

Immigration and Child Trafficking: Indicia and Options for State Court Intervention

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Human Trafficking and the State Courts Collaborative: Contact Information

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Learning Objectives

Participants will be able to:

- **Identify the possible indicators of human trafficking**
- **Identify court case types that may involve juvenile human trafficking victims**
- **Anticipate how human trafficking and immigration status might affect the process, outcomes and range of available options in a juvenile case**

Identifying the Human Trafficking Victim



What is Human Trafficking?

- **Under Uniform Law Commission’s Uniform State Trafficking Law, a person commits the crime of human trafficking if the person intentionally, knowingly, or recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices a person for the purposes of forced labor or servitude or commercial sex through coercion, deception, or fraud.**
- **Note that human trafficking does not require movement of an individual from one place to another.**

Examples of Coercion

- **Causing or threatening harm to the victim or the victim's family**
- **Use or threatened use of law to exert pressure on another person to perform services**
- **Demeaning or demoralizing the victim**
- **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)**
- **Deceiving about consequences (e.g. overstating risks of leaving by feigning ties to authorities or hit men/gangs)**
- **Dominating, intimidating, and controlling (e.g. by abuse, an atmosphere of violence, display of weapons)**

Juveniles as Trafficking Victims

- **Juveniles may be easy prey for human traffickers who deal in prostitution, and identifying juvenile trafficking victims can be difficult.**
- **Traffickers may force the victims into committing other crimes, such as selling drugs for the trafficker, stealing, or even assisting the trafficker in recruiting other victims, thus turning 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.**
- **In addition, juveniles who commit status offenses, such as runaway or truancy, may be trafficking victims or at high risk of becoming trafficking victims.**

Types of Cases Involving Juvenile Trafficking Victims

Types of juvenile cases that may involve human trafficking

- Prostitution is the primary form of human trafficking for juvenile girls.
- Trafficking victims may also appear in cases involving other illegal activities, such as selling drugs, theft, peddling, or recruiting other victims for their traffickers.
- Trafficking victims may be present in status offense cases such as runaways or truancy.
- Trafficking victims may appear in juvenile probation violation cases, such as running away from a placement,
- Trafficking of children by family members, for sex or labor, may arise in an abuse or neglect proceeding.
- A trafficker may try to get guardianship over a victim.



Indicators of Human Trafficking Victims

Some possible indicators that a juvenile may be a human trafficking victim include:

- Homelessness
- Lack of education or not attending school
- Work in massage parlors, dance halls, or other similar establishments
- Unexplained bruises
- Unusual behavior, such as uncooperativeness, fear, or anger
- Dependency relationships with older adults
- Possession of unusually expensive items such as jewelry or expensive cell phones

Indicators of Human Trafficking Victims, Cont.

Indicators of a disruptive home or school environment that might come from prior court contacts of the family or child:

- **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 - three or more runaways in a 12 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.**



Indicators of Human Trafficking Victims, Cont.

Behaviors that reveal a mindset of fear, distrust, denial, and conflicting loyalties, including:

- **General feelings of helplessness, shame, guilt, self-blame, and humiliation;**
- **Shock and denial, phobias, panic attacks, anxiety, and depression;**
- **Sleep or eating disorders;**
- **Addiction to drugs and alcohol;**
- **Emotional detachment and “flat affect;” and**
- **Trauma bonding with the trafficker, believing that, despite repeated abuse, the trafficker is a loving boyfriend**

Decision Points In the Dependency Process Where Trafficking Issues May Be Investigated

- **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.**

Decision Points in the Delinquency Process Where Trafficking Issues May Be Investigated

- **Delinquency plea colloquy:** Trafficking issues may arise in assuring that a plea was knowingly and willingly entered.
- **Disposition and determination of mitigating factors for conviction and sentencing:** With 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.
- **Juvenile diversion decision:** Placing a juvenile into a diversion program may be based on trafficking-involved factors.
- **Juvenile detention decision:** Placing a juvenile into detention may be based on trafficking-involved factors, particularly if there is a need to separate the juvenile from a trafficker.
- **Determining sanctions for a probation violation:** The behavior may be an expected result of the trauma of victimization.

Decision Points In the Probate Court Process Where Trafficking Issues May Be Investigated

- **Evidence of the suitability of a proposed guardian of a juvenile may indicate the possibility of trafficking.**
 - **Traffickers have been known to seek guardianship over minor victims, so in cases where an unrelated person is seeking guardianship over a minor, the relationship between the two may suggest the existence of trafficking.**
 - **An extended family member of a minor may be engaged in trafficking the minor and apply for guardianship.**
- **If the court denies a guardianship petition on the basis that the proposed guardian may be a trafficker, the evidence for the denial of the guardianship petition may also serve as evidence for SJS findings.**

Decision Points In the Family Court Process Where Trafficking Issues May Be Investigated

- **In child custody or placement decisions, 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.**
- **If a parent files for a restraining order against a family member or an unrelated person for alleged trafficking of his or her child, the evidence of possible trafficking might form the basis for the SIJS findings or for eligibility for a T or U visa.**



Immigration Relief for Immigrant Juvenile Trafficking Victims: The T Visa

T Visas for Human Trafficking Victims

- The T visa is a non-immigrant visa available for individuals who have been the victims of human trafficking and meet the following requirements:
 - The person is the victim of a severe form of trafficking. Federal immigration law classifies any sex trafficking of a person under age 18 as severe trafficking.
 - If the person is 18 or older, the person is complying with a reasonable request to assist in the investigation or prosecution of the traffickers.
- 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 after three years.
- The person must show good moral character.



Severe Form of Trafficking

The term “severe form of trafficking in persons” means:

- The recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act 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, 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.

Definition of Coercion and Fraud

Coercion is defined in 22 U.S.C. § 7102 (2) as:

- **Threats of serious harm or physical restraint against a 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.**

Fraud is 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.

Process for Obtaining a T Visa

- The T visa requires application to the United States Citizenship and Immigration Services (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, may serve as primary evidence that the applicant is a victim of trafficking.
- If a parent files for a restraining order against a family member or an unrelated person for alleged trafficking of his or her child, the evidence of trafficking might form the basis for eligibility for a T visa.
- To be eligible for a T visa, the applicant must meet the requirements of admissibility and show good moral character.

Immigration Relief for Immigrant Juvenile Trafficking Victims: U Visas

U Visa

- **U visas are non-immigrant visas with a duration of up to four years for a non-citizen who:**
 - **has suffered severe physical or mental abuse as a result of being a victim of criminal activity;**
 - **has been, is being, or is likely to be of help to a federal, state, or local investigation of the criminal activity causing the abuse; and**
 - **has certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity**
- **After three years in U visa status, person may be able to adjust status to lawful permanent residence**

U Visa Required Certification

- The applicant must have certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity that he or she has been, is being, or is likely to be of help to a federal, state, or local investigation of the criminal activity causing the abuse.
- A judge can make the certification if the judge has knowledge that the applicant meets the above requirements.
- If a parent files for a restraining order against a family member or an unrelated person for alleged trafficking of his or her child, the evidence of trafficking might form the basis for eligibility for a U visa.

Requirement of Willingness To Assist in the Prosecution of the Perpetrator

- **There is no exemption for persons under the age of 18 from the requirement of willingness to assist in the prosecution of the perpetrator, as there is for the T visa.**
- **This may be a burden that many juvenile human trafficking victims cannot or will be unwilling to meet, either out of fear of the trafficker or loyalty to the trafficker.**

U Visa List of Eligible Crimes

- **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.**

Other Immigration Issues Faced By Juvenile Trafficking Victims



Juvenile Pleas And Advisement

- **There are some acts committed by juveniles that do not require a criminal conviction to put a juvenile at risk for immigration consequences, so admissions made in a delinquency case may affect the juvenile's immigration rights.**
- **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.**
- **A juvenile trafficking victim may plead guilty in order to return to the trafficker. For an immigrant juvenile, this may increase the control that the trafficker has over the victim.**

Juvenile Behavior That Can Affect Admissibility and Good Moral Character

- **With regard to juvenile behavior that can affect admissibility, USCIS is particularly concerned about crimes related to a controlled substance, gang activity, and violent offenses.**
- **USCIS can waive most of the requirements of admissibility, and in particular requirements based on criminal convictions caused by or related to victimization as a result of trafficking.**
- **In assessing good moral character, USCIS can consider behavior over the lifetime of the applicant, including acts committed as a juvenile. As a result, good moral character can be affected by juvenile adjudications, even if they are not classified as criminal behavior under state law or criminal convictions under federal immigration law.**

Juvenile Court Dispositions That May Affect Admissibility and Good Moral Character

- **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. The conviction, which is aimed at protecting the juvenile, may end up making an immigrant juvenile ineligible for SIJS or discretionary immigration benefits requiring a showing of good moral character, such as the T visa.**
- **Some states have options for certain juveniles charged with prostitution to be classified as sexually exploited juveniles and sent to diversion programs. One state 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.**

Juvenile Dispositions That Affect Admissibility and Good Moral Character, Cont.

- **If a trafficked juvenile also engages in other illegal activities for a trafficker, such as selling drugs or recruiting other juveniles, that additional criminal behavior, if admitted to in a delinquency hearing, could also affect an immigrant trafficking victim's immigration rights.**

Court Challenges in Processing Juvenile Court Cases Involving Human Trafficking Victims

Human Trafficking Challenges For the State Courts: The Effects of Trauma

Trauma can affect:

- the victim-defendant's culpability for criminal acts if the acts are forced on the victim by a trafficker
- the demeanor of the victim in court, which may make the judge or prosecutor frustrated with the victim
- the ability of the victim to participate meaningfully in her defense, including refusing to identify her trafficker, denying that she is a victim, and appearing unremorseful
- the willingness or ability of the victim to cooperate with the judge or other justice system actors due to fear of reprisal or further victimization by a trafficker
- the ability of the victim to meet conditions of probation in light of the fact that trauma can have recurring effects, so behavioral change may not be linear and relapses can be expected



Human Trafficking Challenges For the State Courts: Resources and Facilities

- **Trafficking victims may recruit other victims in juvenile detention facilities**
- **Mixing delinquents and dependents in a single facility may create problems**
- **Trafficking victims may not meet behavioral expectations of a secure detention facility, especially being uncooperative and going AWOL**
- **There may be a need for secure housing to separate trafficking victims from traffickers**

Human Trafficking Challenges For the State Courts: At Risk Juveniles

Gang involvement in trafficking.

- Gangs may traffic both girls and boys
- Gangs will usually be involved in a variety of illegal activities
- A gang may serve as a surrogate family, so victim may feel loyalty to the gang
- Immigrants may be particularly susceptible to trafficking by gangs

How to identify HT vulnerable populations and prevent involvement in human trafficking

- Juvenile runaways and truants are a high risk population
- Immigrants are especially vulnerable in situations where they may be kept isolated

Human Trafficking Challenges For the State Courts: Becoming Trauma Oriented

- The DA and PD may need to become more collaborative
- With juvenile trafficking victims, the PD may also have to take on the role of GAL, representing the best interests of the child, as well as adversary counsel
- Prosecutor and defense both need to focus assisting the victim
- Concepts of guilt and culpability need to take trauma into account
- Victim safety must be a focus of the judge in the court.
- Probation conditions and dealing with violations need to be trauma oriented
- Expectations of behavior (e.g. AWOLs) may need to change – e.g. in licensing shelters