

PLEASE REMEMBER: “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.”¹

Prostitution Judicial Bench Card

By Judge Laurie A. Clark and Laboratory to Combat Human Trafficking

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LEGAL DEFINITION OF PROSTITUTION

Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange for money or other thing of value.²

Prostitution is a **class 3 misdemeanor**:

- up to six months in jail
- a fine of \$50 to \$750

Prostitution is generally considered a **crime of moral turpitude**³, meaning a conviction can: 1) get an individual with a U.S. visa or green card deported, and 2) disqualify a person with a green card from U.S. citizenship.

DISTINGUISHING BETWEEN PROSTITUTION & VICTIMS OF HUMAN TRAFFICKING

It can be difficult to distinguish between acts of prostitution committed as an offender or as a victim of human trafficking. **Victims of sex trafficking may present as both a victim and defendant in court.**³

Two Subsets of Sex Trafficking*

1. Those **under 18** involved in commercial* sex acts** are **automatically victims of sex trafficking**. There is no such thing as a “child” or “teen” prostitute. **THERE ARE NO EXCEPTIONS TO THIS RULE.**
2. Those **18 and over** involved in commercial* sex acts** through force, fraud or coercion are victims of sex trafficking.

**commercial: exchange for anything of value (drugs, a place to stay, money, etc.)*

***any sex act: pornography, cam work, stripping, escort services, etc.*

**from the Trafficking Victims Protection Acts of 2000, 2003, 2005, 2008, 2013, 2017⁴*

Victim/Defendant Paradigm:

- A paradigm shift is needed. Court personnel should, “**...move from viewing the defendant as a criminal to a victim who has complex needs that often lead to a cycle of recidivism.**”⁵
- Traffickers can be victims of trafficking, “especially in instances where sex-trafficked victims are forced to recruit other victims or engage in other criminal activity.”⁶

THE ROLE OF TRAUMA

- Children who are sexually abused are “**28 times more likely**” to participate in prostitution and to experience sex trafficking.⁷

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- Be aware that **traffickers often target court-sanctioned locations** (e.g. foster care, group homes, juvenile detention facilities) to identify and “recruit” victims of trafficking.⁸
- Unaddressed trauma, especially while people are mandated to be within these systems, can lead to runs, recidivism, and crime.

Fighting Bias:

- **Sex trafficking is not limited to people who are foreign-born, youth, or females.**
- While foreign nationals comprise a “significant portion” of victims of sex trafficking, there are a high level of U.S. born victims of sex trafficking as well.⁹

QUESTIONS TO DETERMINE SEX TRAFFICKING

Always consider: Have elements of force, fraud and coercion played a role in the individual’s recidivism?¹⁰

- Do you have a pimp?
- Do you have a place to live?
- Has anyone ever made you do something you don’t want to do?
- Do you have your ID/passport?
- Has anyone ever hurt you?
- Do you have to work when you don’t want to?
- Do you control your own hours?
- Do you get to choose the conditions of your work?
- Have you been forced to use drugs/alcohol?¹¹
- Has your access to hygiene/medical care been withheld/rationed?¹²

Red Flags for Sex Trafficking¹³

- Prostitution
- Homelessness
- Chronic running away
- Shoplifting
- Domestic violence
- Substance abuse
- Loitering
- Involvement in child welfare/foster care
- Forced criminality
- Survival crimes (crimes to provide basic needs, for example stealing food/clothing)
- Reproductive Health Problems/Signs of Physical Abuse¹⁴

*From the Center for Court Innovation

Safety Concerns¹⁵

- Is someone in the courtroom this individual’s pimp/trafficker?
- What will be said in open court?
- What case information will be shared among stakeholders?

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What kinds of training will be provided to all courtroom staff?

How can courtroom and courthouse safety be improved?

*Taken from “A Guide to Human Trafficking for State Courts”

Citations:

¹ Human Trafficking and the State Courts Collaborative. “A Guide to Human Trafficking for State Courts .” Human Trafficking Courts, http://www.htcourts.org/wp-content/uploads/Full_HTGuide_desktopVer_140902.pdf. Accessed 21 Feb. 2021.

²“C.R.S. § 18-7-201(1);

<https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crd=7e305b74-d7c9-4793-b7a6-63d57e15e2d2&prid=7628c4a7-03d3-4205-83b1-2c1c97f3151b>. Accessed 21 Feb. 2021.

³ United States Citizenship and Immigration Service. “Chapter 5 - Conditional Bars for Acts in Statutory Period | USCIS.” USCIS, 13 Dec. 2019, <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>.

⁴ International and Domestic Law - United States Department of State.” United States Department of State, <https://www.state.gov/international-and-domestic-law/>. Accessed 27 Jan. 2021.

⁵ See 1

⁶ See 1

⁷ See 3

⁸ See 1

⁹ See 1

¹⁰ See 3

¹¹ See 1

¹² See 1

¹³ See 3

¹⁴ Office of Court Improvement. “Grace Court Benchbook 2017.” Florida Courts. Accessed March 23, 2021.

https://www.flcourts.org/content/download/217037/file/GRACE_Court_Benchbook.pdf.

¹⁵ See 1