the United States for a period of at least one year
- An immigrant granted withholding of deportation or removal

- An immigrant who is granted conditional entry
- An immigrant who is a Cuban or Haitian entrant
- An immigrant who has been approved or has a pending petition that sets forth a *prima facie* case for relief as a VAWA self-petitioner
- An immigrant who has been granted a T visa or who has a pending application that sets forth a prima facie case for eligibility for a T visa.

Trafficking survivors who are certified by or receive an eligibility letter from the Office of Refugee Resettlement are eligible for federal benefits to the same extent as refugees, even if they do not meet the "qualified" immigrant definition.

The following are the key sections in federal immigration law, in U.S. Code Title 8, relating to eligibility for federally-funded benefits or services. The law is complicated and full of exceptions, so judges should ensure that attorneys for immigrant human trafficking victims are able to advise their clients about these provisions.

- 8 U.S.C. § 1611 – General eligibility for Federal public benefits;
- 8 U.S.C. § 1612(a) – Limited eligibility for SSI and food stamps;
- 8 U.S.C. § 1612(b) – Limited eligibility for TANF, Social Services Block Grants, and Medicaid;
- 8 U.S.C. § 1613 – Eligibility for Federal means-tested benefits;
- 8 U.S.C. § 1621 – Eligibility for state or local public benefits; and
- 8 U.S.C. § 1622 – Authority of a state to determine eligibility for state benefits.

In addition, see 22 USC § 7105(b)—benefits eligibility for trafficking survivors.

Additional statutes and regulations provide options for states to provide federal Medicaid/CHIP to a broader group of lawfully residing children and/or pregnant women, or prenatal care women regardless of their status.

In addition to the federal options, states have the authority to provide state or local benefits to federally ineligible immigrants, using their own funds. The National Immigration Law Center provides more detailed information about immigrant eligibility for benefits, at *http://www.nilc.org/access-to-bens.html*.

Immigration Consequences of Criminal Convictions

The eligibility of a non-citizen human trafficking victim for any of the immigration protections listed above under federal immigration law can be affected by an individual's involvement in a state court criminal, family, or juvenile case. A trafficker may force victims to commit crimes that potentially make the victim deportable, and the threat of deportation may apply both to lawful and undocumented immigrants. Further, arrest and deportation can occur quickly, before the possibility that the individual is a trafficking victim can be investigated, so the fear of being deported is real even where the immigrant may have a valid defense to deportation.

If a sex trafficking victim engages in other illegal activities for the trafficker, such as selling drugs or recruiting other victims, that additional criminal behavior could also make the victim ineligible for discretionary immigration benefits requiring a showing of admissibility or good moral character, including adjustment of status and naturalization.

Under federal immigration law, the term "conviction" means, with respect to an alien (both lawful and undocumented immigrants are considered aliens under federal immigration law), a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where:

- a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt; and
- the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Juvenile delinquency dispositions are not considered convictions under federal immigration law. (Note, however, that juvenile conduct nonetheless in certain circumstances may be considered as grounds of inadmissibility.)

Something considered as a conviction under federal immigration law may not be considered a conviction under state law. For example, the following all constitute a conviction under federal immigration law, if coupled with some form of punishment, penalty, or restraint on liberty:

- admission on the record of facts supporting a conviction;
- diversion, if there is a finding of guilt or admission of facts on the record that would support a finding of guilt;
- deferred adjudication where plea of guilty or *nolo contendere* is entered; and
- deferred adjudication coupled with rehabilitative treatment.

An expungement of a criminal conviction does not erase the conviction for immigration purposes. A presidential or gubernatorial pardon does erase certain, but not all convictions for immigration purposes.

The following table summarizes the major eligibility criteria for the immigration protections described above that may be affected by a state court case. As the table shows, the two most often recurring eligibility requirements for immigration protections that are available to victims of human trafficking are good moral character and admissibility.

Figure1

Benefit	Eligibility Requirements
T Visa	■ Severe form of trafficking ■ Admissibility to get T visa and to adjust to LPR, with possible waivers for some crimes ■ Good moral character to adjust to LPR status
VAWA Self-Petitioner	■ Abuse (battery or extreme cruelty) by U.S. citizen or lawful permanent resident ■ Good moral character ■ Admissibility to adjust to LPR status, with possible waivers for some crimes
U Visa	■ Victim of certain enumerated crimes ■ Certification by a justice system official that he/she is helpful or likely to be helpful in the investigation or prosecution of the crime ■ Admissibility to get U visa and to adjust to LPR status, with possible waivers for some crimes
Special Immigrant Juvenile	■ Required court findings including abuse, neglect, or abandonment ■ Age ■ Admissibility to adjust to LPR status, with limited waivers for some crimes

Both good moral character and admissibility can be affected by juvenile adjudications and convictions for a wide variety of criminal offenses. USCIS typically asks an applicant applying for an immigrant protection to provide criminal record information including any arrests and convictions in order to determine whether the individual qualifies and should be granted as a matter of discretion the requested benefit.

Good Moral Character 8 U.S.C. § 1101(f)

As the above table shows, good moral character is a requirement for certain immigration protections such as VAWA and T non-immigrant status. Federal immigration law does not define what good moral character is, but the statute contains a list of actions that negate it. Federal immigration law provides that an individual who is or has engaged in any of the following is not of good moral character:

- conviction of an aggravated felony (after November 29, 1990);
- conviction of or admission to acts which constitute the essential elements of
  - a crime involving moral turpitude, with an exception for certain petty offenses, or
  - a crime related to a controlled substance, with exception for a single offense of simple possession of 30 grams or less of marijuana (but see discussion of the residual clause below);
- known or reasonably believed to have engaged in drug trafficking;
- coming solely, principally, or incidentally to engage in prostitution or having engaged in prostitution within 10 years of the date of application for immigration benefits;
- engaged in or profited from the business of prostitution;

- confinement in a penal institution for an aggregate of 180 days or more as a result of one or more convictions;
- multiple convictions with an aggregate sentence of five years or more;
- receiving one's primary income from illegal gambling;
- conviction of two or more gambling offenses;
- being an habitual drunkard;
- giving false testimony for the purpose of gaining or retaining immigration benefits;
- smuggling aliens into the U.S.;
- polygamy; or
- participation in Nazi persecution or religious persecution.

There is a residual clause providing that the fact an individual does not fall within any of these classes does not preclude a finding that he or she is not a person of good moral character for other reasons. In fact there are additional negative factors provided in regulations and other guidance, including having a protection order issued against the individual, being on probation or parole, some interactions with law enforcement, commission of other unlawful acts, failure to pay child support or file taxes, receipt of public benefits where fraud is involved, and willful failure to register for the Selective Service which may negate good moral character. Further, the residual clause can override the exception for a single offense of simple possession of 30 grams or less of marijuana. It is important to note that these are not situations where people are automatically denied naturalization for failure to show good moral character. Nonetheless, when a naturalization applicant falls under these bases it is more likely than not that applicants will be denied naturalization for lack of good moral character, unless, in some instances where the applicants can show extenuating circumstances and/or using the balance test, the positive factors involved in granting the naturalization application outweigh the negative factors.

Inadmissible Aliens 8 U.S.C § 1182

To receive certain immigration benefits or to adjust to lawful permanent resident status, a person must meet the requirements of admissibility to the United States. The following can make an alien inadmissible. (In the list below, "Conviction" refers to a conviction in adult court. "Admission" means a formal admission of conduct committed as an adult.)

- Conviction or admission to having committed acts constituting the essential elements of a crime involving moral turpitude, subject to a petty offense exception where a person has only committed one crime involving moral turpitude with a maximum sentence of one year or less and actual sentence of six months
- Conviction or admission to having committed acts constituting the essential elements of a crime relating to a controlled substance, with the possibility for a hardship waiver for a single offense of simple possession of 30 grams or less of marijuana or an offense occurring more than 15 years prior to the application for admission or adjustment of status
- Being a current drug addict or abuser
- Two or more convictions with an aggregate sentence of five years or more

- Known or reasonably believed to have engaged in trafficking in a controlled substance
- Coming to the U.S. to engage in prostitution or having engaged in prostitution in the 10 years prior to application for admission, with exception that one act of soliciting prostitution for oneself does not preclude admissibility
- Coming to the U.S. to engage in any other form of commercialized vice
- Engaging in prostitution business, including directly or indirectly procuring or attempting to procure, or (within ten years of the date of application for a visa, admission, or adjustment of status) procuring or attempting to procure or to import, prostitutes or persons for the purpose of prostitution, or receiving or (within such ten-year period) having received, in whole or in part, the proceeds of prostitution
- Known or reasonably believed to have engaged in trafficking in persons
- Engaging in alien smuggling
- Known or reasonably believed to have engaged in money laundering
- Known or reasonably believed to have engaged in or come to the U.S. to engage in terrorist activity
- Known or reasonably believed to have engaged in or come to the U.S. to engage in various acts of espionage, treason, or sedition
- Making a false claim to U.S. citizenship for any benefit under local, state, or federal law
- Engaging in visa fraud
- Being a stowaway
- Illegal voting

Aggravated Felony 8 U.S.C. § 1101(a)(43)

Aggravated felonies carry severe consequences including denial of an immigration application such as citizenship, loss of a green card and mandatory deportation with no chance ever to enter the U.S. again, mandatory detention, and federal criminal penalties (if a person illegally re-entered the U.S. after conviction of an aggravated felony and was deported).

Conviction of an aggravated felony triggers mandatory deportation in almost all cases of those lawfully present with no judicial consideration of individual circumstances. It is also a bar to establishing good moral character if the conviction occurred after November 29, 1990 and thus prevents the person from obtaining certain immigration protections and from ever being able to naturalize.

Relevant to victims of abuse, conviction of an aggravated felony is a bar to VAWA, at least if the conviction occurred after November 29, 1990, and a very serious obstacle to Special Immigrant Juvenile Status or T or U visa status. In addition, many offenses that are aggravated felony offenses also come within the moral turpitude or drug offense grounds, and are bars in that way. Even if the person is eligible to apply for relief, an aggravated felony is a very serious negative discretionary factor. Furthermore, a conviction of an aggravated felony is weighed heavily as a matter of discretion by immigration authorities and may lead to denial of an immigration protection or benefit. Finally, a

non-permanent resident (including a conditional permanent resident) who has an aggravated felony conviction can be removed from the U.S. without a hearing before an immigration judge, in which case they will not be permitted to apply for any immigration protection or benefit they would be eligible for, regardless of equities or hardship.

Federal immigration law contains a long list of crimes that are classified as aggravated felonies, some of which may be neither aggravated nor classified as felonies under the laws of some states. Further, there is no definitive list of which specific state crimes may be considered aggravated felonies under federal immigration law. Some crimes require a term of imprisonment of one year or more imposed by a judge to qualify as an aggravated felony, while others require no minimum sentence at all. For those offenses that require a jail or prison sentence, the length of the term includes time for which imposition or execution of the sentence was suspended.

The following are some of the more common aggravated felonies:

- murder;
- rape;
- sexual abuse of a minor;
- crime of violence, as defined in federal law under 18 U.S.C. § 16, with a term of imprisonment of one year or more;
- theft, forgery, burglary, or receipt of stolen property offense, with a term of imprisonment of one year or more;
- obstruction of justice with a term of imprisonment of one year or more;
- fraud or deceit offense if the loss to the victim exceeds $10,000;
- firearms trafficking; and
- drug trafficking.

With regard to what constitutes a sentence to a term of imprisonment, federal immigration law provides that "Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part." A sentence of incarceration that is suspended for probation is still a sentence for the full term of the possible incarceration. A sentence solely to probation with no incarceration is not a sentence to a term of imprisonment.

As noted above, a crime that meets the definition of a crime of violence under 18 U.S.C § 16 may be an aggravated felony if it also has a term of imprisonment of one year or more. A crime qualifies as a crime of violence if it involves:

- the use, attempted use, or threatened use of physical force against the person or property of another; or
- a felony that involves a substantial risk that physical force against the person or property of another may be used.

Many misdemeanors may fall within the definition of an aggravated felony. The following are a few examples of misdemeanor convictions that, coupled with a sentence to a term of imprisonment of one year or more, even if the sentence is suspended, qualify as an aggravated felony:

- shoplifting or any theft of property;
- joyriding;
- assault with intent to commit great bodily harm;
- accessory after the fact;
- making threats of violence; and
- in some Circuits, a misdemeanor conviction of consensual sex with a person under age 18, or conduct with lewd intent toward a minor, is an aggravated felony even if no sentence is given.

Crime Involving Moral Turpitude

A crime involving moral turpitude (CIMT) is a crime that contains an element of fraud or other behavior considered morally offensive. This category is deceptive, as many crimes classified as a crime involving moral turpitude may be considered very minor, and even classified as infractions or misdemeanors, under state law.

Inadmissibility for a moral turpitude conviction (in adult court) is a bar to Special Immigrant Juvenile Status, and unless a waiver is granted, is a bar to applications for VAWA, T visa, U visa, and for lawful permanent resident status.

There is no statutory definition of a crime involving moral turpitude in the relevant section of federal immigration law, so all of the crimes so classified depend on case law from the immigration courts or federal Circuit Courts. Case law is not all that helpful either. For example, the most commonly applied definition of a crime of moral turpitude from the federal case law is the rather vague, "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The courts have interpreted this to include crimes that involve:

- evil or malicious intent or inherent depravity;
- intent to commit great bodily harm;
- intent to defraud, including theft where there is an intent to permanently deprive an owner of property; or
- in some cases, lewd intent or recklessness.

Neither the seriousness of the crime nor the severity of the sentence is determinative of whether a crime is a crime involving moral turpitude.

The statute and not the actual behavior controls; the aspect of moral turpitude must be a necessary element of the crime as defined by state statute. If a person could be convicted of the crime, as defined by statute, without an aspect of moral turpitude, it is not a crime involving moral turpitude. Where the crime as defined by statute includes both crimes that qualify as moral turpitude and crimes that do not, the Circuits are split as to what further analysis the immigration judge may

undertake. In some Circuits the record of conviction, including indictment, plea, verdict, and sentence, and other evidence of what specific elements were involved, may be considered to determine what elements the person was convicted of. In other Circuits, an immigration judge confronting a record of conviction that is vague as to certain elements, may make a factual inquiry into the circumstances of the offense.

The following are some common crimes that are considered minor in state law that can qualify as a crime involving moral turpitude:

- petty theft (for example, turnstile jumping has been found to be a CIMT);
- fraud;
- perjury; and
- prostitution (both for the prostitute and the customer).

Regular criminal negligence does not involve moral turpitude. A crime involving intent or reckless behavior to commit great bodily harm may be a crime involving moral turpitude if there is specific intent to cause physical injury or reckless behavior causing serious bodily injury. Knowing gross deviation from a reasonable standard of care is reckless behavior, but reckless behavior alone is not enough to constitute a crime involving moral turpitude, unless coupled with the infliction of serious bodily injury.

Conviction of even one crime involving the elements of moral turpitude, or attempt or conspiracy to commit such a crime, renders the person inadmissible. In addition, conviction of a crime involving moral turpitude is a bar to establishing good moral character if committed within the specified statutory time period for which good moral character must be shown. There are two exceptions to these penalties. First, there is a petty offense exception, which applies to an individual who has committed just one crime involving moral turpitude, and the crime carried a maximum possible sentence of one year or less and actual sentence of less than six months. Second, there is a youthful offender exception, which applies to a person convicted as an adult of just one CIMT, which was committed while under 18 years of age, if the conviction and resulting imprisonment ended at least five years earlier.

III. Implications for the State Courts

As awareness of the incidence of human trafficking and concern for the welfare of the victims increase, state courts can expect to face increasing demands placed on them in cases that involve human trafficking victims, including assisting victims facing immigration consequences for acts committed under the influence of a trafficker, providing necessary documentation for victims who apply for federal immigration protections, and assuring safety for victims in court. Some of these roles raise may difficult ethical issues for judges.

Immigrant human trafficking victims who are coerced into the commission of crimes face some serious risks in state court not only due to the physical or psychological trauma associated with being a victim of human trafficking, but because of the immigration legal challenges they face. Conviction of many of these trafficking crimes may carry negative immigration consequences for the victim who is a non-citizen, including making the victim deportable (loss of current legal status), ineligible for

immigration protections including unable to adjust to lawful permanent resident status, and unable to become a naturalized citizen. Courts need to be aware of ways in which victimization can affect both lawful and undocumented immigrants and what steps a judge may take to assist those victims.

On the other hand, there are opportunities for lawful and undocumented immigrants to get temporary or permanent lawful status to remain in the United States based on immigration benefits and protections in federal immigration law for victims of human trafficking. State court cases can have an important effect on the eligibility of immigrant trafficking victims eligible for those protections. The granting of these protections is handled primarily by the USCIS. A non-citizen who believes he or she is eligible for such a protection must apply to USCIS and meet the burden of proof of eligibility as well as show that he or she deserves the protection as a matter of discretion. For most of the protections the process requires two steps, first applying for a temporary, time-limited visa and then applying for LPR status within the specified time limit of the temporary visa. Becoming a lawful permanent resident is a prerequisite to becoming a naturalized U.S. citizen.

Assisting Human Trafficking Victims Coerced into Criminal Acts

Human trafficking victims may be coerced into the commission of some of the above crimes due to the physical or psychological trauma associated with being a victim of human trafficking and thus appear in court as a defendant to a criminal charge. Some of the more common crimes that a trafficking victim may be forced to commit at the behest or under the influence of a trafficker include the following:

- prostitution;
- drug sales;
- theft;
- illegal peddling; and
- recruiting other victims.

As discussed earlier, conviction of any of the above crimes can carry serious negative consequences for the immigrant victim's rights under federal immigration law and eligibility for immigration protections, and these consequences may far exceed the potential punishment for the criminal acts.

If the defendant can claim that the crime was committed as a result of coercion due to the physical or psychological trauma associated with being a victim of human trafficking, the coercion may have legal consequences for the defendant's criminal liability, including the following:

- the coercion may negate the requisite criminal intent, so an essential element of the crime is missing and the offender cannot be convicted;
- even if all elements of the crime are present under state law so that the offender may be found guilty of the criminal charge, the coercion may justify absolving the offender in whole or in part from the consequences of the behavior; and
- the coercion may provide grounds for vacating the conviction at a later date.

Some possible options that may be available to a judge where the commission of a crime may have

been influenced by human trafficking victimization include the following:

- refuse to accept a guilty plea where the defendant may have committed a crime due to the human trafficking victimization;
- identify cases where the prosecution's proof may indicate that a crime was committed under coercion due to victimization so that criminal intent or another essential element of the crime is negated;
- continue the case to allow the defendant to enter proof that a crime was committed as a result of victimization so that criminal intent or another essential element of the crime is negated, if the prosecution's case does not provide proof; and
- continue a case to allow the defendant to raise an affirmative defense if the victimization doesn't negate an essential element of the crime.

If an immigrant defendant pleads guilty and there is any punishment, penalty, or restraint ordered by the court, the plea constitutes a conviction under federal immigration law even if the defendant is absolved in whole or part from the consequences of the behavior.

As discussed earlier, with respect to eligibility for a T visa, conviction of a crime committed as result of victimization from human trafficking may be waived by USCIS as a requirement of admissibility. When the victim later applies for LPR status, however, crimes committed after the T visa is granted may still result in inadmissibility and negate good moral character and therefore make the victim ineligible for adjustment to LPR status based on the T visa. Avoiding a conviction may thus still be important to the victim.

Further, where the victim of human trafficking is an immigrant, when the victim is convicted of a crime coerced by trafficking, the potential consequences far exceed the possible criminal penalties. The conviction may even make a lawfully present immigrant defendant deportable (triggering loss of legal status), and this can result even if the state court judge determines at the punishment phase that the defendant should not be punished for the crime due to mitigating circumstances stemming from the effects of being a human trafficking victim.

Juvenile victims of human trafficking may engage in a variety of criminal activities for their trafficker, including prostitution, drug sales, theft, or recruiting other victims. With regard to immigrant juveniles in delinquency proceedings, a simple advisement as part of a plea colloquy that a guilty plea to the charges might have consequences for their immigration status may not be adequate for advising juveniles. A juvenile's judgment can affect competence to plead guilty. A juvenile may be more likely to focus on the short term benefits of pleading guilty, such as immediate release, rather than long term consequences such as immigration consequences. Further, as noted above, the court may need a guilty plea in the delinquency proceeding in order to place the victim into certain services, and that guilty plea may affect the juvenile immigrant human trafficking victim's eligibility for protections under federal immigration law.

An immigrant juvenile is unlikely to be able to comprehend all the ramifications without the assistance of a defense attorney who is familiar with federal immigration law. The juvenile court judge may also want to take steps to assure both that the defense attorney has advised the juvenile of the possible immigration consequences of a plea and that the juvenile understood the advisement.

Assuring Immigrant Defendants Receive Appropriate Legal Advice

The U.S. Supreme Court, in Padilla v. Kentucky, 559 U.S. 356 (2010), held that failure of a defendant's attorney to competently and affirmatively advise the defendant about the potential immigration consequences of pleading guilty to a criminal offense constitutes ineffective assistance of counsel. While the Supreme Court did not specify the duties of state criminal court judges to assure that immigrant defendants have been advised of the immigration consequences of a guilty plea, a growing number of states now require, either through statute, court rule, or plea acceptance form, that judges investigate whether non-citizen criminal defendants have been advised of the potential immigration consequences of a guilty plea.

Even without a specific state requirement or court rule that the judge assure that a defendant has been advised of immigration consequences of a guilty plea before accepting the plea, after Padilla it is likely that many judges will feel that they have an ethical duty to do so to assure fundamental fairness for immigrant defendants.

Judges who decide or are required to provide immigration advisals may want to issue them to all defendants regardless of immigration status and for all pleas, admissions, and findings of guilt. Because of the complexity of immigration law, judges should assume that any criminal charge has potential immigration consequences. However, it is the duty of defense counsel to provide specific individualized advice about the actual immigration consequences to the defendant. Judges may also want to be aware that any questions posed to defendants and counsel that risk eliciting immigration or citizenship status could unlawfully or unfairly prejudice a defendant in later criminal or immigration proceedings.

If a defendant indicates in court that he or she has not been advised of the possible immigration consequences of a guilty plea, the judge may consider refusing to accept the plea until the defendant has been properly advised. Judges may also find that defense attorneys representing immigrants may request time to investigate the potential immigration consequences before advising a client to enter a guilty plea, in order to meet the requirements for effective representation set forth in Padilla. Judges may want to accommodate such requests and not allow the prosecution to force a plea so that defense counsel does not render ineffective assistance of counsel.

Further, there may be cases where an immigrant defendant charged with a misdemeanor may be unrepresented and not have a right to appointed counsel, but conviction of the misdemeanor may still carry immigration risks. For example, certain misdemeanors, such as theft, fraud, perjury, and prostitution, may qualify as crimes involving moral turpitude under federal immigration law, triggering loss of immigration status or ineligibility for immigration protections or benefits. There are no clear answers as to what the judge should do in cases involving unrepresented immigrant defendants. One approach might be to advise any defendant who offers a plea of guilty or *nolo contendere* that such a plea by a non-citizen may result in

deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States. The court could then offer the defendant an opportunity to retain or to request appointment of counsel in order to consider the appropriateness of the plea in light of the advisement, if the defendant so desires. Judges may want to warn defendants that the lack of such advice is one of the risks of proceedings *pro se*.

Uses of Court Records

As discussed earlier, good moral character and admissibility are key eligibility requirements for a wide range of immigration protections and benefits. Both good moral character and admissibility can be affected by convictions for a wide variety of criminal offenses. Therefore, as part of the process to determine whether to grant a requested immigration benefit, USCIS typically asks an applicant to provide records relating to any arrest and also any such convictions. For every case during a period relevant for an immigration benefit, USCIS asks the applicant to provide court records detailing the following information:

- What crime was the applicant charged with?
- What was the outcome of the case?
- If there was a conviction, what was the sentence?
- Did the applicant complete the sentence?

As some of the crimes that can affect good moral character or admissibility include misdemeanors as well as felonies, all levels of courts may receive requests for court records by immigrant defendants applying for benefits. With regard to juvenile court records, while USCIS may occasionally request them, in many states due to juvenile confidentiality laws, a court order will be required for the court clerk to release them.

The Judge's Role in Documenting Eligibility Criteria for SIJS, T Visas, and U Visas

Some of the immigration benefits available to victims of human trafficking require either a finding by a judge or certification by a justice system official, which could be a judge or other official. An applicant to USCIS for Special Immigrant Juvenile status must provide a specific set of findings signed by the judge, with supporting findings of fact to justify the required findings. The U visa application requires certification by a justice system official that the victim has been or is likely to be of assistance in the investigation or prosecution of the perpetrator. The T visa application does not require any certification, but such a certification can be helpful to the victim in justifying eligibility for the visa. With regard to eligibility for a VAWA self-petitioner, court findings are often the primary source of proof establishing the extent of abuse.

Referral to Services

As noted earlier, judges need to be aware of any required findings or orders required in order to get a trafficking victim into services, juvenile and adult. If the victim is in court as a criminal defendant, there may be circumstances where the state court is unable to provide services to an adult or juvenile offender unless the court has a conviction to give the court the jurisdiction to order the person into

a treatment program. That conviction may affect the individual's eligibility for certain immigration benefits.

Where a criminal case may involve a trafficking element but the prosecutor has elected to file an alternative charge against the perpetrator, such as procuring prostitution or false imprisonment, the court's ability to refer the victim to services becomes more complicated. While the court may not have any jurisdiction to order or place the victim into services, if the victim is in court as the victim of the defendant or as a witness against a defendant, the court may be able to work with the prosecutor's victim assistance program or with a human services agency to refer the victim to services.

Getting trafficked juveniles into services can be difficult. For juvenile delinquency cases, the case is adjudicated in the county where the crime was committed but the disposition is determined in the county where the juvenile lives. As a result, there is a need for cross-jurisdictional coordination to ensure that human trafficking victims are identified and provided appropriate services. State services may be available for juveniles prosecuted in one county and sent to another for supervision and services.

Issues of Safety for Trafficking Victims

Judges need to be aware of some issues relating to the safety and protection of trafficking victims, particularly those who are charged with crimes committed on behalf of or at the direction of a trafficker.

- Judges may want to be aware of indicators of trafficking in order to be able to identify situations when it may be necessary to take steps to protect someone who shows signs of being a trafficking victim.
- Where a trafficking victim is in court as a criminal defendant, the trafficker may be in the courtroom, so the judge must be careful in framing questions to the potential trafficking victim.
- A guilty plea by a trafficking victim charged with a crime, such as prostitution, may give the trafficker more control over the victim.
- Trafficking victims may be reluctant to testify against their traffickers, particularly in cases where the trafficker is being charged with a lesser offense that may make the trafficker eligible for immediate release on probation.
- There may be a need for a protocol with prosecutors and defense attorneys to identify a potential trafficking victim before the victim has to testify in open court.
- Judges need to be aware of local resources to assist trafficking victims.

Ethical Issues in Assisting Immigrant Trafficking Victims

Judges are concerned about acting as an advocate for a human trafficking victim in the context of a criminal prosecution without compromising their neutrality. In juvenile cases all juveniles have an attorney appointed, and a Guardian *ad litem* (GAL) may intervene to protect a victim. In cases involving adult victims who are in court as criminal defendants, judges can slow down the proceedings and can ask questions of prosecutors and defense attorneys to investigate whether potential trafficking issues have been considered.

Where a case involves possible trafficking situations and the victims are not part of the legal proceedings or no victims have been identified, the judge will not have any direct contact with the victims. It is not clear whether a judge can do anything to assist victims in that circumstance, as even raising the possibility that human trafficking is involved may affect the court case and compromise the judge's neutrality.

IV. Guidelines for Recognizing a Potential Immigrant Human Trafficking Situation

This section is designed to help judges recognize situations that may involve issues of human trafficking, including case types and the characteristics of victimization, and identify how and when immigration status may be important. It is not meant to provide definitive methods for a judge to investigate who is an immigrant or a victim of human trafficking, but rather to help a judge spot issues and identify situations that may give a judge cause to exercise caution.

Identifying Immigrants Involved in Court Cases

Judges can rarely be certain about the actual risks facing an immigrant party, given the complexities of Federal immigration law. As a result, judges need to be cautious about making assumptions concerning immigration status and acting on those assumptions. Many public defender organizations are concerned about a judge specifically asking an individual about his or her immigration status, as that inquiry could be a source of danger to the immigrant. In many cases it may be desirable for the judge to leave it up to the parties to decide whether and in what circumstances to raise immigration status as an issue, keeping in mind the possibility that raising immigration issues in order to take steps to protect the party may cause that party unanticipated immigration problems.

There may be information in the case file, such as a jail record, that indicates the immigration status of a defendant. The expansion of the Secure Communities program, in which fingerprints of individuals booked into local jails are compared to the Department of Homeland Security's immigration databases through data sharing between the FBI and Immigration & Customs Enforcement (ICE – the interior immigration enforcement arm of DHS), has led to increased identification of immigrants whose immigration status may be at risk. Further, as all individuals booked are screened, many with lesser crimes are coming to the attention of ICE, and as the discussion above illustrates, many crimes that are considered minor under state law can make a lawful or undocumented immigrant ineligible for some of the federal protections for human trafficking victims.

The problems for the judge are compounded in cases where the defendant or victim does not have attorney representation. There may be cases where an immigrant offender charged with a misdemeanor may be unrepresented and not have a right to appointed counsel, but conviction of the misdemeanor may still carry a risk of deportation. For example, certain misdemeanors may qualify as crimes involving moral turpitude. These are crimes involving fraud or immoral behavior, such as theft, fraud, perjury, and prostitution. In those situations, the judge may feel it appropriate to inquire about the immigration status of a party in court who appears to be a victim of human trafficking.

Identifying Trafficking Victims

The burden of identifying human trafficking victims falls on officials from across the entire justice system, including law enforcement officers, human service providers, prosecutors, defense attorneys representing possible trafficking victims who are charged as criminals, judges, and probation officers. The court may be the last recourse for a trafficking victim to get help if other parts of the justice system have missed the signs of victimization, and this could be the last chance for an immigrant victim to get on a path to obtain immigration relief. This may be much more difficult for a judge to do in misdemeanor cases, particularly in high volume courts where trials tend to move quickly through the courtroom.

Human trafficking can involve trafficking both for commercial sex and for labor, either domestic or commercial. The following are ways in which a trafficking victim might come before the courts:

- A trafficked person is most likely to come before the courts, both adult and juvenile, in the context of a prosecution for prostitution. Distinguishing between a prostitute and a victim of human trafficking can be difficult, and many judges may not even be aware of the possibility.
- A trafficking victim might be identified in the process of determining conditions for probation, juvenile diversion, or other forms of alternative to detention if the offender is asked pertinent questions about his or her living conditions or details of employment. Judges should be aware that increasingly, juveniles are being recruited by drug cartels in their home countries or at the border on entering the U.S. and forced to engage in drug trafficking while in the U.S. Their undocumented status makes them vulnerable to coercion.
- Sometimes trafficking victims will also engage in other illegal activities for their traffickers, such as selling drugs or recruiting other girls for prostitution.
- Labor trafficking victims may appear in a variety of criminal or civil cases, including wage disputes, municipal ordinance enforcement, illegal peddling, and others. They may also be susceptible to victimization, particularly if they are in the country illegally, as criminals will assume that they will not report thefts or other crimes committed against them.

One critical issue with regard to understanding and assessing human trafficking cases is that potential human trafficking cases are often prosecuted under lesser charges that are easier to prove and carry similar penalties. Crimes that may be used as surrogates for a human trafficking charge include, among others, compelling prostitution, promoting prostitution, kidnapping, unlawful imprisonment, assault, family violence, and drug crimes. This may make it difficult to identify the victim of the crime as a human trafficking victim, as nobody in the justice system may be looking for a trafficking victim in those cases. Further, these lesser charges are often classified as misdemeanors and handled in high volume calendars where trials tend to move quickly through the courtroom. The speed of the trials may make it more difficult for a judge to identify possible signs of trafficking.

Justice system officials should also be alert to human trafficking issues in the investigation and prosecution of child protection and juvenile delinquency cases, particularly as juvenile detention facilities sometimes serve as fertile recruiting ground for traffickers, and even some foster parents have engaged in trafficking. Traffickers have also tried to obtain guardianship over juvenile trafficking victims. Further, trafficking victims may not view themselves as such. They may have

become dependent on the trafficker or believe that the trafficker is a boyfriend, so they may actually run away from a foster home or other placement to rejoin a trafficker.

Case types that may involve elements of human trafficking are listed in the box below. In some of these cases the possible presence of human trafficking may not have been raised or even considered by the parties to the case. In other cases the victims may not be present in court as part of the legal proceedings or even identified as human trafficking victims.

Figure 2

Case Types

- **Prostitution** – In a prostitution case, it can be difficult to distinguish between acts of prostitution committed as an offender or as a victim of human trafficking.
- **Gang activity** – Gangs often supplement income through sex or labor trafficking.
- **Drug sales** – Drug sales may be forced on a victim by a trafficker.
- **Drug use** – Drugs may be used to control a trafficking victim.
- **Illegal peddling** – Peddling may be forced on a trafficking victim by a trafficker.
- **Theft** – A trafficker may coerce a victim into stealing in order to provide extra income for the trafficker.
- **Human trafficking** – The victim may be required to recruit other victims for the trafficker or be rewarded for doing so.
- **Code violations** – Code violations that involve overcrowded sleeping areas in business locations for employees may indicate labor trafficking or in residential settings may indicate either labor or sex trafficking.
- **Delinquency** – Trafficking victims who are placed in a juvenile detention center may be forced by the trafficker to recruit other victims in the detention center.
- **Juvenile status offenses** – Runaways and truants are especially vulnerable to becoming trafficked.
- **Child abuse and neglect** – Abused children are vulnerable to trafficking, and some parents may be trafficking their children, either for sex or labor.
- **Guardianship** – There have been cases in which a trafficker has applied for guardianship over their victims.

A study conducted in 2012 funded by the National Institute of Justice (NIJ) found that the following were elements of cases identified by law enforcement as possible sex or labor human trafficking violations.

Figure 3

Case Elements

- Threatening or actual physical or non-physical harm which compels the victim to perform labor or services to avoid harm.
- Use or threatening use of law to exert pressure on another person to perform labor or services.
- Demeaning or demoralizing the victim (e.g., through verbal abuse or humiliation).
- Disorienting and depriving the victim of alternatives (e.g., isolation, restricted communication, debts, monitoring).
- Diminishing resistance and debilitating the victim (e.g., by denial of food, water, or medical care or by use of drugs or alcohol).
- Deceiving about consequences (e.g., overstating risks of leaving or rewards of staying, feigning ties to authorities or hit men/gangs).
- Dominating, intimidating, and controlling (e.g., by abuse, an atmosphere of violence, display of weapons, rules, and punishments).
- Knowingly recruiting, enticing, harboring, transporting, providing, obtaining, or maintaining a person for purposes of a commercial sex act.
- Knowingly benefiting financially or receiving something of value by participating in the above commercial sex venture.
- Knowingly or recklessly disregarding that force, fraud, or coercion would be used to cause a person to engage in commercial sex acts.
- Sex trafficking of a victim under the age of 18.
- Past involvement of the suspect or victim in suspected human trafficking activities.

Farrell, A., McDevitt, J., Pfeffer. R., Fahy, S., Owens, C., Dank, M, and Adams, W. (2012). Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases. (Washington, D.C.; National Institute of Justice)

The lack of presence of an element listed above may merely reflect the fact that law enforcement investigation did not look for that element. Further, any given human trafficking case will typically involve only some of the above elements, so it is not necessary that all be present.

Indicators of human trafficking that might assist court personnel and other justice partners include a variety of behaviors that reveal a mindset of fear, distrust, denial, and conflicting loyalties. For example, trafficking victims may (1) develop general feelings of helplessness, shame, guilt, self-blame, and humiliation; (2) suffer from shock and denial, or display symptoms of post-traumatic stress disorder, phobias, panic attacks, anxiety, and depression; (3) suffer from sleep or eating disorders; (4) become addicted to drugs and alcohol as a way to cope with or "escape" their situation, or as a method of control used by their traffickers; (5) become emotionally numb, detached, and disassociated from the physical and psychological trauma and display "flat affect"; or (6) experience "trauma bonding" with the trafficker, positively identifying with the trafficker and believing that, despite repeated abuse, the trafficker is a loving boyfriend, spouse, or parent.

Many trafficking victims suffer serious health issues, including (1) signs of physical abuse, such as bruises, broken bones, burns, and scarring; (2) chronic back, visual, or hearing problems from work in agriculture, construction, or manufacturing; (3) skin or respiratory problems caused by exposure to agricultural or other chemicals; (4) infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation; (5) untreated chronic illnesses, such as diabetes or cardiovascular disease; or (6) reproductive health problems, including

sexually transmitted diseases, urinary tract infections, pelvic pain and injuries from sexual assault, or forced abortions.

If any of the following personal, work, or living conditions regarding a defendant, victim, or witness is evidenced during a trial, they may indicate that the individual is a victim of human trafficking:

- is not allowed to speak to anyone alone;
- is not being paid, is paid very little, or has pay applied directly to reducing debt;
- cannot leave his or her job;
- cannot come and go freely;
- lives in the workplace or with many others in a confined area;
- has to ask permission to eat/sleep/go to the bathroom;
- has locks on doors/windows that he or she cannot unlock; or
- does not have access to identification or travel documents.

Other possible indicators of trafficking include:

- homelessness;
- lack of education or not attending school;
- work in massage parlors, dance halls, or similar establishments;
- unexplained bruises;
- unusual behavior, such as uncooperativeness, fear, or anger;
- dependency relationships with older adults; and
- possession of unusually expensive items such as jewelry, expensive cell phones, etc.

An understanding of the screening tools used by service providers, probation officers, and others to identify trafficking victims may help the state courts identify situations where evidence in a trial indicates that a participant may be a trafficking victim.

V. Additional Tools and Resources

The Human Trafficking and the State Courts Collaborative – (*http://www.htcourts.org*): This is the web site for the State Justice Institute-funded Human Trafficking and the State Courts Collaborative. It contains a wide variety of information, research, and training resources produced by the partners in the collaborative related to ways in which state courts deal with issues of labor and sex trafficking. The site contains an information card on *Immigration Rights for Human Trafficking Victims*, prepared as a short summary of the issues discussed in this Chapter.

State Justice Institute – (*http://www.sji.gov*): This is the web site of the State Justice Institute, the funding organization for the Collaborative.

Present members of the Collaborative – The following are links to the web sites of the six members of the Collaborative, the Center for Public Policy Studies, the Center for Court Innovation, The National Judicial College, Legal Momentum, the National Association of Women Judges, and the National Council of Juvenile and Family Court Judges.

- Center for Public Policy Studies: *http://www.centerforpublicpolicy.org*
- Center for Court Innovation: *http://www.courtinnovation.org*
- National Judicial College: *http://www.judges.org*
- Legal Momentum: *http://www.legalmomentum.org*
- National Association of Women Judges: *http://www.nawj.org*
- National Council of Juvenile and Family Court Judges: *http://www.ncjfcj.org*

Other organizations and resources

The following are links to web sites of other organizations that have programs and resources on justice system responses to issues of human trafficking.

- *http://www.polarisproject.org*: The Polaris Project is a non-profit organization aimed at providing information, technical assistance, training, and services to combat human trafficking and modern day slavery.
- *http://www.ilrc.org*: The Immigrant Legal Resource Center provides research, training and technical assistance on immigration law and policy.
- *http://www.nilc.org/access-to-bens.html*: This web site of the National Immigration Law Center provides more detailed information about immigrant eligibility for benefits.

Governmental agency web sites

- *http://www.dhs.gov/topic/human-trafficking*: The Department of Homeland Security has an extensive program to fight human trafficking.
- *http://www.acf.hhs.gov/programs/endtrafficking*: The Administration for Children and Families of the United States Department of Health and Human Services has programs and resources to combat human trafficking and provide assistance to victims.
- *http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status*: The United States Citizenship and Immigration Services handles decisions regarding eligibility of immigrant trafficking victims for immigration benefits and protections, including T visas, U visas, Special Immigrant Juvenile Status, and VAWA self-petitioner status. The following web sites provide information on different programs within USCIS:
  - *http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes*
  - *http://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status*
  - *http://www.uscis.gov/humanitarian/battered-spouse-children-parents*
  - *http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectioncode=uscode* This code is a link to the U.S. Code of general and permanent laws.

Chapter 4

Child Trafficking Victims and the State Courts

Miriam Goodman
Center for Court Innovation

Julie Laurence
Girls Educational Mentoring Services

I. Introduction to Commercial Sexual Exploitation of Children (CSEC)

Growing recognition of sexually exploited children's involvement in the juvenile court and child welfare systems has mobilized many court and community stakeholders to respond to this expanding and increasingly visible population. Commercial sexual exploitation of children (CSEC) is any sexual activity involving a child in exchange for something of value, or promise thereof, to the child or another person or persons. When sexual exploitation occurs, the child is treated as a commercial and sexual object. CSEC is recognized as a form of severe child abuse and can occur in various settings including:

- street prostitution;
- pornography;
- stripping;
- erotic or nude massage;
- phone sex lines;
- private parties;
- gang-based prostitution;
- interfamilial pimping; and
- forms of internet-based exploitation.

II. Scope of CSEC Victimization

Accurate numbers of CSEC victims are scarce, but the U.S. State Department estimates that between 244,000 and 325,000 American youth are at risk for sexual exploitation. Another commonly cited statistic estimates that 199,000 minors are currently being exploited in the United States.[1] The most common age of entry into the commercial sex industry in the U.S. is between 12-14 years of age.[2]

Research confirms that child maltreatment, particularly abuse, increases the likelihood of a child becoming commercially sexually exploited. Rates range from 70-90 percent of CSEC victims reporting a history of childhood abuse,[3] and children who are victims of sexual abuse are 28 times more likely to be arrested for prostitution at some point in their lives. Furthermore, according to a recent study on trauma and adolescents, 70-80 percent of CSEC victims experienced one or more

[1] Clawson, Heather J., et al. (August 2009) Human Trafficking Into and Within the United States: A Review of the Literature (Washington, D.C.: US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation). Available at *http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/*

[2] U.S. Department of Health and Human Services Administration for Children, Youth and Families (September 2013) Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States (Washington, D.C.: DHHS, ACF).

[3] Ibid.

traumatic events, most commonly witnessing violence followed by physical and/or sexual violence. Leaving a home, either a family or foster-care home, at a young age, and being forced to the streets, sets the victim up for continued experiences of abuse. When abuse is present during a young person's development, it can affect important aspects of a young life including:

- physical health;
- educational attainment;
- sense of self-worth; trust with self and others;
- emotional regulation;
- sense of belonging and feelings of isolation.

Early abuse can also cause the victim to undertake a very difficult search for love and belonging.[4]

The full impact of chronic trauma on the mind and body are only beginning to be fully understood. However, new research on the neurological impact of trauma on the brain sheds further light on the link between trauma and vulnerability to sexual exploitation. According to research done by the neuro-psychiatrist Bruce Perry:

> *"The brain tries to make sense of the world by looking for patterns. When it links coherent, consistently connected patterns together again it tags them as "normal" or "expected"…we must use these patterns to predict what the world is like. If early experiences are aberrant, these predictions may guide our behavior… As victims of CSEC regularly experience lifelong trauma, particularly childhood sexual abuse and neglect, some of the prevalent patterns that become normative are violence as a means of communication, deep worthlessness, distrust of people in positions of power and help, and a belief that the body is an object to be hurt."*[5]
>
> Bruce Perry

[4] U.S. Department of Justice, Office of Justice Programs: National Institute of Justice (April 2003) Youth Victimization: Prevalence and Implications (Washington, D.C.: NIJ).

[5] Perry, Bruce (2006) The Boy Who Was Raised as a Dog and Other Stories from a Child Psychiatrist's Notebook (New York: NY: Basic Books).

The impact of trauma on a young person's brain development and behavior can affect communication skills, including ability to communicate feelings, emotional regulation, such as the ability to match emotion to the situation, executive skills including organization and planning, as well as social skills such as recognizing impact of behavior on others. When these areas of functioning are challenged because of chronic trauma, it can further thwart a young person's ability to reach out for help and be identified as a person in need of help. In turn, struggle in these areas can cause young people to become frustrated with themselves, and with systems and people who do not consider the underlying impact of trauma.[6] Indeed, disruption in normal youth development and a lack of family and social support greatly affect the development of the key social and life skills necessary for healthy decision-making and growth.

Moreover, organizations around the country serving the CSEC population report findings that support and highlight the correlation between poverty, child sexual abuse, familial trauma, homelessness, child welfare involvement, and recruitment into the commercial sex industry. For example the New York City based Girls, Education, and Mentoring Services (GEMS), a nationally recognized organization that works with sexually exploited young girls, found that:

- over 90 percent of GEMS participants have been sexually or physically abused as children;
- 26 percent have attempted suicide;
- 80 percent have a family member who has been or is currently incarcerated;
- over 70 percent have spent time removed from their primary caregivers and are within the child welfare system; and
- 99 percent are now or have been under the control of a pimp.

Figure 1 provides examples of common risk factors and recruitment pathways for girls in GEMS programs.

[6] Greene, Ross W. and J. Stuart Ablon (2006) Treating Explosive Kids: The Collaborative Problem Solving Approach (New York: Guilford Press) pp. 9-18.

Figure 1: Example Risk Factors and CSEC Recruitment Pathways

Risk Factor Types	Definition	Examples
Individual	■ Events in, or characteristics of, an individual's life.	■ Sexual, physical, emotional abuse
Environmental	■ From a child's neighborhood or community	■ Gangs, poverty, violence
Social	■ Aspects of our culture that makes CSEC possible. ■ Ways in which society promotes or perpetuates sexual exploitation.	■ Pornography ■ Exploitation of women ■ Use of women's bodies in advertisement ■ Blaming language ■ Glorification of "pimp-ho" life style
Recruitment Pathways ■ Parents selling children ■ Violence and force ■ Kidnapping ■ Seduction and coercion ■ False advertisement for "modeling, acting or dancing" opportunities ■ Peer recruitment ■ Internet enticement through chat rooms and profile sharing ■ Use of social media		

II. Challenges of Identification: Hidden in Plain Sight

Sex trafficking of children is often a hidden crime that happens in plain sight. In particular, vulnerable CSEC victims are young people pushed into the commercial sex industry, often by an exploiter pimp, family or gang member, and by circumstances such as abuse, neglect, and child welfare involvement. Research finds that age, poverty, unemployment, lack of work opportunities, lack of education, mental health issues, substance use, high crime rates, and young people who identify as LGBTQ are common themes among sexually-exploited young people.[7] At the same time, the two most commonly cited experiences among CSEC victims are physical and sexual abuse-generated trauma and running away from home at a young age. These two experiences often work together to cause a young person to be very vulnerable to sexual exploitation and multi-system involvement.[8] Further, the complicated challenges experienced by CSEC victims also act as barriers to connecting victims to specialized help. In short, deeply embedded messages of being unlovable, unworthy of care, and shame affect the young person's capacity to disclose their experiences and reach out for help.

[7] US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation: Human Trafficking into and within the United States; A review of the Literature

[8] Covenant House: Homelessness, survival sex, and human trafficking: A experienced by the youth of Covenant House New York

In addition, these children do not commonly self-identify as victims, further preventing identification. Often they do not have the language or understand their experiences as trafficking victims, and their traffickers threaten them and their families. Perhaps even more prohibiting, victims often view their traffickers as family and intimate partners and want to protect the relationship and their trafficker. In short, the severity of trauma that survivors of commercial sexual exploitation have experienced both prior to recruitment and during "the life," result in Stockholm Syndrome trauma bonds.[9] In fact, the power of the traumatic bond and relationship can keep a victim with their trafficker for many years, even decades, and isolate the victim from help and support.

III. Strategies for Identifying Commercially Sexually Exploited Children

As previously noted, trauma, shame, stigma, and the underground nature of exploitation pose barriers to CSEC identification.[10] Still, there is agreement among service providers about general red flags that offer some guidance in identification, including:

- evidence of physical, mental, or emotional abuse;
- inability to speak on one's own behalf;
- inability to speak to an official alone;
- excess amounts of cash on hand;
- frequent running away;
- tattoos;
- working for long hours with little or no pay;
- presence of an older male or boyfriend who seems controlling;
- loyalty and positive feelings towards a trafficker;
- exhibition of fear, tension, shame, humiliation, and nervousness; and
- lack of ability or unwillingness to identify as a victim.[11]

[9] Described as a victim's emotional "bonding" with their abuser, Stockholm Syndrome was given its name following a hostage situation in Stockholm, Sweden when, following the end of a bank robbery, the hostages identified with and supported their captor. Stockholm Syndrome develops subconsciously and on an involuntary basis. The strategy is a survival instinct that develops as an attempt to survive in a threatening and controlling environment.

[10] Op. cit., footnote 2.

[11] Op. cit., footnote 8.

While these signs and symptoms provide a starting point for identifying victims of CSEC, they do not assure identification. Nonetheless, as will be shown in greater detail in the next two sections, judges, court staff and stakeholders can increase their awareness of red flags as a way to begin the dynamic process of identification. Courts, child welfare agencies and stakeholders can begin to screen more closely for these red flags when cases are being processed through juvenile courts. By creating multidisciplinary screening opportunities, there is a greater chance that CSEC victims will not fall through the cracks of the existing support systems and safety nets.

IV. What Can Judges and Court Practitioners Do in a Case that Involves Possible Human Trafficking Activity?

Judges and court practitioners need to be aware of some issues relating to the safety and protection of trafficking victims, particularly those who are charged with crimes committed on behalf of or at the direction of a trafficker, and may want to take steps to protect someone who shows signs of possibly being a trafficking victim. Here are some safety issues that may arise.

- Judges need to be aware of indicators of trafficking and conversant with the screening tools used by service providers, probation officers, and others.
- If the trafficker is a family member or other caretaker, he or she may be in the courtroom, so a trafficking victim may be reluctant to answer certain questions.
- A guilty plea by a juvenile trafficking victim charged with a crime, such as prostitution, coupled with a placement with a family member, may give the trafficker more control over the victim.
- There may be a need for a protocol with prosecutors, defense attorneys, and guardians *ad litem* to identify a potential trafficking victim before the victim has to testify in court.
- The judge may want to recess or continue a trial if a trafficking situation appears to be present, to determine what steps, if any, need to be taken to protect a possible trafficking victim.
- Judges need to be aware of local resources to assist trafficking victims.

As suggested previously, the following are some of the elements that a juvenile court judge may see in a case file for a delinquency or dependency case that may indicate that the juvenile is at risk of being trafficked. The indicators all involve a disruptive home or school environment that leaves the juvenile vulnerable with no safe or stable place to go:

- absence of supervision at home;
- parents who are or have been in prison;
- a history of involvement with child welfare;
- multiple foster care placements or schools attended;
- a family history of domestic violence;
- frequent runaway or truancy, particularly three or more runaways in a twelve month period or a runaway at age 12 or younger;

- a history of alcohol or drug abuse;
- behavioral problems at school; and
- behind in grade level.

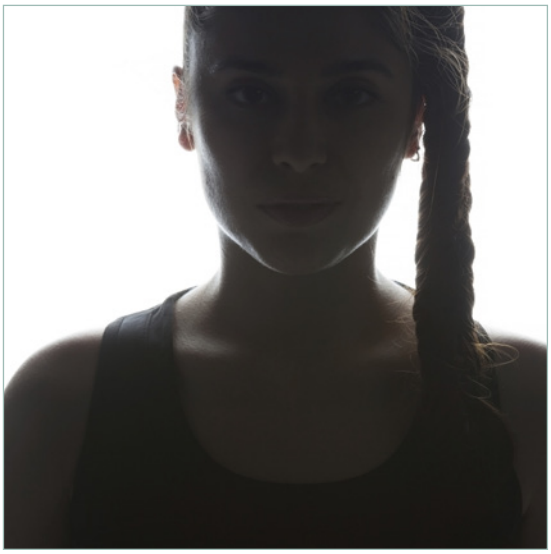
A juvenile judge may have the option to treat a delinquency case as a dependency case, if it appears that the delinquent behavior was committed due to coercion by a trafficker or was the result of victimization. Some states have options for certain juveniles charged with prostitution to be classified as sexually exploited juveniles and sent to diversion programs rather than being convicted of prostitution.

Options for placing juvenile trafficking victims may be limited. Juvenile trafficking victims can be uncooperative and unruly, making them poor candidates for foster care. Juvenile detention or residential juvenile facilities can be a prime recruiting ground for new victims, and trafficking victims may be pressured into recruiting others. This may affect where to place a juvenile trafficking victim, for the protection of both the victim and others who may be vulnerable to recruitment. It may also affect where to place at-risk juveniles who may not be trafficking victims yet but are vulnerable to victimization due to their family, economic, social, health, or educational situation, to avoid exposing them to potential recruitment efforts.

Judges and court practitioners need to be aware of any required findings or orders required in order to get a trafficking victim into services. There may be circumstances where the state court is unable to provide services to a juvenile offender unless the court has a conviction on which to justify requiring the person to enter a treatment program. For example, there may be no secure housing available for a juvenile victim of sex trafficking unless the juvenile is convicted of prostitution and sentenced to a juvenile detention facility.

In some states there are statutes that limit what a judge can do with runaways and other status offenders. These offenders are among the highest risk category for becoming trafficking victims. The statutes may prevent juvenile judges from placing status offenders into secure detention unless the case also involves a delinquency charge, thus taking away one element of court control over the victims.

Getting trafficked juveniles into services is complicated by the fact that in juvenile delinquency cases the adjudication takes place in the county where the crime was committed, but the disposition is determined in the county where the juvenile lives. As a result, there is a need for cross-jurisdictional coordination to ensure that human trafficking victims are identified and provided appropriate services. State services may be available for juveniles prosecuted in one county and sent to another for supervision and services.



Finally, there are special dangers facing juvenile trafficking victims in delinquency proceedings who are immigrants. A delinquency conviction may make the

immigrant juvenile ineligible for certain immigration benefits. In particular, any of the following can be problematic:

- known or reasonably believed to have engaged in drug trafficking;
- being a drug addict;
- having engaged in prostitution;
- violation of a protection order;
- use of false documents; or
- having a mental condition that is a threat to others.

Violent offenses, sex offenses, and gang activity are particularly problematic for the immigrant juvenile, as they often can lead to denial of any immigration benefit.

V. CSEC Resource Needs

A history of trauma and victimization results in a range of psychological and behavioral issues that: (1) make it difficult to engage young people, (2) help them to become free from commercial sexual exploitation, and (3) help them to begin to heal and recover. In particular, CSEC needs for services include:

- **Basic needs –** Food, clothing and housing are some of the immediate needs of CSEC. Many victims are likely to be homeless upon identification and/or have no basics as result of fleeing their trafficker. Available emergency resources are paramount in creating safety and building rapport.
- **Emergency, transitional and permanent housing –** CSEC victims are often in need of immediate safe housing that is non-judgmental and sensitive to the special issues affecting this population, for example policies on running away. Once safe and stable, the need for supportive and loving environments continues to be a major need.
- **Medical care –** Repeated physical and sexual abuse can cause victims to need a range of medical care, including a care provider who is sensitive to the challenge for victims of being touched, even by a professional.
- **Counseling –** Trauma-informed counseling is needed so victims may begin to process and heal from the tremendous abuse they have experienced. Individual counseling creates a victim's own space to process and heal, while supportive group counseling can help decrease feelings of isolation and shame because survivors have the opportunity to meet others who have been through similar experiences.

- **Substance use treatment –** CSEC victims may struggle with substance use. Substance may have been introduced and used by their trafficker as a means of control and by the victim as a coping mechanisms for dealing with their traumatic experiences. A continuum of care options is necessary ranging from immediate detox to longer-term recovery programs that incorporate the trauma of being a victim of CSEC as it relates to substance use.
- **Education and vocational support –** CSEC victims often have dropped out of school and may need specialized one-on-one tutoring to get back on track. Access to a variety of education services, such as one-on-one tutoring and certificate programs, can help. Similarly, specialized vocational programming may be a better path for some young people who have completed high school or their GED.
- **Intensive case management –** Having an intensive case manager who is trained in accessing relevant resources and navigating systems is helpful in smoothly connecting victims to necessary services. Having a point person who can assist with making appointments and who can accompany the victim to appointments helps ensure that the victim receives essential services. Additionally, many of the resources needed may trigger shame and fear; thus, having a dedicated person the victim grows to trust is extremely beneficial.
- **Healthy adult relationships and mentoring –** The value of healthy adult relationships is a requisite for healing. Within the last few years there has been a growing recognition that mentoring, an evidence based practice, can be used effectively with CSE youth. The benefits of a successful mentoring program are replicable and exponential.[12] Connecting high-risk youth with caring adult mentors helps young people develop supportive, consistent relationships with these adults, leading to increasing engagement in multiple aspects of their lives.

VI. Elements in Court Strategies for Addressing the Commercial Sexual Exploitation of Children

Victims of CSEC are some of the most vulnerable people in our systems. Judges, court staff and stakeholders have begun to enhance their awareness and response to these cases and this knowledge will increase the likelihood of early identification and intervention for these young people. In particular, while many barriers remain to identifying and assisting CSEC victims, promising practices such as the following are emerging:

- **Training and capacity building –** Training is at the heart of creating change in response to CSEC victims. Training about the CSEC population and the elements that increase the risk of a young person to be sexually exploited is needed across systems and stakeholders, with ongoing and detailed training for stakeholders who are likely to have contact with or already work with CSEC victims. Additionally, it is recommended that existing agencies that do not traditionally work with CSEC victims build internal capacity by incorporating CSEC-specific questions into screening and assessment tools.

[12] Grossman, Jean Baldwin and Eileen M. Garry (April 1997) Mentoring: A Proven Delinquency Prevention Strategy (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention). This bulletin reports that mentored youth were 46 percent less likely than controls to initiate drug use (minority youth were 70% less likely), 27 percent less likely to initiate alcohol use, and almost one third less likely to hit someone. They skipped half as many days of school and had improved relationships with their peers.

- **Use of multisystem approach and cross-system coordination**[13] – CSEC victims interact with many systems and need the help of multiple systems as they heal from their experiences. Multisystem approaches—the involvement and collaboration of systems to provide wraparound services—have proven successful. Creating forums such as coalitions and collaboratives with protocols aimed at providing streamlined care helps to build a strong network to support victims. Building multidisciplinary teams is one way to coordinate across systems. Including child welfare, probation, attorneys, service providers and the judge establishes efficient communication pathways.
- **Screening and assessment** – While there is still debate as to which screening and assessment tools are best for this population, incorporating trafficking-sensitive questions into general screening and intake forms can help assist in identification. Also, special consideration of who is conducting the screening and assessment, and where it is being done, are important to promote safety.
- **Trauma-informed programming** – Trauma-informed programming is important across systems and providers. According to the Substance Abuse and Mental Health Services Administration (SAMSHA), trauma-informed organizations, programs, and services are based on an understanding of the vulnerabilities or triggers of trauma survivors that traditional service delivery approaches may exacerbate, so that these services and programs can be more supportive and avoid re-traumatization. Using this lens can create a sense of safety and understanding for victims as they begin to heal.
- **Meaningful engagement and relationship development** – Engagement is the beginning of the change process. The relationships that victims begin to form with stakeholders are most helpful when they are consistent, non-judgmental, and supportive, and recognize that change takes time. Building transformational relationships with caring, committed adults, and drawing on peer support, mentoring and role modeling to cultivate a "family-like" atmosphere helps support the survivor.
- **Creation of specialized services and treatment options** – The establishment of foster homes and group homes run by foster parents and staff that are trained in working with CSEC victims and offer specific programming is recommended. Offering young victims a stable home with adults who understand the impact of CSEC can be life changing. Additionally, policies that are aware of CSEC experiences, like protocols for running away, help provide the unconditional love that CSEC victims need.

Putting it All Together: The GEMS Victim, Survivor, Leader Model

GEMS has developed a program model that incorporates the features mentioned above. In particular, the GEMS Victim, Survivor, Leader (VSL) Model, incorporates a variety of evidence-based practices and concepts, building on two foundational principles—survivor leadership and transformational relationships—and six core values: (1) gender-responsive, (2) trauma-informed, (3) strengths-based, (4) culturally competent, (5) developmentally grounded, and (6) social justice oriented. Figure 2 provides a diagram of the GEMS VSL Model.

[13] U.S. Department of State (June 2013) Trafficking in Persons Report (Washington, D.C.).

Figure 2: The Girls Educational and Mentoring Services (GEMS) Victim, Survivor, Leader Model for Serving Trafficking Victims

Stage of Healing	VICTIM	SURVIVOR		LEADER
Stage of Change	Pre-contemplation / Contemplation	Preparation	Action (Relapse)	Maintenance (Relapse)
Engagement	■ Contact from staff is frequent and consistent, working to create safety and build trust. ■ Preliminary goals are developed based on strengths and need. ■ Engagement is less formal with access to support services and resources that members are interested in and prepared for.	■ Contact from staff continues to be frequent and consistent while members are encouraged to develop relationships with peers and other trusted adults. ■ Members are challenged to create robust service plans, and are referred for more intense services either through vetted referrals to outside service providers or to internal specialized programs.		■ Contact between staff and members is less frequent as members begin taking initiative in their own lives. ■ Programming is less intense as members are accessing appropriate support, resources and opportunities outside of GEMS.

Moreover, from its inception, all GEMS services and programming have sought to minimize barriers for girls and young women who have experienced commercial sexual exploitation and domestic trafficking (called "members" at GEMS) by incorporating the following strategies:

- providing a secure, non-judgmental, drop-in space, access to 24-hour crisis support and a continuum of housing services to address safety;
- meeting members with support tailored to where they are in the change process using the Stages of Change model to understand the stages of exiting the commercial sex industry;
- incorporating trauma-informed care and survivor input and leadership to ensure services and programs are responsive to survivor needs;
- building transformational relationships with caring, committed adults, and drawing on peer support, mentoring and role modeling to cultivate a "family-like" atmosphere;
- offering opportunities for positive youth development, and utilizing a strengths-based, member-identified approach to empower survivors to become authorities in their own lives;
- providing financial incentives for participation that address practical barriers to engagement and success, while publicly recognizing, celebrating and honoring achievement;
- advocating on behalf of all at-risk youth within child welfare, education, legal and housing systems to affect policies and practice;
- designing, implementing and maintaining evidence-based programming where possible; and
- employing staff who embrace GEMS principles and core values, and are committed to providing high-quality services.

Chapter 5

Identifying and Responding to Sex Trafficking

Miriam Goodman and Robyn Mazur
Center for Court Innovation

I. Introduction

The hidden nature of trafficking crimes makes it difficult to determine an exact number of victims. Estimates range that within the U.S., 300,000 to 2 million people are victims of human trafficking each year.[1] There is growing recognition that prostitution, chronic running away, homelessness, shoplifting, substance abuse, domestic violence, and loitering are all potential red flags for sex trafficking. Given this reality, courts can play a crucial role in not only identifying victims of sex trafficking, but linking them to needed services. This *HT Guide* provides judges and court staff with concrete steps to enhance their ability to respond effectively and sensitively to these difficult cases.

II. Understanding the Victim-Defendant Paradigm in Sex Trafficking Cases

Victims of sex trafficking range across all ages, races, and nationalities. Foreign-born sex trafficking victims make up a significant portion of this population, but domestic sex trafficking victims in the United States also exist in alarmingly high numbers. According to a recent study by the National Human Trafficking Resource Center, pimp-controlled sex trafficking cases make up the majority of domestic cases; these cases also have the highest rates of minor sex-trafficking victims.[2] Despite differences among populations, sex trafficking victims share risk factors, barriers to being identified, and challenges in accessing help.

Recognizing the Duality of the Victim-Defendant

Victims of sex trafficking appearing in the court system may be both victim and defendant. A victim may initially become visible in court as a defendant charged with a crime that might normally be appropriate for a punitive sentence. However, with further inquiry, it may be revealed that this defendant was forced into "the life" (i.e., the life of a prostitute) and is fearful of her trafficker/exploiter.

This duality poses a challenging question to the courts: how does the court hold the defendant accountable for his or her criminal act, while knowing the defendant could be a victim of sex trafficking or other forms of violence? It is a vexing question, without a simple answer. Addressing it requires a paradigm shift in

[1] Clawson, H.J., N. Dutch, A. Solomon and L.G. Grace (2013) *Human Trafficking Into and Within the United States: A Review of the Literature* (Washington D.C.: U.S. Department of Health and Human Services). Accessed January 10, 2013. Available at http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/.

[2] Polaris Project (2013) *Human Trafficking Trends in the United States: National Human Trafficking Resource Center*, p.9.

which court staff and stakeholders move from viewing the defendant as a criminal to a victim who has complex needs that often lead to a cycle of recidivism. Experience suggests that providing a defendant with support and the tools to break free of a pimp/trafficker has a greater chance of restoring the victim-defendant to a life free from violence and exploitation than conventional prosecution and incarceration. If courts intend to make a difference, they can begin by:

- acknowledging the tremendous impact of chronic victimization;
- understanding the multifaceted obstacles faced by this population;
- creating meaningful alternatives to incarceration; and
- searching for legal dispositions that support deferment/dismissal of cases and reduction of criminal record.

Understanding the Impact of Victimization

It is imperative that legal system players understand the impact of chronic victimization and the role played by shame and stigma. Victimization often begins in childhood, and may be committed by multiple people, including family members, intimate partners, pimps/traffickers and purchasers. For example, sex trafficking victims experience high rates of childhood sexual abuse, which affects their development, ability to trust others, and sense of self-worth. Reports estimate that 70 - 90 percent of commercially sexually exploited children have a history of childhood sexual abuse. Children who experience childhood sexual abuse are 28 times more likely to end up in prostitution and as a victim of sex trafficking.[3] Lifelong trauma can lead to other issues, such as not finishing school, homelessness and drug use. The way communities and systems react to a victim's experience (i.e., providing help, not harm) can influence a victim's level of engagement and trust.

Recognizing the Needs and Challenges that Victim-Defendants Face

Chronic victimization, poverty, homelessness, substance use and social stigma are some of the common obstacles that victims of sex trafficking face. The interconnection of these hardships often results in victims' distrust of people, resources, and systems, making it difficult for victims to connect to help. Additionally, a victim may not have the ability to access assistance because of his/her pimp/trafficker's control. The obstacles that block victims from accessing services are often the parts of their lives that need the most help. The figure on the following page highlights the myriad of needs that may be facing a victim-defendant of trafficking when they come into contact with the justice system.[4]

---

[3] Adapted from U.S. Department of Health and Human Services Administration for Children, Youth and Families (ACYF) *Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States*. Bagley, C. and L. Young (1987) "Juvenile and Child Sexual Abuse: A controlled Study." *Canadian Journal of Community and Mental Health*.

[4] Clawson, H.J., N. Dutch, A. Solomon and L.G. Grace (2013) Human Trafficking Into and Within the United States: A Review of the Literature (Washington D.C.: U.S. Department of Health and Human Services). Accessed January 10, 2013. Available at *http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/*.

Figure 1

Need	Description
Basic Needs	For many victims, food and clothing are urgent needs.
Housing: emergency, transitional and permanent	Victims typically need immediate safe housing. Once they are safe and stable, they will need a long-term supportive environment.
Medical Care	Repeated physical and sexual abuse can cause victims to need a range of medical care. Providers should be sensitive to the specific challenges faced by this population (i.e., some victims are so traumatized that they have a fear of being touched, even by a professional).
Counseling	Trauma-informed counseling is critical to helping victims begin to process and heal from the variety of abuses they have experienced.
Substance Use Treatment	Victims may struggle with substance use. A continuum of care options are necessary ranging from immediate (detox) to longer term recovery programs.
Education	Victims often need access to a variety of education services, such as one-on-one tutoring, GED programming and certificate programs.
Employment	Work training programs and employment opportunities that can serve as an alternative to prostitution are necessary for victims to financially support themselves.
Intensive case management	A case manager can assist in navigating the many services needed to transition victims to safety and security.

Lizzie's story, below, helps illustrate the complicated lives of victims. Her life provides the beginning of a blueprint for how courts and stakeholders can affect the lives of victims.

Lizzie was raised in extreme poverty in New York City. At the age of four, her father sexually abused her. She continued to experience sexual abuse and assault by other boyfriends of her mother. Her mother was also physically and emotionally abusive, often beating Lizzie with electric cords and telling her she was worthless. After years of abuse, Lizzie ran away at 12 years of age. Within the first week of being homeless, Lizzie met her first pimp while begging for change outside a fast food restaurant. She was sexually assaulted and physically abused by him to "break her into the life." At seventeen, Lizzie met a pimp whom she married and with whom she had two children. He physically, sexually and emotionally abused Lizzie throughout their twenty year relationship.

As a way to cope with the trauma that she had experienced, Lizzie began to use crack cocaine. She was arrested over 45 times for prostitution and drug possession. After her forty-sixth arrest, she ended up in a court that offered specialized programming for people arrested for prostitution offenses. She was mandated to attend 15 sessions with a trained social worker who listened to her story and provided support, counseling and case management. After she completed her counseling sessions, Lizzie continued to work with the social worker on a voluntary basis. With this assistance, she began a healing process. Today, she is drug free, living in her own apartment and working on reconciling with her children.

III. Developing the Capacity to Identify Trafficking Victims

Courts and criminal justice stakeholders have begun to rely heavily on evidence-based tools and practices to determine the risks and needs of defendants. This information can be used to impose appropriate and informed sentences. This process is referred to as a risk-need-responsivity ("RNR") model. The assessment tools used in this process define *risk* as the likelihood of re-offense and the intensity of supervision required to manage the possibility of recidivism. The tools view need as composed of static and dynamic characteristics that are empirically related to the likelihood of recidivism (*criminogenic* factors). Criminogenic factors have been found to lead to or cause crime, making them appropriate targets for interventions that aim to reduce recidivism.[5] *Responsivity* refers to the type of intervention that is most appropriate based on risk and need outcomes.

Figure 2 below is a list of commonly-used assessment tools that are being used by courts and criminal justice stakeholders (i.e., pre-trial officers, probation officers, parole officers, and corrections officers).

Figure 2

Name	Description
The Level of Services Inventory (LSIR)–Revised[6]	A validated risk-need assessment tool that assesses the criminogenic needs of offenders, their risk of recidivism, and the most relevant factors related to supervision and programming. A short screener and case management tool are also available. These tools require in-depth clinical training and require that the user pay per assessment.
The COMPAS[7]	The COMPAS is a validated risk-needs assessment that uses a computerized tool to assess offenders' needs and risk of recidivism. It is designed to aid in correctional treatment for offenders starting at 17 years old. Separate assessment modules include reentry, women, youth, and case management. The system asks closed questions that offer little room for clinical discretion. Training is required for all users and there are fees associated with the software to administer the tool.
The Ohio Risk Assessment System (ORAS)[8]	The ORAS is a dynamic risk-needs assessment system to be used with adult offenders. It offers the ability to assess individuals at various decision points throughout the criminal justice system and is the only public domain instrument that explores all eight criminogenic domains and predicts both risk of recidivism and rehabilitative needs.
Women's Risk Needs Assessment[9]	The WRNA is a validated and gender-specific assessment tool that assesses both gender-neutral and gender-responsive factors. The WRNA developed separate forms for probation, prison, and pre-release. The WRNA incorporates questions that address needs such as: (1) trauma and abuse; (2) unhealthy relationships; (3) parental stress; (4) depression; (5) self-efficacy; and (6) current mental health symptoms.

[5] Bonita, J. and D. Andrews (2007) *Risk-Need-Responsivity model for offender assessment* (Canada: Carlton University).

[6] The Level of Services Inventory- Revised (LSIR) See: *https://www.assessments.com/catalog/LSI_R.htm*

[7] The COMPAS See: *http://www.northpointeinc.com/products/northpointe-software-suite*

[8] The Ohio Risk Assessment System (ORAS) See: *https://www.assessments.com/purchase/detail.asp?SKU=5252*

[9] Women's Risk Needs Assessment See: *http://www.uc.edu/womenoffenders.html*

Incorporating Experiences of Victimization into Existing Tools

Only one of these RNR tools actually screens for victimization and none is designed with the goal of identifying victims of trafficking. The impact of common elements of trafficking—force, fraud and coercion—are not considered. Without adding the context of trafficking, victim-defendants are likely to flag as high risk and need. This may reduce the likelihood that they will receive an appropriate response and/or intervention by courts or stakeholder agencies. In order to better identify and treat victims of sex trafficking, the current RNR tools and paradigm used by courts and stakeholders needs to be amended.[10] This means using domains that consider the elements of trafficking (force, fraud, coercion) and establishing appropriate interventions instead of relying on incarceration.

Figure 3 below examines the eight commonly-cited criminogenic factors alongside related risk factors that incorporate the context of victimization and trafficking.[11] This figure offers a new paradigm for judges, courts and stakeholders to consider when assessing defendant recidivism and associated character traits.

Figure 3

Criminogenic Risk Factors	Victims of Sex Trafficking
1. History of Antisocial Behavior: Criminal History The best predictor of future behavior is past behavior.	**Recidivism as a Red Flag** Without choice and freedom of options, victims are at high risk of being arrested multiple times. The pressure that victims face from their pimp/trafficker of making a "quota" of money every night (with violent consequences) forces victims to be in known areas of prostitution and increases their likelihood of arrest.
2. Antisocial Attitudes, Values, and Beliefs What we think is related to how we act—blaming the victim, denying harm or denying that there was a victim	**Victim/Defendant Duality** A history of victimization informs how victims think and behave. When the defendant is also the identified victim, it is re-victimizing to ask him/her to take responsibility for the crime. Repeated victimization can cause victims to hold deep shame that informs attitudes, values, and self-worth.
3. Antisocial Associates and Peer Groups Who our friends are and whom we socialize with affects what we do—peers reinforce behavior	**Isolation of Victims** Victims of trafficking are likely to have limited interaction with those not involved in trafficking. Traffickers often isolate victims as a means of control. Runaway and high-risk youth are likely to spend time with others in similar situations.

[10] The adaptation with gender-responsive assessment tools, such as the Women's Risk Needs Assessment (WRNA; see Figure 3) can provide guidance on how to create a new lens to understand criminogenic factors and how to add new population-specific factors.

[11] Available at: http://www.samhsa.gov/co-occurring/topics/criminal-justice/screening.aspx

Figure 3

Criminogenic Risk Factors	Victims of Sex Trafficking
4. Antisocial Personality Characteristics These characteristics include: ■ hostile interpersonal interactions; ■ lack of empathy; ■ weak socialization; ■ impulsivity; ■ restless/aggressive energy; ■ poor self-regulation skills; ■ weak problem-solving; ■ taste for risk; and ■ below average verbal intelligence. *Examples:* 1. Hostile interpersonal interactions, lack of empathy 2. Poor self-regulation skills 3. Taste for risk	**Impact of Trauma and Influence of Trafficker** Repeated interpersonal violence (childhood sexual and physical abuse, neglect, sexual and physical assault) affects a victim's interactions with others. Compounded by the influence of a trafficker, a victim's behavior can result in the display of qualities that mimic antisocial personality characteristics. *Examples:* 1. After repeated abuse by an adult, victims are likely to distrust people in authority. Traffickers train victims not to speak to or trust authorities. 2. Repeated abuse causes victims to remain in a state of flight/fight/freeze response, making it challenging to regulate themselves. 3. A victim of sex trafficking is typically not able to control the risks she takes. Also, victims of trauma are more likely to continue to be victims of trauma.
5. Education/Employment Work or school are pro-social activities that reduce the chances of recidivism.	**Control of Trafficker and Lack of Options** While being trafficked, victims do not have the ability to attend school or obtain legal employment. Repeated convictions cause victims to have criminal records, prohibiting them from obtaining employment. This is often used as a tactic by traffickers to keep victims from leaving.
6. Family and/or Relationship Circumstances Family can provide the same influences as peers, re-enforcing behavior and shaping our values and beliefs.	**Family and/or Relationship Circumstances** Family dynamics can influence a victim's connection to support systems. When victims leave their families (biological or foster) because of abuse and/or neglect, they are often on their own without any support system. The trafficker can provide the victim's only sense of family and/or belonging.
7. Substance Abuse In addition to being illegal, drug abuse may lead to other criminal behaviors.	**Coping and Influence of Trafficker** Victims will find many ways to cope with their experiences. Substance use is a common way for victims to survive. Sometimes traffickers force victims to use drugs.
8. Lack of Leisure and/or Recreational Pursuits Positive leisure and recreational activities occupy time constructively.	**Isolation, Victimization and Influence of Trafficker** Victims of trafficking do not have the ability to engage in leisure or recreation pursuits as they do not have control over their day-to-day lives. Repeated victimization can cause victims to feel isolated and as though they don't belong with others, prohibiting them from engaging in "pro-social" activities.

Example from the Field: A Specialized Sex Trafficking Identification Tool

In 2010, the Midtown Community Court (a demonstration project of the Center for Court Innovation) hired a dedicated, on-site social worker to work with women, men, and transgender people arrested for prostitution. This resulted in the development of a tool that is a trauma-informed, strengths-based, comprehensive psychosocial assessment based on the following principles:

- trauma and violence play a significant role in the way an individual thinks, feels and acts;
- an individual's way of coping, such as using drugs or in engaging in self-harm, are adaptations for survival;
- a victim often does not readily identify as a victim, therefore questions are asked in multiple ways using non-victim based language;
- language must be sensitive to all gender and sexual identities;
- including the victim's strengths into the assessment is an essential component of engagement; and
- there should be a commitment to providing welcoming, compassionate, and appropriate services for all victims.[12]

This tool assists the case manager in identifying trafficking by listening for:

- history of past victimization;
- experiences of current victimization;
- victim's experiences in prostitution;
- pimp-controlled trafficking;
- experiences of migration;
- general information about housing, drug use, education; and
- current needs that contribute to risk.

While this tool has not yet been validated, Midtown Community Court staff has found the tool to be effective in screening for sex trafficking, particularly domestic, pimp-controlled trafficking. Using the tool, over half (53%) of the women who were arraigned on prostitution-related offenses at the Midtown Community Court in 2012 reported past or current pimp-controlled trafficking.

[12] U.S. Department of Health and Human Services, 2008. *Case Management and the Victim of Human Trafficking: A Critical Service For Client Success*

From the Bench: Identification Considerations for Judges and Court Personnel

Identification is a dynamic process and extends beyond the use of any single tool. Judges and court staff can assist in this process by considering the effects victimization and trafficking may have on defendants in court. For instance, victims of trafficking may present as "defiant" and "antisocial," when in fact, their behavior may be better understood in the context of traumatic stress and experiences of trafficking. Judges and court staff should be listening for signs of trauma and trafficking when hearing cases. Here are several questions for judges, court staff and stakeholders to consider:

- Have I considered whether or not trauma and/or trafficking are playing a role in this person's behavior?
- Have I considered the elements of force, fraud and coercion in relation to this person's recidivism?[13]
- If I am unsure if the person is really a victim of trafficking, have I considered connecting her to a community-based advocate/provider for services and further assessment?

IV. Strategies for Courts: Enhancing Response to Trafficking Victims

The following strategies provide a blueprint for judges and court personnel to begin to better address the needs of trafficking victims:

Lay the foundation

- Judicial leadership can affect outcomes. Judges can convene court staff and stakeholders to meet and discuss possible responses to trafficking. Recognizing that high rates of coercion and violence by pimps/traffickers/abusers result in frequent arrests, judges can use graduated sanctions as a response to recidivism and as a way to continuously bridge victims to services.
- Training can deepen a collective understanding of the complexity of sex trafficking. Judges and court personnel can convene multidisciplinary trainings that reinforce shared goals of identification and linkage to needed services. Examples of potential training topics include:
  - Sex trafficking 101 and listening for trafficking "red flags"
  - Trauma and trauma-informed care
  - Lesbian, Gay, Bisexual, Transgender, Queer or Questioning (LGTBQ) sensitivity

[13] The Trafficking Victims Protection Act of 2000 (TVPA) defines trafficking as: The recruitment, harboring, transportation, provision, or obtaining of a person for sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Coercion includes threats of physical or psychological harm to children and/or their families. Any child (under the age of 18) engaged in commercial sex is a victim of trafficking. *http://www.state.gov/j/tip/laws/*

- how to talk to victims; and
- available community resources

Develop a plan

- Courtroom protocols can enhance safety. Protocols aid in establishing safety within the court. Areas to consider are:
  - What will be said in open court?
  - What case information will be shared among stakeholders?
  - What kinds of training will be provided to all court room staff?
  - How can courtroom and courthouse safety be improved?

Build communication, collaboration and coordination

- Collaboration with community stakeholders can begin the process of change. Trained social workers at community stakeholder agencies are often best positioned to conduct in-depth assessments and provide services and case management. Building relationships and trust between the court and these community-based providers can help develop a specialized response to victim-defendants.
- Coordination among community providers enhances the response to victim-defendants. Creating networks, referral protocols and ongoing dialogue among the court, criminal justice stakeholders and community advocates can assist in streamlining services for victim-defendants. Attorneys, probation and community stakeholders need to have a comprehensive understanding of protocols (e.g., judicial mandates, assessment, judicial monitoring, courthouse safety procedures) that the court is using when handling trafficking cases.

Engage in self-reflection

- Improving the court response to victims of sex trafficking is not a one-time event. The field is constantly changing as new research and interventions emerge. Continuing to identify gaps in services, training needs and changes in the victim-defendant population will allow local justice systems to improve responses to victims of trafficking over the long haul.

V. Conclusion

Using the steps outlined in this *HT Guide*, courts have a unique opportunity to be leaders in the effort to identify and connect victims to needed resources. Judges and court personnel can assist in convening, coordinating and collaborating with community stakeholders in an effort to advance safe and liberating outcomes for victims of human trafficking.

Resources and Other Links

- Clawson, H.J., N. Dutch, A. Solomon and L.G. Grace. (2013) "Human Trafficking Into and Within the United States: A Review of the Literature". Washington D.C.:U.S. Department of Health and Human Services accessed January 10th, 2013, available at *http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/*
- Polaris Project, (2013), from *Human Trafficking Trends in the United States: National Human Trafficking Resource Center.*
- Adapted from U.S. Department of Health and Human Services Administration for Children, Youth and Families (ACYF): "Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States". Bagley, C. & Young, L. (1987) "Juvenile and Child Sexual Abuse: A controlled Study". Canadian Journal of Community And Mental Health.
- Clawson, H.J., N. Dutch, A. Solomon and L.G. Grace. "Human Trafficking Into and Within the United States: A Review of the Literature". (Washington D.C.:U.S. Department of Health and Human Services, 2009), accessed January 10th, 2013, *http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/*
- Bonita, J., Andrews, D. (2007). Risk- Need- Responsivity model for offender assessment. Canada: Carlton University.
- The Level of Services Inventory – Revised (LSIR) See: *https://www.assessments.com/catalog/LSI_R.htm*
- The COMPAS See: *http://www.northpointeinc.com/products/northpointe-software-suite*
- The Ohio Risk Assessment System (ORAS). See: *https://www.assessments.com/purchase/detail.asp?SKU=5252*
- Women's Risk Needs Assessment. See: *http://www.uc.edu/womenoffenders.html*
- The adaptation with gender-responsive assessment tools, such as the Women's Risk Needs Assessment (WRNA; See chart) can provide guidance on how to create a new lens to understand criminogenic factors and how to add new population-specific factors. Available at: *http://www.samhsa.gov/co-occurring/topics/criminal-justice/screening.aspx*
- U.S. Department of Health and Human Services, 2008. "Case Management and the Victim of Human Trafficking: A Critical Service For Client Success."

- The Trafficking Victims Protection Act of 2000 (TVPA) defines trafficking as: The recruitment, harboring, transportation, provision, or obtaining of a person for sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Coercion includes threats of physical or psychological harm to children and/or their families. Any child (under the age of 18) engaged in commercial sex is a victim of trafficking. *http://www.state.gov/j/tip/laws/*

Chapter 6

Ethical Issues for Judges and Court Practitioners in Human Trafficking-Involved Cases

Steven Weller
Center for Public Policy Studies

Judge Elizabeth Lee
San Mateo County, California, Superior Court

Judge Dana Leigh Marks
President, National Association of Immigration Judges[1]

HUMAN TRAFFICKING
AND THE STATE COURTS COLLABORATIVE

I. Chapter Overview

This chapter *of the HT Guide* addresses the underlying ethical concerns of judges and court practitioners in handling cases where human trafficking may be an issue. The major concerns that they face include the following:

- Acting or appearing to act as an advocate for a human trafficking victim in the context of a criminal prosecution without compromising their neutrality.
- Undermining the prosecutors. For example, by identifying a criminal case filed under an alternative charge as a possible trafficking case, the judge may undermine the credibility of the prosecutor. Even adding a trafficking flag to a case in an automated case record system may indicate that the judge questions the decision of the prosecutor.
- Assisting potential trafficking victims in cases where trafficking may have occurred but the victims are not part of the legal proceedings. An example might be code violation cases. Even raising the possibility that human trafficking is involved may affect the court case and compromise the judge's neutrality.
- Actions that might disqualify or support a motion to recuse the judge. This could include *ex parte* discussions, independent investigation of the facts in a case, or any actions that might give rise to a reasonable belief that the judge has pre-determined a particular result.
- Actions that can give an appearance of bias.
- Being perceived as interfering with the attorney/client relationship.

The remainder of this chapter contains the following three sections.

- Section II discusses the implications of ethical issues for the state courts. It first covers ethical issues arising for judges in the adjudication process and in their extra-judicial activities and then covers the applications of judicial rules of ethics to other court staff.
  - With regard to issues arising in the adjudication process, the section points out that judges cannot act on information obtained outside of the trial process concerning an individual but may act on concerns that arise as the trial unfolds, including taking steps to protect a person who appears to be a victim of human trafficking, unless the judge shows such extreme bias against an alleged trafficker that his or her ability to conduct a fair trial can reasonably be questioned. The steps that a judge may ethically take to assist a victim are discussed in detail.
  - With regard to the judge's extra-judicial activities, the section points out that a judge may become involved in activities aimed at improving the law, the legal system, or the administration of justice, as long as the judge's participation doesn't raise an appearance that

[1] *The views expressed here are those of Judge Marks in her individual personal capacity and as President of the National Association of Immigration Judges (NAIJ), not as official spokesperson for the U.S. Department of Justice (DOJ). The National Association of Immigration Judges is a professional association of Immigration Judges and the certified representative and recognized collective bargaining unit which represents the Immigration Judges of the United States. Judge Marks does not purport to represent the views of the U.S. DOJ, the Executive Office for Immigration Review, or the Office of the Chief Immigration Judge. Rather, her views reflect her personal opinions, which were formed after extensive consultation with the membership of the NAIJ.*

the judge is unable to carry out his or her judicial duties impartially, such as being associated with an advocacy group or having too close a relationship with a service provider. It also points out that judges must be careful in their use of social media. Again, examples are provided.

- The section also notes that judges must hold court staff to the same standards of behavior.

- Section III presents selected judicial ethics opinions by the State of Washington Ethics Advisory Committee to provide detailed analysis and examples of some of the more difficult ethical problems.
- Section IV provides links to additional resources, including state judicial ethics opinions and the American Bar Association's (ABA) *Model Code of Judicial Ethics*.

II. Implications for the State Courts

This section includes a review of federal judicial ethics opinions and an analysis of situations in which ethical concerns may arise. *Judges and court staff should be aware that individual state judicial ethics codes and opinions may differ, so each judge should review his or her own state's rules.* Further, there are areas where either no clear ethical guidance has been developed at present or small nuances in the facts can have an effect on the ethics of a particular judicial action, so judges may be dealing with issues of first impression.

The discussion that follows addresses concerns of judges, court administrative staff, and court support staff and covers both actions in the adjudication process and activities of judges in their roles as justice system and community leaders. The discussion makes references to the ABA's *Model Code of Judicial Conduct* (2011 edition).

Judicial Actions in the Adjudication Process

A judge presiding over a case where human trafficking victims may be involved may have to decide what steps are appropriate to protect participants in the trial whom he has reason to suspect may be trafficking victims. Some of the actions that a judge may want to take to assist or protect trafficking victims can raise ethical issues, including the following:

- taking steps to promote safety for a suspected trafficking victim;
- asking questions of the prosecutor or attorney for a party to a case;
- asking questions of a party, victim, witness, prosecutor, or defense attorney in open court or in chambers;
- meeting with a party, victim, witness, prosecutor, or defense attorney privately in chambers; and
- asking questions aimed at revealing signs that the person may be a trafficking victim without giving rise to an appearance that the judge has already decided that the person is a trafficking victim;

- assisting an unrepresented party, victim, or witness who appears to be a trafficking victim;
- assisting a person charged with a crime who might have a defense of coercion due to victimization by a trafficker;
- slowing down the process in situations that may raise red flags, such as an older male posting bail for or seeking guardianship over a younger female; and
- taking leadership to assure that all participants in the courtroom, including prosecutors, defense attorneys, and other court officers, have a common understanding of the role that the judge will play in handling cases involving issues of human trafficking.

Many of the ethical concerns with regard to the above actions by the judge will have to be determined by particular fact situations. The following are some principles that should be applied in deciding whether a particular situation raises ethical concerns.

- A judge may be subject to disqualification in situations where pre-existing attitudes, relationships or statements deriving from an extra-judicial source appear to compromise the judge's neutrality or ability to decide a case fairly.
- Statements or actions by the judge at trial that reveal negative opinions about a party to a case based on information obtained in the context of a trial do not disqualify the judge unless the judge shows extreme bias.

The most important ethical issue with regard to all of the above actions is whether an action by a judge in a criminal case to protect a potential human trafficking victim would be considered an indicator of bias against the defendant that could make the judge subject to disqualification.

Assisting a suspected trafficking victim

A critical issue for a judge is determining what steps, if any, he or she can take in the courtroom when suspecting that a criminal defendant might be a trafficking victim, to assist the victim without violating the ethical canon to be fair and impartial.

The concern for the judge is whether actions taken to identify or assist a victim could be viewed as evidence that the judge has determined that the case involves human trafficking, particularly where the defendant has not been charged with a trafficking crime but rather a related lesser offense. Under 28 U.S.C. 455 on judicial disqualification, the Federal Courts have held that expressions of opinion by a judge based on his or her participation in the trial do not disqualify the judge, unless the judge evidences bias from an extrajudicial source or "such a high degree of favoritism or antagonism as to make fair judgment impossible."

In **Liteky v. United States**, 510 U.S. 540, 550-551 (1994), a defendant in a criminal case claimed that the judge should be disqualified, due to the fact that the judge had shown frustration with the same defendant in a prior criminal case involving prosecution of the defendant for similar acts. In both cases the defendant was prosecuted for acts of vandalism in a federal military facility, which the defendant intended to be a political protest. The judge became impatient and antagonistic when the defendant tried to use the trial itself as a political forum to continue his protest. The U.S. Supreme Court held that the judge's remarks showing frustration with the same defendant in the prior criminal case did not require disqualification. The Court held that evidence of bias by the judge in reaction to what the judge has observed during the trial generally does not require disqualification.

The Federal Courts have also held that comments by a judge that a prosecutor should have charged a defendant with a particular count of criminal behavior did not require disqualification. One case involved a defendant who was initially charged with bank robbery, which charge was amended to add armed robbery after the judge questioned why the prosecutor had omitted the firearms charge. **United States v. Wilkerson**, 208 F 3d 794 (9th Cir. 2000). The defendant pleaded guilty to both charges but then moved to vacate the plea and have the judge disqualified based on the judge's comments to the prosecutor regarding the gun charge. The court held that the judge's actions did not require disqualification.

There are limits on how far a judge can go, however, in suggesting a course of action to a prosecutor. A New Jersey Supreme Court judicial ethics opinion held that it was unethical for a judge to advise a prosecutor in an *ex parte* communication regarding what was needed to create a record of evidence necessary to support a conviction in a case before the judge. See **In the Matter of Diamond**, Order (New Jersey, July 11, 2013).

While the above cases did not involve human trafficking, the case law can be interpreted to support the proposition that a judge would not be subject to disqualification for taking steps to follow up on a concern that a person in court is a potential victim of human trafficking if that concern is based on the judge's observations in the trial. This could include situations where a judge's actions at trial to assist a victim/witness suggest that the judge believes the defendant should have been charged with human trafficking, as long as the judge does not suggest to the prosecutor how the evidence in the case could justify a conviction for human trafficking.

Judges should be aware that each state has its own statutes governing the process of moving to disqualify a judge. Once a judge has "disclosed," then those particular state statutes come into play. Some allow for disqualification for "cause" and "not for cause." If it is for cause, there are provisions that allow for judges to "defend" themselves from the challenge. Given the wide disparity and variances in state disqualification statutes, judges should refer to their own state statutes if a motion for disqualification is made.

A judge has the widest latitude to "help" a victim/defendant at sentencing. This is the appropriate time for "mitigating" circumstances to be evaluated. For example, after a victim/defendant is convicted at trial of armed robbery, she may divulge to the judge at sentencing that she was a victim of human trafficking and was forced to steal by her pimp. The judge can use this mitigating factor in determining the best disposition for the victim/defendant.

Judges may be more limited during trial. Perhaps there are appropriate jury instructions that could be given to help jurors sort out how they should factor in the additional evidence presented by a defendant that he/she was a trafficking victim. This presumes the defendant has offered this in his/her defense. Judges are more limited at trial because they have to remain fair and impartial in front of the jury. However, in jurisdictions which allow the parties to discuss the merits of a case with a judge before trial, a judge may be able to suggest that the victim/defendant appears to be a victim of human trafficking and should be treated accordingly. The judge should be mindful of Rule 2.2 (Impartiality and Fairness). Also see comment 2 to Rule 2.2: a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. Hence, we believe it would be inappropriate for the judge to say something like, "this defendant is a trafficking victim, I don't know why the DA continues to bring these cases to my courtroom, I don't believe these victims have committed a crime, they should not be detained, and I refuse to sentence them to any custody time!" (This assumes the state statutes still treat child prostitution as a crime.)

When can a judge request human trafficking screening?

One major issue for judges is when a judge may use human trafficking screening tools and analytical methods for uncovering possible human trafficking issues. The above cases suggest that in circumstances where information arising at trial could raise a suspicion that a participant in the trial is a human trafficking victim, a judge may request an assessment of the status of the individual.

More broadly, courts commonly make decisions within a case that require information on an individual's criminal record, employment status, financial capability, residence, living conditions, and ties to the community, such as bail and release decisions, sentencing, child placement decisions, juvenile diversion decisions, and juvenile detention decisions. It may be permissible for a judge to request that a human trafficking risk and needs assessment, as described in *Chapter 5* of this *HT Guide*, be conducted as standard protocol in the context of those decisions, as the information may be a factor in the decision. The human trafficking screening tools in those circumstances might be administered by designated court personnel, prosecutors, probation officers, pretrial release programs, child protection agencies, juvenile diversion programs, or human services agencies.

At the broadest level, certain case types are more likely to have trafficking issues, and screening may be able to more consistently identify trafficking victims in those cases. Those case types include cases involving crimes commonly committed by trafficking victims, such as prostitution, drug use, moving violations, thefts, or illegal peddling, or other case types associated with human trafficking, such as juvenile delinquency, child abuse and neglect, foster care review, family, debt collection, wage disputes, or code violations. It is not clear whether a judge may take screening a step further and adopt a standard practice of requiring screening for trafficking victims in all of those case types. Different states may view this possibility differently.

Transfer of juvenile victim to another judge for disposition

In a case involving a minor victim of trafficking where the jurisdiction hearing (plea hearing) is held in one county and the case is then transferred to another jurisdiction for disposition (sentencing), an important ethical issue for both judges is when it is appropriate for the first judge to discuss the case with the judge who is handling the disposition hearing.

In juvenile cases involving transfer, the judge hearing the "plea" or taking "jurisdiction" will be in the county where the event occurred. The "sentencing" or "disposition" will take place in the county where the child's parent or legal guardian resides, hence the bifurcated hearing. Transfers out routinely occur in about 7 to 10 days after jurisdiction is taken, leaving very little time (or incentive) for services to be given to a trafficked child who is going to be going home to another county. In cases involving human trafficking, a question arises as to whether there is a need to tell the other judge about the circumstances under which the victim/delinquent or victim/dependent was found. For example, where the victim/delinquent is charged with petty theft charges but the first judge suspects her to be a human trafficking victim who was working for a well known pimp in the county, would it be appropriate to communicate with the judge who is going to determine her "disposition" and suggest that specialized probation services are more appropriate for this trafficking victim than custody time?

In some juvenile courts, judges commonly talk to other judges about cases where venue is changed, either by writing notes to the file or, occasionally, by telephone. However, such communication may be inappropriate if the first judge had to recuse himself or herself due to some information that the judge received from a third party that would be prejudicial to one of the parties in the case. If the judge shares that information, or even appears to, it could compromise the receiving judge.

Rule 2.9(A)(3) allows a judge to consult with another judge as long as the judge makes reasonable efforts to avoid receiving information that is not part of the record. Rule 2.9(5)(c) says that a judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may be properly judicially noticed. If it is determined that the judge receiving the information from another judge might be in violation of this rule, the remedy would be disclosure under Rule 2.9(A)(1)(b). This rule is aimed at preventing the judge from possessing outside information that would give one side or the other an advantage or might influence the judge's decision, so it would seem that disclosure of the receipt of the outside information would ensure fairness to both sides.

Also note in certain states there are state statutes or interstate compact agreements that permit a judge to call another judge to discuss child custody issues in cases where a child may be moved from one state to another. This is probably not routinely applicable here with human trafficking cases, but there may be compacts or agreements that govern the transfer of cases involving children which would allow for some type of communication between judges. We recommend that a judge put any such communication on the record before the parties at the earliest instance if possible.

We suggest that the best practice is to not communicate directly with the next judge. The first judge might ask that the record contain a recommendation to look into determining whether the minor might be a victim of trafficking. Ultimately the best practice might be to have either juvenile probation or child welfare connect with their counterparts in the county receiving the case to share that information.

Self-incrimination by a witness that may be a perpetrator

If a judge suspects that a trafficking victim who is a witness testifying in his or her courtroom may actually be a perpetrator or someone who has recruited other trafficking victims to work for the trafficker, what can the judge ethically do?

The safest approach may be to take a break and appoint counsel to represent the trafficking victim because they may have a Fifth Amendment right not to say anything that might incriminate them. As long as they are on the witness stand and/or are going to testify, we believe it is fair for the judge to raise the question with the parties of the witness's Fifth Amendment rights and state that it appears to the judge that further testimony might implicate the witness's rights. At that point, the judge may decide to appoint counsel for the witness to advise the witness further on this issue and stop the testimony or take a break from the trial until the witness returns with counsel's advice.

We recommend that a judge make this assessment early on and appoint counsel to save valuable court time. It could be that the victim/witness was so embroiled in the pimp's operation that she/he will take the Fifth. It is better to know early rather than spend court time hearing testimony from a witness who later asserts the Fifth, cannot be cross-examined, and whose testimony may ultimately be stricken.

Relationship between evidence of human trafficking and merits of the issues at trial

Where the facts relate to the human trafficking issue and are also critical to the merits of the underlying case, any action by the judge to determine if the respondent is a trafficking victim could give the impression that the judge has decided the underlying case in favor of the respondent. For example, in a case where a defendant is possibly a trafficker but was charged with a lesser crime such as procuring prostitution, a judge who asks questions to determine whether the victim of the crime may also be a victim of human trafficking might also unintentionally signal a belief in a particular version of the facts relating to the ultimate issue of guilt of the defendant.

Where the facts concerning the trafficking issue are separate from the facts of the underlying case, so that facts surrounding the trafficking do not involve the same subject matter as the merits of the criminal case, the case does not carry the same ethical dilemma. If, however, the facts pertaining to the trafficking issues cannot be fully separated from the facts relating to the contested legal issues involved in the case, the judge may want to have the trafficking assessment conducted outside the context of the contested case.

The following are two hypothetical examples of human trafficking issues arising in the process of adjudication that present the application of the above ethical principles. The hypotheticals are presented in the Immigration Court context, but the issues could arise in the state court context as well, so the concepts are applicable to all types of cases. The critical issue for the judge in both hypotheticals is how to maintain a role as a neutral arbiter in the proceeding while offering compassionate help to victims of human trafficking who may themselves be accused of some violation of criminal or civil law.

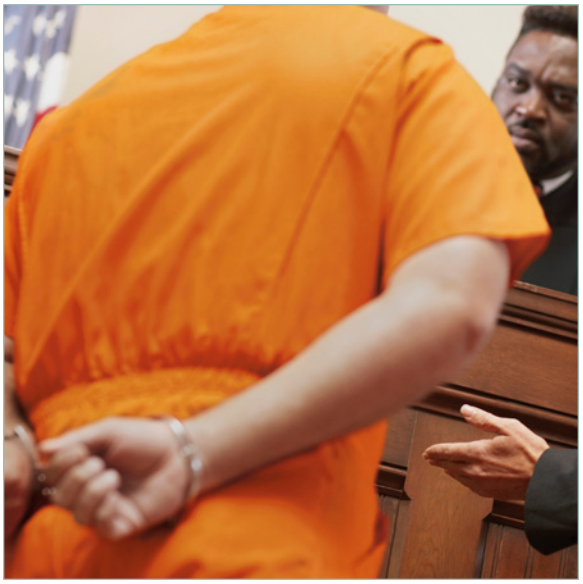
Hypothetical 1: Facts of Trafficking Also Relate to the Merits of the Case

In Hypothetical 1, removal proceedings are started against a young lawful permanent resident who was accused of engaging in marriage fraud in immigrating to this country. Immigration and Customs Enforcement (ICE) alleges that he entered the United States with an immigrant visa as the spouse of a United States citizen with whom he did not intend to create a marital life.* ICE prosecutors therefore seek to strip the respondent's permanent residence and deport him.

In the hearing on this matter, the respondent testifies that he fell in love with his (now ex-) wife while she was visiting his country, that he corresponded with her, that she later returned to his country to marry him in a civil ceremony, and that he intended to live with her in the U.S. as husband and wife. He further testifies that, when he arrived in the U.S., his wife and his mother-in-law picked him up at the airport and took him to the mother-in-law's house. There his life was controlled by his mother-in-law. He was promised that after a proper church wedding, he would be able to stay in the same bedroom with his wife, but until then, he was not allowed to share a marital life with her, though she lived in the same house. The illusive church wedding kept being put off into the future. He also testified that he was told he must help out the family by working in his brother-in-law's business in another city. There he was forced to do menial labor and sleep on the floor with only a blanket. While describing this treatment, the respondent breaks down in humiliation on the stand. He says that other employees were not required to sleep at the place of business, although his brother-in-law did sleep on a cot in the office. He was not paid for his work. Twice the respondent refused to continue working in the business and traveled back to his mother-in-law's house, but after the second time, he was told that he would be reported to immigration authorities if he continued to rebel. After this, he left his mother-in-law's house even though she retained his passport and visa.

** The primary requirement for establishing eligibility to immigrate based on marriage to a United States citizen or lawful permanent resident is that the couple, at the time of the marriage, intended to make a life together and the marriage, therefore, was not entered into solely or primarily for immigration purposes.*

In Hypothetical 1 the case presents a critical factual dispute between the two parties before the Immigration Judge. The judge suspects that the respondent may be a human trafficking victim but is ethically bound to remain neutral in her assessment of the facts of the case. ICE alleges he was complicit in marriage fraud and not a victim. The Immigration Judge wants to determine whether human trafficking has occurred by asking questions of the respondent in a way that shows compassion and understanding but does not re-traumatize the potential victim. However, this might derail the primary inquiry in the immigration case, and it might also unintentionally signal to the ICE attorney that the judge has a bias toward the respondent's version of the facts, which are critical to both the trafficking issue and the ultimate issue of deportability.



Hypothetical 2: Facts of Trafficking Not Related to the Merits of the Case

In Hypothetical 2, a respondent who has applied for asylum in removal proceedings before an immigration judge describes how he paid a down payment to an "agent" to bring him to the United States. He understood that he would have to work in the U.S. to pay off the remainder of the large fee for his passage and entry into the U.S. The agent helped the respondent receive a visa on false pretenses and the respondent entered the U.S. "legally." He testifies that he was met at the airport by his new "employer" and driven in a van for many hours to a remote location, but he was never told the name of the location. He was settled into the employer's house in the basement with seven other employees. They slept on cots. His employer held his passport. For a period of three years, he worked seven days a week in the employer's restaurant. He was driven each morning in the van to the restaurant and back again to the employer's house and worked approximately 16 hours per day. Otherwise, he was not allowed to leave the house, except that occasionally, he and the other employees were driven to a nearby drugstore to purchase personal items. For this purpose, the respondent was given $100 per month. The employer sent the rest of his salary to the "agent" in repayment of his "loan" for passage and entry into the U.S. At the end of three years, he was put again into the van and driven many hours back to the large city where he had entered the U.S. At that time, his passport was returned and he was given $300 and left in the city.

In Hypothetical 2, after hearing the above testimony the Immigration Judge calls a chambers conference with both attorneys. The judge is willing to involve both attorneys in the conference because the judge feels confident that the defense attorney was not hired by or involved with the trafficker because the attorney has a long history of ethical and competent practice before the judge. She explains her agency's concern with human trafficking, notes that she is going to ask the respondent a series of questions, and explains that her purpose is to determine whether the respondent's case should be referred for investigation regarding his being a victim of human trafficking. Both the attorney for ICE and the respondent's counsel agree to this plan.

After asking a series of questions meant to determine the level of coercion involved, the judge tells the parties of her intent to refer the case for investigation and asks the respondent's permission to share his information for that purpose. The attorney for ICE consults with her supervisor and tells the judge that human trafficking is "priority number one" for ICE and that if the respondent files an application for a T non-immigrant visa, ICE will agree to administratively close the case to allow time for United States Citizenship and Immigration Services (CIS) to adjudicate the application.[2]

This case does not carry the ethical dilemma presented in the case described previously. As an asylum case, the facts surrounding the trafficking do not involve the same subject matter as the merits of the immigration case. In addition, by the time this case came before the court, both the court and the prosecuting entity, ICE, had clarified their priorities with regard to human trafficking and it was relatively simple to come to agreement on how to handle the situation. And, most importantly, the respondent was no longer in the clutches of the trafficker.[3]

---

[2] *T visas offer non-immigrant status and a path to permanent residence for victims of severe forms of human trafficking. The Immigration Court does not have jurisdiction to consider a visa application, which must be made before Citizenship and Immigration Services of the Department of Homeland Security (CIS).*

[3] *If he had been, the strategy of calling a chambers conference would have to be considered only with much caution, as the attorney for the respondent is sometimes entangled with traffickers. Therefore, in some circumstances, such a conference might endanger the respondent.*

Nevertheless, even this second scenario could have been complicated if one of several factors were involved. Sometimes the method of arrival in the United States is relevant to contested issues involved in an asylum case or to the respondent's credibility overall. Sometimes, respondents' attorneys are hand in glove with trafficking agents. At times representation by an attorney chosen by the trafficker is included in the price for passage and entry into the U.S. Or the gentleman seated in the back of the courtroom, who the respondent said "gave him a ride to court," may be an agent of the trafficker. In that case, having the respondent answer questions in open court could put him or her in danger and may not elicit honest answers.

This second scenario is included because it emphasizes the importance of shared training on human trafficking issues including all stakeholders in the court's proceedings. Having all parties on the same page with regard to the need to identify and assist victims will lead to a better understanding of the court's purposes in asking questions or referring a case for investigation. The judge must be careful to disentangle these issues from the contested legal issues involved in the case. Where that cannot be done, such as in the first example above, then a referral to a neutral investigator that can investigate outside the context of the contested case should be made. For this purpose, even the initial steps of asking questions might be better left to the investigating entity.

Extra-Judicial Activities of Judges

As community leaders, a key issue for judges is the extent to which a judge can work with other organizations in a community to develop resources for victims without creating an impression of bias, including participation on a Human Trafficking Working Group. Juvenile judges in particular are often urged to go out in the community and create programs that will assist at-risk youth including children who are victims of commercial and sexual exploitation. Juvenile judges may also encounter unique ethical issues because of their leadership in the community. For a more detailed discussion of these particular issues facing Juvenile Judges, see "The Role of the Juvenile Court Judge: Practice and Ethics" by Judge Leonard Edwards (2012).

The following are some principles that should be applied in deciding whether a particular situation raises ethical concerns with regard to activities of judges in their role as community leaders.

- The activity must be aimed at improving the law, the legal system, or the administration of justice.
- Engaging in the activity must not create the appearance that the judge might act improperly in fulfilling his or her judicial duties.
- The activity should not be one that would cause a reasonable person to question whether the judge will be able to decide cases involving certain issues or parties in an unbiased manner.
- The activity should not compromise the judge's neutrality in a way that could lead to the need for frequent recusals.

The following is a discussion of some of the main ethical questions that may arise for a judge in the context of engaging in extra-judicial activities. References are to the ABA's *Model Code of Judicial Conduct* (2011 version). Ultimately, many of the answers to ethical questions will be up to each judge after a careful consideration of the circumstances and the individual judge's state ethical statutes.

Membership in human trafficking committees and working groups

Section 3.1(E) of the *Model Code of Judicial Conduct* states that a judge may engage in extrajudicial activities that concern the law, the legal system, or the administration of justice. Judges are encouraged to engage in appropriate extra-judicial activities and are uniquely qualified to engage in those that concern the law, the legal system, and the administration of justice. Participation in both law-related and other extra-judicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

Judges must be careful, however, about serving on boards of organizations or in an advisory capacity to organizations that have a trial advocacy function. For example, Texas Judicial Ethics Opinion 270 (2001) states that it is a violation of ethical standards for a judge to serve on the advisory council of a children's Assessment Center that serves as an advocate for witnesses and children involved in the justice system, including providing expert testimony in court. The purposes and services of the center included the following:

- videotaping forensic interviews with child sexual abuse victims;
- providing sexual assault examinations;
- providing expert testimony in civil and criminal court;
- providing advocacy for children as they make their way through the justice system; and
- providing a forum for a dialogue regarding mutual concerns about the sensitivity of child sex abuse cases.

In addition, Texas Judicial Ethics Opinion 86 (1985) addresses the situation where a judge was asked to serve in an advisory capacity to a task force where it was likely he or she would later preside over cases involving the problem that the task force was created to solve. The Judicial Ethics Commission stated that the judges could not serve on such a task force if it would create a conflict with their ability to perform their judicial duties.

As another example of a problematic relationship, Texas Ethics Opinion 240 (1999) holds that a judge could not serve as a member of a Board of Directors of a non-profit corporation that trains volunteers and employs professional staff to be appointed by the judge to serve as guardians of incapacitated or minor persons. The ethical problem is that the qualifications and competence of a guardian must be determined and approved by the judge, and the judge could not pass on the qualifications and competence of an individual trained by a corporation if the judge is a member of the board of that corporation without creating an appearance of impropriety regarding the judge's capacity to act impartially. A casual observer could well conclude that the judge would consider anyone trained by "his/her" corporation to be qualified and competent regardless of evidence to the contrary. It is the appearance of impropriety that must be avoided. It would make no difference if the judge were a voting or non-voting member of the board.

On the other hand, Texas Judicial Ethics Opinion 26 (1977) states that a judge may sit on the Board of an organization formed to advance the rights of people with disabilities, including assisting individuals in pursuing their rights, as long as the Board's function is limited to setting broad policy and the Board does not participate in any of the operational functions of the organization.

With regard to membership on a Human Trafficking Committee, the above principles suggest that a judge may be a member of such a committee as long as its functions are for education and broad policy development for the improvement of the law, the legal system, or the administration of justice. The judge should not participate in activities providing advocacy services and must assure that participation in the group will not give rise to a perception that the judge cannot be fair and impartial. For example, if asked to be a member of a law enforcement Human Trafficking Task Force, the judge should decline. There is too much danger in the judge looking like an advocate for law enforcement efforts. Further, judges should avoid relationships that could create an impression of putting people in a special position to influence the judge.

One important issue for judges is when a judge who is a member or the chair of a human trafficking committee or working group has to disclose that relationship to the attorneys when presiding over a case involving human trafficking or a bail hearing for a defendant charged with human trafficking. As long as the judge's participation on the human trafficking committee is to advance the law, the legal system, and the administration of justice, disclosure should not be required. If the judge firmly sets the ground rules of the working group early on that there will be no discussing of any pending matters or any actual cases, the judge will not be in danger of violating Rule 2.9 regarding disclosure of *ex parte* communications.

Sponsoring a human trafficking conference in the courthouse

Section 3.1(E) of the *Model Code of Judicial Conduct* states that a judge engaged in extra-judicial activities that concern the law, the legal system, or the administration of justice may make use of court premises for those activities. Rule 3.7 governs what a judge can and cannot do when fundraising is involved. A judge may assist in the planning of the event (3.7(A)(1)) but cannot ask for funding directly (3.7(A)(2)). The best solution may be to set up a resource board and have the attorneys, rather than judges or court staff ask for the funds.

Fundraising or supporting activities for non-profit organizations

Judges must be careful about engaging in fundraising or other support activities for non-profit organizations. For example the West Virginia Judicial Investigation Commission, in an opinion dated April 24, 1997, held that it is not proper for a judicial officer to attend as a guest annual luncheons, picnics or parties sponsored by victim assistance programs, sexual assault centers, family violence prevention programs, police agencies, and others because these organizations represent one interest in a particular area and appear in court on a regular basis.

On the other hand, Texas Ethics Opinion 245 (1999) states that a judge who serves as director of a private, non-profit corporation supported by public and private funds to provide necessities for children under the supervision of Child Protective Services (CPS) may allow his or her name to appear on the letterhead of the organization as a director on a fundraising letter, as long as the judge does no fundraising.

The Arizona Supreme Court Judicial Ethics Advisory Committee in Advisory Opinion 00-06, presents the general rule for analyzing ethical considerations in participating in fundraising events for organizations that advocate a particular viewpoint on legal issues.

Whether a judge may attend a particular organization's fund-raising event depends largely on evaluation of multiple factors. Thus, the more active the organization is in advocating positions on disputed legal issues, in regularly engaging in adversarial court proceedings, or in filing amicus briefs on disputed issues, etc., the more caution the judge should exercise in attending that organization's fund-raising events… The critical issue is whether, from an objective standpoint, the judge's attendance at the fund-raiser may give the appearance that the judge is lending the prestige of the office to support a position that would impair the judge's impartiality.

Service providers in collaborative working groups

Where a service provider is part of a judge's collaborative working group, the judge faces additional ethical concerns. In circumstances where a judge would be permitted to refer a victim to a specific service provider, the judge must consider whether is it appropriate to refer trafficking victims to that particular service provider without disclosing the judge's working relationship on a committee with the service provider. If that service provider is the only one who offers that service in the county, the judge is not choosing them due to favoritism or improper bias so disclosure should not be required.

Generally, we believe that under Rule 3.1 it would be permissible to refer victims to this service provider without the need for disclosure, as long as there is no discussion of pending cases in the group meetings and the referral is made based on the needs of the victim. The downside to disclosure would be that the judge would have to do this in every case.

On the other hand, under Rule 2.4, if the judge's relationship with a service provider might give an appearance that it will influence his or her judgment or conduct, it might be best for the judge to disclose that relationship. In addition, if the judge always makes a referral to that service provider and one side or party consistently disagrees that the program is the best one for their client, Rules 3.1(B) and (C) would seem to require disclosure of the relationship. Finally, if the relationship might require frequent recusals, the judge should not enter into the relationship. See Commonwealth of Virginia Judicial Ethics Advisory Committee Opinion 00-3, March 27, 2000.

What if the judge learns that the service provider has posted his or her picture on its website or listed the judge's name as a supporter? Under Rule 2.4C, the picture of a judge on a service provider's website might convey the impression that the organization is in a position to influence the judge. It might be best to ask them to remove the picture and the judge's name on the website. (Also see Rule 1.2, Promoting Confidence in the Judiciary by Avoiding the Appearance of Impropriety.)

The remedy for a perpetrator or victim might be to report the judge to the agency responsible for overseeing judicial conduct. If the judge refused to recuse himself or herself and the defendant challenges the decision, the judge would have to look at the disqualification statutes for that state and follow those procedures.

Referrals to service providers linked with fees or fines

Judicial Discipline and Disability Commission v. Proctor 2010 WL 271343 (Arkansas Supreme Court January 25, 2010), involved a judge who started a Cycle Breakers Program as part of Court Probation and subsequently created a non-profit organization to run the program. He kept referring defendants to the program and was actively involved in running the business. He imposed "civil fees" on probationers and had those fees paid to Cycle Breakers. The Arkansas Supreme Court found these actions on the part of the judge to be a violation of judicial ethics.

Ex parte communications in committee meetings

It is not appropriate for a judge to have discussions about a particular case with an attorney, or other party, during a meeting of a human trafficking committee. An example might be discussing how well an individual is doing in a human trafficking residential program that the judge referred her to. A variation of that might be if participants in a human trafficking committee begin to discuss a particular case to illustrate a point about why services are needed.

A judge should establish early on the ground rules that the committee will not be discussing particular cases in the meetings, whether they are pending or probably even if they are "closed." That would be an *ex parte* communication. The ground rules should make it clear that where judges are serving on the committee, any "hypothetical" examples should be fully shielded/changed so as to not be recognizable as real cases before the judges on the committee. If the community organization will not abide by that rule, the judge must decline to be on the committee.

Rule 2.9(B) requires that if a judge inadvertently receives an unauthorized *ex parte* communication, the judge must promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond. Practically speaking, the judge should walk away, but if he or she overhears enough of the conversation, then disclosure could be the safest course of action.

Uses of social media

Judges must be careful about how they use social media, including whom they accept as Facebook friends and what they say about attorneys, parties, or cases in their Facebook posts. "Friending" local attorneys or parties to a case may give an appearance of favoritism toward those attorneys or parties. Further, any discussion of the facts of a case or a judge's concerns about an attorney should be avoided. This admonition applies to court staff as well.

Ethical Issues for Court Administrators and Staff

Proper conduct by court employees, including court staff, inspires public confidence in the courts and promotes the values of fairness and trust in the court system. Because the courtroom clerk, court reporter, and bailiff are often the first individuals to be seen by the public and are whom the public deals with most frequently, it is important that court staff exhibit exemplary conduct and follow the highest standards of ethical behavior.

The ABA's *Model Code of Judicial Conduct* specifically addresses court staff behavior and strongly suggests that a judge must supervise his or her staff and ensure that they follow the same rules as the judge. See Rule 2.9(5)(B) and (D) concerning *ex parte* communications involving court staff. Rule 2.9(3) states that a judge may consult with court staff and court officials as long as the judge makes reasonable efforts to avoid receiving factual information outside the record and does not abrogate his or her responsibility to make the decision. Rule 2.10(C) provides that a judge shall require court staff, court officials and others subject to the judge's direction to refrain from making statements a judge would be prohibited from making, such as comments on pending or impending cases, etc.

Rule 2.12 (Supervisory Duties) provides that a judge shall require court staff and court officials to act in a manner consistent with the judges' obligations under the Code. Recognizing this, several states have adopted detailed Codes of Ethics for Court Employees and practitioners are encouraged to ascertain whether their state has one. For example, see "Code of Ethics for Court Employees of California, adopted May 17, 1994, revised 10/23/09." (The link is included in the final section of this chapter.) Because these codes specifically address the conduct of court staff, they should be incorporated in any training of court staff in addition to the Judicial Cannons of Ethics.

The following are some areas of concern that come up frequently.

Improper communication with staff by the judge

Often court staff will overhear or be privy to matters related to a proceeding before the judge but which are outside the presence of the judge. It can be very tempting to share these details with the judge. Some examples might be when the bailiff overhears attorneys discussing concerns about their clients' credibility. Or the courtroom clerk might learn from an attorney that he needs a continuance of the trial because his client, showed up at the courthouse under the influence of drugs. The court reporter might overhear people in the courtroom disclosing that the real reason why the police officer in the case is not available to testify is because of a pending disciplinary proceeding. A minor might be overheard telling her social worker that she does not want to be in her current placement because the foster parents are mean and make derogatory comments about her. Should these kinds of facts that involve the pending proceeding be disclosed to the judge?

Although Rule 2.9(A)(3) allows a judge to consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, unlike law clerks or staff attorneys, it would appear that courtroom staff do not aid in carrying out the "adjudicative" part of a judge's duties. Therefore communication from the staff to the judge of factual matters involving a pending proceeding is an *ex parte* communication and is improper absent some type of exception. Because this type of situation comes up frequently, a judge should establish some ground rules with court staff as to how to handle such communications. Some hypothetical examples of these issues follow.

Improper communication between a court stakeholder and the judge

In human trafficking cases involving a minor, social workers and/or probation officers are often assigned to manage the case. In Juvenile Court, due to the collaborative nature of the work where everyone is trying to work towards doing what is in the "best interest" of the youth, the lines between the parties and stakeholders and the court can easily become blurred. Without proper training, improper communication between court stakeholders and the judge might occur. An example might be when a social worker sends an e-mail to the judge directly to advise that she does not agree with the results of a psychological examination of the minor and recommends that the judge use another evaluator. A probation officer might stop by to talk with the judge for a few minutes in chambers and mentions that the Juvenile Hall staff is concerned that one of the frequent visitors to a sex trafficking victim is really her pimp. She would like the judge to order that the person be removed from the visitors' list that afternoon to protect the minor.

These examples illustrate improper *ex parte* communications between court stakeholders and the judge. Court staff can be the gatekeepers preventing inappropriate access to the judge where these improper communications might take place.

The following hypotheticals present some other examples of improper communication by staff, court stakeholders, or parties.

Hypothetical 3: *Ex Parte* Communication From an Interested Party

Hypothetical 3 involves a human trafficking victim who is a minor. The maternal grandmother of the victim writes to the judge directly asking the judge to reconsider the decision to have the minor moved from a group home where she has been a frequent runaway and placed with the father. The social worker recommends this change in placement, but the mother is objecting and a court hearing has been scheduled on this issue. In the grandmother's letter, which was mailed and given to the judge in chambers to read, the grandmother reveals additional facts about the father including prior allegations of the father's sexual abuse of the minor several years before. She implores the judge not to make such an unwise decision. This is new information that has not been raised by anyone previously. What should the judge do? See the Kentucky Supreme Court opinion, In re Langford, Findings of Fact, Conclusions of Law, and Final Order (Kentucky, June 17, 2013).

Hypothetical 3 implicates Rule 2.9(A)(3) because the judge has just been given information outside the record that might affect his or her decision in the case. The proper remedy at this point would be to disclose that the judge received the letter, share copies with all parties in the case, and give everyone a chance to respond. Rule 2.9(5)(B). The judge might also want to instruct court staff that any letters addressed to the court from parties or interested persons in a case should not be given to the judge until all other parties in the matter have had a chance to review the correspondence and make objections. In the meantime, the clerk might be directed to place the communication in the court file in a sealed envelope and to send a form letter to the sender, with a copy to all parties, informing them that the court is not permitted to receive *ex parte* communications and the letter has been placed in a sealed envelope in the court file for now [Rule 2.9(5)(D)]. A similar situation might arise if a party, interested person, or witness attempts to contact the judge directly through the court's e-mail with information about the case. The judge should strongly discourage this kind

of communication and admonish the parties that all correspondence to the judge must go through the attorneys for the parties or it will simply be returned to the sender and left unread. Court staff should be instructed to intercept all such correspondence and advise counsel in the case that an *ex parte* communication was attempted.

Hypothetical 4: *Ex Parte* Communications: Exceptions for Threats to Public Safety

In Hypothetical 4, you, the Judge, are presiding over a criminal case where the defendant is charged with human trafficking, false imprisonment, assault and battery, and other criminal violations. The matter is set for a preliminary hearing. Before the case is called, outside the presence of the Judge, the District Attorney approaches the bailiff and advises that the under age victim who will be testifying in the proceeding has expressed extreme fear of several of the defendant's family members. The victim has stated that these family members have given her hostile looks while waiting outside the courtroom. The District Attorney suggests that the victim would feel more comfortable if she didn't have to see these family members when she testifies. The bailiff talks to the defendant's family and asks them to leave the courtroom. The Public Defender, who has been interviewing witnesses, comes into the courtroom after the family members have left. When you take the bench, only the District Attorney, the Public Defender, and the defendant are in the courtroom. Your bailiff comes up to you and tells you in a side bar conversation what just happened. What do you do? Would it make a difference if the defendant's family members became openly hostile when the bailiff spoke to them and made threats to disrupt the courtroom proceedings? Would it make a difference if the bailiff did not tell you anything?

In Hypothetical 4, the communication between the bailiff and the judge could be characterized as an improper *ex parte* communication that should be disclosed to all parties in court. Furthermore, adult criminal court proceedings are open to the public. While some proceedings are closed by statute, such as in juvenile delinquency and dependency matters, there are very few exceptions allowing closing the courtroom. Court staff should be advised of these rules and avoid closing the courtroom to others without the judge's approval. There may be other ways to ensure the victim/witness's safety and address her fear of testifying, including conducting her testimony using closed circuit television, which would not require excluding members of the public from the courtroom.

Additionally, while *ex parte* communications between the judge and staff are not permitted, there generally is an exception for information relating to threats to the court or the safety and security of the courtroom. The judge should instruct court staff to immediately advise him or her of any matter that might involve a threat to the judge or the safety and security of the courtroom and protection of the public. A courtroom bailiff is required to respond to any threat appropriately, notwithstanding the judicial ethics rules. Depending upon the severity and immediacy of the threat, it would appear that this may be done without involving the judge.

Hypothetical 5: Improper Communications with Probation Officer

In Hypothetical 5, the judge is presiding over a case involving a 15-year old minor who has been charged with possession of stolen property, a vehicle, near a known prostitution track in town. She was in the car with an adult, a man who had previously been arrested for pimping and pandering underage girls. After a contested jurisdiction, you sustain the petition, and put the matter over for a disposition hearing. In reviewing her probation report, you note that she is a frequent runaway, has been in and out of home placement for several years, has six prior referrals to Child Protective Services due to alleged physical and sexual abuse by a family member (all unsubstantiated), has a serious substance abuse problem, and prior to being detained in this case had been AWOL from her group home placement for six months. The minor has refused to talk with anyone in the case. You think she might be a victim of sex trafficking. By chance, the Probation Officer who prepared the report is in your courtroom on another matter. You ask her to talk with you in chambers privately for a few minutes. There you ask her about her thoughts as to whether the minor is a victim of human trafficking. Is this proper?

With regard to Hypothetical 5, in cases involving human trafficking of a minor, often the Juvenile Probation Officer will have much more information about a minor than what has been disclosed in court. While Probation Officers could be seen as "court personnel," a private meeting between a judge and a probation officer in the absence of all parties being present is improper and is considered an *ex parte* communication. The better way to handle this would be to make this type of inquiry of the probation officer in front of all of the parties at the disposition hearing and perhaps put the matter over if needed for the probation officer to address the judge's concerns in another report.

Uses of social media

Just as judges need to be careful about how they use social media, they also have to police how their staff uses social media. The following hypothetical illustrates how court staff might compromise a judge's ethics by posting something on social media.

Hypothetical 6: Staff Posting Pictures on Facebook of the Judge at a Fundraiser

In Hypothetical 6, the judge has been invited to attend the annual fundraising gala for a non-profit organization that provides services to victims of human trafficking. The judge has been careful to instruct the organization that her/his name and the prestige of her/his office cannot be used to promote the fundraiser. The judge has invited her/his staff to come with her/him to this event and she/he has purchased all the tickets for the party. The judge's staff takes pictures of the event throughout the evening. Later, these pictures are shared with others on Facebook asking people to "like" the photos. In one of the pictures, it shows the judge with the Chief Financial Officer (CFO) of the organization under the organization's banner, with a caption, "thanks to all of our supporters!" The judge did not tell the court staff to post these photos and is surprised to learn about them when a judicial colleague calls the judge to express a concern. Is this a problem? Does the answer change if the photos were posted by someone who was not affiliated with the court?

In Hypothetical 6, even though the judge may not be mentioned by name in the photos and did not encourage the postings of these photos on a social network, the postings might still be in violation of Rule 1.3. Because it was a member of the judge's court staff who posted the photos linking the judge with the fundraising efforts and the judge invited them to attend the function with her/him, the judge bears supervisory responsibility for making sure that the court staff acts in a manner consistent with the judge's obligations under the Code. Rule 2.12. An argument could be made that the

pictures suggest the judge is in favor of the fundraising efforts of this organization. Since the judge is prohibited from using the prestige of the judicial office to support an organization's fundraising efforts, this same prohibition applies to the court staff. The rule also covers more than court staff. It includes court officials or others who are subject to the judge's direction and control. It might be good policy to advise court staff to be mindful of engaging in any activity that could be interpreted as abusing the prestige of the judicial office especially when it comes to using social media. This rule would not apply to someone who was not affiliated with the court in any way.

III. Tools and Guidelines

This section includes selected judicial ethics opinions by the State of Washington Ethics Advisory Committee and guidelines for Immigration Court Judges, to provide examples of detailed analyses of some specific ethical problems. The Washington judicial ethics opinions were chosen because the Washington Code of Judicial Ethics is based on the ABA's *Model Code of Judicial Ethics* and the opinions provide a detailed analysis of each problem. The following opinions and guidelines are presented, selected for their detailed discussions.

- State of Washington Ethics Advisory Committee Opinion 02-05 discusses the permissible role of the judge in planning and participating in victim impact panels, and the analysis has relevance for judge involvement in any type of victim assistance program.
- State of Washington Ethics Advisory Committee Opinion 93-03 discusses the permissible role of the judge in soliciting financial support for a court-related alternative youth placement program.
- State of Washington Ethics Advisory Committee Opinion 96-02 discusses issues regarding the possible participation of judges on a domestic violence task force aimed at proposing policies for the handling of domestic violence cases in court. It sets out limits on a judge's participation depending on the scope of activities to be undertaken by the task force.
- State of Washington Ethics Advisory Committee Opinion 97-10 discusses limits on a judge's participation in a domestic violence symposium where one of the participants is an organization that advocates for domestic violence victims.

State of Washington Ethics Advisory Committee Opinion 02-05

Issue and Question

The committee has received several inquiries about courts participating in victim impact panels and education programs and has been asked to provide guidance on which panels/programs judges and/or court personnel may participate. Because there are various factors which affect whether or not it is appropriate for judicial officers or court staff to either take part in or plan these programs, the committee has determined it would be helpful to set out factors which courts should consider when evaluating whether to participate in these types of programs. This opinion summarizes the

relevant provisions of the Code of Judicial Conduct (CJC), issues and factors which should be weighed in determining whether a judicial officer or court staff should take part in or plan victim impact panels and education programs.

Answer

Relevant Canons

CJC Canon 2(A) provides in part that judicial officers should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CJC Canon 2(B) provides in part that judges should neither lend the prestige of their office to advance the private interests of others nor convey or permit others to convey that they are in a special position to influence them.

CJC Canon 3 provides in part that judicial duties of a judge take precedence over all other activities.

CJC Canon 3(A)(4) provides in part that judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding.

CJC Canon 3(B)(2) provides in part that judicial officers should require their staff and court officials subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

CJC Canon 4(A) provides that judicial officers may participate in activities concerning the law, the legal system and the administration of justice if in doing so they do not cast doubt on their capacity to decide impartially any issue that may come before them.

Major Issues

The major issues judges must consider in deciding whether and to what extent a judicial officer or court staff should either take part in or plan victim impact panels and education programs are:

- the sponsorship and content of the program;
- who participates in planning the program's content; and
- the nature of the judge's or court staff's participation in planning or participating in the impact panel and/or education program.

Relevant Factors

The following checklist may be helpful in assessing whether it would be appropriate for a judicial officer or court staff to participate in planning or participating in an impact panel and/or education program:

- What is the structure of the planning group and are all interested groups represented so that participation by the judicial officer or staff would not give the appearance of partiality or impropriety?
- Does the panel advocate for particular persons who may appear in court?
- What is the purpose of the program; e.g., educational or treatment?
- Does the group sponsoring the panel or program engage in any lobbying, legislative or other advocacy activities?
- Does the sponsoring group engage in adversarial proceedings in court or file *amicus* briefs?
- To whom will the program be presented?
- Would participation by the judicial officer or court staff give the impression that the sponsors or others are in a special position to influence the judicial officer?
- Would participation interfere with the performance of judicial duties?
- Would participation cast doubt on the capacity to decide impartially any issue that may come before the court?
- Could contact with either the sponsoring group or other panel or program participants either constitute *ex parte* communication or give the impression that the judicial officer is engaging in *ex parte* communication?

Conclusion

Generally, judges may participate in activities concerning the law, the legal system and the administration of justice if in doing so they do not cast doubt upon their capacity to decide impartially any issue that may come before them. Even though judges and court personnel are permitted to participate in victim impact panels and educational programs, that does not mean that they may participate in programs, even if the purpose is educational, if there are circumstances which would cause the impartiality of the judge to be questioned. Participation in programs which are sponsored by an advocacy group or a program which promotes a partisan or biased point of view would not be appropriate. Also, a victim impact panel or education program which would put the judge or court personnel in *ex parte* contact with individuals who routinely appear in court would call the court's neutrality into question and would be inappropriate. A judicial officer cannot appear to favor victims over the accused and they cannot appear to give preference to a particular type of case over other matters that come before them. If participation in a program were to give that impression, it would not be appropriate for the judicial officer or staff to participate.

An educational program is different from a victim impact panel because members of the impact panel have appeared before the judicial officer and have been ordered to attend the panel for treatment purposes. A judicial officer may participate in an educational program which is open, for example, to students and/or other members of the community at large because that program is

being offered for educational purposes to persons who have not appeared before the judicial officer. In general, educational programs for the general public raise fewer ethical concerns than programs directed towards persons who have appeared before the court and are required to attend.

State of Washington Ethics Advisory Committee Opinion 93-03

Questions

A. May a judicial officer, through a program director and advisory board members, solicit financial support from local governments and corporations for the "Young Adult Court Mentor Program"?

B. Is it acceptable to use court stationery for written requests for financial support?

C. May the program director open a bank account in the name of the court to be used for the payment of program expenses?

D. May a judicial officer serve on the advisory board which oversees and advises the program director provided that the judge does not engage in fundraising activities?

E. May a judicial officer send letters of support to potential funders of this program? The letters would state that this is a court sponsored program and that community support (without specifying financial support) is crucial for its success.

F. Alternatively, may the program be established by a non-profit corporation with the court establishing the policies and procedures and the corporation's board of directors responsible for fundraising?

Answer

The following representations were made to the Committee: 1) the court is considering establishing a "Young Adult Court Mentor Program" for young adults between the ages of 17 and 25 who lack basic "life skills" and who would be ordered into the program as part of their sentence following conviction of a crime; 2) these defendants would be paired with a "mentor" who would be trained by a part-time program director; 3) the director would be responsible to and supervised by the judges of the court; 4) an advisory board comprised of community leaders would also exist to assist and advise the director; 5) funds are necessary to hire a part-time director and pay for supplies; and 6) local governments and corporations would be contacted for financial support by the director and advisory board members. CJC Canon 4 permits judicial officers to engage in activities involved in the law, the legal system and the administration of justice, if in doing so they do not cast doubt on their capacity to decide any issue that would come before them. Canon 4(A) provides in part that they may speak and participate in other activities concerning the law, the legal system and the administration of justice. Canon 4(B) provides that they may appear at a public hearing before a governmental body or official on matters concerning the law, the legal system and the administration of justice, and they may otherwise consult with them, but only on matters concerning the administration of justice. Canon 4(C) provides that judicial officers may serve as members, officers, or directors of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. Canon 4(C) also provides that judicial officers may assist the organization in raising funds and may participate in their management and investment, but

should not personally participate in public fund raising activities. Finally, judicial officers may make recommendations to public and private fund granting agencies on programs concerning the law, the legal system and the administration of justice.

1. A court may not, through a program director who is a court employee, solicit financial support from corporations for the "Young Adult Court Mentor Program." Because the program director is an employee supervised by the judges, that could create the appearance that the judicial officer is permitting the program director, as a surrogate, to do something on the judicial officers' behalf that the judicial officer is prohibited from doing, that is, personally soliciting funds. The members of the advisory board are permitted to personally solicit funds if it is done independently of the court and its employees.
2. CJC Canon 4(C) prohibits judicial officers from personally soliciting funds for any purpose including activities that advance or promote the law, the legal system and the administration of justice. Therefore, court stationery should not be used for written requests for financial support from non-government sources.
3. The Code of Judicial Conduct precludes the program director from opening a bank account to be used for the payment of program expenses in the court's name.
4. A judicial officer is permitted by Canon 4 to send letters of support to potential funders of the program which, would not ask for financial support, but which would state this is a court-sponsored program and that community support is critical to its success.
5. 4. and 6. CJC Canon 4(C) permits a judicial officer to serve on the advisory board, which oversees and advises the program director, provided the judicial officer does not personally engage in fundraising activities for private monies. A judicial officer may, however, personally solicit financial support from local governments. Alternatively, the program may be established by a non-profit corporation with the court participating in establishing the policies and procedures and the corporation's board of directors responsible for fundraising for private monies.

State of Washington Ethics Advisory Committee Opinion 96-02

Question

A. May a judicial officer join and participate in a domestic violence task force?

The mission statement for this particular task force provides that the mission of the various community service systems in regard to family violence should be to aid any person affected by such violence with the primary focus being the safety of the victim; and to foster a belief, at all levels of the community, that domestic violence shall not be tolerated in the county.

The judicial officer is a full time judge in a district court who hears all aspects of Assault IV Domestic Violence cases. These cases make up a large part of the court's duties and that of the probation staff which the judicial officer oversees.

Some of the task force goals for the courts are: prosecution and courts need to develop standards for sentencing; courts should not sentence any defendant in domestic violence cases until the defendant's background and prior convictions have been researched; domestic violence assaults should result in supervised probation; priorities should be given to domestic violence assault cases so the victim will not be required to wait long periods of time before a trial; and sentence revocation hearings should be held promptly.

Answer

CJC Canon 4 permits judges to participate in quasi-judicial activities that do not cast doubt on their capacity to decide impartially any issue that may come before them. Because the goals established by the task force adopt a specific agenda which recommends judicial policy and it appears to act as an advocacy group it would not be appropriate for the judicial officer to join and participate in the domestic violence task force as the judicial officer presides over domestic violence cases. This particular task force appears to act as an advocacy group which distinguishes its functions from other groups that do not act in an advocacy role such as the Domestic Relations Commission. This task force advocates for victims of domestic violence and as such is more like Mothers Against Drunk Drivers (MADD) than it is to other groups which do not engage in the role of advocate.

The judicial officer would not be precluded from meeting with this particular task force even though the judicial officer may not join and participate on the task force.

Amended Opinion 96-2 held that a judicial officer may not join and participate on a domestic violence task force because in that case the task force's goals established a specific agenda which recommends judicial policy and also acts as an advocacy group.

State of Washington Ethics Advisory Committee Opinion 97-10

Questions

A. May a judicial officer plan and participate in a domestic violence symposium?

B. If the judge cannot serve as a member of the planning team, would it be appropriate for the judge to serve in an advisory capacity?

C. May the judicial officer address the symposium if the judicial officer's remarks are carefully crafted to avoid the appearance of impropriety?

D. May the judge be a discussion leader at the symposium and in doing so give a judicial perspective on the way domestic violence cases impact the courts?

A judicial officer has been asked to organize a domestic violence symposium which is sponsored by two civic organizations one of which is a provider of services for victims of domestic violence. That organization operates a battered women's shelter, provides perpetrator treatment and offers domestic violence advocate services for victims.

The purpose for the symposium is to educate the community and increase awareness of domestic violence, to coordinate community efforts to fight domestic violence, to develop a consensus toward an action plan and to develop a multi-disciplinary community response.

The symposium will feature speakers discussing various aspects of domestic violence. Participants from one discipline would be exposed to ways domestic violence affects and is dealt with by members of other professions. Small group workshops will follow in an effort to develop a consensus toward an action plan for the community response to domestic violence.

The judicial officer has been asked to lead one of the small group workshops. The judge would not advocate a particular approach or philosophy, but would give a perspective on how the courts handle domestic violence cases and facilitate group discussion that may lead to a community consensus on different approaches and strategies for preventing domestic violence, treating perpetrators, investigating and prosecuting offenders and administering justice in courts.

Answer

CJC Canon 2(A) provides that judges should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 4(A) provides in part that judges may participate in activities to improve the law, the legal system and the administration of justice, if in so doing they do not cast doubt upon their impartiality to decide any issue that may come before them. CJC Canon 5(B) provides that judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties.

One of the sponsors of the symposium is a provider of services for domestic violence victims and offers domestic violence advocate services for victims. Because that organization acts as an advocate for domestic violence victims the judicial officer should not act as a member of the planning team for the symposium or serve in an advisory capacity as that could erode the judicial officer's appearance of impartiality and cast doubt over the judicial officer's ability to preside over domestic violence proceedings.

The purpose of the symposium is educational. Therefore, the judicial officer may address the symposium and/or act as a moderator and give a judicial perspective on the way domestic violence cases impact the courts. Even though the judicial officer may participate in the symposium, as either a speaker or moderator, the judicial officer should not speculate on what the law should be or how it could be improved in particular cases and the judge should not act as an advocate or give the impression as to how the judicial officer might rule in a particular case.

State of Washington Ethics Advisory Committee Opinion 95-19

Question

A. May a judicial officer serve on the board which will facilitate the risk and resource assessment, implement a plan for communicating the assessment to the community at large and develop long-term prevention strategies for the city's youth?

Community leaders have formed a prevention board made up of a diverse group of experts with a common commitment to youth. The Communities That Care model has been adopted by city leaders as the method of creating a comprehensive plan for addressing youth problems.

The process focuses on and addresses youth violence and other problem behaviors by reducing risks present in the community while exploring prevention strategies that have shown positive results. The process engages the members of the community from many sectors, cultures, ages, organizations and disciplines in the comprehensive, collaborative design of strategies and outcome measures.

Answer

For the purposes of this answer, it is assumed that this is a community-based board and not an appointment to a governmental committee which is governed by CJC Canon 5(G). CJC Canon 5(B) provides that judicial officers may participate in civic activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Canon 5(B) further provides that judicial officers may not participate in these activities if it is likely that the organization would become involved in court proceedings, and also prohibits the judicial officer from lending the prestige of the office for fund raising purposes.

Canon 5(B) permits a judicial officer to serve on the board which will facilitate the risk and resource assessment, implement a plan for communicating the assessment to the community at large, and develop long-term prevention strategies for the city's youth, if the board is unlikely to become involved in court proceedings and court policies. However, should the board consider matters or issues which would ordinarily come before the judicial officer's court, the judicial officer must resign as a board member. Otherwise, the judicial officer would be required to constantly recuse when these matters come before the court. The judicial officer should periodically reexamine the activities of the board to determine that it is still proper to serve.

IV. Links to Additional Tools and Resources

The following are links to selected resources.

State Judicial Ethics Opinions

- http://www.courts.wa.gov/programs_orgs/pos_ethics/?fa=pos_ethics.alpha
- http://www.courts.state.tx.us/judethics/ethicsop.asp
- http://www.azcourts.gov/azcjc/judicialethicsadvisoryopinions.aspx
- http://www.kscourts.org/appellate-clerk/general/judicial-ethics.asp
- http://www.courts.state.va.us/agencies/jirc/opinions.html

American Bar Association Model Code of Judicial Conduct, 2011 Edition

- http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/mcjc_canon_1.html
- http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2.html
- http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_3.html
- http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_4.html

Code of Ethics for Court Employees of California

- http://www.courts.ca.gov/documents/codethic-courtemp.pdf

Federal Judicial Center Analysis of Rules of Judicial Disqualification

- http://www.fjc.gov/public/pdf.nsf/lookup/judicialdq.pdf/$file/judicialdq.pdf

Chapter 7

The Affordable Care Act: Assisting Victims of Human Trafficking in Rebuilding Their Lives

Peter Coolsen
Cook County Illinois Circuit Court

Introduction

The Patient Protection and Affordable Care Act (ACA) presents a significant opportunity for victims of human trafficking. The primary mechanism in the Affordable Care Act that holds promise for trafficking victims is the expansion of Medicaid to low-income adults, along with significant subsidies for lower income individuals who do not quality for expanded Medicaid. The pivotal resource in the Affordable Care Act, particularly relevant for victims of human trafficking, is the Behavioral Health Care Component. While the ACA provides new opportunities for many Americans, it will have a dramatic impact on formerly uninsured, low income adults and, in particular, on justice-involved individuals. Victims of human sex trafficking fall into most of these categories and, as they often have significant medical and behavioral health care problems; the Affordable Care Act represents a very valuable resource for them. State courts, which regularly come into contact with victims of human trafficking, can play a unique role in affecting public policy and in assisting victims in getting access to and utilizing the benefits of the Affordable Care Act.

Basics of the Patient Protection and Affordable Care Act[1]

The Patient Protection and Affordable Care Act is the most comprehensive healthcare reform legislation since the passage of Medicare and Medicaid in 1965. The Act has two principal mechanisms for expanding insurance coverage:

- expansion of Medicaid to cover significantly more low income families; and
- subsidizing the purchase of private health insurance through an "exchange," where consumers can compare health plans offered by different insurance companies.[2]

Exchanges provide a set of government-regulated and standardized health care plans from which individuals may purchase health insurance. Access may be through either a state-based exchange or through the federal exchange. Adding to the complexity of the act, eligibility and coverage options differ across the nation, as only about half of states have adopted expanded Medicaid coverage. In states with full expansion of both Medicaid and subsidized insurance coverage through the federal or state Exchange, it is estimated that the percentage of people in the justice system eligible for health care coverage will go from ten percent prior to the Affordable Care Act to ninety percent after the implementation of the Act.

For states that are only participating in the insurance Exchange, the ACA will still have an impact on the justice system; a single adult making more than $11,170 year (100% federal poverty level) can purchase insurance with significant subsidies. Premium subsidies and cost-sharing subsidies—which significantly reduce out-of-pocket costs for deductibles and co-pays—are available for low-income

[1] Coolsen, Peter and Maureen McDonnell (June 2014) "State Courts and the Promise of the Affordable Care Act," Trends in State Courts: 2014 (Williamsburg, Virginia: National Center for State Courts).

[2] Nixon, J. Peter (December 20, 2013) "Health Scare: Obamacare is Down but Not Out," Commonweal.

[3] Raju, Ram, M.D. (November 30, 2013) "Early Obamacare a Boom to Cook County," Crain's Chicago Business.

adults purchasing insurance through the Exchange. While the full impact of the ACA remains to be seen, enrollment figures and early financial returns, during the first quarter of 2014, have been quite promising particularly for people involved in the criminal justice system.[3]

Although the ACA provides significant opportunity for victims of human trafficking for coverage of medical and behavioral health care, there are limitations in the ACA that will affect this population. Full eligibility for the Patient Protection and Affordable Care Act is limited to U.S. citizens. However, lawfully present immigrants will be eligible for coverage with some restrictions. They will be able to purchase coverage in the exchange and receive tax credits without a waiting period, but will face a five-year waiting period for Medicaid eligibility. Undocumented immigrants are ineligible for Medicaid and for the premium tax credits. They will also be prohibited from purchasing exchange coverage at full cost.[4] One of the exceptions to the ineligibility of undocumented immigrants relates to individuals who are designated as "refugees."[5] Refugees who are admitted to the United States meet the immigration status eligibility requirements for immediate access to Medicaid and the health coverage options under the Affordable Care Act. Other groups are eligible for the same benefits and services as refugees including "certified victims of human trafficking."[6]

State Courts and the Affordable Care Act

The role of the court in the implementation of the Affordable Care Act is a limited, but critically important one. On a systems level, the court has the opportunity to affect health care policy as an "informed partner," a facilitator and a convener. Through their already influential role in communities, the courts can help inform and influence policies around substance abuse and mental health treatment. As a convener, the Court has the authority to bring together stakeholders from both the criminal justice and health care communities to discuss and help shape policy around benefits. On an individual case level, the court may play both a direct role in the enrollment of defendants and a broader oversight and collaborative role with community treatment providers.

The concerns of state courts, related to the implementation of the ACA, are comprised of three primary issues; availability of treatment when needed (i.e. capacity), quality of care being provided to defendants, and the creation of effective linkages with community treatment providers. In regards to capacity, high rates of substance use disorders,

[4] Kaiser Commission on Medicaid and the Uninsured, Washington, D.C., March 2013.

[5] Refugees are defined as people who were persecuted in their countries because of their race, religion, nationality, membership of a particular social group, or political opinion.

[6] Draft fact sheet, Refugees and the Affordable Care Act, Office of the Governor, State of Illinois, Springfield, Illinois, May 2014.

mental health illness and chronic conditions in the justice population have created a "pent up demand" for health care services. Many providers are already working with limited economic resources. In states that are expanding Medicaid Managed Care, there may be uncertainty, in the early stages of the ACA, around Medicaid funding streams. Also, providers must address the challenge of transitioning from a "fee for service" to a "managed care" model, incorporating the concept of "shared risk" in their business model. The courts can play a leadership role in capacity building by engaging community providers as full partners in planning for and tackling emerging challenges of the Affordable Care Act. State courts can also play a leadership role in the ongoing development of public policy concerning implementation of the Affordable Care Act and the development of benefit structures in their state.

In the Circuit Court of Cook County, for example, the Presiding Judge of the Criminal Division, along with leadership from TASC, Inc., a nonprofit organization providing case management with justice-involved individuals, convened a multi-agency planning process called the Justice and Health Initiative, to support all justice agencies in aligning their business processes with the resources of the Affordable Care Act. A Steering Committee was formed including leadership from the judiciary, state's attorney, public defender, probation, sheriff's office, county clerk, state Medicaid agency, county health system, jail health services and community foundations. Working groups in the justice system identified places where jail inmates, defendants and probationers could make applications for the new coverage. The court met with community substance abuse and mental health providers to discuss their intentions to refer many more probationers for services, needed capacity expansion and quality measures. A working group on the issue of identification was formed to address the need for valid identification in order to enroll in coverage. When the county health system began to enroll new members into its Medicaid expansion program, the Justice and Health Initiative ensured that people under justice supervision would be actively included in planning around policies and benefits.

In order to fully leverage the resources of the Affordable Care Act, state courts and justice agencies will need to address the following four questions:

- How will the justice system assist people under their supervision in applying for coverage for which they are eligible?
- How will people with untreated, or undertreated, serious mental illness, severe substance use disorders and chronic medical conditions be identified and linked to care in the community?
- How will the community expand medical treatment, substance abuse and mental health treatment that is relevant to a justice-involved population?
- How can these new services be used to divert more people from jail and prison to community supervision, with the requirement that they participate in the necessary treatment services?

Challenges to Be Addressed

Enrollment and re-enrollment – These processes will need to be addressed at the point in which trafficking victims become involved in the criminal justice system. In Cook County, Illinois, at the close of open enrollment on March 31, 2014, 80,000 individuals were enrolled in CountyCare, the county Exchange, and of these individuals, about 4,000 were enrolled directly through the criminal justice system, most at the point of entrance into Cook County Jail or through the Probation Department.

Specialized counseling and treatment services – Not only are victims of human trafficking likely to exhibit considerable medical, mental health and substance abuse problems, but they bring special needs and requirements to the treatment environment. Behavioral health care for this population will need to be gender sensitive and "trauma informed," as trauma plays a significant role in the victim's life and in the way they relate to their environment.

Consumer education – Human trafficking victims, many of whom were never covered by health insurance before, will need to be educated about becoming "consumers of health care." For many, this means transitioning from an "emergency room" health care model to an office/clinic, appointment-based, primary doctor and specialist referral "managed care model."

Non-Medicaid funded services – Victims of human trafficking will need assistance in their recovery process in accessing critical non-Medicaid funded services, such as housing and employment. In a survey of over 120,000 new ACA applicants in Cook County, respondents were asked a series of questions including "Are you worried about having a place to stay tonight or in the near future?" One out of five respondents expressed concern about being homeless or without adequate housing.[7] While behavioral health care services are necessary, they need to be supplemented with assistance in meeting basic human needs.

Conclusion

Victims of human trafficking, many for the first time, have an opportunity to access needed medical and behavioral health care coverage through enrollment in the Patient Protection and Affordable Care Act. State courts, which often come in contact with victims of human trafficking, can play a leadership role in public policy development, community capacity building and, on a case level, a facilitative role in helping to move victims of human trafficking onto a new and more promising life path. The result will be a significant benefit for victims of human trafficking and for the society in which they live.

[7] Health Needs Assessment, Cook County Health and Hospitals Systems, Chicago, Illinois, March 31, 2014.

Tools for Addressing the Topic

The following guides are particularly helpful for state courts in understanding the Affordable Care Act and addressing issues around ACC.

- Bainbridge, Andrea A. (July 2012) The Affordable Care Act and Criminal Justice: Intersections and Implications, Bureau of Justice, U.S. Department of Justice.
- Office of the Governor, State of Illinois (January 2014) A Culture of Coverage for Justice-Involved Adults in Illinois: A Resource Guide for Implementing the Affordable Care Act for Justice Personnel in Illinois (Springfield, Illinois).

Additional Resources for State Courts and the Affordable Care Act

- Beiser, Vince (January 204) "Obamacare is a Powerful New Crime-fighting Tool," The Atlantic.
- Coolsen, Peter and Maureen McDonnell (June 2014) "State Courts and the Promise of the Affordable Care Act," Trends in State Courts 2014 (Williamsburg, Virginia: National Center for State Courts).
- The Dreamcatcher Foundation; 5401 South Hyde Park Blvd., Apt. 302; Chicago, Illinois 60615. (The Dreamcatcher foundation is a survivor-founded agency fighting to end human trafficking in Chicago and its surrounding suburbs.)
- Kaiser Foundation Website: *www.kff.org*

Chapter 8

Tribal Justice and Sex Trafficking

Kathryn Ford
Center for Court Innovation

Native American women experience the highest rates of domestic violence, sexual violence and sex trafficking of any group in the United States.[1] Since an effective response requires interagency coordination and informed decision making, it is imperative that state courts have a working knowledge of tribal justice and that each state court build respectful, collaborative relationships with their tribal justice system colleagues. While some state courts are knowledgeable about and collaborate closely with nearby tribal communities, others have historically had distant or even strained relationships with their tribal counterparts. This has resulted in dangerous offenders slipping through the cracks and victims not receiving the support and justice they deserve. Native Americans have often had negative experiences with state justice systems,which may feel intimidating, unsafe, discriminatory, and unresponsive to their needs. Collaborative efforts can help ensure that the court's response is as culturally competent and effective as possible, and improve Native litigants' experience with the state court system and increase their willingness to utilize it to access safety and justice.

Tribal justice, though, can be quite complicated. Here are some important things to know.

- There are over 560 federally-recognized tribes in the United States, and scores more that are state-recognized, or have not yet been granted government recognition (unfortunately, the federal recognition process can take decades). Each tribe has its own unique culture, history, language and traditions. Although there are some values and practices that are shared by many tribes, it is important to acknowledge that there's no such thing as "Native American culture."
- Federally-recognized tribes are sovereign nations with their own governments, laws and legal systems, and the authority to make and enforce their own criminal and civil laws. The U.S. government also has a "trust relationship" with the tribes, which means that it is obligated to provide the tribes with certain protections, resources, and services, such as health care.
- Tribal justice systems are extremely diverse. Some adhere closely to Western-style structures and processes, whereas others utilize traditional tribal justice practices, such as peacemaking, elder panels, and sentencing circles. Many incorporate both Western and traditional elements. Regardless of the specifics, all tribal justice systems are working hard to serve and protect their communities, often with limited and inconsistent resources. For example, in some communities, police officers must patrol large swaths of land, causing police response to crime reports to take two or more hours. And some tribes struggle to fund the key components of their justice systems, including judges, court staff, prosecutors, and probation.

[1] National Congress of American Indians (2013). Policy Insights Brief: Statistics on Violence against Native Women. *http://www.ncai.org/attachments/PolicyPaper_tWAjznFslemhAffZgNGzHUqIWMRPkCDjpFtxeKEUVKjubxfpGYK__Policy%20Insights%20Brief_VAWA_020613.pdf*

- Determining jurisdiction over tribal justice matters can be challenging, and is a frequent source of confusion and frustration for community members and providers. The variables that determine jurisdiction in a particular case include: (1) whether or not the crime occurred on tribal land; (2) whether or not the offender is Native American; (3) whether or not the victim is Native American; (4) whether or not the neighboring state is a Public Law 280 state; and (5) the type of crime that was committed. In P.L. 280 states, the tribe and state share criminal jurisdiction, whereas in non-P.L. 280 states, the tribe and federal government share jurisdiction. Native offenders can be prosecuted in both tribal and state or federal courts. However, tribes do not have any criminal jurisdiction over non- Native offenders. This is especially problematic in regard to violence against Native women, most of which is perpetrated by non-Native men. (For a more detailed explanation of these jurisdictional issues, see: *http://www.tribal-institute.org/ lists/jurisdiction.htm*).
- A series of Supreme Court decisions imposed limitations on tribal justice systems' handling of criminal cases. The Major Crimes Act gave the federal government joint jurisdiction over certain felonies, and tribal courts were limited to imposing one year of incarceration and/or a $5,000 fine for each conviction, regardless of the severity of the offense. This is a serious barrier to holding offenders accountable for such serious offenses as domestic violence, sexual violence, and sex trafficking, and to protecting victims and communities from these offenders. The Tribal Law and Order Act of 2010 (TLOA) attempted to remedy this problem by allowing tribes to impose sentences of up to three years' incarceration. However, TLOA includes numerous requirements that many tribes are unable to meet due to resource limitations, such as providing attorneys for all defendants.
- The federal Violence Against Women Act of 1994 (VAWA) awarded full faith and credit to all tribal court orders. When it was reauthorized in 2013, VAWA invited tribes to reassert jurisdiction over non-Native domestic violence offenders, again, provided that the tribes meet certain practice standards. The expanded jurisdiction only applies to intimate partner violence crimes, though some sex traffickers and their victims may actually meet the Act's definition of "intimate partners."
- Many Native communities have had profoundly negative experiences with federal and state governments and non-Native people. These interactions have included persecution, genocide, disproportionate rates of incarceration, gender-based violence, sexual exploitation, prohibitions on traditional language, religion and cultural practices, discrimination, forcible separation of children from their families, and broken promises. Native women in particular were frequently dehumanized by the colonizers; enslavement and sexual violence were used as tactics of oppression by westward settlers and the U.S. military. This history has resulted in understandable mistrust and skepticism, even today, of outsiders and U.S. government agencies and personnel. Native communities also suffer from severe intergenerational trauma, long-lasting damage to families and communities, and high rates of psychosocial problems. Tribes have demonstrated tremendous resilience in confronting these problems and engaging in individual and collective healing processes.

When crafting a court response to sex trafficking, it is critical to understand the unique history and dynamics of the trafficking of Native people in the United States. There have been few research studies on this topic, but in conjunction with the stories and experiences of survivors and advocates, they present a disturbing picture.[2] Evidence is emerging that Native people are severely overrepresented among victims of sexual exploitation.[3]

The known risk factors for sexual exploitation are especially common in Native American communities. These risk factors include high rates of poverty, homelessness, unemployment, domestic violence, child abuse and neglect, and substance abuse; low levels of educational attainment; disconnection from culture and community; and lack of prosocial activities and opportunities. In some families, there may be multigenerational cycles of abuse, exploitation and trauma. These factors make young people especially vulnerable to sexual exploitation—traffickers have been known to "recruit" at Native American schools, group homes, and youth centers, at cultural events like powwows, and at tribal government conferences. Native girls and women may be targeted because of their perceived vulnerability, because of their marketability as "exotic," and because of the barriers to effective law enforcement on tribal lands. Victims may be transported from tribal reservations to urban areas, from one tribal land to another, on "dance" and strip club circuits, or on boats, all patterns of movement which present jurisdictional challenges. Native victims of trafficking are also frequently subjected to racist abuse by their exploiters, most of whom are non-Native.

So what can state courts do to engage in mutually beneficial collaboration with tribal justice systems, and more effectively respond to sex trafficking of Native women?

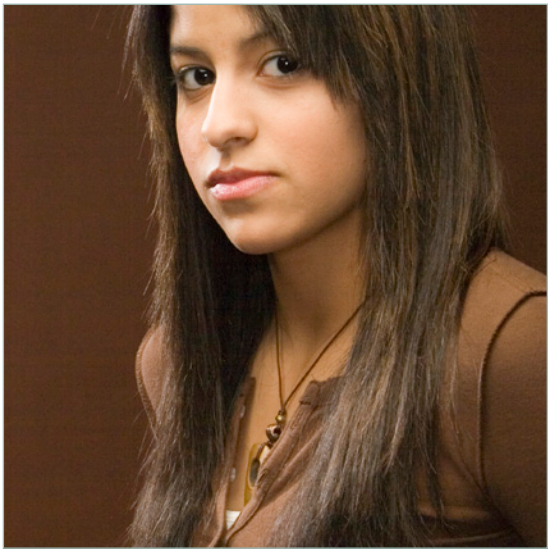
- **Identify and learn about the tribes in your area –** The following link lists all recognized tribes by state: *http://www.ncsl.org/issues-research/tribal/list-of-federal-and-state-recognized-tribes.aspx*. For each tribe, learn as much as you can about their unique history, culture, traditions, government, and legal and social service systems. Where appropriate, visit the community to observe and participate in government and cultural events.
- **Designate a tribal liaison between your court and the tribes in your community –** This could be a judge, court clerk, court attorney, or other staff person. Reach out to each tribe and build relationships with tribal justice system staff by identifying shared goals and inviting tribal justice personnel to visit your court and participate in stakeholder meetings and training events.
- **Participate in federal-state-tribal court forums –** A list of these forums can be found here: *http://www.walkingoncommonground.org/state.cfm?topic=6*.

[2] Farley, M., Matthews, N., Deer, S., Lopez, G., Stark, C. & Hudon, E. (2011). "Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota." St. Paul, MN: Minnesota Indian Women's Sexual Assault Coalition, and Prostitution Research and Education.

[3] Pierce, A. (2009). "Shattered hearts: The commercial sexual exploitation of American Indian women and girls in Minnesota." Minneapolis, MN: Minnesota Indian Women's Resource Center.

- **Honor tribal court orders by providing them with Full Faith and Credit, as required by VAWA –** Tribal court orders may include civil and criminal protective orders, sex offender registration and management conditions, criminal convictions, offender program mandates, probation, and child custody and visitation orders. Consider how to identify situations in which a defendant has cases in both tribal and state courts and develop procedures to appropriately share information that can facilitate effective criminal investigation, informed decision making, and offender accountability by both systems.
- **Utilize tribally-run, culturally-appropriate services for Native litigants –** Some tribes administer their own probation, batterer programs, and sex offender treatment and management programs. In addition, many tribes provide specialized victim services—culture and tradition, and reconnection to one's community and people can play a critical role in the physical, emotional, and spiritual healing process. Learn about the services and supports available to tribal members and how the court can refer and mandate litigants to those services. Also, consider requiring that the community service of Native defendants be conducted within their home community.
- **Work with technical assistance providers that are knowledgeable about both sex trafficking and tribal justice[4], and learn more about the sexual exploitation of Native people –** Two highly recommended resources are the research reports "Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota" by Melissa Farley et al., and "Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota" byAlexandra Pierce. Both publications are available online for free. State court staff may also wish to participate in professional training and conferences on tribal justice issues, such as the annual American Indian Justice Conference and the biannual Indian Nations Justice for Victims of Crime Conference, which includes workshops on sex trafficking.

Despite the many obstacles, it is possible for tribal and state court systems to work together effectively for the benefit of victims and communities.



[4] Recommended technical assistance providers include Mending the Sacred Hoop, the Tribal Law and Policy Institute, and the Center for Court Innovation.

Resources and Other Links

- National Congress of American Indians (2013). "Policy Insights Brief: Statistics on Violence against Native Women." *http://www.ncai.org/attachments/PolicyPaper_tWAjznFslemhAffZgNGzHUqIWMRPkCDjpFtxeKEUVKjubxfpGYK_Policy%20Insights%20Brief_VAWA_020613.pdf*
- Farley, M., Matthews, N., Deer, S., Lopez, G., Stark, C. & Hudon, E. (2011). "Garden of truth: The prostitution and trafficking of Native women in Minnesota." St. Paul, MN: Minnesota Indian Women's Sexual Assault Coalition, and Prostitution Research and Education.
- Pierce, A. (2009). "Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota." Minneapolis, MN: Minnesota Indian Women's Resource Center.
- Recommended technical assistance providers include Mending the Sacred Hoop (*www.mshoop.org*), the Tribal Law and Policy Institute (*www.tribal-institute.org*), and the Center for Court Innovation (*www.centerinnovation.org*).

Chapter 9

Addressing the Complexities of Language and Culture in Human Trafficking-Involved Cases

John A. Martin
Center for Public Policy Studies

HUMAN TRAFFICKING
AND THE STATE COURTS COLLABORATIVE

I. Background

The Human Trafficking, Language, Culture, and Immigration Status Nexus

Estimates of the number of people trafficked from other nations to the United States **annually** for labor or commercial sex purposes range from about 15,000 to over 50,000 people. In addition, there is increasing concern among service providers that some groups of foreign nationals living in the United States—such as the 60,000 plus unaccompanied minors entering the country without authorization annually in recent years, and the 70,000 plus refugees admitted each year—may be particularly vulnerable to becoming trafficking victims. Moreover, there are no estimates for how many of the nearly 60 million U.S. residents five years of age or older that speak a language other than English at home might be, currently or potentially, involved in sex or labor trafficking as either victims, witnesses, or traffickers. Numbers are imprecise too regarding how many of the hundreds of thousands of U.S. citizens trafficked for sex or labor might come from cultures that differ substantially from the dominant culture of the courts. Finally, precise information also is lacking regarding how much of the trafficked population from abroad speak languages other than English, come from cultures that differ from the dominant culture of the courts, or have immigration status issues.

Even though there is a lack of precise data about the number of trafficked individuals in the United States, as shown in previous chapters of the NACM *Human Trafficking Guide (HT Guide)*, we do know that the complexity of the challenges facing state courts resulting from trafficking are considerable, affecting everything from the mechanics of risk and needs assessment and judicial ethics to strategies for providing effective services for severely traumatized people. In particular, as discussed in this chapter, the dynamics of human trafficking, coupled with the complexities of working across languages and cultures, likely pose even greater challenges for our courts than in non-trafficking-involved cases. This occurs in large part because:

- the dynamics of human trafficking make it difficult for court and justice system actors to identify trafficking victims, identify "criminals" who might also be trafficking victims, determine victim needs, and provide remedies to help address victim needs;
- language is not only the primary tool for communication between court participants and the courts but is also the essential tool for providing insights about the interplay between culture and the multiple immigration issues likely present in trafficking-involved cases for foreign nationals;
- differences between the culture of the courts and culture of court participants can greatly complicate communications and understanding of court processes, case outcomes, expectations for performance, and compliance with court orders; and
- state court action can profoundly affect any immigrant's legal status, but particularly a trafficking victim's immigration status, including the victim's opportunity to be protected from traffickers, work, receive needed services, remain in the Untied States, or become a U.S. citizen.

Contents Overview

This chapter continues in Section II with an examination of how contemporary views about procedural justice provide an approach to help address the implications on the state courts of the complicated nexus of human trafficking dynamics, language, culture, and immigration status. We then use the approach to help summarize why, how, and where the interplay of these human trafficking issues matter in the state courts.

The conclusions presented in Section III stress that assisting court participants in human trafficking-involved cases adequately likely will require many courts to:

- increase awareness about the dynamics of human trafficking and how these dynamics affect victims and cases;
- increase understanding among court and justice partners about the complicated interplay among human trafficking dynamics, language, culture, and immigration status; and
- institutionalize an intermediator role within courts to help victims and others in human trafficking-involved cases be heard by the courts, successfully navigate the court and justice system, make wise decisions, and acknowledge and comply with court orders and follow well-founded guidance.

Section IV provides references and links to additional resources for addressing the connections among human trafficking, language, culture, and immigration status.

II. Understanding the Human Trafficking, Language, Culture, and Immigration Status Nexus: a Procedural Justice Approach

Contemporary views about procedural justice provide important insights to help understand the human trafficking, culture, language, and immigration status nexus. In particular, procedural justice provides empirically-based criteria for helping us determine the challenges this nexus of human trafficking, culture, language, and immigration status raise for courts. Procedural justice stresses that a person's perceptions about how they are treated in court are as important as the outcomes of cases when it comes to their willingness to participate with the courts, their satisfaction with their court experience, and their willingness to comply with case outcomes.

Dr. Brenda J. Wagenknecht-Ivey's work with the California Administrative Office of the Courts has produced a concise synthesis of a great deal of writing about procedural justice—including the extensive writings of Tom Tyler and David Rottman—in what she labels the four dimensions of procedural fairness.[1] As shown in Figure 1, procedural fairness or justice emphasizes that in court people want to have a **voice**; that is, the chance to tell their story in their own words. They also want to be treated with politeness, dignity, and **respect** as they participate in court processes where authorities are, and appear to be, fair and **neutral**, and where court participants can **trust** the character and sincerity of those authorities.

[1] See, for example, Tom R. Tyler (2004) "Procedural Justice and the Courts," 44 *Court Review*, pp. 26-31.

The implications of human trafficking dynamics, language, culture, and immigration status on procedural fairness in general, and voice, respect, neutrality, and trust in particular, are examined in the remaining portions of this section.

Figure 1: Four Dimensions of Procedural Fairness
Respect + Voice + Neutrality + Trust = Procedural Fairness (PF) Procedural fairness is defined as court users understanding how decisions are made using court processes that are fair. PF includes perceptions about (1) how cases are handled and (2) the quality of treatment people receive throughout the court process. Perceptions of PF are the strongest predictor of public satisfaction, approval, and confidence in the courts irrespective of why people are at court, whether they won or lost their case, and their ethnicity, race, and economic or social status. Thus, increased perceptions of PF can lead to greater public support for the courts. In addition, people who perceive that court processes are fair and they have received quality treatment are more likely to see the court's authority as legitimate, and in turn are more likely to comply with court orders.
Respect – People react positively when they feel they are treated with politeness, dignity, and respect, and their rights are respected. In addition, helping people understand how things work and what they must do are strongly associated with respect and court user satisfaction.
Voice – People want the opportunity to tell their side of the story, explain their situation/views, or have their stories told to an authority who listens carefully.
Neutrality – People are more likely to accept court decisions when those in authority do things that both are, and are perceived as, fair and neutral (e.g., they have been treated equally; legal principles, court procedures, and assistance from court have been consistent.) People also respond more positively to court decisions when the importance of facts is clearly emphasized and the reason for a decision have been clearly explained.
Trust – People observe behavior or look for actions to indicate they can trust the character and sincerity of those in authority, and those in authority are aware of and sincerely concerned with their needs (e.g., they look for conduct that is benevolent, caring, seeking to do right).

Copyright PRAXIS Consulting Inc., Denver, Colorado. All rights reserved.

Why the Dynamics of Human Trafficking Matter

Collectively, information presented in various chapters of the *HT Guide* indicates that the dynamics of human trafficking make it difficult for courts and their justice system partners to:

- identify trafficking victims;
- identify criminal defendants who might also be trafficking victims;
- determine how to address the criminal behavior of victims that might be a by-product of their victimization;
- determine victim needs;
- link trafficking victims with appropriate services; and
- provide justice for trafficking victims by holding traffickers accountable for their actions.

Looking at the implications human trafficking dynamics have on the courts through a procedural justice lens further illustrates the challenges listed above. (Figure 2 provides a summary of the procedural fairness implications of human trafficking dynamics as well as the implications of language, culture and immigration status.)

In particular, as indicated in Figure 2, with regard to **respect** and **voice**, the techniques of control exercised by traffickers over trafficking victims—such as repeated physical violence, deception, psychological manipulation—can greatly undermine a victim's capacity to make a positive impression in court and justice forums much less tell a consistent, coherent, compelling story about their circumstances. Also, victims may not view themselves as victims and resent being labeled and addressed as victims. Moreover, service providers report that additional impediments to trafficking victims having an effective voice include (1) the inadequacy of existing risks and needs assessment tools when used in trafficking-involved cases, and (2) the length of time and extraordinary effort required to build enough trust between court and justice personnel and victims so that victims are able to reveal their circumstances and determine how they might improve their circumstances.

With regard to **neutrality**, judges and court administrators have told us that ethical limitations make it difficult, but not impossible, for courts to process trafficking-involved cases in a manner that is sensitive to victim needs while appearing to be fair and neutral. For example, the following judge and court staff ethical concerns with potential implications for neutrality are examined in detail in *HT Guide* ***Chapter 6***:

- Acting or appearing to act as an advocate for a human trafficking victim in the context of a criminal prosecution without compromising their neutrality.
- Undermining the prosecutors. For example, by identifying a criminal case filed under an alternative charge as a possible trafficking case, the judge may undermine the credibility of the prosecutor. Even adding a trafficking flag to a case in an automated case record system may indicate that the judge questions the decision of the prosecutor.
- Assisting potential trafficking victims in cases where trafficking may have occurred but the victims are not part of the legal proceedings. An example might be code violation cases. Even raising the possibility that human trafficking is involved may affect the court case and compromise the judge's neutrality.
- Actions that might disqualify or support a motion to recuse the judge. This could include *ex parte* discussions, independent investigation of the facts in a case, or any actions that might give rise to a reasonable belief that the judge has pre-determined a particular result.
- Actions that can give an appearance of bias.
- Being perceived as interfering with the attorney/client relationship.

In addition, the dynamics of human trafficking likely challenge the neutrality of many routine court and justice system operational processes. For example, as shown in ***Chapter 5***, validated risk and needs assessment tools commonly used in courts and justice systems today are not designed specifically to identify trafficking victims. In fact, the dynamics of human trafficking, perhaps especially the dynamics associated with chronic victimization and trauma, likely result in many trafficking victims displaying high risk, attitudes and behaviors, personality characteristics, histories of antisocial behavior, and other criminogenic factors. As one consequence, use of these tools may not be perceived as being fair and neutral.

Finally, the dynamics of human trafficking have numerous implications for procedural justice notions of **trust**. In particular, there might be numerous reasons why human trafficking-involved court participants—especially victims and witnesses—might mistrust the courts and justice system and system authorities and practitioners. For example:

- Traffickers typically coerce victims not to trust court and justice authorities.
- The genuine or imagined incentives for trusting a trafficker—affection, fear, protection, food, place to live, membership in a "family"—might be more compelling than the incentives for trusting the courts and justice system.
- Victims might fear the potential consequences of criminal behavior (e.g., substance use, theft, recruiting other victims) that might accompany their victimization.
- A victim's past negative experiences with the justice system, including involvement with agencies such as child protection services, foster care, juvenile and adult detention, might contribute to mistrust.
- Repeated abuse by adults when a child can lead to ongoing mistrust of adults generally.

Figure 2: Summary of Procedural Fairness Intersections With Human Trafficking Dynamics, Immigration Status, Culture, and Language

	HT Dynamics	Culture	Language	Immigration Status
Respect – People react positively when: ▪ they feel they are treated with politeness, dignity, and respect; ▪ their rights are respected; and ▪ they understand how things work and what they are expected to do.	The ongoing power and control traffickers exercise over victims can result in victims displaying attitudes and behaviors that appear disrespectful of the courts and justice system. These attitudes and behaviors can challenge court and justice system practitioners' professional skills, including their ability to appear respectful. For example: ▪ Trafficking victims may not present themselves well in court and justice settings. ▪ Trafficking victims may not view themselves as victims and feel disrespected when labeled as victims.	▪ Definitions and verbal and non-verbal expressions of respect can differ widely across cultures and between the culture of the courts and court participants. ▪ Views about the meaning of facts, ways to know and gain knowledge, and the sources of knowledge differ across cultures.	▪ Although active litigant participation in state court processes is highly valued, it is extremely difficult to convey across languages the verbal and non-verbal expressions that indicate participation, such as expressions of respect, understanding, dignity and strong emotions including sincerity, anger, contrition, remorse, and hurt.	▪ Literacy levels, in any formal written language and familiarity with the way the courts work and what courts expect tend to be lower among many immigrant groups than in the U.S. non-immigrant population. ▪ The nexus of federal immigration law, policy and practice, and state law greatly complicates preservation of immigration options and rights.

Figure 2: Summary of Procedural Fairness Intersections With Human Trafficking Dynamics, Immigration Status, Culture, and Language

	HT Dynamics	Culture	Language	Immigration Status
Voice – People want the opportunity to: ■ tell their side of the story; ■ explain their situation/views; and ■ have their stories told to an authority who listens carefully.	■ Story telling by trafficking victims can be very difficult because the forms of force, fraud, and coercion used to control victims by traffickers–such as repeated violence, rationed access to personal hygiene and medical care, social isolation, physical isolation, substance use–undermine the ability and incentive of victims to tell a consistent, comprehensive story. ■ Victims may fear telling their story because of the potential for reprisals by traffickers. ■ Repeated victimization can cause victims to hold shame and suffer from severe forms of trauma that limit their ability to tell their stories. ■ The sufficient time, availability of "safe" settings, and the patience required of the courts and justice system and practitioners to hear the voices of trafficking victims can strain or exceed system capacity.	■ Story telling is difficult because the low-context culture of the courts might differ greatly from the high-context cultures of many court participants. ■ For example, for many, the messenger might be more important than direct content of the message; demeanor might mask emotion; and the amount of time required to communicate might differ greatly. ■ The culture of the courts might be more compatible with the low-context cultures often associated with people of German, Swedish, European-American, and English extraction in contrast with people from high-context cultures, such Japanese, African American, Mexican, and Latino cultures.	■ Story telling is difficult because of differences between the linear, explicit, empirical "fact" driven preferred forms of the standard U.S. English of the courts and the preferred forms of many LEP court participants. ■ Story telling often includes extensive back and forth, back-tracking, "reading between the lines" and interpreting the silences that form part of the story telling.	■ The potential effects of state court action on immigration status and the practical consequences on trafficked immigrants and their families, can often be far more complicated than for U.S. citizens and thus the stories immigrant victims, witnesses, and litigants need to tell are often very complicated and require greater awareness by court authorities.

Figure 2: Summary of Procedural Fairness Intersections With Human Trafficking Dynamics, Immigration Status, Culture, and Language

	HT Dynamics	Culture	Language	Immigration Status
Neutrality – People are more likely to accept court decisions when those in authority do things that both are, and are perceived as, fair and neutral.	■ Neutrality-based ethical limitations on judges and court personnel might make it difficult to identify or intervene to assist trafficking victims in other than trafficking-charged cases even where trafficking may be present. For example, ethical considerations might make it difficult to intervene in trafficking-involved, coerced, prostitution, drug sale, or theft cases. ■ Validated risk and needs assessment tools commonly used in courts and justice systems today are not designed specifically to identify trafficking victims. As one consequence, use of these tools may not be perceived as being fair and neutral. In fact, the dynamics of human trafficking, perhaps especially the dynamics associated with chronic victimization and trauma, likely result in many trafficking victims displaying high risk attitudes and behaviors, personality characteristics, histories of antisocial behavior, and other criminogenic factors.	Court culture notions of fairness and neutrality that emphasize that: ■ following the law using established consistently-applied processes to reach just outcomes; ■ authority is based on the formal position one holds in court and justice system; and ■ knowledge is generated by professionals and experts. All might differ from court participant notions of neutrality and fairness.	■ Among many LEP court participants, there may be suspicion that those who speak another language not only might not be able to understand what I might be trying to express but also may be working to my potential disadvantage. The court might also somehow favor those who speak the same language they do. ■ Many LEP court participants likely are from parts of the world with poor histories regarding the exercise of power relative to language by justice officials.	■ Routine case outcomes, such as typical plea deals that seem fair and neutral to U.S. citizens, may not seem fair or neutral to non-U.S. citizens in trafficking-involved circumstances because similar case outcomes can dramatically affect immigration status. For example, there may be risks to obtaining T or U Visas, Special Immigrant Juvenile Status, and other federal immigration status protections for foreign national trafficking victims because of the presence of state court prostitution, drug, theft, and other charges and convictions. ■ Compliance with court orders may be difficult because remedies and solutions available to U.S. citizens, such as those based on eligibility to work or receipt of government-supported services, may not be available to immigrants.

Figure 2: Summary of Procedural Fairness Intersections With Human Trafficking Dynamics, Immigration Status, Culture, and Language

	HT Dynamics	Culture	Language	Immigration Status
Trust – People observe behavior or look for actions to indicate they can trust the character and sincerity of those in authority, and those in authority are aware of and sincerely concerned with their needs.	There are numerous reasons why human trafficking-involved court participants –especially victims and witnesses–might mistrust the courts and justice system and system authorities and practitioners. For example: ■ Traffickers typically coerce victims not to trust court and justice authorities. ■ The genuine or imagined incentives for trusting a trafficker–affection, fear, protection, food, a place to live, membership in a "family" –might be more compelling than the incentives for trusting the courts and justice system. ■ Victims might fear the potential consequences of criminal behavior–such as substance use, theft, recruiting other victims–that might accompany their victimization. ■ A victim's past negative experiences with the justice system–including involvement with agencies such as child protection services, and foster care, juvenile and adult detention–might contribute to mistrust. ■ Repeated abuse by adults when a child can lead to ongoing mistrust of adults generally.	Court culture and court users' notions of trust and how trust is indicated might differ about: ■ the importance and forms of expressions of contrition; ■ how people might fundamentally change the circumstances of their lives; and ■ that complying with the directions of court authorities should help improve your lives and the lives of others.	Court language is very "wordy," with ideas spelled-out directly, explicitly, and in detail, even in instances regarding the most intimate and difficult aspects of someone's behavior and life that in other languages and cultures may never be appropriate to talk about.	■ Many immigrants might come from countries where authorities, justice institutions, and courts cannot be trusted and have low levels of trust of these institutions in the U.S. until shown otherwise. ■ Trafficked immigrants may come from countries where government officials are indirectly or directly involved in human trafficking or where trafficking is tolerated. ■ Many immigrants have direct or indirect contact with federal immigration agencies that lack the same level of due process protections as the state courts.

Why Language Matters

Language matters in the state courts because perhaps the most fundamental assumption of our contemporary system of justice is that parties involved with the courts will be able to communicate, understand, and participate in all types of court proceedings and processes, including pre-adjudication, adjudicative, and post-adjudicative proceedings. Moreover, our system is heavily based on both oral and written communication as essential to providing opportunities for understanding between court practitioners and participants. Language also is the single most visible and one of the most important manifestations of culture. As one consequence, adequate and comprehensive language assistance in the court and justice settings is the key to working across cultures in court and providing an opportunity for all court participants to access justice. In short, communication across languages is a key element for making court participation meaningful.

Yet, as anyone who has spent even five minutes involved with the courts—either in or outside of a courtroom—is aware, communication to the point of offering opportunities for understanding and meaning is difficult enough when all court participants share a common language. Differences in vocabulary, literacy and comfort levels among court participants, to name but a few of many factors, make communication, much less understanding, difficult even among those using the same language. When working across multiple languages, even the most casual observer begins to suspect that there is more going on than the simple exchange of words. That's because there is a lot more going on. Language is about the use of symbols in the form of words, actions, or objects that represent a unit of meaning and, unfortunately for communication across languages, the relationships among symbols and what they represent are highly arbitrary and vary dramatically from language to language and culture to culture. Varying dramatically too are the very complicated and interrelated sets of rules regarding the use of symbols to create language. Also, the reciprocal relationship among language, thought, and culture are so interconnected that for meaning and understanding to occur across languages, working with language means working with far more than words.[2]

Finally, the dynamics of human trafficking create additional communication and understanding barriers between the courts and court participants in trafficking-involved cases, especially barriers to meaningful participation by victims and witnesses. For example, even for native English speakers, the meaning of the vocabulary associated with sex trafficking subcultures differs greatly from not only the language typically associated with court culture but also from standard U.S. English in general. Service providers routinely report that English speaking human sex trafficking victims often do not view themselves as victims, do not understand the language of victimization, and might be offended when language is used that explicitly indicates that they are victims. For example, in *Renting Lacy: A Story of America's Prostituted Children*, Linda Smith from the service organization Shared Hope International, includes a detailed glossary with illustrative language such as:[3]

[2] This section relies heavily on the wok of Myron Lustig and Joelen Koester (2006) "Intercultural Competence: Interpersonal Communication Across Cultures" (Pearson Education, Inc.; Boston) pp. 183-196 and 235-242.

[3] Smith, Linda (2013) "Renting Lacy: A Story of America's Prostituted Children" (Shared Hope International: Vancouver, WA).

- "Bottom (sometimes called bottom bitch, bottom ho, bottom girl) – one girl, among several controlled by a single pimp, appointed by him to supervise the others, report rule violations, and sometimes even help inflict punishment on them." Note also that bottom girls sometimes help recruit new victims.
- "Exit Fee – money a pimp demands from a victim who is thinking about leaving. This is routinely an exorbitant sum intended to discourage her departure. (Victims usually don't have money, other than what the pimps give them to supply their needs.) Most pimps never let their victims leave freely."
- "Family or Folk – a group of people under the control of one pimp; plays the role of father or Daddy. This idea can be extremely complicated psychologically for a victim who has never had a supportive family."
- "Lot Lizard – a derogatory term for a person who is prostituted at truck stops."

Obviously, differences in the meaning associated with concepts surrounding human trafficking, and the words used to express concepts, makes communication difficult for conversations where all participants are English speakers. Now imagine the additional difficulties when there is a need to communicate across languages and cultures between court personnel and trafficking-involved court participants.

In addition, service providers and court practitioners also have become increasingly uneasy about how they can:

- determine that language specialist proficiency is adequate to take into account the nuances associated with human trafficking; and
- be confident that language service providers are not directly or indirectly involved in trafficking or with traffickers.

Although an adequate description of the details about what must happen to communicate across languages and cultures is well beyond the scope of this effort and are topics covered well elsewhere, two things about language, how it works, and the desired role of interpreters and language specialists are described here because they greatly affect language access in the courts and procedural fairness.

First, languages, and every culture connected with a particular language, have preferred ways of organizing and presenting ideas both verbally and non-verbally. According to cross-cultural communication experts Lustig and Koester, in the standard form of U.S. English—especially when modified by the specialized vocabulary and organization of the so-called "legalese" that is part of the court culture—there are numerous expectations about (1) how to organize and present thoughts, (2) styles of persuasion, (3) the validity of types of evidence, and (4) the value and meaning of talk and silence.

For example, Lustig and Koester indicate that organization and presentation in standard U.S. English is linear:

- a specific theme attached to a clear specific thesis statement is the foundation for organizing ideas that should be presented in a clear, straightforward, unambiguous manner;
- theses are stated at the beginning of a presentation;
- main points are outlined early and supporting ideas are linked directly to the main idea;
- topics are developed fully before moving on to a new topic;
- persuasion, that is the ability to use symbols to influence others to accept ideas or engage in some behavior, is direct, "fact" evidence and formal authority-based; and
- what is reasonable or correct is derived from a series of values, processes, and empirical science-based information derived in large part from the testimony of objective experts.

All of these preferences can vary greatly from language to language and culture to culture. For example, in many of the numerous other than Anglo-European languages where language assistance is being frequently sought in courts around the nation:

- there might be no equivalents to standard U.S. English concepts of thesis statements and paragraph topic sentences;
- thesis statements are often buried deep within a presentation;
- the organization and presentation of ideas is often indirect and implication-dependent; and
- persuasion and reasonableness, including what is logical and rational, is often based on types of evidence and authority that are considered unscientific, biased, irrational, unprofessional, and indirect by U.S. English thinkers and speakers.

Second, the complexity of communications across languages in the courts, suggests the need for very high standards of language assistance, specifically standards that produce legal and dynamic equivalence across languages. *The Fundamentals of Court Interpretation: Theory, Policy, and Practice*, the so-called Bible of court interpretation, indicates that "the goal of court interpreting is to produce a legal equivalent, a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice versa." Moreover, the interpretation cannot be a mere summary or approximation of what is said or written but instead, "the court interpreter is required to interpret the original source materials without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker."[4]

This is indeed a very high set of expectations, especially in light of the complexities of the interconnections among thought, language, and culture summarized previously. In addition, *Fundamentals of Court Interpretation*, stresses that legal equivalence encompasses dynamic equivalence; that is, "the notion that the message should have the same effect on the target

[4] See for details, Roseann Duenas Gonzalez, Victoria F. Vasquez and Holly Mikkelson (1991). *Fundamentals of Court Interpretation: Theory, Policy and Practice* (Carolina Academic Press, Durham, N.C.) pp. 16-18.

language audience as the message had on the source language." As one consequence, seeking the true message may be as much about non-verbal communication and how something is said as it is about what is said.

Not surprisingly, there are many important implications of language on procedural fairness. For example, with regard to **respect and voice**, language matters because even though participation by litigants, witnesses, victims, and others in state court processes is highly valued, it is extremely difficult to convey across languages the verbal and non-verbal expressions that indicate participation, such as expression of respect, understanding, dignity and strong emotions including victimization, sincerity, anger, contrition, remorse, hurt, and many more.

In addition, telling one's story in the numerous courtroom and non-courtroom settings that make up the state court system, and having that story actually heard, is very difficult across languages in large part as a result of differences between the linear, explicit, empirical "fact-driven" preferred forms of the standard U.S. English of the courts and the preferred forms of many Limited English Proficiency (LEP) court participants. For example, even when working with the assistance of the most skilled interpreter, it is likely that more than a few probation workers, judges and juvenile, child welfare, and family court practitioners have been frustrated by the amount of time and effort witnesses, litigants, and their families require to be able to tell their story and the amount of time and effort court practitioners must exert to understand and react to that story. As in most court-related cross language conversations, story telling in particular about understanding expectations for compliance, why compliance might have been violated, and what might be done to get back into compliance often are hardly linear but rather include extensive back and forth, back-tracking, "reading between the lines" and interpreting the silences that form part of the story telling. As mentioned previously, the dynamics of human trafficking, when combined with differences in languages, likely make it even more difficult to assure voice and indicate respect.

With regard to **neutrality and trust**, when working with non-English speaking participants and attempting to appear neutral and build trust, state courts are at a disadvantage simply because the dominant, preferred, language is English and all other languages are secondary. It has long been known that in many and likely most language groups and the national/ethnic cultures associated with language groups, there is often suspicion that those who speak another language not only might not be able to understand what I might be trying to express but, also to my potential disadvantage, might also somehow favor those who speak the same language they do. Bi-lingual state court judges, counter clerks, and court staff throughout the system for example, routinely report very different levels of participation, changes in demeanor, and in general a different climate when working with court participants who realize that the practitioner speaks "their" language.

Further, and unfortunately for our courts, many LEP court participants are from parts of the world with poor histories regarding the exercise of power and language dominance. Interpreters, along with increasing numbers of court practitioners, likely have become aware of these challenges as they try to find language specialists who not only act in a neutral fashion but are perceived as being neutral and trustworthy. At the same time, as noted previously, concerns about the potential for those providing language assistance to be involved in trafficking makes the demand for vetting interpreters and monitoring their performance to assure neutrality and trust even more important than it already is in other types of cases.

Moreover, as noted previously, standard U.S. English, when combined with the culture of the courts, is a very "wordy" language, where ideas are spelled out directly, explicitly, and in detail, even in instances regarding the most intimate and difficult aspects of someone's behavior and life that in other languages and cultures may never be appropriate to talk about—unless required in the court and justice system setting—and may not have a way to communicate verbally at all. In addition, non-verbal messages in the culture of the courts are often less important for communication than they might be in other languages and cultures.

Why Culture Matters

Culture matters in the state courts because, as shown in Figure 3, notions of culture profoundly affect how people:

- define justice, conflict, and disorder;
- determine when it is appropriate to involve third parties—including the courts and justice organizations—in resolving problems and conflicts;
- describe events or "what happened;" and
- fashion responses or solutions to problems and conflicts.

Culture also matters because it greatly influences:

- the ways people communicate;
- perceptions about the sources of legitimate authority;
- beliefs about individual and group responsibility;
- beliefs about what are fair processes;
- fundamental, underlying beliefs about cause and effect—such as the causes and treatment of illness; and
- beliefs about people and their motivation.

Finally, culture can matter in human trafficking-involved cases because aspects of culture, including the gaps between the professional culture of the courts and national/ethnic cultures of court users, can unintentionally reinforce the already destructive dynamics of human trafficking. For example, as suggested in Figure 2, the interplay of the dynamics of human trafficking and culture might:

- shape the demeanor of trafficking victims in ways that make it difficult for court personnel to assess victim needs and circumstances;
- limit the capacity of trafficking victims to tell their stories consistently to a variety of court and justice system officials in a variety of different settings;
- reinforce the victim's fear of court personnel, officials, and adults generally;
- reinforce the victim's feelings of shame and self-worth;

- reinforce the victim's fears to reveal the reasons for the criminal behavior they might have engaged in, such as prostitution, drug sales, and theft, as part of their victimization; and
- create misunderstanding about how the incentives the courts and justice system offer will improve their lives more than the incentives offered by traffickers

Gaps Between Court Culture and the Culture of Court Participants

There are numerous implications on procedural fairness of culture, or more accurately, of having multiple ethnic/national, professional, and organizational cultures participating in the state courts.[5] All aspects of procedural justice—respect, voice, neutrality, and trust—fundamentally are shaped by one's ethnic/national cultural origins. At the same time, the expectations for communications and behavior, the key values, and the fundamental beliefs of the culture of the courts, buttressed by the professional culture of the U.S. legal system, for the most part are Anglo/European in origin.[6] Thus there may be vast differences between the behaviors, values, and fundamental beliefs and assumptions of many court participants and the key aspects of court culture. Fortunately, the differences between court culture and a court participant's ethnic/national culture provide both increased chances for misunderstanding and increased opportunities for developing creative, more effective solutions.

For example, the behavior for helping ill children which one culture might define as appropriate use of herbal and other forms of traditional healing—such as the use of the mix of spiritual and organic remedies facilitated by a curandero or other form of healer—might be defined in another culture as child neglect and even abuse. Notions of extended family inherent in some cultures might provide opportunities to link troubled family members with far more extensive family-based support resources than might be available in cultures where family is more narrowly defined. For people of some cultures, attending batterers' classes conducted by a highly trained outsider professional might be an effective technique for addressing some aspects of domestic violence, while being counseled by a "non-professional," insider, a respected peer, might be more appropriate for people of another culture.

Similarly, "time" in the traditional model of American courts is viewed as highly structured and valuable, and thus subject to being managed and controlled by a variety of techniques such as careful scheduling and detailed compliance monitoring that expects appropriate performance to occur within standardized time frames. In contrast, in other cultures, time may be far more flexible,

[5] The notion of culture refers to the commonly-shared, largely taken-for-granted assumptions about goals, values, means, authority, ways of knowing, and the nature of reality and truth, human nature, human relationships, and time and space that a group has learned throughout its collective history. Ethnic/national culture refers to groups whose individual members' common affiliation is defined by reference to ethnicity or nation. Professional culture refers to groups of people with affiliations defined by occupation and profession, such as judge, court administrator probation or social worker. Organizational culture refers to groups of individuals interacting within particular administrative units and agencies that together form the institutions of justice within a society, such as courts, district attorneys, police departments, and child protection agencies.

[6] Martin, John, Marcus Reinkensmeyer, Barbara Rodriguez Mundell, and Jose Guillen. (2008) "Becoming a Culturally Competent Court" 22/4 *Court Manager*, 6-24. In addition, this section on culture is based heavily on the work completed over the decades by Edward Hall (1966) *The Hidden Dimension* (New York: Doubleday); and Myron Lustig and Jolene Koester (2006) *Intercultural Competence: Interpersonal Communication Across Cultures* (Boston: Pearson Education, Inc.).

endless, and ongoing, stressing the need to respond to circumstances and individuals rather than adhere to a schedule. A few other more obvious examples of the numerous culturally-based assumptions embedded in the court and justice systems include notions that:

- illness is largely organically-based and thus can be treated medically;
- knowledge can be gained by a combination of structured educational sessions such as parenting or anger management classes, by following the directions and counsel of judges, probation, and treatment providers, and by observing the successes of peers;
- individuals are in control of and responsible for their own actions;
- gender roles in child rearing should be centered on equal parenting responsibilities between partners;
- people can be motivated to alter behavior by punishments and rewards;
- judges and other persons of authority within the court and justice system should be listened to and obeyed because of the positions they hold and the important roles society has assigned to those positions;
- people should show respect for court and justice officials;
- neutral, objective, third parties unrelated to litigants involved in a dispute can be effective in resolving disputes;
- written communication is an effective way to communicate; and
- determining when someone is truly sorry for what they have done and would like to make amends is important.

Each of the assumptions, beliefs, values, or behaviors listed above are largely steeped in Anglo/European cultures as well as the organizational and professional cultures of the courts and justice system. Yet increasingly, there is a gap between the Anglo/European culturally-based foundations of the courts and justice systems and the fundamental assumptions and beliefs, values, and behaviors of increasing numbers of people using the courts. For example, the increased presence in state courts across the nation of greater numbers of people with extremely diverse sets of cultural origins in the Middle East, Africa, Latin America, Asia, or the Pacific, as well as increased awareness of the cultural foundations of numerous Native Americans and indigenous people from nations across the globe, have resulted in the need to work, routinely, with litigants who might:

- emphasize a spiritual or cosmic foundation for the origins and responses to illness and health;
- view gender roles as being very clearly differentiated and unalterable;
- maintain that behavior cannot be modified by the forms of rewards and punishment routinely used by the courts and justice system;

- demonstrate deference, respect, and contrition in ways at odds with expected behaviors in courtrooms, probation offices, and treatment sessions;
- emphasize group responsibility over individual responsibility;
- misunderstand the authority in family matters assigned to outsiders; and/or
- have limited exposure to written language generally, and even less exposure to the official language of the courts and justice system.

Culture and Procedural Justice

As summarized in Figure 2, with regard to **respect**, culture complicates the work of the state courts because definitions, perceptions and verbal and non-verbal forms of expression of key aspects of respect, such as politeness and dignity, vary widely across cultures, and thus between the culture of the courts and increasing numbers of litigants. Moreover, as we describe in greater detail in the next section, even the presence of skilled interpreters and other language specialists cannot address the complicated barriers inherent in working across cultures alone. Similarly, if "understanding" court procedures and outcomes is to be an essential component of respect, additional barriers might need to be considered because culture profoundly shapes views about the meaning of facts, ways to know, and ways to gain and use knowledge.

The issues culture raises for **voice** are many in large part because culture profoundly shapes the forms and styles of voice; that is, it shapes the ways people effectively tell their stories and to whom. Although the notion of voice is itself a sub-field in many disciplines, to simplify things here, communications expert Edward T. Hall's high and low context culture taxonomy provides a tool for highlighting some of the sources of cultural variation with regard to voice and the source's potential impacts on the courts and justice system. Hall maintains that high-context cultures prefer to use high-context messages where most of the meaning is implied by the physical setting or is assumed to be part of an individual's internalized beliefs, values, norms, and social practices. Note also that in high-context cultures very little of the content of the message is provided in the coded, explicit, transmitted part of the message. In contrast, for low-context cultures the majority of information contained in a message is in the explicit code. Examples of high-context cultures frequently identified in the research literature include Japanese, African American, Mexican, and Latino, while low-context cultures include German, Swedish, European American, and English. Increasingly, then, given long-term immigration trends alone, essentially the low-context culture-oriented state courts have been and will continue to be having to work more and more with litigants from high-context cultures.

With regard to *neutrality* and *trust*, the culture of the courts has very clear notions of trust, what is fair and neutral, and how to express those notions. These notions of the culture of the courts may or may not align with the views of court participants and consequently additional efforts might be needed when working across cultures. For example, as indicated in Figure 3, in the culture of the courts, heavy emphasis that neutrality is demonstrated structurally because authority is based on the formal positions held by highly trained people consistently following established processes might not align with the views of court participants. At the same time, the demeanor of court participants, especially how they express interest (or non-interest) and understanding, or key behaviors such as contrition, might not meet the expectations of court personnel.

Figure 3: Critical Culturally-Based Attributes in American Courts

Level of Culture	Traditional American Court Characteristics
Behaviors: ■ Appropriate attire/ dress ■ Body art and decoration ■ Engagement ■ Deference ■ Styles of oral and written communication ■ contrition ■ coercion ■ Time management/ scheduling ■ Use of technology ■ Public displays of affection ■ Expressions of anger ■ Expressions of disagreement	■ Preferred forms of engagement include eye contact, active listening, dialog, and direct expression, including expression of understanding. ■ Oral communication should be on-point, organized, and concise. ■ System participants should express deference and respect for system officials. ■ System personnel should express deference and respect for hierarchy of positions within system. ■ Written communication should be structured and on-point. ■ All official communication should be carefully documented in a written form. ■ Time should be carefully managed. ■ Being on-time and prompt are important. ■ Time-frames should be established and followed around a series of predetermined events. ■ Behavior can be modified by learning the correct way to do things. ■ Expressions of contrition are important, and should include clear acknowledgement of responsibility for wrong doing. ■ Improvement is demonstrated by completing activities. ■ Technology provides useful tools for increasing the efficiency of communication.

Figure 3: Critical Culturally-Based Attributes in American Courts

Level of Culture	Traditional American Court Characteristics
Key Values Regarding: ■ Respect ■ Dignity ■ Fairness ■ Integrity ■ Honesty ■ Justice ■ Punishment/rewards ■ Family ■ Obedience ■ Compliance ■ Reciprocity ■ Intervention ■ Community	■ **Respect and dignity** – Listen to people carefully and attempt to respond to their needs. Be polite and explain processes and outcomes. Explain one's motivations and actions. ■ **Fairness and integrity** – Follow the law using established, consistently-applied processes. Be impartial, and treat people equally while doing individual justice in individual cases. ■ **Honesty** – Provide the full picture, and reveal intent and reasons for behavior. ■ **Justice** – Following established processes carefully should result in best outcomes for all involved. ■ **Punishment and rewards** – Fines, confinement, education, mentoring and other sanctions are techniques to be used to deter negative behavior and encourage positive behavior. ■ **Family** – Parents, children, siblings, spouses, and other intimate relatives are defined by blood and marriage, or adoption and other court action. ■ **Obedience** – Follow the directions of judges and other formal authorities. Authorities are working to help you. ■ **Compliance** – Follow the directions of court and justice system personnel; following their directions will improve your life and the lives of others. ■ **Reciprocity** – The system will reward people who make an honest effort to meet system expectations. ■ **Intervention** – The system is doing things and asking you to do things for your own good. Officials have the authority to intervene in all aspects of people's lives, including the intimate aspects of people's lives. ■ **Community** – A community is defined largely by geographic boundaries shared by people with a common civic interest, in contrast to interest defined by ethnicity, clan, family, or other social groupings that might transcend geography.
Fundamental Assumptions and Beliefs About: ■ Time ■ Causality ■ Illness ■ Gender roles ■ Authority ■ Human nature ■ Motivation ■ How to learn/gain Knowledge ■ Life partners ■ Same-sex partners	■ People can, and sometimes should, change the circumstances of their lives. ■ People are responsible for their actions. ■ People are fundamentally equal. ■ Authority is based on the formal position one holds in the courts and justice system. ■ The courts and justice system are involved in problem-solving; the system helps to identify, clarify and solve problems in peoples' lives. ■ Time is linear, structured, and can be managed. ■ The causes of behavior are based in the physical world and subject to modification. ■ The causes of illness are organic and can be modified. ■ Individuals can change their behavior in part by changing their responses to negative environments or controlling their environment. ■ People are motivated by material rewards and punishments. ■ The role differences between men and women are flexible; men and women should be equally responsible for family well-being and child rearing. ■ Knowledge is generated by professionals and experts and transmitted through classes and other forms of education and experience based on tangible rewards and punishments. ■ Most people are fundamentally good and can improve their lives. ■ One's presence in court is defined by being a party or an official. (Not by who you are or whom you know.)

Why Immigration Status Matters

At any one moment in time, there are tens of millions of immigrants with a variety of immigration statuses living in the U.S. as well many millions more foreign temporary visitors. Individuals from any of these groups potentially might be trafficking victims or traffickers, and might appear in the state courts.

At its most basic, immigration status refers to the classification under federal law that allows an individual to be in the United States lawfully. All persons present in the U.S. are considered under federal law as either U.S citizens or aliens. U.S citizens are individuals who were either born in the United States or to U.S. citizen parents or went through a rigorous naturalization process to be granted U.S. citizenship. The alien classification includes legal aliens who are present in the U.S. under non-immigrant temporary visas or, more frequently, legal aliens classified under one of numerous other lawful immigrant statuses. The alien classification also includes unlawful aliens—often referred to in the popular media as illegal immigrants or unauthorized immigrants—who are present in the U.S. unlawfully.

In particular, with regard to immigration trends it is well documented that:[7]

- About 40 million people living in the U.S. are foreign born.
- Over one-half of the foreign born population arrived in the U.S. after 1990 with one-third of all the foreign born population arriving in 2000 or after.
- As of 2010, 44 percent of all the foreign born were naturalized citizens.
- The legal permanent resident (LPR) immigrant population in the U.S. is about 12.6 million people. About 8.1 million of these people meet the residency requirements to become U.S. citizens.
- An additional 11.2 million people living in the U.S. are undocumented, illegal immigrants.

---

[7] Grieco, Elizabeth M. and et. al. (May 2012). "The Foreign-Born Population in the Unites States: 2010." America Community Survey Reports, U.S. Census Bureau. Retrieved from: *http://www.census.gov/prod/2012pubs/acs-19.pdf*

Martin, Daniel C. (May 2011). "Refugees and Asylees: 2010." Department of Homeland Security. Retrieved from: *http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf*

Passel, Jeffrey and D'Vera Cohn. (February 2008). "U.S. Population Projections: 2005-2050." Pew Hispanic Center. Retrieved from: *www.pewhispanic.org/files/reports/85.pdf*

Passel, Jeffrey. (March 2006). "The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey." Pew Hispanic Center. *www.pewhispanic.org/files/reports/61.pdf*

Taylor, Paul, Mark Hugo Lopez, Jeffrey Passel and Seth Motel. (December 2011). "Unauthorized Immigrants: Length of Residency, Patterns of Parenthood." Pew Hispanic Center. Retrieved from: *http://www.pewhispanic.org/files/2011/12/Unauthorized-Characteristics.pdf*

Rytina, Nancy. (July 2012). "Estimates of the Legal Permanent Resident Population in 2011." Department of Homeland Security. Retrieved from: *http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2011.pdf*

- Nearly two-thirds of the 10.2 million undocumented adult immigrants living in the United States have lived in the country for at least 10 years. Specifically, 15 percent of the undocumented adult population have lived in the U.S. less than 5 years, 22 percent 5-9 years, 28 percent 10-14 years, and 35 percent 15 years or more.
- About 12 million people living in the U.S. are naturalized citizens.
- An additional 1.3 million people in the U.S. are temporary legal migrants such as students and temporary workers.
- 73,293 refugees and 21,113 asylees were admitted to the U.S. in 2010.
- In 2011 over 62 million foreign nationals from abroad visited the U.S. for some period of time.[8] While the total number of foreign national visitors may vary from year to year, it is likely that significant numbers of these visitors are going to have contact with our state courts as victims, litigants, witnesses or the accused.

Chapter 3 of the *HT Guide* examines in detail the intersection of human trafficking and immigrant victims and traffickers and we have written elsewhere about the complexities of federal, state, and local immigration law and the many effects they have had on the state courts.[9] Here we want stress two important points that are covered in detail in *Chapter 3*:

- an immigrant trafficking victim may be eligible for immigration status benefits under federal law, including benefits providing protection such as T and U visas, work authorization, and medical and other resources;

---

[8] Bryson, John and Ken Salazar. (2012). National Travel & Tourism Strategy. Task Force on Travel and Competitiveness. Retrieved from: *http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=295021*

[9] Martin, John A., Steven Weller, David Price, Angie Lederach, and Jeff Yoder (2009) "Addressing Immigration in the State Courts," 24/1 *Court Manager*, 16-37.

Weller, Steven, John A. Martin and Tara Lundstrom (2013) "Addressing the Misalignment Between Federal Immigration and State Court Law and Practice: A Strategy for State Courts," 28/4 *Court Manager*, 20-29.

Weller, Steven and John A. Martin (2012) "The Risk to Immigrants for Drug Court Participation," 27/2 *Court Manager*, 6-17.

Weller, Steven and John A. Martin (2011) "Uses of State Criminal Court Records in Immigration Proceedings," 26/4 *Court Manager*, 22-35.

Weller, Steven and John A. Martin (2011) "Implications of Padilla v. Kentucky for the Duties of State Court Criminal Judges and Court Administrators," 25/4 *Court Manager*, 46-52.

Weller, Steven and John A. Martin (2011) "Implications of Padilla v. Kentucky for the Duties of the State Court Criminal Judge," 50/1 *Judges Journal*, 13-17.

Martin, John A., Steven Weller, David Price, Angie Lederach, and Jeff Yoder (2010). "Immigration and the State Courts Assessment and Measurement Framework," 25/2 *Court Manager*, 36-47.

Martin, John A., Steven Weller, David Price, Angie Lederach, and Jeff Yoder (2009). "Addressing Immigration in the State Courts," 24/1 *Court Manager*, 16-37.

- eligibility for these benefits, however, can be negated if human trafficking victims are not identified as victims but are involved in criminal behaviors such as drug sales, theft, and numerous other offenses, including offenses that are forced on them as part of their victimization.

In addition, as indicated in *Chapter 1*, foreign nationals are particularly vulnerable to some of the most severe methods of coercion, force, and fraud used by traffickers, such as:

- threat of deportation;
- withholding of passports, social security cards, and other documents;
- fear of reprisals against family members remaining in the country or region trafficked from; and
- numerous cultural and language-based barriers to obtaining help for exiting trafficking settings.

When the connections between human trafficking, immigration status, and the work of the state courts are looked at from the perspective of procedural justice, it is apparent that with regard to **respect** the complexity of federal immigration law, policy, and practice—coupled with the potential negative status consequences state court actions can have—creates some very high barriers to overcome if we are going to have state courts where immigrants typically feel respected. For example, it is challenging enough for state court practitioners to understand the connections between the work they do—including what is happening, why, and what the consequences of that work might be—and the implications of that work for immigration status, much less communicate their understanding in polite and respectful ways that make sense to immigrants from diverse cultural backgrounds.

Similarly, with regard to **voice**, the potential effects of state court action on immigration status and the practical consequences on immigrants and their families of that action, can often be far more complicated than the consequences are for U.S. citizens. Consequently, even in what might appear to be relatively straightforward state court cases, the stories immigrant victims, witnesses, and litigants need to tell are often very complicated and might require greater patience, knowledge, and assistance by state court authorities than the same type of case might require for U.S. citizen litigants. Moreover, as suggested in Padilla v. Kentucky, the U.S. Supreme Court recognized the additional burdens immigration status might pose for defense attorneys. Also, there are other burdens on court and justice personnel not addressed by the Supreme Court for immigrants to have a voice, particularly in family and civil court settings or in many types of limited jurisdiction cases where attorneys may not be present, but the matters before the court that can have serious consequences for immigration status.

The possibility for greatly disproportionate impacts from state court actions between U.S. and non-U.S. citizens in essentially similar cases due to immigration status issues also creates challenges with regard to **neutrality**. For example, routine case outcomes in criminal, family, juvenile, and dependency cases, such as typical plea deals that seem fair and neutral to U.S. citizens, may not seem fair and neutral to non-U.S. citizens because similar case outcomes can dramatically affect immigration status. As indicated previously, the results of typical "good" plea deals, divorce decrees, or child unification performance requirements can look very different for immigrants than for U.S. citizens in circumstances where the state court result might mean deportation, ineligibility for naturalization, or separation from a child. Compliance with court orders might be difficult because remedies and solutions available to U.S. citizens, such as eligibility to work or receive public-supported services, might not be available to some immigrants.

With regard to **trust** and immigration status, many immigrants come from countries where authorities, justice institutions, and courts cannot be trusted and thus many immigrants to the U.S. have low levels of trust of these institutions until shown otherwise. Assessments of the attitudes of Latino immigrants in particular, the nation's largest immigrant population accounting for over 50 percent of the total, consistently reveal not just mistrust, but fear of justice institutions. These skeptical views likely are reinforced by the direct and indirect contact with federal immigration agencies that might have a different mission than the state courts, such as Immigration and Customs Enforcement, or might lack the same level of due process protections as the state courts, such as the absence of a right to appointed counsel in Federal Immigration Court or when appearing before U.S. Citizenship and Immigration Services.

III. Providing Language, Culture, and Immigration Status-Appropriate Assistance in Cases Involving Human Trafficking

At a minimum, developing ways to address human trafficking-involved cases requires courts to do three things.

First, courts need to increase awareness about the dynamics involved in human trafficking and how these dynamics might alter case processing and the infrastructure needed to support more effective case processing. Increasing awareness about human trafficking should include clarifying:

- the types of commercial sex and labor trafficking and their prevalence nationally and in particular jurisdictions;
- the characteristics, dynamics, and individual and societal consequences of human trafficking;
- approaches to addressing human trafficking and the implications of various approaches on the work of judges and court personnel;
- the needs of human trafficking victims and how those needs are similar to and different from the needs of other victims typically seen in courts;
- how to link trafficking victims with appropriate services;
- how judicial ethics might affect trafficking-involved case processing;
- the effective use of specialty courts, dockets, and other court-focused approaches to trafficking-involved case processing;
- how human trafficking-involved cases might appear in a variety of different criminal, civil, family, juvenile, dependency, probate, and other types of cases;

- how to work with cases where human trafficking victims are also criminal defendants; and
- the infrastructure required to support effective court and justice system responses to human trafficking.

(Information presented in *Chapter 11* provides a more detailed inventory of topics that might be included in efforts to increase awareness about human trafficking.)

Second, courts need to work with justice system partners and service providers to increase awareness and court and justice system capacity to address the interplay among language, culture, and immigration status in human trafficking cases. Addressing the interplay among human trafficking, language, culture, and immigration status should include:

- assessing the demographic characteristics of potential trafficking victims, traffickers, and the consumers of trafficked services;
- identifying trafficking-involved or vulnerable LEP populations;
- describing the local court culture and assessing how the characteristics of local culture might differ from those of trafficking-involved populations;
- identifying priority improvement processes, programs, or other aspects of court and justice system operations and organization where the interplay of human trafficking, language, culture, and immigration status might matter;
- learning the implications of immigration status on the work of the court; and
- assuring high quality language services and developing methods to assure that language specialists cannot be involved in human trafficking.

Third, courts should institutionalize the role of an intermediator—either a person on the court staff or an outside person appointed by the court—to serve as a neutral advisor and guide to the trafficking victim in all trafficking-involved cases where challenges of language, culture, and immigration status might be present. To effectively address the formidable challenges of trafficking victimization while moving cases toward just and timely resolution, court and justice system service providers need the authority and tools to play an assertive role mediating between cultures and serving as a counselor, educator, translator, interpreter, spokesperson and guide. This role would include:

- helping trafficking-involved court participants understand and navigate the justice system;
- helping victims recognize when cultural or language barriers are causing misunderstanding between them and justice system officials;
- helping victims recognize when they can trust the judicial system to provide for their safety;
- helping victims find the voice to express their needs and concerns to justice system officials;

- helping victims understand what is culturally acceptable, expected, and lawful behavior in the United States; and
- empowering trafficking victims to gain independence from their traffickers and obtain a better life.

IV. Resources and Tools for Addressing Language and Culture in Trafficking-Invoved Cases

Information and Bench Cards

The following nine information and bench cards—first referenced in *Chapter 1*—should prove useful when addressing the nexus of human trafficking dynamics, language, culture, and immigration status.

- *Definitions, Forms, and Dynamics of Human Trafficking*
- *Identifying Cases That May Involve Human Trafficking*
- *Approaches to Addressing Human Trafficking*
- *Characteristics of a State Court Focused Approach to Addressing Human Trafficking*
- *Human Trafficking Assessment and Measurement Framework*
- *Infrastructure Required to Support Courts and Justice Partners in Human Trafficking Cases*
- *Human Trafficking and Criminal Defendants*
- *Dealing With Human Trafficking Victims in a Juvenile Case*
- *Immigration Rights of Victims of Human Trafficking*

They are also available and can be downloaded from the resource webpage at *www.htcourts.org*.

Reference and Resource Links

Most of the references used in preparing this chapter appear in the footnotes. A few other useful resources are:

- Anne Fadiman (1997) "The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures." (New York: Farrar, Straus and Giroux). This classic assessment of intercultural misunderstanding, and the role of child protection and health service providers in that misunderstanding, remains the single best example of why language and culture are important.
- John Martin, Steve Weller, Angie Lederach, Jeff Yoder, and David Price (2012) "What Does the Intersection of Language, Culture, and Immigration Status Mean for Limited English Proficiency Assistance in the Courts." (Denver: Center for Public Policy Studies). This short piece served as the foundation for much of the materials on language, culture, and immigration status used in this chapter. *http://www.centerforpublicpolicy.org/index.php?s=13877*

- Susan F. Martin (2011) *A Nation of Immigrants*. (New York: Cambridge University Press). Professor Martin describes the history and features of three models of immigration and how those models have informed debate and policy around immigration from colonial America to the present.
- Boye Lafayette De Mente (1996) "NTC's Dictionary of Mexican Cultural Code Words." (Chicago: NTC Publishing Group). Mr. De Mente's dictionary entries illustrate the complicated interplay between language and culture.

Chapter 10

Labor Trafficking

Steve Weller
Center for Public Policy Studies

John A. Martin
Center for Public Policy Studies

I. Chapter Overview

As concern about human trafficking has grown, attention has been focused more on sex trafficking than labor trafficking although the statistics suggest that labor trafficking is more prevalent. One contributing factor to that disconnect is that labor trafficking is very difficult to identify using current justice system-based approaches, and as a result courts and other justice system organizations often are unaware of the presence of labor trafficking victims in their caseloads. Unlike sex trafficking victims, labor trafficking victims are typically engaged in work that is legal, so they are less likely to come to the attention of the courts as criminal defendants. Further, as the work itself is legal, the existence of trafficking is unlikely to be uncovered unless a victim is willing to come forward to complain and a government official is willing to take action based on the complaint.

The purposes of this chapter are to:

- help judges and court practitioners identify how labor trafficking might appear in criminal, civil, family, juvenile, dependency, probate, municipal ordinance, and other types of cases;
- help judges and court practitioners identify how labor trafficking might appear in other types of forums such as safety, labor, health, licensing, employment and other administrative and regulatory boards and commissions, and how the courts can coordinate with the work of those forums;
- identify possible remedies that labor trafficking victims might have against their traffickers;
- discuss what steps the courts can take to assist and protect participants in court whom the judge has reason to suspect may be labor trafficking victims; and
- identify the types of services that labor trafficking victims might require, including immediate and long-term housing, trauma-informed care, and sustainable jobs, and what the courts can do to assist victims in accessing those services.

The remainder of this chapter contains the following sections:

- a description of the legal rights and protections of labor trafficking victims;
- a review of the characteristics of a labor trafficking-involved case;
- a discussion of judicial strategies for identifying and assisting labor trafficking victims; and
- links to additional tools and resources.

II. Legal Rights and Protections of Labor Trafficking Victims

Definition of Labor Trafficking

The Trafficking Victims Protection Act of 2000 defines labor trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force or fraud or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery."

Federal and State Laws Providing Rights to Labor Trafficking Victims

There are a variety of federal and state laws that provide rights and remedies for U.S. citizen and immigrant labor trafficking victims. The federal laws include the following:

- The Trafficking Victims Protection Act of 2000 (TVPA 2000) – This Act is directly aimed at providing remedies for human trafficking victims. TVPA 2000 provides a definition of trafficking in persons, defines what constitutes a "severe form of trafficking," makes trafficking in persons a federal crime, provides relief from deportation for immigrants who are victims of a severe form of trafficking through the T visa, and provides that trafficking victims be treated as refugees regarding eligibility for federally-funded services. With regard to labor trafficking, it defines debt bondage as the pledge of personal services as security for a debt where the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of the services is not limited and defined. The requirements for a T visa are discussed in *Chapter 3* of this Guide.
- Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) – The 2008 Act relaxes the T visa requirement of assisting law enforcement in the prosecution of a trafficker for victims facing a present danger of retaliation or suffering physical or psychological trauma, allows United States Citizenship and Immigration Services (USCIS) to consider a possible waiver of disqualification for adjustment of status due to crimes involving moral turpitude committed by a trafficking victim as an incident to the trafficking, requires that holders of visas as diplomatic domestic help workers be provided written contracts as a condition of receiving the visa, and expands the authority of Immigration and Customs Enforcement (ICE) to grant continued presence.

- Fair Labor Standards Act (FLSA) – This Act regulates minimum wage, maximum hours, and overtime requirements. Domestic workers who live in the household are excluded from the protections, and other domestic workers are excluded from overtime provisions. It also regulates "oppressive child labor", which it defines as any employment of a child under 16 years of age by someone other than a parent or guardian, or employment of a child between the ages of 16 and 18 years in an occupation that is determined by the Secretary of Labor to be hazardous or

detrimental to the health and well-being of the child. It gives the employee a right of action for damages for unpaid wages owed due to minimum wage or overtime requirements.

- **Occupational Safety and Health Act (OSHA) –** The OSHA provides for the development and enforcement of occupational health and safety standards by the United States Department of Labor. Individuals who employ people for ordinary household tasks are excluded from the requirements of OSHA. Any rights of employees provided by OSHA are in addition to employee rights under common law or state laws.
- **Title VII 42 U.S.C. 2000e (Title VII) –** This Act prohibits employment discrimination based on race, color, religion, sex, or national origin and sexual harassment in the workplace. It also protects workers who participate in proceedings to enforce rights under the Act. It applies to employers with 15 employees or more.
- **National Labor Relations Act (NLRA) –** This Act provides for the right of workers to organize, bargain, and strike collectively. It excludes domestic workers.
- **New York State Domestic Worker Bill of Rights and California Domestic Worker Bill of Rights –** These Acts provide for overtime benefits for domestic workers who work over a specified number of hours per day or week.
- **California Supply Chain Transparency Act of 2010 –** This Act applies to retail sellers and manufacturers doing business in California with annual gross worldwide sales of $100 million or more. It requires each such business to disclose and post on its internet website the extent to which it has undertaken certain specified efforts to eradicate slavery and human trafficking from its supply chain. Violations are enforceable solely by an action for injunctive relief by the state Attorney General.
- **State laws –** There are common law and statutory rights in all states for employees under contract law, health and safety laws, and personal injury laws that could be available to labor trafficking victims. These laws may provide a victim of human trafficking with a right to bring a civil action for actual, compensatory, and punitive damages and injunctive relief against a trafficker.

Special Legal Issues Regarding Immigrant Labor Trafficking Victims

Immigrant labor trafficking victims face some special problems, including:

- threat of deportation;
- withheld passports, social security, and other documents;
- threats of arrest;
- brought to US under false promises;
- fear of the unknown;
- fear of reprisals against family members, including members remaining in the country or region trafficked from; and,
- numerous culture- and language-based barriers to obtaining help to exit trafficking settings.

Temporary work visas

There are a variety of provisions in federal immigration law that provide an employer with the means to bring temporary immigrant labor into the United States. Two of the most common non-immigrant work visas for temporary or seasonal labor are the H2A and H2B visas.[1] The H2A visa covers temporary or seasonal agricultural workers, and the H2B visa covers temporary non-agricultural workers. Temporary work visas are employer-specific, so the visa holder becomes illegal once he or she stops working for the employer listed on the visa. They are also time limited, either under the law or as specified in the visa, and overstaying the time limit also makes the holder illegally present in the United States. As a result, these visas can provide a trafficker with a means for coercion of a victim by threatening to take action to endanger a victim's immigration status if the victim refuses to comply with the demands of the trafficker.

Refugees or asylees[2]

Refugees and asylees are non-immigrants who have been granted the right to enter or remain in the United States because of a well founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion if returned to the home country or country of last permanent residence. The right to stay is time limited, although the individual may apply for lawful permanent resident status after a set period of time.

Often refugees from a particular country are settled in communities run by approved sponsoring agencies or organizations under the overall supervision of the Office of Refugee Resettlement of the U.S. Department of Health and Human Services. Individuals in these refugee resettlement communities can be vulnerable to becoming victims of human trafficking, either by people within the community or outsiders.

Refugees may be particularly vulnerable to trafficking due to a combination of low economic status, culture, language difficulties, and the risks inherent in their immigration status. Refugee communities may be especially susceptible to labor trafficking, as federal immigration law can create some ways to facilitate trafficking. Immigration law provides a trafficker the means to bring people through temporary work non-immigrant visas, and most particularly the H2A visa for temporary or seasonal agricultural workers and the H2B visa for temporary non-agricultural workers. Some entire refugee communities come in on these visas. Temporary work visas are employer-specific, so the visa holder becomes illegal once he or she stops working for the employer listed on the visa. This may provide the employer with a means to control the refugee workers.

[1] R 8 U.S.C 1101(a)(15)(H); 8 U.S.C. 1184; 8 CFR §214.2(h)(4)(iii)(A) and (C).

[2] 8 U.S.C 1101(a)(42), 1157, 1158.

Immigration Consequences of a Criminal Conviction

Any non-citizen, including temporary visa holders, lawful permanent residents, and undocumented immigrants are at risk of being deported for a variety of criminal convictions. A trafficker may force victims to commit crimes that potentially make the victim deportable. The threat of deportation may apply both to lawful and unlawful immigrants. Further, arrest and deportation can occur quickly, before the possibility that the individual is a trafficking victim can be investigated, so the fear of being deported is real even where the immigrant may have a valid defense to deportation. Further, some criminal behavior could also make the trafficking victim ineligible for discretionary immigration benefits requiring a showing of admissibility or good moral character, including adjustment of status and naturalization.

In many cases, ambiguities in immigration law may make the threat of deportation difficult for a victim to determine, so the mere possibility may provide a trafficker with a means to exert continuing control over a non-citizen victim. The immigration consequences of a particular criminal conviction are sometimes difficult to determine, due to:

- ambiguities created by unclear definitions in Federal immigration law of certain crimes that carry immigration consequences;
- the lack of any definitive list of crimes included under each category of crimes that carry immigration consequences under Federal immigration law;
- differences among the Federal Circuit Courts in interpreting which crimes carry immigration consequences under Federal immigration law;
- the constantly changing interpretation of Federal immigration law as case law develops;
- state criminal statutes that include multiple crimes in a single section, some of which carry immigration consequences and some of which do not, so court documents other than the record of conviction may have to be considered to determine the actual elements of the crime for which the individual was convicted;
- the level of discretion that can be exercised by immigration court judges in determining removability of an immigrant and by officers of the United States Citizenship and Immigration Services (USCIS) in determining eligibility for naturalization and other discretionary immigration benefits; and
- the possibility that an alien with a criminal conviction may not necessarily come under scrutiny or be prosecuted by Immigration and Customs Enforcement (ICE).

These difficulties make it difficult for individuals who are experiencing the stress of victimization by a human trafficker to understand and evaluate their immigration rights when threatened by a trafficker. Further, they make it risky for judges, attorneys, and human service providers to think they fully understand the immigration rights of non-citizen trafficking victims merely from their criminal records.

A further risk for undocumented workers is that ICE has conducted raids, sometimes acting on tips from the traffickers themselves, and prosecuted trafficking victims despite being aware of the trafficking claims. This further serves to intimidate trafficking victims and aid traffickers in controlling their victims. In addition, it may result in the deportation of witnesses against the trafficker.

III. Characteristics of the Labor Trafficking-Involved Case

Case Types that may Have Labor Trafficking Issues

A wide variety of criminal, civil, juvenile, and family cases may involve labor trafficking situations. Figure 1 lists how different case types may have trafficking connections.

Figure 1: Types of Cases that may Contain Labor Trafficking Issues

Case Examples	Possible Labor Trafficking Connections
Crimes Against Persons Involving Force, Fraud, or Coercion	■ All of these crimes may be prosecuted as surrogates for a human trafficking charge. ■ A trafficking victim may be coerced into recruiting other victims and thus be subject to a charge of engaging in human trafficking. ■ Gangs may coerce members into criminal activity.
Property Crimes ■ Shoplifting ■ Criminal trespass	■ A trafficker may coerce a victim into stealing in order to provide extra income for the trafficker.
Drug Crimes	■ A trafficker may require victims to engage in drug sales in addition to performing other services. ■ A trafficker may use drugs to control a victim.
Traffic Violations	■ Traffickers may require a victim to drive for work, even if the victim does not have a driver's license.
DUI	■ Traffickers have been known to force their victims to drive, if both have been consuming alcohol, so that the victim gets the ticket if they are stopped.
County or Municipal Ordinance Violations	■ Code violations that involve overcrowded sleeping areas in business locations for employees may indicate labor trafficking or in residential settings may indicate domestic labor trafficking. ■ Unlicensed peddling or other street sales, or door-to-door sales may be conducted as a part of a labor trafficking enterprise
Bail Hearings	■ The person seeking release of a young female may be a much older male.
Probable Cause Hearings	■ A trafficking victim may commit crimes under coercion by a trafficker, particularly drug sales, drug possession, theft, and recruiting other victims. ■ A victim-defendant may engage in criminal activities to escape the trafficker or overcome abuse.
Arrest Warrants	■ Arrest warrants in domestic violence cases may involve a trafficking situation.
Guardianship and Conservatorship	■ Traffickers have been known to seek guardianship over minor victims. ■ Family members may be engaged in trafficking other family members.
Juvenile Dependency	■ If the person seeking to be a guardian or foster parent of a young female is a much older male, the person may be a trafficker. ■ Family members may be engaged in trafficking other family members. ■ The abuse may be a form of control by a parent or guardian.
Divorce and Custody	■ Some parents or extended family members may be trafficking their children or other family members, either for sex or labor.
Civil Cases	■ Wage disputes or suits for debt collection may indicate labor trafficking.

In addition, labor trafficking issues may arise in a variety of types of administrative forums, such as safety, labor, health, licensing, employment and other administrative and regulatory boards and commissions

Health and Safety Claims by Labor Trafficking Victims

In addition to the above, the following health and safety claims related to a workplace may be an indicator of a labor trafficking situation:

- workplace-induced physical injuries, such as mouth and teeth injuries, bruises and broken bones, head wounds, stab and puncture wounds, and malnutrition;
- workplace-induced exposure to infectious and communicable diseases;
- workplace-induced exposure to environmental hazards, such as exposure to chemicals, other irritants and carcinogens contributing to acute and chronic respiratory disease, poisoning, cancer, and skin ailments; and
- workplace-induced mental health problems, including post-traumatic stress disorder, feelings of low self-esteem, anxiety, depression, isolation, shame, self-blame, hopelessness and resignation.

Locales for Labor Trafficking

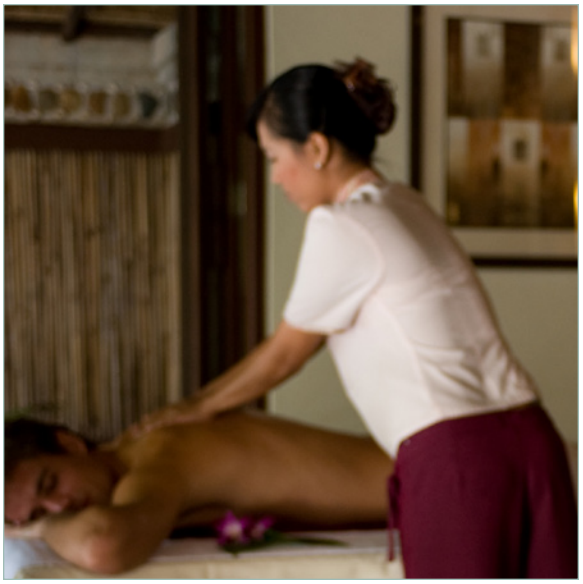
The following are examples of businesses where labor trafficking has been found frequently in the past. Unskilled immigrant labor may be particularly vulnerable to being trafficked.

- **Traveling door-to-door sales crews –** These sales crews typically sell magazines, candy, or other small items, purportedly to raise money for scholarships or to send high school or college students to some camp or special event. They may be bussed from place to place by the trafficker and may not really know where they are. They may be brought *en masse* to a neighborhood, canvas all the houses, and then get driven away together.
- **Domestic labor –** This category of business includes live-in household help such as maids, nannies, cooks, gardeners, and the like. As noted earlier in this chapter, this type of employment is excluded from coverage by most wage and hour regulations.
- **Agricultural labor –** Groups of workers to work in fields picking crops may be brought in as refugees or on temporary work visas and live on the farms in dormitory-like accommodations. The employer may hold their passports. As they live in rural areas, they are typically isolated from local residents and may even have food and other necessities supplied by the employer. This type of employment is typically seasonal in any one location, so workers move from place to place to follow the harvest.

- **Food processing factories –** Some large food processing plants, such as for chickens, hogs, and cattle, located in rural areas may make extensive use of immigrant labor. The employer may hold the passports of the workers. The extent to which the workers are integrated into local communities can vary.
- **Construction and landscaping –** Construction crews and work crews to install sprinkler systems and do other landscaping tasks may make use of immigrant labor and can be a source of trafficked labor.
- **Restaurants –** Restaurants may be a source of family labor trafficking, particularly where undocumented immigrant family members are working for a business owned by family members who are legally present in the United States.
- **Cantinas and bars –** Young women may work in these establishments as hostesses or waitresses whose job is to encourage patrons to buy drinks. They may also serve as dance partners. Sex trafficking may occur in these establishments as well.
- **Nail salons, spas, massage parlors, and escort services –** These are typically licensed by some state or local administrative board, but that does not preclude the possibility that the workers are trafficked labor. Again, sex trafficking may occur in these establishments as well.
- **Peddling or begging rings –** Gangs and other traffickers may force victims to engage in street begging or peddling, some of which may be illegal.

Forms of Coercion for Labor Trafficking

- **Debt bondage.** Workers may be charged exorbitant fees and payroll deductions for room, board, and work-related tools, with payroll deductions for constantly accruing interest. In addition, wages may be withheld to pay interest, with no possibility of reducing the principal owed. Employees typically will not be allowed to have bank accounts.
- **Food withheld –** This may be done as punishment for poor performance on the job or raising complaints to the employer or fellow employees.
- **Verbal and physical abuse –** This also may be done as punishment or to set an example to other employees.
- **Overcrowded living conditions in dormitory settings –** This may come to light as part of an ordinance violation case.
- **Workers kept under surveillance and guard –** The movement of workers may be monitored, with workers not free to come and go as they please.
- **Frequent moving of location –** As a result of constantly being moved, workers do not know what town they are in and make no connections to any community other than with the employer. Workers may be brought to a location in a group from out of state.



- **Isolation –** The employer may prevent employees from communicating with family or friends, refuse to allow employees to learn English, of take other steps to assure that employees are cut off from the outside world.
- **Employer holds passports –** For immigrant workers, the employer may hold their passports and visa documents as a means of control.
- **Retaliation –** The employer may use retaliatory firing or eviction from employer housing to set an example for other employees who complain or challenge the employer. The employer may report employees who are undocumented immigrants or who try to move employers in violation of their work visas to ICE for deportation proceedings.
- **Deceit –** Victims are given false information about the potential consequences of leaving, including that no one cares about them or will be willing to help them, or the potential benefits and rewards of remaining a victim.

IV. Court Strategies for Identifying and Assisting Labor Trafficking Victims

There is a need for alignment between the fundamental values of courts and the needs of human trafficking victims. The role of the courts may be restricted by some fundamental values that they are duty-bound to fulfill, including:

- being independent, fair, ethical, and impartial;
- upholding the rule of law and protecting the integrity of the judicial process;
- being accessible, affordable, timely, and understandable;
- promoting the effective administration of justice; and
- treating all people with appropriate understanding and respect.

The effects of those values on the ability of the courts to help combat human trafficking may be important to defining the roles that other parts of the justice system must play in that effort if the effort is to have any chance of succeeding. These values may be especially important to defining the roles that service providers must play in combating human trafficking in refugee communities, and particularly trafficking of children.

In addition, as discussed in detail in *Chapter 6*, the ABA Code of Judicial Ethics provides that a judge shall not investigate facts in a case independently and may consider only factual information

that is part of the court record or facts that may be judicially noticed. The prohibition extends to information available through all mediums, including electronic. This prohibition may inhibit a judge's ability to assist a trafficking victim by limiting the judge's ability to conduct an assessment of a possible victim appearing in court as a witness or defendant for evidence of victimization.

In investigating the possibility that trafficking may have occurred, the judge may also end up identifying individuals who should be investigated for engaging in trafficking. This last possibility might apply in cases where a victim may have been coerced by a trafficker into committing a crime but the trafficking activity is not raised as an issue in the case. In those situations, by investigating the possibility that a person may be a victim of trafficking, the judge may be violating the duty to treat the potential trafficker without bias by providing evidence that may later be of use in the prosecution of the trafficker.

Evidence at trial may be problematic in a human trafficking case. Trafficking victims may be reluctant to testify against their traffickers, due on the one hand to fear of reprisal or on the other hand to feelings of attachment to the trafficker and a belief that the trafficker has feelings for the victim. Further, trafficking victims may often suffer from trauma that makes them uncooperative and unsympathetic witnesses. Finally, the victims may face barriers to testifying in court due to language, culture, and immigration status.

Opportunities for Judges and Court Personnel to Investigate Trafficking Issues

Within the above context, there are still strategies available to judges and court practitioners as part of the trial process to take steps to identify the possibility that trafficking issues are embedded in a case before them. Most importantly, judges may be able to use screening tools and analytical methods for uncovering possible labor trafficking issues in the context of decisions requiring analysis of an individual's criminal record, employment status, financial capability, residence, living conditions, and ties to the community. Figure 2 lists proceedings where that type of information might be relevant for judges and court practitioners.

Figure 2: Proceedings Where Trafficking Issues may be Investigated

Proceeding	Possible Trafficking Connections
Issuance of arrest warrant	■ Arrest warrants in domestic violence cases may involve a trafficking situation. ■ Arrest warrants for theft, trespass, illegal peddling, or similar activities may indicate a labor trafficking activity.
Probable cause hearing	■ In determining the existence of probable cause that a crime has been committed by an alleged defendant, a judge may uncover the possibility that the crime was committed under coercion by a trafficker, or committed by a trafficking victim to escape the trafficker or overcome abuse.
Bail and release hearing	■ In deciding whether to release a defendant, a judge can investigate the person's connections to the community, the stability of living conditions, financial and employment situation, the likelihood that the defendant will flee or be moved from the community, and other factors relevant to the release or hold decision. Any of these may indicate that the defendant is being controlled by a trafficker.
Plea Colloquy	■ The judge may uncover possible trafficking issues in assuring that a plea was knowingly and willingly entered.
Sentencing and determination of mitigating factors and probation conditions	■ With regard to possible victim-defendants, investigating mitigating factors may uncover that the defendant engaged in the criminal activity due to the coercion of a trafficker or the trauma of victimization.
Probation violation hearing	■ Reasons for violating a condition of probation may provide an indication of trafficking.
Removal of child from a home	■ Evidence regarding the conditions in the home may provide an indication of trafficking.
Child custody or placement decision	■ Evidence of the suitability of a parent for custody or the suitability of extended family members for placement of a dependent child may indicate the possibility of family trafficking.
Juvenile diversion decision	■ The decision to place a juvenile into a diversion program may be based on trafficking-involved factors.
Juvenile detention decision	■ The decision whether or not to place a juvenile into detention may be based on trafficking-involved factors, particularly if there is a need to separate the juvenile from a trafficker or evidence that delinquent acts may have been coerced by a trafficker.
Enforcement of settlement as a court order	■ The judge may be able to investigate possible coercion in determining whether to enforce a proposed settlement that looks unusually one-sided.

In any of the above processes, the judge may be able to make use of human trafficking screening tools, or the judge may be able to request that trafficking be investigated by other designated court personnel, the prosecutor; the defense attorney, a probation officer, a pretrial release program; a child protection agency; a juvenile diversion program; a human services agency a GAL, or a CASA volunteer, depending on the type of proceeding.

Indicators of Possible Labor Trafficking

Many trafficking victims suffer serious health issues, including:

- signs of physical abuse, such as bruises, broken bones, burns, and scarring;
- chronic back, visual, or hearing problems from work in agriculture, construction, or manufacturing;
- skin or respiratory problems caused by exposure to agricultural or other chemicals;
- infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation;
- untreated chronic illnesses, such as diabetes or cardiovascular disease; or
- reproductive health problems, including sexually-transmitted diseases, urinary tract infections, pelvic pain and injuries from sexual assault, or forced abortions.

If any of the following personal, work, or living conditions regarding a defendant, victim, or witness is evidenced during a trial, that may indicate that the individual is a victim of human trafficking:

- is not allowed to speak to anyone alone;
- is not being paid, is paid very little, or has pay applied directly to reducing debt;
- cannot leave his or her job;
- cannot come and go freely;
- lives in the workplace or with many others in a confined area;
- has to ask permission to eat/sleep/go to the bathroom;
- has locks on doors/windows that he or she cannot unlock; or
- does not have access to identification or travel documents.

What Can the Court Do if Labor Trafficking is Suspected?

If the victims are not parties to a case

Labor trafficking cases are difficult to identify in court, as in many cases the victims have not engaged in any criminal behavior and the trafficker is in court for a matter unrelated to the offense of trafficking, so any evidence that trafficking is occurring may be peripheral to the matter at issue before the judge. Where a possible trafficking situation exists but the victims are not part of the legal proceedings or no victims have been identified, the judge will not have any direct contact with the victims. It is not clear

whether a judge can do anything to assist victims directly in that circumstance, as even raising the possibility that human trafficking is involved may affect the court case and compromise the judge's neutrality.

Judges still may have a role as justice system and community leaders to work with other court practitioners and service organizations in the community to develop a capacity to identify and assist labor trafficking victims, including developing protocols for coordinating the efforts of the courts, law enforcement, prosecution, and administrative boards and agencies that may come across labor trafficking situations as part of their work. One way that this may be accomplished is in the context of a local anti-trafficking task force. *Chapter 6* of this Guide discusses the ethical considerations facing judges in participating on such a task force.

If the victim is in court as a criminal defendant

When a trafficking victim is charged with criminal behavior committed as a result of the victimization, either against the trafficker of coerced by the trafficker, there may be options for a judge to protect the victim or mitigate the consequences of the criminal behavior. Where a crime was committed by a victim due to coercion by a trafficker, coercion by the trafficker may have the following legal consequences for a victim-defendant's criminal liability for his or her acts.

- The coercion may negate the requisite criminal intent, so an essential element of the crime is missing and the offender cannot be convicted.
- Even if all elements of the crime are present under state law so that the offender may be found guilty of the criminal charge, the coercion may justify absolving the offender in whole or in part from the consequences of the behavior.
- The coercion may provide grounds for vacating or expunging the conviction at a later date.

The United States Supreme Court has made it clear in a number of opinions that the burden of proof regarding the consequences of coercion on criminal liability depends on whether the coercion affects the presence of an essential element of the crime as defined by state law.

- The prosecution has the burden of proving beyond a reasonable doubt every element of the crime charged. If the coercion is such that it negates the requisite criminal intent for a crime, once the issue of coercion has been raised, the burden of disproving coercion is placed on the prosecution. This is the case even if state law labels the defense an "affirmative defense." The only burden placed on the defendant is the burden of producing some evidence in order to create a factual issue as to the lack of criminal intent due to coercion. Once this is done, the state then has the burden of proving beyond a reasonable doubt the absence of coercion.

- If the coercion does not rise to the level of negating criminal intent, so that the offender has committed all the elements of the offense but is raising coercion as an affirmative defense in order to avoid the legal consequences of the offense, the burden of proving this defense is on the defendant. The required burden of proof of this affirmative defense may be proof by clear and convincing evidence or by a preponderance of the evidence, depending on state law, but not proof beyond a reasonable doubt.

Prior to conviction, some possible options that may be available to a judge where the commission of the crime may have been influenced by human trafficking victimization include the following:

- refusing to accept a guilty plea where the prosecution's proof may indicate that a crime was committed under coercion due to victimization so that criminal intent or another essential element of the crime is negated;
- continuing the case to allow the defendant to enter proof that a crime was committed as a result of victimization so that criminal intent or another essential element of the crime is negated, if the prosecution's case does not provide proof; and
- continuing a case to allow the defendant to raise an affirmative defense if the victimization doesn't negate an essential element of the crime.

Post conviction, if the victim-defendant is convicted of the crime, the judge may consider victimization as a mitigating factor in determining a sentence.

The judge should be aware that if an immigrant defendant pleads guilty but asks to be absolved in whole or part from the consequences of the behavior, the guilty plea constitutes a conviction under Federal immigration law. The conviction may make the defendant deportable even if the state court judge determines that the defendant should not be punished for the crime due to mitigating circumstances stemming from the effects of being a human trafficking victim.

If the victim is a juvenile in a dependency or delinquency case

A juvenile judge may have the option to treat a delinquency case as a dependency case, if it appears that the delinquent behavior was committed due to coercion by a trafficker or was the result of victimization. Some states have options for certain juveniles charged with prostitution to be classified as sexually exploited juveniles and sent to diversion programs rather than being convicted of prostitution.

A guilty plea by a juvenile trafficking victim charged with a crime coupled with a placement with a family member may give the trafficker more control over the victim. The judge may want to recess or continue a trial if a trafficking situation appears to be present, to determine what steps, if any, need to be taken to protect a possible trafficking victim. There may be a need for a protocol with prosecutors, defense attorneys, and guardians *ad litem* to identify a potential trafficking victim before the victim has to testify in court.

V. Links to Resources

The following are links to the web sites of the six members of the Collaborative: the Center for Public Policy Studies, the Center for Court Innovation, The National Judicial College, Legal Momentum, the National Association of Women Judges, and the National Council for Juvenile and Family Court Judges.

- *http://www.centerforpublicpolicy.org*
- *http://www.courtinnovation.org*
- *http://www.judges.org*
- *http://www.legalmomentum.org*
- *http://www.nawj.org*
- *http://www.ncjfcj.org*

Other Organizations and Resources

The following are links to web sites of other organizations that have programs and resources on justice system responses to issues of human trafficking.

- *http://www.polarisproject.org*
- *http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us*

The Polaris Project is a non-profit organization aimed at providing information, technical assistance, training, and services to combat human trafficking and modern day slavery.

- *http://www.ilrc.org*

The Immigrant Legal Resource Center provides research, training and technical assistance on immigration law and policy.

- *http://www.nilc.org/access-to-bens.html*

This web site of the National Immigration Law Center provides more detailed information about immigrant eligibility for benefits.

In addition, the following resources may be of interest.

- Lawyer's Manual on Human Trafficking (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011)
- Polaris Project, *In Their Shoes: Understanding Victims' Mindsets and Common Barriers to Victim Identification* 2-3 (2010), located at http://tinyurl.com/HT-Resources (visited Feb. 4, 2014)
- Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941 (Spring 2007)

Chapter 11

Human Trafficking Educational Resources for Judges and Court Practitioners

William J. Brunson
The National Judicial College

Steven Weller
Center for Public Policy Studies

Marie Komisar
National Association of Women Judges

John A. Martin
Center for Public Policy Studies

I. Purpose of Educational Programs on Human Trafficking

Courts need to increase awareness about the dynamics involved in human trafficking and how these dynamics might alter case processing and the infrastructure needed to support more effective case processing. Increasing awareness about human trafficking should include clarifying:

- the types of commercial sex and labor trafficking and their prevalence nationally and in particular jurisdictions;
- the characteristics, dynamics, and individual and societal consequences of human trafficking;
- approaches to addressing human trafficking and the implications of various approaches on the courts and the work of judges and court personnel;
- the needs of human trafficking victims and how those needs are similar to and differ from the needs of other victims typically seen in courts;
- how to link trafficking victims with appropriate services;
- how judicial ethics might affect trafficking-involved case processing;
- the effective use of specialty courts, dockets, and other court-focused approaches to trafficking-involved case processing;
- how to work with cases where human trafficking victims are also criminal defendants; and
- the infrastructure required to support effective court and justice system responses to human trafficking.

Recognition is growing that human trafficking, for both sex and labor, is a widespread problem in the United States. It is a crime that can be committed against both immigrants and United States citizens and against both children and adults. Human trafficking issues can arise in all types of cases, including felony, misdemeanor, juvenile, family, administrative, and civil.

All 50 states now have state statutes that address human trafficking, and the number of state prosecutions of traffickers is likely to increase as human trafficking task forces and local law enforcement agencies expand their efforts to combat all forms of trafficking. Judges and court practitioners need to know about these statutes. Further, as state human trafficking statutes are relatively new, prosecutors often prosecute crimes involving human trafficking under alternative statutes such as procuring prostitution, unlawful imprisonment, assault, and similar statutes. Judges and court practitioners need to know how to recognize when this type of case may involve a human trafficking victim.

This chapter discusses the education needs of judges and court practitioners to enable them to recognize when human trafficking may be occurring, especially in cases where the trafficker is prosecuted under a different statute, and what options they have to assist the victims. It includes the following sections:

- Purpose of Educational Programs on Human Trafficking;
- Key Contents of a General Course;
- Education Tools and Resources; and
- References and Links.

Identifying Trafficking Activity and Victims

The educational program should help judges and court practitioners identify the variety of settings in which human trafficking can occur, some of which are fairly obvious, but others of which may not be as readily recognized. This includes how human trafficking might appear in a variety of different criminal, civil, family, juvenile, dependency, probate, and other types of cases.

Judges and court practitioners should be aware of some unexpected settings that might involve trafficking, including the following:

- trafficking by family members;
- trafficking in refugee communities;
- trafficking associated with civic events that bring in large numbers of people from out of state, such as football games, bicycle and car races, conventions, etc.;
- DUI cases where a trafficker may have forced a victim to drive so the trafficker would not be the one arrested if stopped; and
- activities involving certain licensed businesses, such as massage parlors, nail salons, construction companies, agricultural companies, etc.

One issue for judges and court practitioners is when and how to use human trafficking screening tools and analytical methods for uncovering possible trafficking issues. In particular, judges and court practitioners may want to know how they can use such tools to analyze an individual's criminal record, employment status, financial capability, residence, living conditions, and ties to the community, such as:

- in minor crimes such as moving violations, thefts, etc., that might be committed by a trafficking victim; juvenile delinquency; child abuse and neglect; foster care review; family; debt collection; wage disputes; code violations;
- in bail and release decisions; sentencing; child placement decisions; juvenile diversion decisions; juvenile detention decisions; and
- for defendants charged with prostitution, drug use, and other types of crimes commonly associated with trafficking or requiring the prosecutor to provide the assessment in all cases involving those selected crimes.

Judges and court practitioners may need guidance on deciding who might administer human trafficking screening tools in those circumstances, including: judges themselves; other designated court personnel; prosecution; probation; pretrial release programs; child protection agencies; juvenile diversion programs; or human services agencies.

Assisting Trafficking Victims

The educational program should address possible strategies for judges and court practitioners in dealing with human trafficking victims. For example, judges have indicated that they need clarification concerning whether and in what circumstances they may take any of the following actions to protect possible human trafficking victims in cases before them:

- ensure that public defenders are effectively representing people who may be trafficking victims;
- ensure that prosecutors are taking into account the possibility that a defendant is a trafficking victim;
- appoint a guardian *ad litem* for a possible victim; and
- delay accepting a plea and indicate what other issues the judge wants to be considered, including asking the prosecutor and defense attorney to address specific questions.

A judge presiding over a case where human trafficking victims may be involved may have to decide what steps are appropriate to protect participants in the trial whom the judge has reason to suspect may be trafficking victims. Also, what steps can judges take without violating the code of judicial ethics? Judges have indicated that they need guidance on the following questions:

- What steps may judges take to promote the safety of a suspected trafficking victim?
- What questions may judges pose to prosecutors, defense counsel, or attorneys for a party to a case in open court?
- What questions may judges ask of a party, victim, witness, prosecutor, or defense attorney in chambers?
- Is it appropriate to meet with a party, victim, witness, prosecutor, or defense attorney privately in chambers?
- What questions may judges ask to reveal signs that the person may be a trafficking victim without giving rise to an appearance that the judge has already decided that the person is a trafficking victim?
- May a judge assist an unrepresented or self-represented party, victim, or witness who appears to be a trafficking victim?
- May a judge assist a person charged with a crime who might have a defense of coercion due to a trafficker's victimization?
- Is it appropriate for a judge to slow down the process in situations that may raise red flags, such as an older male posting bail for or seeking guardianship over a younger female? and
- May a judge take leadership to assure that all participants in the courtroom, including prosecutors, defense attorneys, and other court officers, have a common understanding of the role that the judge will play in handling cases involving issues of human trafficking?

In addition, judges and court practitioners face a variety of special problems that should be considered in developing any educational materials, best practice materials, and other materials to assist judges and justice system personnel, including the following.

- In high volume misdemeanor courts, the cases move quickly through the courtroom, so judges need some quick indicators to identify where trafficking issues may exist if the parties do not raise those issues.
- Trauma tools do not work for people who do not identify themselves as victims. The tools have to focus more on behaviors rather than feelings and be couched in street language. The assessment requires fact-based questions.
- It may be desirable to have a quick assessment tool for judges and a more detailed assessment tool for human service providers.
- If a possible victim is also a criminal defendant, judges need to recognize when information obtained in an assessment may not be privileged, so that the assessment may do more harm than good for the victim.
- The educational program may have to provide information on mental health services, as they likely will be involved in child in need of services cases.

Special Concerns Regarding Labor Trafficking

With State Justice Institute grant sponsorship, The National Association of Women Judges (NAWJ) has organized and provided full-day programs devoted to human trafficking at its 2013 Mid-Year Conference, its 2013 Annual Meeting, and its 2014 Mid-Year Conference. The 2014 Mid-Year Conference was specifically devoted to issues of access to justice for labor trafficking victims and identified a list of key topics that should be a part of any education session addressing what state judges and court personnel need to know to identify and deal with labor trafficking issues that arise in state court cases.

The NAWJ conferences highlighted the fact that labor trafficking is very difficult to identify using current justice system-based approaches, and as a result, courts and other justice system organizations often are unaware of the presence of labor trafficking victims in their caseloads. Further, labor trafficking is both exceedingly profitable and poses relatively little risk to the consumers of the benefits of trafficking, and consequently efforts to address trafficking must somehow work to minimize the profits and increase the risks to those who gain from trafficking.

The NAWJ sessions highlighted the following key questions that should be addressed in education sessions for judges and court personnel on labor trafficking.

- What are the most important access to justice challenges we face in labor trafficking?
- What are the types of forums where labor trafficking-involved cases might be present? How do we identify labor trafficking-involved cases in these forums? Can our efforts be improved?
- What are the potential overlaps between what administrative boards and commissions do and what the state and federal courts do? Can and should there be more coordination? How might coordination occur?
- What are the features of effective or more promising tools for addressing labor trafficking? How can these tools be improved?
- How can we improve access to justice for labor trafficking victims?

Building on those questions, the following is a list of key topics that a labor trafficking program should address to meet the needs of state judges and justice system personnel.

- types, characteristics, and extent of labor trafficking;
- assumptions and features of various approaches for addressing labor trafficking, including criminal law, labor, human rights and public health approaches to human trafficking;
- scope and features of current U.S. Government efforts to address labor trafficking;
- special issues for foreign labor trafficking victims;
- access to justice-related challenges related to labor trafficking and how access to justice for labor trafficking victims can be improved;
- other types of forums where labor trafficking issues may arise, such as safety, labor, health, licensing, employment and other administrative and regulatory boards and commissions, and how the courts can coordinate with the work of those forums;
- the most effective established and emerging tools, techniques, methods, strategies, etc., for addressing labor trafficking, such as supply chain legislation and enforcement;
- the most important and effective established and emerging tools for protecting and meeting the needs of labor trafficking victims; and
- additional tools, strategies, approaches, etc., that are needed to better address labor trafficking.

In addition, the educational program could encourage the participants to consider the following questions in workshop sessions to start thinking about local action to address labor trafficking.

- It appears that educators have focused on sex trafficking more heavily than labor trafficking although the statistics suggest that labor trafficking is a much bigger problem. Why might that be and more importantly, how might that perception affect a labor trafficking victim's access to justice?
- Large scale labor trafficking cases such as those involving migrant workers or factory workers often involve businesses that are an integral part of a region's economic base. Are there political or other factors that might affect whether labor trafficking cases are vigorously investigated and prosecuted? How might these barriers be overcome?
- Victims of human trafficking are in need of a variety of services such as immediate and long-term housing, trauma-informed care, and sustainable jobs. What particular services are most needed by labor trafficking victims, and how do they access these services?
- What civil remedies against their trafficker(s) do victims of labor trafficking have in state court under existing federal or state law? How can the effectiveness of these remedies at getting compensation or damages for victims be enhanced?

Education Strategies

Some strategies for educating judges and court practitioners on ways to address human trafficking issues include the following.

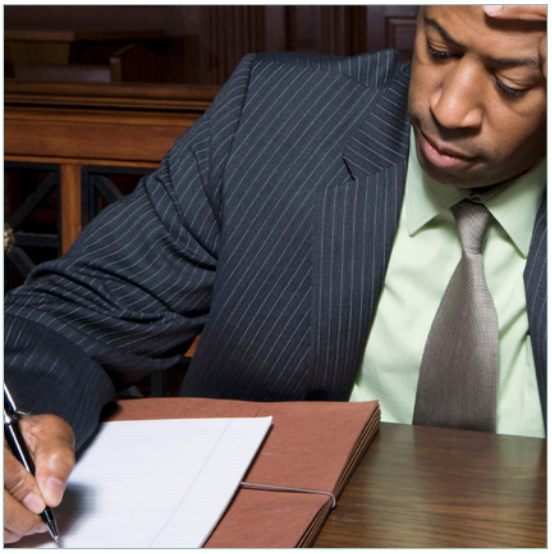
- Include stories and graphic descriptions.
- Develop separate educational sessions for each level of court.
- Education might need to be jurisdiction-based, as the ways in which trafficking appears in the courts may differ in different parts of a state.
- Include consideration of system-wide issues. For example, in juvenile cases there is a need to coordinate the hand-off of a case from the jurisdiction where guilt is adjudicated to the jurisdiction where the disposition is determined and monitored.
- It may be desirable to have separate sessions for judges, court personnel, public defenders, and prosecutors.
- Education for judges and court practitioners should include what they can do for victims, such as referral to services or placements, and what impediments may limit a judge's options.
- Education for judges should address the relationships between the courts and the administrative agencies that interface with the courts, such as Departments of Licensing, Labor, Secretary of State, and Revenue.
- Educational entities should build local capacity to conduct educational programs on human trafficking.

It might be most effective for a state to work through statewide conferences and educational programs, which may be held for different levels of courts in the state. On the other hand, a state might want to present a stand-alone statewide program for all levels of courts in the state.

For example, the following are recommended components for a general curriculum for judges. This is a starting point for developing courses tailored to the specific needs of individual states.

- Component 1 – This component is an overview of the forms, dynamics, and approaches to addressing human trafficking. The session presents a framework for understanding the causes and effects of human trafficking. The last section of this chapter contains links to a set of information cards produced by the Human Trafficking and the State Courts Collaborative that could serve as the basis for this session, in particular the following cards:
  - Definitions, Forms, and Dynamics of Human Trafficking.
  - Approaches to Addressing Human Trafficking.
  - Characteristics of a State Court-Focused Approach to Addressing Human Trafficking.
  - Human Trafficking Assessment and Measurement Framework.
  - Infrastructure Required to Support Courts and Justice Partners in Human Trafficking Cases.

- **Component 2** – This component covers issues in processing human trafficking cases and assisting victims. This part of the educational program would be tailored to the specific caseloads of the different levels of courts represented in the educational programs and could include breakout sessions by type of court. The content could make use of scenarios developed through interviews of judges from each level of court. This session would include discussions of:
  - types of trafficking situations;
  - strategies for identifying victims;
  - options for assisting victims;
  - safety for victims;
  - victims as criminal defendants;
  - special concerns for immigrant victims;
  - special concerns for juvenile victims; and
  - ethical issues.



II. Contents of a General Course

The National Judicial College (NJC) and its partners drafted the following curriculum for state trial judges who will confront these cases. By the publication date of this curriculum, the collaborative will have pilot tested the curriculum in at least seven states. The collaborative also will have taught judges via webcast. The courses employ group exercises, problem-solving scenarios and cases studies. Participants engage in learning through the application of adult learning principles to assist them in understanding the intricacies of the crime of human trafficking.

This curriculum will assist trial judges in understanding the Trafficking Victims Protection Act (TVPA), human trafficking in the U.S., state laws regarding human trafficking, perpetrators and victims, immigration issues, penalties, sentencing issues, restitution and forfeiture. With its partners, NJC developed the curriculum to be presented in three to five hours, depending upon the faculty member's pace. Faculty members may customize the material for other timeframes. The curriculum provides a variety of interactive teaching methods to promote higher retention rates. Faculty members can review the resource materials included with the curriculum to give them additional background and information. NJC designed the curriculum for use at a national conference, but a presenter can modify it for state or local judicial conferences. Indeed, as part of the materials on the NJC's Cloud, PowerPoint slides available from a number of previous state-specific presentations are available.

Overall Learning Objectives

NJC designed this curriculum as an introductory overview of human trafficking. Depending upon the methods and breadth of presentation, it will take approximately three to five hours to present in its entirety. At the conclusion of the entire curriculum, participants should be able to:

- define "human trafficking;"
- analyze human trafficking statutes;
- apply human trafficking statutes to case studies;
- identify the prevalence of the crime in the U.S.;
- differentiate the ways in which domestic victims are trafficked versus international victims;
- identify state statutory schemes for human trafficking;
- summarize methods of human traffickers;
- identify types of human traffickers;
- describe processes of domestic sex traffickers;
- identify international recruitment methods of victims;
- differentiate how traffickers target domestic victims;
- define why victims do not escape;
- identify ways that immigrant victims enter the country;
- differentiate different types of "aliens";
- summarize different types of immigration remedies available to victims;
- identify the federal penalties for peonage, slavery, forced labor and trafficking;
- summarize sentencing factors that require consideration;
- locate resources for assessing the risk of offenders; and
- identify common state restitution and forfeiture statutory schemes.

Module 1: Trafficking Victims Protection Act (TVPA)

This module includes a variety of learning activities including lecture, large group discussions, small group discussions (if preferred), quizzes, and case studies. This module is the largest of the curriculum. It sets forth the federal statutory structure for human trafficking cases and provides the opportunity for the participants to apply them to case studies.

Approximate Time for Module 1: Module 1 will take between 1 and 1½ hours, depending upon the amount and types of activities used and the presenter's teaching style.

Module 1 Learning Objectives: At the conclusion of this module, participants will be able to:

- define "human trafficking;"
- analyze human trafficking statutes; and
- apply human trafficking statutes to case studies.

Supporting Documents: In addition to the PowerPoint slides printed three slides per page, the presenter may wish to use the following documents found here: *http://tinyurl.com/NJC-Human-Trafficking*:

- Case Study, Indonesian Laborer
- Case Study, Vietnamese Laborer
- Case Study, Guatemalan Sex Worker

Module 2: Human Trafficking in the U.S.

This module includes lectures and a quiz. In this module, the participants will be able to explore the difference between deportability and inadmissibility. Also, they will learn about permanent bars to naturalization.

Approximate Time for Module 2: Module 2 will take between ¼ and ½ hour, depending upon the amount and types of activities used and the presenter's teaching style.

Module 2 Learning Objectives: At the conclusion of this module, participants will be able to:

- identify the prevalence of the crime in the U.S.; and
- differentiate the ways in which domestic victims are trafficked versus international victims.

Module 3: State Laws Regarding Human Trafficking

This module includes lecture. In this module, the participants will explore the differing state statutory structures for the crime of human trafficking.

Approximate Time for Module 3: Module 3 will take between 7 and 12 minutes, depending upon the amount and types of activities used and the presenter's teaching style.

Module 3 Learning Objective: At the conclusion of this module, participants will be able to identify state statutory schemes for human trafficking.

Module 4: Human Traffickers: Understanding the Perpetrators

This module includes lectures and a quiz. It assists the participants in understanding the perpetrators of the crime of human trafficking.

Approximate Time for Module 4: Module 4 will take between ¼ and ½ hour, depending upon the amount and types of activities used and the presenter's teaching style.

Module 4 Learning Objectives: At the conclusion of this module, participants will be able to:

- summarize methods of human traffickers;
- identify types of human traffickers; and
- describe processes of domestic sex traffickers.

Module 5: Understanding Human Trafficking Victims and Recruitment Methods

This module includes lectures, large group discussions, and small group discussions (if preferred). It helps the participants to understand international and domestic recruitment methods, and to define why law enforcement and prosecution don't charge more cases and why the trafficking victims don't escape.

Approximate Time for Module 5: Module 5 will take between ½ and 1 hour, depending upon the amount and types of activities used and the presenter's teaching style.

Module 5 Learning Objectives: At the conclusion of this module, participants will be able to:

- identify international recruitment methods of victims;
- differentiate how traffickers target domestic victims; and
- define why victims don't escape.

Module 6: Immigration and Human Trafficking Victims

This module includes lectures and a quiz. It assists the participants in understanding different ways that aliens enter the U.S. and immigration remedies available to certain classes of human trafficking victims (e.g., continued presence and T, U and S visas).

Approximate Time for Module 6: Module 6 will take between 1/3 and 1/2 hours, depending upon the amount and types of activities used and the presenter's teaching style.

Module 6 Learning Objectives: At the conclusion of this module, participants will be able to:

- identify ways that immigrant victims enter the country;
- differentiate different types of "aliens;" and
- summarize different types of immigration remedies available to victims.
- Supporting Document: In addition to the PowerPoint slides printed three slides per page, the presenter may wish to use the following document: Answers to Human Trafficking Questions found on *http://tinyurl.com/NJC-Human-Trafficking*.

Module 7: Penalties, Sentencing Issues, Restitution and Forfeiture

This module includes lectures, a large or small group discussion, and a case study. It assists the participants in understanding the federal penalties for human trafficking-related crime, appropriate sentencing factors, different screening instruments for assessing the trafficker, and restitution and forfeiture requirements under federal law.

Approximate Time for Module 7: Module 7 will take between ½ and 1¼ hours, depending upon the amount and types of activities used and the presenter's teaching style.

Module 7 Learning Objectives: At the conclusion of this module, participants will be able to:

- identify the federal penalties for peonage, slavery, forced labor and trafficking;
- summarize sentencing factors that require consideration; and
- locate resources for assessing the risk of offenders.
- Supporting Document: In addition to the PowerPoint slides printed three slides per page, the presenter may wish to use the following document: Case Study, Penalties for Financially Benefitting from Forced Labor, found on *http://tinyurl.com/NJC-Human-Trafficking*.

III. Tools and Resources

Learning Activity Guidelines

Many of the slides recommend the use of lectures, quizzes, small groups, large groups, and case studies, among others. For these exercises, please abide by the following guidelines.

Guidelines for effective lectures

- **Lecture for relatively short periods –** Adult education research has shown that lectures should generally last no longer than 15 to 18 minutes before another type of learning activity is used. See below for examples.
- **Utilize learning objectives to establish what's in it for the participant –** The learning objectives do not have to be the first thing the presenter discusses. Indeed, in many cases, the presenter may want to begin with an opening that captures the participants' attention, establishes credibility, and/or sets the stage for the remainder of the session. Nevertheless, identifying what the participant will gain from the presentation is quite important for focusing the participants' attention on the learning objectives.
- **Reduce the major points in the lecture to key words that act as verbal subheadings or memory aids –** In PowerPoint, NJC recommends utilizing the 7x7 rule, which suggests having no more than seven phrases on each slide and seven words in each phrase, relying on key words and phrases instead of complete sentences. Maximum is 9x9 phrases and words.
- **Do not read from the slides –** The 7x7 rule and words and phrases helps eliminate this possibility.

- **Offer examples –** When possible, provide real life illustrations of the lecture's main ideas.
- **Use analogies –** If possible, make a comparison between the content of the lecture and knowledge the participants already possess.
- **Use audio-visual aids –** Use a variety of media to enable participants to see as well as hear what is being said. The PowerPoint slides contained in the curriculum are a good beginning.
- **Use vivid language and graphics –** In creating new slides, use vivid language and graphics. The presenter may wish to use mnemonic devices and other aids to memory. Also, storytelling can be quite effective for improving retention.

Guidelines for tests and quizzes

- **Use pre-tests to assess participants' needs –** Use of a pre-test before a course can provide you with a clear indication of how much the participants know at the outset of the presentation.
- **Use short quizzes –** Providing short quizzes during the presentation will aid in retention rates.
- **Consider using a post-test –** Use of a post-test at the end of a presentation provides a summary of how well the participants retained the information. However, be sure to allow sufficient time for feedback because the test will not be effective if the participants do not learn what they have misapprehended.
- **Provide 3 to 5 choices for multiple choice questions –** Adding implausible, incorrect choices does not add value to the question.
- **Use incorrect choices in multiple choice questions that are possibly correct –** The purpose of an incorrect answer is to reduce the chances that the participant can guess the correct answer.
- **Avoid using negatives such as "which of the following is not ...." –** However, if you are assessing the participant's verbal reasoning ability, negatives are appropriate.
- **Write multiple choice responses so they are relatively equal in length –** You do not want to make it easy for the participant to guess the answer based upon the correct choice standing out due to its length.
- **Use the same grammatical structure for each choice for the reason noted above.**
- **Do not use language that tricks or confuses the participant –** Test questions should measure what the participant knows about the subject matter.
- **Avoid "All of the above." –** All of the above is usually the correct answer and offers a good guess to a test-taker who doesn't know the subject matter.

Guidelines for large group discussions

- **Plan key questions –** Do not ask, "Any questions?" Rather, provide direction in the question being asked about what you want to know. See the PowerPoint for examples.
- **Start with simple questions –** Questions should proceed from lower to higher level thinking according to Bloom's Taxonomy:
  - *Knowledge* – The participant is able to identify and recall information: who, what, when, where, how. Example: What are the requirements for a finding of human trafficking?

- *Comprehension* – The participant is able to present the information in his or her own words, not a mere mechanical repetition.
- *Application* – The participant is able to apply theory to specific facts. Example: Are these facts sufficient for a finding of human trafficking?
- *Analysis* – The participant is able to separate the whole into component parts. Example: What does "human trafficking" mean under the case law of the participant's state?
- *Synthesis* – The participant is able to construct ideas and concepts from multiple sources to form new, integrated information. Example: How does the definition of human trafficking relate to other parts of the state's law?
- *Evaluation* – The participant is able to judge or assess ideas on the basis of specific standards and criteria. Example: Under current state law, does the justice system have the necessary tools and resources to effectively combat human trafficking?

Guidelines for small group discussions

- **Give all instructions before splitting participants into groups** – Otherwise, the participants will begin forming relationships with their group members and miss the instructions.
- **Develop explicit instructions concerning what the presenter wants the participants to do** – The presenter may want to try out the instructions on a few colleagues to ascertain if they understand the exercise.
- **Provide a handout** – Give written as well as oral instructions for the activity. Written instructions can assist the groups while they are working in their groups. This is especially important for larger groups.
- **Ask each group to select a reporter (if necessary—for reporting back to the larger class) and a recorder (if necessary—for producing a written product to be reported back to the larger class)** – This should be an explicit instruction. Otherwise, the group members will look at one another when the presenter asks for the report back, thereby delaying and likely resulting in less effective report backs. The groups should select a reporter at the beginning of the exercise to ensure that he or she takes good notes for the presentation to the larger class.
- **Set a time limit** – The presenter can be flexible but give the participants some idea of how long the activity is anticipated to take.
- **Give a time warning** – Before ending the group work, give the participants a one-minute time warning telling them to wrap things up. This will assist the reporters in knowing they have just a minute to collect their thoughts.
- **Be clear** – If there is a report back, be clear in the instructions about what the reporters are to communicate. Obviously, the presenter doesn't want to embarrass the reporters as they report, so make the instructions as clear as possible.

Guidelines for case studies

- A good case poses a challenging problem. They can be quite detailed (e.g., 10 to 20 pages) or quite simple (e.g., half to one page). Instructors can use case studies to provide the facts to test a legal theory.
- Tell a "real" story. Participants prefer to work on problems that they're likely to confront in their work, so the more realistic, the better.
- Write the case study so that it …
  - Raises a thought-provoking issue.
  - Has elements of conflict.
  - Promotes empathy with the central characters.
  - Lacks an obvious or clear-cut right answer.
  - Encourages participants to think and take a position.
  - Demands a decision.
  - Is relatively concise. See Barbara Gross Davis, *Tools For Teaching* 159, 162 (1993).

Learning Materials

In addition to this faculty guide, *http://tinyurl.com/NJC-Human-Trafficking* contains a PowerPoint presentation, learning materials to assist presenters in teaching, and additional materials to provide further background information about the topic.

Http://tinyurl.com/NJC-Human-Trafficking contains the following learning materials:

- Case Study, Financially Benefitting from Forced Labor
- Case Study, Guatemalan Commercial Sex Worker
- Case Study, Indonesian Laborer
- Case Study, Vietnamese Laborer
- Answers to Human Trafficking Questions

IV. References and Links

This is the web site for the State Justice Institute-funded "Human Trafficking and the State Courts Collaborative." *http://www.htcourts.org*

The site contains a wide variety of information, research, and educational program resources produced by the collaborative partners related to ways in which state courts address issues of labor and sex trafficking.

In particular, the site contains a set of information cards that can be used as handouts for educational program sessions. Here is the direct link to the information cards. *http://www.htcourts.org/information-cards.htm*

To learn how Polaris Project rated your state's law on human trafficking, go to *http://tinyurl.com/Polaris-State-Ratings*. *Http://tinyurl.com/NJC-Human-Trafficking* contains several items to help the presenter learn more information about human trafficking and other relevant information. The items are as follows:

- U.S. Department of State, Trafficking In Persons Report (June 2013)
- Duren Banks & Tracey Kyckelhahn, "Characteristics of Suspected Human Trafficking Incidents," 2008-2010, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (Apr. 2011)
- The National Judicial College and the Center for Sex Offender Management, "Sentencing Sex Offenders: A Model Curriculum for Judges" (2010)

In addition, the presenter may benefit from reviewing the following:

- "Lawyer's Manual on Human Trafficking" (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011)
- Polaris Project, "In Their Shoes: Understanding Victims' Mindsets and Common Barriers to Victim Identification" 2-3 (2010), located at *http://tinyurl.com/HT-Resources* (visited Feb. 4, 2014)
- Charles Tucker, Kari Kammel, Heather Lehman, & Elisabeth Ward, "An Analysis of Human Trafficking for Sexual Exploitation in Vietnam and a Comprehensive Approach to Combating the Problem," 16 U.C. Davis J. Int'l L. & Pol'y 437 (2010)
- Terry Coonan, "Anatomy of a Sex Trafficking Case," 5 Intercultural Hum. Rts. L. Rev. 313 (Nov. 2009)
- Melynda H. Barnhart, "Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation," 16 Wm. & Mary J. Women & L. 83 (Fall 2009)
- Linda A. Smith, Samantha Healy Vardaman & Melissa A. Snow, "The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children" 8-9 (May 2009), located at *http://tinyurl.com/National-DMST-Report* (visited Mar. 26, 2014)
- M. Margaret McKeown & Emily Ryo, "The Lost Sanctuary: Examining Sex Trafficking Through the Lens of United States v. Ah Sou," 41 Cornell Int'l L.J. 739 (Fall 2008)
- Amy Farrell & Jack McDevitt, "Understanding and Improving Law Enforcement Responses to Human Trafficking Report" (June 2008) located at *http://tinyurl.com/Cops-and-HT* (visited Feb. 4, 2014)
- Kathleen Kim, "Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking," 38 U. Tol. L. Rev. 941 (Spring 2007)
- Norma Hotaling, Kristie Miller & Elizabeth Trudeau, "The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective," 18 Yale J.L. & Feminism 181 (2006)
- Kathryn A. Lloyd, "Wives for Sale: The Modern International Mail-Order Bride Industry," 20 NW. J. Int'l L. & Bus. 341, 349 (Winter 2000)

July 2014

HUMAN TRAFFICKING
AND THE STATE COURTS COLLABORATIVE

930 Acoma Street, #415
Denver, CO 80204

www.htcourts.org