

Child Trafficking: Collateral Consequences of Delinquency Adjudications

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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 adjudication of delinquency for crimes coerced by a trafficker might affect the process, outcomes and range of available options in a juvenile case

Identifying the Human Trafficking Victim

Definition: Trafficking Victim

- **Many states have their own specific trafficking legislation, 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.**

Center for Court Innovation

Three Key Elements

Force

- Physical Assault
- Sexual Assault
- Emotional Abuse
- Damage to property
- Branding

FEAR

Fraud

- Pretending to be a boyfriend
- Promise of making money for a future business that never happens
- Promise of money or earnings that never materialize
- Required to do things that were not originally planned

SECRECY

Coercion

- Exposing a secret
- Threats of violence to victim, family or friends
- Isolation
- Keeping control of documents
- Threatening to take custody
- Threatening to call authorities immigration and/or police

SHAME

Examples of Interpersonal and Systemic Trauma and Oppression

Interpersonal

- Childhood sexual abuse
- Childhood physical abuse
- Verbal/emotional abuse
- Domestic/sexual violence
- Rape
- Neglect

Systemic

- Court
- Foster care
- Education
- Incarceration
- Police/law enforcement
- Health care

Structural

- Racism
- Poverty
- Sexism
- Homophobia
- All other -isms



Juveniles as Trafficking Victims

- **Juveniles can be targets of traffickers**
 - Systems
 - Neglect
 - Trauma
 - Poverty
- **Identifying juvenile trafficking victims can be difficult**
 - Relationship with trafficker
 - Presentation to court and law enforcement
 - Behavior may not meet expectation
 - Put it in context!
 - “Good” v. “Bad” victim
 - Involved in other criminalized activity: drugs, guns etc.

Types of Cases Involving Juvenile Trafficking Victims

Types of juvenile cases that may involve human trafficking

- Prostitution offenses are most common charge
- Runaway and truancy
- Assault
- Drug charges
- Trafficking

** Question

- Can you add to this list?

Indicators of Human Trafficking Victims

- **Poverty**
- **Wanting to improve family economic status (send money home)**
- **Violence in home countries**
- **Damage to property**
- **History of abuse**
- **Homelessness**
- **Undocumented**
- **Mental or behavioral health issues**
- **About 50-80 % of trafficking victims involved with CPS**
- **Minimal social support**
- **Limited education**
- **Lack of work opportunities**
- **Runaway, homeless youth**
- **History of previous sexual abuse**
- **Drug or alcohol addiction**
- **History of trauma**
- **History of truancy**

Sex Trafficking And Foster Care

- **About 50-80 % of trafficking victims involved with CPS**
- **Minimal social support**
- **Limited education**
- **Lack of work opportunities**
- **Runaway, throwaway, homeless youth**
- **History of previous sexual abuse**
- **Drug or alcohol addiction**
- **History of trauma**
- **History of truancy**
- **Mental or behavioral health issues**

** Question

- In what circumstances have you seen any of the above?

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.

**** Question**

- **Are there any other points in the process that you can add regarding your work?**

PAUSE!! Before any investigation consider the following:

- **Is the young person safe?**
 - Physically?
 - Emotionally?
- **Are basic needs met?**
 - Shelter
 - Food
 - Money
 - LOVE and SUPPORT?
- **Do they have a contact person?**
- **Has a safety plan been made?**
 - Consider a harm reduction approach: What if s/he returns to trafficker?
- **Is it in the best interest of the child to proceed with an investigation?**
- **Are there ways information can be used without the young person testifying?**

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.

**** Question**

- **Are there any other points in the process that you can add regarding your work?**

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 SIJS findings.

**** Question**

- **Are there any other points in the process that you can add regarding your work?**

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.
- **KNOW YOUR LOCAL RESOURCES!**

**** Question**

- **Are there any other points in the process that you can add regarding your work?**

Collateral Consequences of Delinquency Adjudications

Introduction to Collateral Consequences

- **We will be discussing the collateral consequences of juvenile adjudications but will also provide an overview of adult convictions. Juveniles who are tried as adults will face the same consequences as an adult convicted of the crime.**

Juvenile Pleas And Advisement

- **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 or collateral 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.**

Overview of Employment Eligibility

A criminal conviction may seriously limit the employment options available to the convicted offender, both under state laws limiting access to certain occupations or business licenses and as a result of employer reluctance to hire convicted offenders. Further, employers may take into account any criminal conviction that reasonably relates to the fitness of an individual for a particular job. The crimes committed by human trafficking victims will most likely be misdemeanors, but many of these can have serious collateral consequences. With regard to juvenile adjudications:

- Delinquency adjudications may prevent an otherwise qualified candidate from applying for a license to practice many trades and professions, both under state and federal law.
- In some circumstances, placement in a pre-trial diversion program may be considered a conviction.
- As an example, employment involving work with children or the elderly may trigger a background check by the prospective employer. While a delinquency adjudication is not a conviction, it may be treated as such by a prospective employer. This means an employer may deny employment to a person with a delinquency adjudication. See 42 U.S.C. § 5119a. Delinquency adjudications for sex offenses are likely to bar juveniles from working with young children in schools, summer camps and swimming programs. Delinquency adjudications for aggravated assault may bar juveniles from working with the elderly.

Eligibility for Employment

Some juvenile offenses can affect eligibility for certain types of employment and can also affect access to other privileges that may be a requirement for certain jobs, such as driving

- **Employers may take into account any criminal or juvenile conviction that reasonably relates to the fitness of an individual for a particular job**
- **Delinquency adjudications for sex offenses are likely to bar juveniles from working with young children in schools, summer camps and swimming programs**
- **Delinquency adjudications for aggravated assault may bar juveniles from working with the elderly**
- **Some delinquency adjudications can affect the ability to work in different human service occupations**

Eligibility for Employment, Cont.

- **Juvenile offenses may affect eligibility for entry into a state-licensed occupation**
- **Juvenile offenses may affect an individual's eligibility for employment either as a juvenile or later when applying for employment as an adult**

Overview: Adult Convictions

Some of the adult crimes that can result in mandatory or discretionary denial of employment or ineligibility for a state license include the following:

- crimes involving moral turpitude, as defined under state law;
- theft;
- crimes indicating dishonesty, fraud, or breach of trust;
- offenses involving a child victim or endangering the welfare of a child;
- any misdemeanor;
- drug trafficking;
- any crime related to a controlled substance; and
- human trafficking, such as recruiting new victims for a trafficker.

Michigan has 777 statutory provisions that impose collateral consequences for criminal convictions.



Overview: Crime Involving Moral Turpitude

Under immigration law a crime involving moral turpitude is one that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between persons, either to individuals or society in general. The crime must involve evil or malicious intent or inherent depravity.. Some examples are:

- Crimes involving specific intent to cause physical injury or reckless behavior causing serious bodily injury. Knowing gross deviation from reasonable standard of care constitutes reckless behavior.
- Crimes involving an intent to defraud, such as theft, fraud, or perjury.
- Prostitution.

Eligibility For Employment: Adult Convictions

- occupations with likelihood of significant contact with children in the form of care, guidance, supervision, or training (e.g. social workers, clergy, hospital personnel, mental health professionals, counselors, librarians and doctors);
- health and behavioral services, including home health care, behavioral services, mental health services, residential or assisted living, batterer intervention programs;
- school employment, including teacher, administrator, counselor, school nurse, school social worker, school psychologist, assistant, aide, contractor, etc.;
- law enforcement officer;
- court interpreter;
- municipal court judge;
- juvenile justice employee;
- state agency employee, contractor;
- professional license, including physician, optometrist, dentist, architect, attorney, pharmacist, chiropractor, speech pathologist;
- occupational license, including physical therapist, massage therapist, dental hygienist, medical imaging, emergency medical technician, social worker, midwife, private investigator, massage parlor employment;
- financial industry license, including insurance broker, securities broker/dealer, investment advisor, accountant, real estate broker;
- work in a variety of federal jobs; or
- occupations, including airports, auctioneer, motor vehicle dealer or salesperson, security guard, electrician, HVAC technician, interior design, plumber, hairstylist, barber, cosmetologist.

Eligibility for Employment: Good Moral Character MCL 338.41

- **Sec. 1. (1) The phrase “good moral character”, or words of similar import, when used as a requirement for an occupational or professional license ... shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.**
- **Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.**
- **NOTE: In federal immigration law, acts committed as a juvenile can be considered by USCIS in determining a person’s good moral character. This may affect a person’s ability to naturalize or, in some circumstances, to attain lawful permanent resident status.**

Good Moral Character in Immigration Law

An person's good moral character is not determined by a single act, but rather is measured by a person's actions generally. It is a measure of a person's character derived by the sum total of all his or her actions. Federal immigration law provides that an individual who is or has engaged in any of the following is not of good moral character:

- Being an habitual drunkard;
- Conviction of or admission to acts which constitute the essential elements of
- A crime involving moral turpitude, with petty offense exception, 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;
- Conviction of an aggravated felony;
- Multiple convictions with an aggregate sentence of more than five years;
- Confinement in a penal institution for an aggregate of 180 days or more;
- Failure to complete probation or parole;
- Smuggling aliens into the U.S.

There is a residual clause providing that the fact that an individual does not fall within any of these classes does not preclude a finding that s/he is or was not a person of good moral character for other reasons. Family court actions such as having a protection order issued against the alien, interaction with law enforcement, failure to pay child support, and civil charges of child abuse or neglect can all negate good moral character.

Ability to Enter the Military

A delinquency adjudication may affect an application for military service

- **A delinquency adjudication is considered a conviction for a criminal offense under Army regulations**
- **The Air Force, Navy and Marines examine delinquency adjudications on a case-by-case basis**

Eligibility for Other State or Federal Benefits

A juvenile delinquency conviction, or in some cases even an arrest for certain offenses, can affect the juvenile's eligibility for other state or federal benefits or privileges

- **juvenile offenses, particularly offenses involving possession of drugs or alcohol, DUI, and other driving offenses, may result in the suspension of driving privileges**
- **Some serious juvenile offenses may prohibit an individual from obtaining a license to possess or use a firearm for a specified period of time**
- **Conviction or even arrest for certain offenses, particularly offenses involving a crime of violence or a weapon, may result in suspension or expulsion from school**
- **Certain delinquency adjudications can make the juvenile ineligible for public or subsidized housing**

Driving Privileges, MCLS 257.303

A person may not obtain a driver's license if the person has received juvenile dispositions or been determined responsible for:

- **Two or more moving violations within the preceding 3 years**
- **Certain crimes involving the use of an automobile**
- **Manufacture, possession, or use of a controlled substance**
- **DUI**
- **Purchase, consumption, or possession of alcohol by a minor**

Overview: Issues With Regard to Benefits

- **Driving Privileges**: Lack of driving privileges may seriously limit the juvenile's ability to engage in certain types of employment.
- **Possession of a Firearm**: Inability to obtain a license to possess or use a firearm could prevent the person from entering any profession requiring the carrying of a firearm, such as law enforcement, park ranger, etc.
- **School Attendance**: Expulsion from school just makes the juvenile more dependent on the trafficker, possibly well into adulthood. In some places a school administrator may have the authority to assess the suspension or expulsion even if the juvenile is not adjudicated delinquent.
- **Public Assistance and Public Housing**: The juvenile may also be ineligible for food stamps or lead to eviction from public housing.

**** Question**

- **What other consequences can you add?**

Immigration Consequences of Juvenile Delinquency Pleas



Immigration Consequences of Juvenile Pleas

- **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 delinquency plea can affect deportability.**
- **A delinquency plea can affect eligibility for some forms of immigration relief.**
- **A delinquency plea can affect the ability of a juvenile to adjust to lawful permanent resident status or to naturalize as a U.S. citizen.**

Juvenile Behavior That Can Carry Immigration Consequences Without a Criminal Conviction

The following behaviors or conditions do not require a criminal conviction to put a juvenile at risk for immigration consequences. All of these can be associated with being a trafficking victim.

- **Being a habitual drunkard**
- **Being a drug addict or abuser**
- **Known or reasonably believed to have engaged in drug trafficking**
- **Engaging in prostitution or commercialized vice**
- **Violating a protection order**
- **Having a mental condition that is a threat to others**

Special Immigrant Juvenile Status (SIJS)

- **Special Immigrant Juvenile Status (SIJS) is a form of temporary immigration relief that provides an abused, neglected, or abandoned juvenile who meets certain requirements with some important immigration rights, including the right to work.**
- **A trafficked juvenile who is also an undocumented immigrant may be eligible to apply for SIJS under certain conditions specified by Federal immigration law.**
- **The juvenile must file an application with the United States Citizenship and Immigration Services (USCIS) for the grant of SIJS, and the granting of status is discretionary with USCIS.**
- **In order to remain permanently in the U.S., the juvenile must also file a separate application for adjustment to lawful permanent resident (LPR) status.**

Overview: SIJS Requirements

For eligibility for SIJS, there must be a finding by a court in the United States with jurisdiction over the care and placement of children, signed by the judge, that:

- The juvenile is declared dependent on the court or placed in the custody of an agency or department of a state or 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
- There has been an administrative or judicial finding that 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.

CPS may be a source of evidence for the findings.

Other issues:

- The juvenile is eligible to apply for SIJS if reunification is not viable with one parent. A juvenile may be eligible to apply for SIJS if declared dependent due to abuse, neglect, or abandonment by one parent even if the juvenile is still living with the other parent.
- A “dependent” is a child legally committed to, or placed under the custody of, an agency or department of the State, or an individual or entity appointed by a State or juvenile court. Placements in foster homes, group homes, with relatives or with guardians qualify.
- UAC's are an important group of juveniles for whom courts are seeing a growing number of applications for SIJS. Some of these children may become victims of trafficking due to their vulnerability.
- The juvenile must apply for LPR status and meet the requirements of admissibility.
- Once a juvenile has SIJS status, he or she can no longer obtain immigration status for either parent based on a parent-child relationship.



Eligibility for 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 law enforcement certification that the person is a victim of human trafficking, but such a certification could be helpful. A child protective worker might be a source of evidence for law enforcement that the applicant is a victim of human trafficking.**
- **The T Visa holder is eligible to apply to lawful permanent resident status after 3 years of continuous residence if the holder is admissible and of good moral character.**

T Visas: Other Issues

- **As the T visa is a non-immigrant (temporary) visa, the applicant must be admissible and of good moral character to receive an adjustment to LPR status. Criminal convictions can make the applicant ineligible for LPR status, although convictions for crimes related to the trafficking can be waived.**
- **The victim must be physically present in the U.S. due to trafficking. This does not require that the victim was trafficked into the U.S. Someone who entered for other reasons but then becomes a trafficking victim is at that point present in the U.S. due to trafficking. (e.g. brought in with the promise of a job and then trafficked.)**

Eligibility for U Visas

- **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 certain specified 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 Child Protective Services worker 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.**
- **If the victim is under the age of 16, the requirement of assistance with prosecution applies to the child's parent, guardian, or best friend**

Delinquency Adjudications Affecting Admissibility and Good Moral Character

- **The be eligible for lawful permanent residency pursuant to a U visa or T visa, the applicant must meet the requirements of admissibility to the U.S. under federal immigration law. A variety of crimes can affect admissibility.**
- **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.**
- **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.**
- **To be eligible to naturalize, an applicant must show good moral character. In assessing good moral character, USCIS can consider behavior over the lifetime of the applicant, including acts committed as a juvenile.**

Delinquency Adjudications Affecting Admissibility and Good Moral Character, Cont.

- **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 discretionary immigration relief or benefits requiring admissibility or 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.**

Delinquency Adjudications Affecting 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.**

Overview: inadmissible Aliens

The following can make an alien inadmissible, which can make the alien removable and can prevent the alien from reentering the country after leaving and from adjusting to lawful permanent resident status.

- Conviction or admission to having committed acts constituting the essential elements of a crime involving moral turpitude, subject to petty offense exception.
- Conviction or admission to having committed acts constituting the essential elements of a crime relating to a controlled substance, with exception for single offense of simple possession of 30 grams or less of marijuana occurring more than 15 years prior to the application for admission or adjustment of status.
- Two convictions with 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.
- Known or reasonably believed to have engaged in trafficking in persons.

Access to Juvenile Court Records

- In most states juvenile court records of individuals who have not yet attained the age of 18 are not public records, although some states make juvenile court records open to the public except in very limited circumstances
- The rules of public access to juvenile court records may depend on the crime committed, other criminal convictions of the juvenile, the age of the offender at the time that access to the juvenile court records is being sought, or the person or agency requesting the records
- Prospective employers may request a job applicant to provide records pertaining to juvenile offenses as a precondition to an offer of employment

Other Issues: Access to Juvenile Records

- Some states make records public for serious offenses such as murder or rape.
- If a juvenile court record is open to the public, it makes the juvenile record available to potential employers making a background check.

Sealing Juvenile Court Records

- Sealing a record will make it non-public, but the record is not destroyed
- A sealed record may still be available to a court, a justice system agency, a law enforcement agency, a prosecutor, the attorney general, or the governor for certain specified purposes, including consideration for licensing and consideration for employment in a law enforcement agency
- Sealed records of delinquency adjudications may be available to school officials

Michigan Juvenile Records

- **712A.28 Case records. (2) Beginning June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. Except as otherwise provided in this subsection, records of a case brought before the court shall be open to the general public.**
- **If an arrest results in a juvenile adjudication, unless the adjudication is expunged the juvenile's criminal record will contain information about the arrest, the charges that were brought, and the charges adjudicated.**

Other Issues: Sealing Juvenile Records

- **Sealing a record will make it non-public, but it does not erase the record, so it may be accessed for certain purposes. For example, Michigan law provides that on application to the court by the offender the record can be made non-public, but it can still be accessed by a court, a justice system agency, a law enforcement agency, a prosecutor, the attorney general, or the governor for certain specified purposes, including consideration for licensing and consideration for employment in a law enforcement agency.**
- **Kentucky makes juvenile court records available to school officials, including the juvenile's counselor and teacher.**
- **The scope of what records are covered by an order sealing a juvenile's record varies by state. In some states sealing applies just to the records of the juvenile court, while other states extend the sealed records to include other justice system records.**

**** Question**

- **What requests for records regarding a juvenile has your agency received, and what access was granted? Include requests from other agencies, the courts, employers, and the public.**

Options for Legal Relief From Criminal Liability for Juveniles Who Commit Crimes Coerced by a Trafficker



Classifying Juvenile Trafficking Victims as Children in Need of Services

- **Some states provide options for classifying cases involving children who engaged in prostitution as a result of trafficking as a dependency cases rather than a delinquency cases. The difference could be critical to the juvenile victim by avoiding the collateral consequences of a conviction.**

Michigan MCLS 750.451(6)

- In any prosecution of a person under 18 years of age for [certain prostitution offenses], it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity ... by another person engaged in human trafficking in violation.
- The state may petition the court to find the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm

**** Question**

- **What experiences have you had with this provision?**

Michigan Juvenile Diversion

- **MCLS 722.821 – Applies to juveniles under the age of 17.**
- **MCLS 722.823 – (1) If in the course of investigating an alleged offense by a minor a petition has not been filed with the court, or if a petition has not been authorized, a law enforcement official or court intake worker may do 1 of the following: (a) Release the minor into the custody of his or her parent, guardian, or custodian and discontinue the investigation. (b) Divert the matter ... to a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.**
- **MCLS 722.828 - A minor's record kept under this act shall be destroyed within 28 days after the minor becomes 17 years of age.**
- **Note that these sections are not limited to trafficking victims.**

**** Question**

- **What experiences have you had with the use of juvenile diversion for trafficking victims? Has it been successful?**

Coercion as Negating Criminal Intent

- **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.**

Affirmative Defense

- **An affirmative defense is a new fact or set of facts that operates to defeat a claim even if the facts supporting that claim are true.**

Expunging a Juvenile Record

- **Once a former juvenile offender attains the age of 18, it may be possible for the person to have the juvenile court record expunged. The rules vary from state to state as to which types of offenses can be expunged or vacated and who may be eligible or ineligible.**
- **Some juvenile crimes may be ineligible for expungement. Some of these crimes may have been committed as a result of trafficking victimization.**
- **Some states will not consider a motion to expunge or vacate a conviction if there are any criminal charges pending against the applicant in any court.**

Michigan Expungement for Trafficking Victims

- **MCLS 712A18e** - a person who has been adjudicated of not more than 1 juvenile offense that would be a felony if committed by an adult and not more than 3 juvenile offenses, of which not more than 1 may be a juvenile offense that would be a felony if committed by an adult and who has no felony convictions may file an application with the adjudicating court or adjudicating courts for the entry of an order setting aside the adjudications. Assaultive crimes are excluded.
- **MCLS 780.621 [relating to adult convictions]** - A person who is convicted of [certain prostitution offenses] may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.