

IDENTIFYING CASES THAT MAY INVOLVE HUMAN TRAFFICKING

This card is aimed at helping state court judges identify situations before them that may involve elements of human trafficking and determining what steps to take to assure that victims of human trafficking are protected. While the responsibility for combatting human trafficking falls first on law enforcement, human service agencies, and prosecutors, there are at least two reasons why judges also need to be aware of possible human trafficking activity in cases before them:

- Other justice system agencies may have failed to identify the possible human trafficking activity, so the judge is the last resort for the victim; and
- A judicial order may be required for a victim of human trafficking to receive state-funded assistance or services.

It should be noted that this card addresses possible actions by a judge in the context of a court case and not any broader role that a judge may play working with other policy makers to develop community responses to human trafficking.

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.

WHAT TYPES OF SITUATIONS MAY BE ASSOCIATED WITH HUMAN TRAFFICKING?

Trafficking for commercial sex purposes can include pimp-controlled prostitution, escort services, residential and underground brothels, pornography production, cyber-pornography, massage parlors, and work in a cantina, karaoke, strip-clubs, and other types of bars or clubs.

Common types of labor trafficking include (1) domestic servitude such as nannies, maids, and housekeepers; (2) small businesses such as landscaping, restaurants, industrial cleaning, construction, and hospitality firms; (3) peddling rings such as magazine, flower, and candy sales crews; and (4) large scale industrial operations especially in agriculture and forestry and garment and food processing factories.

WHAT CASE TYPES MAY INVOLVE HUMAN TRAFFICKING SITUATIONS?

All 50 states now have laws making human trafficking for sex or labor a crime. Due to the newness of human trafficking statutes, however, 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/promoting prostitution;
- Prostitution;
- Assault;
- False imprisonment;
- Family violence; and
- Sexual exploitation of a minor.

Other case types that may involve elements of human trafficking or be committed as a result of victimization are listed 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.

- 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; and
- Guardianship – there have been cases in which a trafficker has applied for guardianship over their victims.

WHAT ARE THE CHARACTERISTIC ELEMENTS OF A HUMAN TRAFFICKING OFFENSE?

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:

- Threatened or actual physical or non-physical harm which compels the victim to perform labor or services to avoid harm;
- Use or threatened 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 recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act;
- Knowingly benefited financially or received something of value by participating in the above commercial sex venture;
- Knew or recklessly disregarded 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; or
- Past involvement of the suspect or victim in suspected human trafficking activities.

The lack of presence of an element listed above may merely reflect the fact that law enforcement investigation didn't 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.

WHAT ARE THE INDICATORS THAT A PERSON IN COURT (CHARGED OFFENDER, CRIME VICTIM, WITNESS) MAY BE A VICTIM OF HUMAN TRAFFICKING?

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, 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;
- Does not have access to identification or travel documents.

WHAT CAN A JUDGE DO IF A CASE BEFORE HIM OR HER INVOLVES POSSIBLE HUMAN TRAFFICKING ACTIVITY?

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, 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.
- The trafficker may be in the courtroom, so a possible trafficking victim called as a witness may face dangers in answering certain questions.
- A guilty plea by a trafficking victim charged with a crime, such as prostitution, coupled with a sentence of probation, may give the trafficker more control over the victim by getting the victim back with the trafficker quickly.
- 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.
- 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.

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.

For adult defendants, some states have laws providing alternatives to finding a defendant guilty of a crime where the crime was committed due to coercion by a trafficker or the result of victimization. For example, there are statutes that make 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.

Judges need to be aware of any required findings or orders required in order to get a trafficking victim into services, juvenile and adult. 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 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.

WHAT ETHICAL ISSUES DO JUDGES FACE IN ASSISTING A TRAFFICKING VICTIM IN COURT?

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.

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.



HUMAN TRAFFICKING
AND THE STATE COURTS COLLABORATIVE



For references and additional resources,
go to www.htcourts.org