

# Addressing Human Trafficking in the State Courts

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## Why Human Trafficking is Important for the State Courts

- **There are numerous human trafficking victims and traffickers in the US.**
- **Great deal of activity by federal and state law enforcement and by national interest groups but topic is newer for the courts.**
- **Increased attention directed at state laws.**
- **Recognition that human trafficking can be present in a variety of state court cases such as prostitution, drug sales by individuals who may be trafficking victims, child thieves, and abused and neglected children.**

# Human Trafficking Scope, Types, and Dynamics

**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.**

- **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.

## Human Trafficking Challenges For the State Courts

- **Prosecution of human trafficking under state trafficking laws rather than other criminal violations.**
- **Determining how human trafficking might appear in the state courts.**
- **Linking trafficking victims with appropriate resources.**
- **Using federal protections for immigrant victims where appropriate.**

## Prosecution Using HT Rather Than Other Laws

- **Local prosecutors often prefer to prosecute cases involving trafficking under other more familiar laws.**
- **State human trafficking laws are often more difficult to prove than other state laws that carry similar penalties.**
- **Courts and justice partners are often unfamiliar with how to address human trafficking.**
- **The background characteristics of some trafficking victims can make prosecution challenging.**
- **Trafficking victims often are reluctant to testify.**
- **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.**
- **Federal T and U visas and other potential federal protections for non-U.S. citizen trafficking victims are often unfamiliar to state court practitioners.**

## How Human Trafficking Might Appear in the State Courts

- **Human trafficking charges**
- **Prostitution**
- **Drug possession and sales**
- **Theft and other offenses**
- **Health code and other ordinance violations**
- **Juvenile delinquency**
- **Child abuse and neglect**
- **Others**

## Identifying a Juvenile Trafficking Victim

- **Prostitution is the primary form of human trafficking for juvenile girls. Distinguishing between a prostitute and a victim of human trafficking can be difficult.**
- **Trafficking victims may also engage in other illegal activities for their traffickers, such as selling drugs or recruiting other victims for their traffickers.**
- **Trafficking victims may commit status offenses such as runaways or truancy.**
- **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.**



## Resource Needs For Human Trafficking Victims

- **Safe housing away from traffickers and their associates;**
- **Medical care and substance abuse treatment;**
- **Placement options for short-term and long-term care;**
- **Specialized mental health treatments for trafficking victims, since traditional counseling modalities often have little success;**
- **Assistance with transportation to access specialized programs and medical services, counseling, interviews, and court;**
- **Life skills and vocational training; and**
- **New Social Security numbers, since traffickers often keep birth certificates, drivers' licenses, and Social Security cards of the victims and use these documents to track their whereabouts when they flee.**

## Potential State Court Responses

### **Overview of The Human Trafficking and the State Courts Collaborative**

- **Partners**
- **Strategic Priorities**
- **Activities**

## Example CPPS/State Court Human Trafficking Priorities in Georgia

- **Increase awareness of human trafficking across the justice system;**
- **Educate judges on the dynamics of human trafficking and the relationship between the traffickers and victims;**
- **Develop protocols on how to identify trafficking victims and assuring that judges are familiar with the protocols;**
- **Develop best practices for judges on how to handle trafficking victims in court, including providing for the safety of the victims;**
- **Provide for separation and protection of the victim from the trafficker while the case is in progress and both are living in the community; and**
- **Identify and develop services for trafficking victims.**

## Example CPPS/State Court Human Trafficking Priorities in Texas

- **Determine how the presence of a human trafficking element in a prosecution for a related crime might be used as a sentencing enhancement to facilitate prosecutions of human traffickers and identification of victims under Texas State Statutes;**
- **Assure reliability of the data systems, to enable accurate counting of human trafficking cases;**
- **Increase awareness of possible human trafficking cases throughout the justice system;**
- **Improve the quality and availability of services for victims of human trafficking;**
- **Enhance the effectiveness of specialized prostitution courts in identifying and providing assistance to human trafficking victims; and**
- **Enhance assistance to non-citizen victims in pursuing immigration benefits aimed at victims of severe human trafficking.**

## Human Trafficking, Immigration Status, and the State Courts

- **There are numerous immigrants in the US today and the numbers are likely to expand greatly over the next few decades.**
- **There are numerous families with complicated immigration status, including mixed status.**
- **Immigration status, especially status of trafficking victims, can be impacted greatly by state court action.**

# Using Federal Protections For Human Trafficking Victims

- **U Visas**
- **T Visas**
- **VAWA**
- **Special Immigrant Juvenile Status**

## U Visas

- **U visas are non-immigrant visas with a duration of up to four years for a non-citizen who: (1) has suffered severe physical or mental abuse as a result of being a victim of criminal activity; (2) 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 (3) 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**

## 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. Note that 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.**



## VAWA – Violence Against Women Act

- **VAWA provides opportunities for persons who suffer “battery or extreme mental cruelty” by a USC or LPR spouse or parent to gain lawful status**
- **Derivative provisions designed to promote continued family unity permit petitions to include children of abused spouses, or the non-abusive parent of abused children**
- **An application filed after separation or divorce must be filed within two years of the divorce**
- **Must show good moral character**

## Eligibility for Special Immigrant Juvenile Status

**An unmarried non-citizen under the age of 21 is eligible to apply for SIJ status:**

- **Who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States,**
- **Whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law, and**
- **For whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence**

## Special Immigrant Juvenile Status

- **The court filing may be made by a state agency or by a private individual such as a family member**
- **The juvenile court must retain jurisdiction until the juvenile is granted SIJ status**
- **At the time of filing the juvenile must continue to be dependent on the juvenile court and eligible for long-term foster care**
- **An unmarried alien under the age of 21 who meets the conditions listed above may apply for SIJ status as long as the alien is still under the jurisdiction of the dependency court**

# Benefits of Special Immigrant Juvenile Status

- **The requisite findings in a juvenile court permit application to USCIS to become a special immigrant juvenile**
- **The grant of SIJ status makes the juvenile eligible to apply for adjustment of status to law permanent resident, either concurrently or at a later time**
- **Juveniles who have been approved for SIJ status are eligible to work**
- **SIJ status is not automatic based on juvenile court findings**
- **Most grounds of inadmissibility still apply for adjustment to LPR status**

# Challenges Involving Immigrant Trafficked Juveniles

- **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 adjustment of status or discretionary immigration benefits requiring a showing of good moral character.**
- **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 make the victim ineligible for adjustment of status or discretionary immigration benefits requiring a showing of good moral character.**

## Challenges Involving Immigrant Trafficked Juveniles, Cont.

- **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. 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.**
- **If a juvenile is ineligible for adjustment of status due to criminal activity but is determined to be a victim of human trafficking, the juvenile may be eligible for a T visa as a victim of human trafficking.**