



# Representing Victims of Human Trafficking in Massachusetts

## A GUIDE FOR ATTORNEYS

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# 1. Preface

## 1.1 INTRODUCTION

Attorneys representing victims of human trafficking have faced considerable challenges navigating the multitude of legal issues faced by their clients. However, new tools have recently been made available to assist victims of this crime. In particular, the Massachusetts legislature has responded to the problem of human trafficking by enacting An Act Relative to the Commercial Exploitation of People (“Massachusetts Trafficking Statute”) in 2011. The Massachusetts Trafficking Statute, which became effective in 2012, created new human trafficking-related offenses under Massachusetts law and provides a civil remedy by which victims of human trafficking may independently seek recourse for the crimes committed against them. Additionally, the Massachusetts Trafficking Statute makes an affirmative defense available to adult defendants who can establish that prostitution-related offenses were committed under duress or coercion, and provides an avenue to “safe harbor” for children under 18 accused of these offenses.

Despite these new tools, victims of human trafficking have significant legal needs that may go unaddressed without attention by attorneys in all practice areas, particularly with respect to immigration, unpaid wages, housing, and federal and state welfare benefits, among others.

There is little doubt that human trafficking is a substantial problem worldwide: the International Labour Organization estimates that 20.9 million people are victims of forced labor worldwide, including 1.5 million people in developed economies (including the United States, Canada, and the European Union).<sup>1</sup> It is one of the fastest growing criminal enterprises in the world, generating an estimated \$32 billion in profits to traffickers annually.<sup>2</sup> Although it is clear that Massachusetts is far from immune to sex and labor trafficking, there is currently no systematic way to quantify the scope of the problem.<sup>3</sup>

Sex trafficking occurs throughout the Commonwealth of Massachusetts and affects both female and male victims.<sup>4</sup> In 2011, the E.V.A. Center, a Boston-based program that provides services to adult women in the sex trade, reported that the program had served 225 women since it began in 2006.<sup>5</sup> Of these women, 145 (64 percent) were between the ages of 17 and 25, and 20 (9 percent) were identified as foreign nationals. The commercial sexual exploitation of children also occurs across the Commonwealth. From 2005 through May 2012, at least 480 children from Suffolk County received services related to commercial sexual exploitation.<sup>6</sup> The median age of these victims was 15 years old; 15 percent were 13 years old or younger, and the youngest of these victims was 11 years old.<sup>7</sup> The vast majority of the victims (98 percent) were girls, and a majority (65 percent) were girls of color.<sup>8</sup> Most were runaways or had a history of child abuse.<sup>9</sup> Ten percent of the girls had been arrested for prostitution, and over 40 percent had confirmed or suspected involvement in out-of-state trafficking.<sup>10</sup> While the majority of victims who have sought services in Massachusetts are female, the Interagency Human Trafficking Policy Task Force recognized the lack of information about the trafficking of men and boys, and the need for further study about its prevalence.<sup>11</sup>

Labor trafficking also occurs in Massachusetts, and takes many forms, including forced labor, domestic servitude, and debt bondage.<sup>12</sup> It can be found in many industries, including domestic services, food services, nail salons, and factories—many of which employ a large immigrant population.<sup>13</sup> Temporary workers and domestic workers are particularly vulnerable to human trafficking, because they are often immigrants, and their jobs grant them fewer legal protections.<sup>14</sup>

A variety of stakeholders have stepped forward to raise awareness of human trafficking, reduce demand by targeting buyers of commercial sex, and prosecute traffickers. Moreover, a handful of social service providers exist to assist victims to exit out of labor and sexual exploitation. Despite these resources, victims of human trafficking have significant legal needs that may go unaddressed without attention by attorneys in all practice areas, particularly with respect to immigration, unpaid wages, housing, and federal and state welfare benefits, among others.

## **1.2 PURPOSE OF THIS GUIDE**

This Guide provides a general overview of human trafficking law in Massachusetts in order to help attorneys identify victims of human trafficking and determine how to meet their legal and non-legal needs. While it is not an exhaustive guide to the myriad issues practitioners may face, it endeavors to provide attorneys with a solid foundation about the state of the law and refer them to more comprehensive resources, where appropriate.

## **1.3 ACKNOWLEDGEMENTS**

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## **1.4 DISCLAIMERS**

This material is for general informational purposes only and does not represent or communicate legal advice, including but not limited to legal advice relating to any particular set of facts or circumstances; nor does it represent any undertaking to keep recipients advised of legal developments. You should not take or refrain from taking action based on its content. Use of this Guide does not create an attorney-

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This manual represents the opinions and legal conclusions of its authors and not necessarily those of the Office of the Attorney General. Opinions of the Attorney General are formal documents rendered pursuant to specific statutory authority.

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<sup>1</sup> INTERNATIONAL LABOUR OFFICE, ILO GLOBAL ESTIMATE OF FORCE LABOUR 13 (2012), *available at* [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf).

<sup>2</sup> MASSACHUSETTS INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE, FINDINGS AND RECOMMENDATIONS 7 (2013) [hereinafter TASK FORCE REPORT], *available at* [www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf](http://www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf).

<sup>3</sup> TASK FORCE REPORT, *supra* note 2, at 15.

<sup>4</sup> Although female pronouns are primarily used to refer to victims of human trafficking throughout this Guide, the authors note that victims of human trafficking are both male and female, and recognize the need for further study about the trafficking of men and boys. *See* TASK FORCE REPORT, *supra* note 2, at n.13.

<sup>5</sup> SUZANNE PIENING AND THEODORE CROSS, FROM ‘THE LIFE’ TO MY LIFE: SEXUALLY EXPLOITED CHILDREN RECLAIMING THEIR FUTURES: SUFFOLK COUNTY MASSACHUSETTS’ RESPONSE TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) 6 (2012), *available at* [www.suffolkcac.org/assets/pdf/From the Life to My Life Suffolk Countys Response to CSEC June 2012.pdf](http://www.suffolkcac.org/assets/pdf/From_the_Life_to_My_Life_Suffolk_Countys_Response_to_CSEC_June_2012.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *See* TASK FORCE REPORT, *supra* note 2, at n.13.

<sup>12</sup> TASK FORCE REPORT, *supra* note 2, at 16.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 17.





## 2. Defining and Recognizing Human Trafficking

### 2.1 IDENTIFYING VICTIMS AND INDICATORS OF HUMAN TRAFFICKING

The first step to providing services to a victim of human trafficking is to recognize that a client may be a victim, even if she does not self-identify.<sup>1</sup> This section describes common indicators of human trafficking and provides advice on how to identify victims.

#### 2.1.1 What and where is human trafficking?

Human trafficking is an egregious human rights violation that deprives individuals of human dignity by exploiting them for sex or labor. Although the term may evoke images of handcuffs and chains, trafficking often involves more nuanced forms of coercion and fear. Therefore, it is essential that attorneys understand the wide spectrum of conduct that may be involved.

Under the federal Trafficking Victims Protection Act, “severe forms of trafficking in persons” is defined as:

- (A) 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
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>2</sup>

However, under Massachusetts law, the definition is considerably more expansive and, unlike federal law, does not require force, fraud, coercion.<sup>3</sup> Under both statutes, benefiting financially from such conduct may also constitute trafficking.<sup>4</sup>

It is not required that a victim be transported from one location to another, or across state or international borders, for the crime of trafficking to occur.<sup>5</sup> Furthermore, while a common image of human trafficking may be of foreigners illegally brought into the United States, an individual’s immigration status is immaterial to whether a trafficking crime has been committed.<sup>6</sup> In fact, a majority of human trafficking cases in Massachusetts have involved United States citizens.

Another common misconception is that human trafficking is synonymous with human smuggling, when in fact they are distinct crimes. Human trafficking, as described above, focuses on *exploitation*: a person (or persons) exploits another for labor or sexual services. Human smuggling, on the other hand, focuses on *transportation*: a person (or persons) transports another into the United States in violation of immigration laws.<sup>7</sup> The two may be related: human trafficking victims are sometimes (though not always) smuggled into the United States, and individuals smuggled into the United States are sometimes (though not always) victims of human trafficking when they arrive. Nevertheless, smuggling and



trafficking constitute two different crimes, and advocates should remember that a person does not need to have been smuggled into the United States to be a trafficking victim.

#### COMMON MISCONCEPTIONS ABOUT HUMAN TRAFFICKING

MYTH	REALITY
Most victims are foreigners.	In fact, the majority of victims in Massachusetts are United States citizens.
Human trafficking involves smuggling victims across state or international borders.	Human smuggling is a crime that is distinct from human trafficking. Trafficking focuses on <i>exploitation</i> , whereas smuggling focuses on <i>transportation</i> . <sup>8</sup>
Most victims of human trafficking are kept against their will through the use of physical restraints	Trafficking often involves more nuanced forms of coercion and fear, rather than handcuffs and chains.
Men and boys are not victims of human trafficking – particularly commercial sexual exploitation.	Although the majority of victims who have sought services in Massachusetts are female, the prevalence of trafficking of men and boys is not well-understood. Attorneys should be attentive to signs that male clients have been exploited.
There is a clear line separating prostitution from human trafficking.	Prostitution and human trafficking are often not distinct and are difficult to distinguish. Individuals may not self-identify as victims, and it may not be easily apparent whether their circumstances constitute trafficking.
If a person is able to leave, then it is not human trafficking.	A victim's ability to leave is not a component of the human trafficking definition. In fact, victims may be able to come and go but still may feel pressured to remain in a coercive relationship or labor situation.
Most victims are children.	While many victims are under the age of 18, a large percentage of sex and labor trafficking victims are adults.

Trafficking networks include transnational criminal organizations, small criminal networks, local gangs, corrupt government actors, and individuals.<sup>9</sup> Given that every case is unique and may involve different actors and schemes, it is difficult to generalize. However, one common characteristic is that traffickers tend to target those who are most vulnerable, whether due to youth, poverty, a history of domestic violence or abuse, lack of immigration status, limited English proficiency, or the like.<sup>10</sup> According to the U.S. Department of State:

These vulnerabilities do not mean that those who are victimized are dependent on someone else to empower them. It often means that they had the courage to pursue an opportunity that they believed would change their lives and support their families. Traffickers see and understand this reality, and through imbalances in power and

information—and a willingness to use coercion and violence—they take advantage of their victims’ hope for a better future.<sup>11</sup>

The manner of recruitment varies. Traffickers may recruit victims through fraud and manipulation, and control their victims with violence, threats, lies, manipulation of addictions, or other mechanisms of coercion. Traffickers may restrict victims’ movement, for example by confiscating passports, visas, or other identification documents; constantly accompanying victims or insisting on translating their conversations with others; secluding victims from their communities, friends, and family; and requiring the victims to work and live in the same location. Victims may be forced to work in dangerous living conditions with limited access to food or medical care, and forced to work unusually long hours for little or irregular pay and few or no days off.<sup>12</sup>

Often, traffickers prey on emotionally vulnerable individuals, especially children, by promising protection, love, marriage, or even just a better lifestyle. For example, foreign workers may be induced with false promises of job opportunities with good working conditions and wages, perhaps as a nanny, housemaid, model, dancer, field laborer or factory worker. Instead, upon arrival into the United States, these individuals may have their immigration documents and other belongings confiscated, and be forced to work tireless hours for little or no pay under threats of deportation and arrest. Women may be enticed by promises of protection or love, and instead be forced into the commercial sex industry through physical and psychological coercion. Many victims are trafficked by individuals whom they consider, and who may appear, to be their boyfriends.<sup>13</sup>

Traffickers also may engage in debt bondage, demanding labor as a means of repayment for a real or alleged debt. According to the U.S. Department of Health and Human Services, however, in many cases, traffickers:

do not reasonably apply a victim’s wages toward the payment of the debt, or limit or define the nature and length of the debtor’s services. Traffickers may charge victims fees for transportation, boarding, food, and other incidentals. They may also add interest, fines for missing daily work quotas, and charges for “bad behavior.” Debt bondage traps a victim in a cycle of debt that he or she can never pay down, and it can be part of a larger scheme of psychological cruelty.<sup>14</sup>

Trafficking may occur in plain sight. For example, labor trafficking is more prevalent in places with a demand for cheap labor and a lack of rigorous monitoring. It is often found in domestic work, small “mom and pop” labor operations, farms, factories, the hospitality and food industries, and street peddling rings.<sup>15</sup> Sex trafficking is commonly found in street prostitution, online escort services, residential brothels, and brothels disguised as massage businesses.<sup>16</sup>

### 2.1.2 How to identify victims of human trafficking

Every potential client has a unique story, and an attorney's role is often to try to decipher complex narratives to determine if a client meets the definition of human trafficking under relevant law. It is important for attorneys to understand that it may take many meetings to build sufficient trust to elicit the basic outlines of a client's story. At first, clients may distrust attorneys—viewing them as authority figures—and may obscure or lie about the truth. Therefore, when considering how to identify victims of trafficking, it is important not to expect clients to demonstrate all of the telltale signs of victimization in the initial meeting. Often, survivors may deny victimization due to stigma, shame, or lack of trust. Thus, it is important for attorneys to devote considerable time to developing trust and eliciting clients' full stories.

Nevertheless, attorneys should be aware of certain indicators of trafficking while also being cognizant that these are not the only signs that an individual may have been trafficked. The following have been identified as “red flags” that a client may have been a victim of trafficking pursuant to the definition under federal law:<sup>17</sup>

- **Indicators of vulnerability:** the individual in question is disconnected from his or her family, school, work, and/or community; has lost custody of his or her children; lacks education or skills necessary to support himself or herself; is reliant on others in potentially coercive relationships.<sup>18</sup>
- **Runaway and homeless youth:** a history of running away from home; living on the street; living with an adult that is not a relative or legal guardian.<sup>19</sup>
- **Involvement in the commercial sex industry:** a minor (under 18 years of age) in the sex industry working for a pimp or manager is by definition a victim of human trafficking.<sup>20</sup>
- **Prior illegal conduct :** prior arrests, charges, convictions, or outstanding warrants for illegal conduct correlated with trafficking such as sex for a fee, drug possession, theft, or robbery.<sup>21</sup>
- **Common working and living locations:** the individual in question is not free to leave or come and go as he/she wishes; is unpaid, paid very little, paid only through tips, or works excessively long and/or unusual hours; is not allowed breaks or suffers under unusual restrictions at work; owes a large debt and is unable to pay it off; was recruited through false promises concerning the nature and conditions of his/her work; high security measures exist in the work and/or living locations (e.g., opaque windows, boarded up windows, bars on windows, barbed wire, security cameras, etc.).<sup>22</sup>
- **Poor mental health or abnormal behavior:** fearfulness, depression, anxiety, paranoia or nervousness; addiction to drugs or alcohol; hyper-vigilance; mood swings; unusually distrustful or fearful of law enforcement.<sup>23</sup>

- **Poor physical health:** no access or inadequate access to health care; appears malnourished or shows signs of abuse.<sup>24</sup>
- **Lack of control:** has few or no personal possessions; has no bank account or financial records, or is not in control of his/her own money; does not have or is not in control of his/her identification documents; is not allowed or able to speak for himself or herself (for example, a third party insists on being present and/or translating); is unfamiliar with the local language.<sup>25</sup>
- **Communication or social contact is limited:** is unable to communicate freely with others; has limited or no social interaction; has limited contact with his or her family or with people outside of his or her immediate environment.<sup>26</sup>
- **Other indicators specific to children:** disconnection from family or other caregivers; no friends of his or her own age outside of work; no access to education or time for playing; travels unaccompanied by adults, or travels in groups with persons who are not relatives; a history of childhood physical or sexual abuse; multiple reports of running away with no explanation as to whereabouts or running out of state; prior involvement with child protective services; multiple out-of-home placements (foster homes); unexplained absences from school for a period of time; gang involvement; brands or scarring indicating ownership (such as tattoos); indications of drug or alcohol use; internet contact or phone calls with adults, or has an older boyfriend; inappropriate posts on personal social media pages; possession of new clothes or electronics that were “gifts” from unspecified individuals.<sup>27</sup>
- **Other:** claims of “just visiting” the area and inability to clarify where he or she is staying or is or her permanent address; lack of knowledge of whereabouts and/or does not know what city he/she is in; loss of sense of time; has numerous inconsistencies in his or her story.<sup>28</sup>

This list of potential indicators is not exhaustive. In addition, because many of these “red flags” are also indicators of other types of trauma, their presence does not necessarily mean that a client is a victim of human trafficking. Therefore, it is important that attorneys understand each client’s unique history and inquire into a range of topics, including why he or she felt pressured to provide sex or labor. For sample intake questions, see *infra* [Section 4.2](#).

## 2.2 HUMAN TRAFFICKING IN MASSACHUSETTS

### 2.2.1 Human Trafficking in Massachusetts

Child sex trafficking, also known as the commercial sexual exploitation of children, is a significant problem in Massachusetts. A recent study focused on the sexual exploitation of girls found that, from 2005 through May 2012, at least 480 children from Suffolk County received services related to commercial sexual exploitation.<sup>29</sup> The median age of these victims was 15 years old; 15 percent were 13 years old or younger, and the youngest of these victims was 11 years old.<sup>30</sup> A majority of the victims

(about 65 percent) were girls of color.<sup>31</sup> Most were runaways or had a history of child abuse, or both.<sup>32</sup> Ten percent were arrested for prostitution, and over 40 percent were confirmed or suspected to be involved in out-of-state trafficking.<sup>33</sup>

Adults are also victims of sex trafficking in Massachusetts. Of the 225 women who received services between 2006 and 2011 from the E.V.A. Center, a Boston-based organization that works with adult women in the sex trade:

- 145 (64 percent) were age 17-25;
- 20 (9 percent) were foreign nationals; and
- Over half were involved in the court system, largely due to aging out of government systems, such as the Department of Youth Services and the Massachusetts Department of Children and Families.<sup>34</sup>

Sex trafficking in Massachusetts is not limited to girls and women: men and boys are also victims. In fact, a recent study conducted in New York City indicated that male youth victims of commercial sexual exploitation may make up almost half of the victim population.<sup>35</sup> Many of these men and boys become victims at or before reaching 14 years old. They are often homeless or runaways due to family violence, sexual abuse, or sexual orientation or gender identity issues. While some people assume that male victims of sex trafficking are usually gay, in fact only about 25-30% are gay or bisexual. Importantly, male victims also face the added challenge of being seen as “perpetrators” instead of victims. They are often arrested and brought to court for oppositional behavior. Because they are male, they often are not screened for sex trafficking, and frequently end up in adult prisons instead of receiving services designed to assist sex trafficking victims.<sup>36</sup>

**Practice Tip:** Attorneys must not assume that because a client is male, he is not a trafficking victim. Men and boys should be screened for sex and labor trafficking with the same care and attention as women and girls.

Finally, labor trafficking exists throughout Massachusetts. Labor trafficking can take many forms, including forced labor, domestic servitude, and debt bondage.<sup>37</sup> It can be found in many industries, including food services, retail, and factories—all of which employ a large immigrant population.<sup>38</sup> Temporary workers and domestic workers are particularly vulnerable to human trafficking, because they are often immigrants, and their jobs grant them fewer legal protections.<sup>39</sup>

### 2.2.2 Examples of Sex and Labor Trafficking in Massachusetts

Attorneys must be vigilant in order to identify victims of trafficking, as clients may not identify themselves as such. Attorneys should look for indicators, for example, a client who is disconnected from family and/or community, has lost custody of children, has had travel and/or communications restricted, or is a child runaway; see *supra* [Section 2.1.2](#) for other common signs of trafficking.

The following are case studies of sex and labor trafficking in Massachusetts. These stories also illustrate the common intersection between sex and labor trafficking.<sup>40</sup> Client names have been changed and identifying details have been altered to protect client confidentiality.

#### **2.2.2.1 Case Studies of Sex Trafficking in Massachusetts**

- **Two young women** were recruited into prostitution in Boston when they were 15 years old. They traveled with a pimp around the country in the sex trade, frequently suffering severe beatings from him. One of the women had a daughter, whose father was the pimp. After more than a decade with the pimp, the women, then in their late-twenties, returned to Massachusetts to flee from him. Their move was prompted by fear of the pimp's behavior toward the mother's daughter, then ten years old. The women learned that the pimp came to Massachusetts in pursuit of them. Both women had numerous out-of-state warrants and charges against them from years in sex trade (for example, sex for a fee, driving without a license, and drug possession charges), and the mother got picked up on an outstanding warrant. She was extradited out-of-state where she is still currently serving time. The other woman took custody of the child and hid at a domestic violence shelter in Massachusetts.
- **Maria** is currently twenty-one years old. When she was eighteen, Maria attended classes at a local community college and worked part time. Throughout her teenage years, Maria abused prescription medications and, at times, struggled with substance abuse. While working at a local donut shop, she met a customer named Martin. Maria saw that Martin had a fancy car and that he was well-dressed. Martin gave Maria compliments each time he visited the store, and eventually asked for her phone number. Maria and Martin began texting, chatting on social media and eventually started dating. At first, Martin treated Maria well; he bought her clothes and supplied her with marijuana and other drugs. Maria soon moved in with Martin, and after several months of dating, she was completely dependent on Martin for money and drugs. She quit her job and stopped going to school so she could spend more time with him.

After Maria stopped working, Martin began complaining about the amount of money he was spending to support her and asked her to consider working for him doing "dates" with men at hotels. Martin asked Maria repeatedly to do this and told her that he would break up with her if she didn't comply. Maria eventually agreed, and he showed her how to post ads on Backpage.com. Maria soon began to work every night for Martin and gave him all her earnings. In turn, Martin provided her with nice clothes, drugs and a cell phone. Although other women worked for Martin as prostitutes, he told Maria that she was his girlfriend and that she was different than the rest. She knew, however, that he had sex with the other women. Martin threatened to hurt them if Maria or the other women refused to give Martin their earnings. Sometimes Martin hit Maria and told her it was because she didn't make enough money.

At nineteen, Maria had a baby boy with Martin. Her son stayed with Maria's mother because she was always at hotels working and because she was addicted to drugs. Maria loved Martin and felt that he took care of her. She did not believe she had other skills that would enable her to make money and was afraid of drug withdrawal if she left Martin. All of the money used to support her son was prostitution money that Martin occasionally gave her.

- **Li Xia** came to the United States from China to flee an abusive husband. She paid money to snakeheads (Chinese gangs known for smuggling people) to escape her abusive husband. She spoke only limited English when she arrived in New York. She found an immigration attorney to help her with her asylum application, but the attorney cost money. To pay for the attorney, she responded to an advertisement in a Chinese language newspaper to work as a masseuse. Her employer told her that she had to come to Boston for four weeks to work in a massage parlor, and that it would be "legal." She took the bus and arrived in Boston. For a few days, she learned how to provide massages, and all was "above board." She slept in the shop and did not leave during the day because her boss said that "people might notice," and there might be "problems" if she went out. After a few days, the boss told her that she had to provide sexual services to customers. She did not want to, but her boss said that he would not pay her if she did not obey his instruction. He also said that he knew where her family lived in China, and this made her very nervous that something would happen to her children. She reluctantly agreed and started providing sexual services. After two days, her boss assaulted her. She was very frightened by the experience and continued to provide sexual services.
- **Natalie** is 15 years old. She has suffered sexual abuse and neglect, and her family has been periodically involved with the Department of Children and Families ("DCF"). Throughout her childhood, Natalie was treated by a therapist, met regularly with a therapeutic mentor, and was prescribed medication for anxiety. She has a history of running away from home for days at a time, breaking curfew, staying out overnight, and truancy. For a time, Natalie was placed in a group home to address behavioral issues. Natalie's mother recently became concerned about Natalie's new, "risky" behaviors, such as spending time with older males, smoking marijuana, stealing, acting disrespectfully to family, and returning home with jewelry and clothing, despite lack of employment. Eventually, Natalie's parents caught her stealing her mother's prescription painkillers, and filed a Child Requiring Assistance ("CRA") petition, and Natalie's probation officer submitted a CRA referral to DCF on her behalf. Although Natalie did not disclose exploitation, her probation officer recognized indicators of possible exploitation. He filed a 51A report of suspected child abuse, citing concerns that Natalie was being commercially sexually exploited by an unknown perpetrator. Natalie was referred to the SEEN (Support to End Exploitation Now) Coalition, which enacted a multidisciplinary response and facilitated coordination among the various service providers



working with Natalie, offering comprehensive support and safety planning around the concerns of exploitation. SEEN alerted the Boston Police Human Trafficking Unit to the concerns, established ongoing team communication, and was able to connect Natalie to supportive exploitation-specific mentoring services. Months later, Natalie disclosed that she had suffered sexual exploitation by a “boyfriend” and expressed interest in speaking with law enforcement about her experience.

- **Jason**, age 16, came from an intact family in suburban Boston. After his father died unexpectedly, his mother remarried. Jason and his stepfather frequently fought, and their fighting got worse when Jason told his mother and stepfather that he was gay. Finally, Jason’s new stepfather threw him out, making him homeless. To survive on the street, Jason began exchanging sexual services for money. He also started using drugs in order to cope with the difficulties of his day-to-day existence. Eventually, he met a man named Tim, who was about thirty years his senior. Tim treated him well at first: he took him to good restaurants, bought him nice gifts, and even offered to let Jason live with him. When Jason moved in, however, Tim said that Jason had to have sex with him if he wanted to stay. To avoid homelessness, Jason agreed, and started having sex with Tim out of fear that Tim would kick him out. At times, other men would come to Tim’s house for parties, and Tim coerced Jason into having sex with them as well. Despite feeling trapped and degraded, Jason felt like he could not leave. Because Tim had treated him so well at first, Jason felt emotionally dependent upon Tim—even though Tim was exploiting him. Moreover, Jason’s only other option was living on the street, where he believed he would face even greater danger and exploitation.
- **Eva** was approached by Joela, a business woman in Guatemala, who said that for \$5,000, she would bring Eva to the United States, where she could work off her debt to Joela as a waitress. Eva agreed and was delighted about the opportunity. When Eva entered the United States, Joela provided her with a mattress on the floor of her apartment and took her to a strip club instead of giving her a job as a waitress. Joela told Eva that she must work there to repay her debt. She also told Eva that her debt had increased twenty thousand dollars because of the extra costs of travel. Joela told Eva that she had connections to the police and immigration and that Eva would be deported if she refused to work at the strip club. Eva was scared and reluctantly started to work at the club. During the course of her work, she noticed that Joela and her friends were aggressive and violent. She saw them threaten and physically abuse other dancers at the club. She was afraid to leave before paying the debt because she feared that Joela would hurt her, too.

#### **2.2.2.2 Case Studies of Labor Trafficking in Massachusetts**

- **Manuela** fell in love with an American man named Joel. He supported her in her native country of El Salvador for several years before offering to bring her to the United States,

where they would be married. He was emotionally abusive. He often drank alcohol and occasionally became angry and yelled at her. When they arrived in the United States, Manuela and Joel planned to go into business together and start a clothing store. Joel never married Manuela, however, so her K-1 (fiancé) visa lapsed. He provided her with food and clothing, but she had to work for no pay at the clothing store during the day. He became increasingly aggressive and violent. Joel took her passport and threatened to have her deported if she did not follow his orders.

- **Linh** fled Vietnam to escape an abusive husband. She was smuggled into the United States. She worked for a Vietnamese restaurant to pay off her smuggling debt. At the restaurant, she was paid very little and was the victim of repeated sexual assaults at the hands of her employer. She was scared to leave because she thought that her boss would hurt her or her family in Vietnam. She sought the help of the police only to be returned to her employer because she spoke limited English.
- **Kinaya** was brought to the United States from Kenya to work as a domestic worker for a Kenyan family in the United States. She was paid only three hundred dollars per month and subjected to physical and emotional abuse in the home. She could only leave the house to take the children to school. She was rarely allowed to communicate with her family members, and when she did, her calls were monitored by her employers. Kinaya worked long hours every day of the week, and she was denied medical and dental treatment. When she asked for her wages, her employers threatened to send her back to Kenya.

### 2.2.3 Efforts to Combat Human Trafficking in Massachusetts

Since 2004, there have been a variety of efforts designed to combat human trafficking through multidisciplinary partnerships between law enforcement and other stakeholders. In December 2004, the Massachusetts Task Force to Combat Human Trafficking was established as one of 18 Department of Justice (“DOJ”) funded task forces around the nation charged with establishing comprehensive and collaborative victim-centered strategies for combating human trafficking. Members worked together in a variety of activities that included trainings, public awareness and outreach campaigns, technical support for victim service delivery and case coordination, and collaborative investigations and prosecutions. The Task Force continued until 2010 when DOJ funding ended, and it is still credited with building some of the early, formative relationships between non-governmental organizations (“NGOs”) and law enforcement.

Then, in June 2010, U.S. Attorney Carmen Ortiz created the Civil Rights Enforcement Team to prosecute human trafficking, among other crimes. In the absence of a DOJ-funded task force, the U.S. Attorney’s Office (“USAO”) began to convene regular meetings of federal and local law enforcement to coordinate human trafficking investigations. The USAO also organized periodic meetings with law enforcement and NGOs to promote partnership and collaboration.

In 2012, the Interagency Human Trafficking Task Force, created by the Massachusetts Trafficking Statute, convened 19 members from state government and NGOs to make recommendations to the Massachusetts legislature about the implementation of new human trafficking legislation. The Task Force, chaired by Attorney General Martha Coakley, focused on making specific policy recommendations in areas including data collection and information sharing, reducing demand, education and training, public awareness, and victim services. The task force published a report on August 19, 2013, which included recommendations to state lawmakers about what more can be done to combat and prevent trafficking.

For further information, please visit the [Interagency Human Trafficking Task Force's website](#).<sup>41</sup>

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<sup>1</sup> Although female pronouns are primarily used to refer to victims of human trafficking throughout this Guide, the authors note that victims of human trafficking are both male and female. While the majority of victims who have sought services in Massachusetts are female, the Interagency Human Trafficking Policy Task Force has recognized the lack of information about the trafficking of men and boys, and the need for further study about its prevalence. See MASSACHUSETTS INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE, FINDINGS AND RECOMMENDATIONS, at n.13 (Aug. 19, 2013), available at [www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf](http://www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf).

<sup>2</sup> 22 U.S.C.A. § 7102(9).

<sup>3</sup> See 22 U.S.C.A. § 7102(9)(A) (West 2013); M.G.L. c. 265, §§ 50-51. Force, fraud, or coercion are also not necessary under federal law to prove sex trafficking—it is only required to prove “severe forms of trafficking.” See 22 U.S.C.A. § 7102(10) (West 2013).

<sup>4</sup> See 18 U.S.C.A. § 1593A (West 2013); M.G.L. c. 265, §§ 50-51.

<sup>5</sup> See 22 U.S.C.A. § 7102(9); M.G.L. c. 265, §§ 50-51.

<sup>6</sup> See *Myths and Misconceptions*, POLARISPROJECT.ORG, [www.polarisproject.org/human-trafficking/overview/myths-and-misconceptions](http://www.polarisproject.org/human-trafficking/overview/myths-and-misconceptions) (last visited Sept. 18, 2013).

<sup>7</sup> 8 U.S.C.A. § 1324 (West 2013) (defining the crime of “bringing in and harboring certain aliens”).

<sup>8</sup> 8 U.S.C.A. § 1324 (West 2013) (defining the crime of “bringing in and harboring certain aliens”).

<sup>9</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION, HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 3 (Aug. 2009), available at [aspe.hhs.gov/hsp/07/humantrafficking/litrev/index.pdf](http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/index.pdf).

<sup>10</sup> See SUPREME COURT OF N.Y., APPELLATE DIV., FIRST DEP’T, ET AL., ATTORNEY’S MANUAL ON HUMAN TRAFFICKING 31-40 (2011), available at [www.nycourts.gov/ip/womeninthecourts/publications.shtml](http://www.nycourts.gov/ip/womeninthecourts/publications.shtml).

<sup>11</sup> See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, at 17 (June 2012) [hereinafter TRAFFICKING IN PERSONS REPORT], available at [www.state.gov/documents/organization/192587.pdf](http://www.state.gov/documents/organization/192587.pdf).

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 87.

<sup>14</sup> *Fact Sheet: Human Trafficking*, OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP’T OF HEALTH & HUMAN SERVS. (Aug. 2, 2012), [www.acf.hhs.gov/programs/orr/resource/fact-sheet-human-trafficking](http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-human-trafficking).

<sup>15</sup> See *Labor Trafficking in the U.S.*, POLARISPROJECT.ORG, [www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us](http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us) (last visited Sept. 3, 2013) (“Common types of labor trafficking include people forced to work in homes as domestic servants, farmworkers coerced through violence as they harvest crops, or factory workers held in inhumane conditions with little to no pay.”).

<sup>16</sup> See *Sex Trafficking in the U.S.*, POLARISPROJECT.ORG, [www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us](http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us) (last visited Sept. 3, 2013).

<sup>17</sup> *Recognizing the Signs*, POLARISPROJECT.ORG, [www.polarisproject.org/human-trafficking/recognizing-the-signs](http://www.polarisproject.org/human-trafficking/recognizing-the-signs); UNITED NATIONS, OFFICE ON DRUGS & CRIME, *Human Trafficking Indicators*, [www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf); Telephone Interview with Cherie Jimenez, Founder & Executive Director, E.V.A Center, Boston, MA (Oct. 9, 2013); Telephone Interview with Susan Goldfarb, Executive Director,

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Children's Advocacy Center (Feb. 22, 2013); *see also* JEAN BRUGGEMAN & ELIZABETH KEYES, AMERICAN BAR ASSOCIATION, MEETING THE LEGAL NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 11-15 (2009), *available at* [apps.americanbar.org/humanrights/docs/project\\_docs/DV\\_Trafficking.pdf](https://apps.americanbar.org/humanrights/docs/project_docs/DV_Trafficking.pdf).

<sup>18</sup> Telephone Interview with Cherie Jimenez, *supra* note 17.

<sup>19</sup> Telephone Interview with Susan Goldfarb, *supra* note 17.

<sup>20</sup> *See* 22 U.S.C.A § 7102(9)(A) (West 2013); M.G.L. c. 265, §§ 50-51.

<sup>21</sup> Telephone Interview with Cherie Jimenez, *supra* note 17. Note that a criminal record presents a significant barrier to a victim trying to exit out of trafficking and obtain gainful employment. *See id.*; *see also infra*, Section 7.

<sup>22</sup> *Recognizing the Signs*, POLARISPROJECT.ORG, [www.polarisproject.org/human-trafficking/recognizing-the-signs](http://www.polarisproject.org/human-trafficking/recognizing-the-signs).

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

<sup>25</sup> *Id.*

<sup>26</sup> UNITED NATIONS, OFFICE ON DRUGS & CRIME, *Human Trafficking Indicators*, [www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf).

<sup>27</sup> *See id.*; Children's Advocacy Ctr., Support to End Exploitation Now (SEEN), Indicators of Commercial Sexual Exploitation (CSEC), [www.suffolkcac.org/programs/seen/](http://www.suffolkcac.org/programs/seen/) (last visited Oct. 16, 2013); Telephone Interview with Susan Goldfarb, *supra* note 17.

<sup>28</sup> *Recognizing the Signs*, POLARISPROJECT.ORG, [www.polarisproject.org/human-trafficking/recognizing-the-signs](http://www.polarisproject.org/human-trafficking/recognizing-the-signs).

<sup>29</sup> SUZANNE PIENING & THEODORE CROSS, FROM 'THE LIFE' TO MY LIFE: SEXUALLY EXPLOITED CHILDREN RECLAIMING THEIR FUTURES: SUFFOLK COUNTY MASSACHUSETTS' RESPONSE TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) 6 (2012), *available at* [www.suffolkcac.org/assets/pdf/From\\_the\\_Life\\_to\\_My\\_Life\\_Suffolk\\_Countys\\_Response\\_to\\_CSEC\\_June\\_2012.pdf](http://www.suffolkcac.org/assets/pdf/From_the_Life_to_My_Life_Suffolk_Countys_Response_to_CSEC_June_2012.pdf).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> MASSACHUSETTS INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE, FINDINGS AND RECOMMENDATIONS 15 (2013) [hereinafter TASK FORCE REPORT], *available at* [www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf](http://www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf).

<sup>35</sup> RIC CURTIS, ET AL., CENTER FOR COURT INNOVATION AND JOHN JAY COLLEGE OF CRIMINAL JUSTICE, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY: EXECUTIVE SUMMARY 3 (2008), *available at* [www.courtinnovation.org/sites/default/files/CSEC\\_NYC\\_Executive\\_Summary.pdf](http://www.courtinnovation.org/sites/default/files/CSEC_NYC_Executive_Summary.pdf).

<sup>36</sup> Telephone Interview with Steven Procopio, Project Coordinator, Surviving our Struggle (May 6, 2013).

<sup>37</sup> TASK FORCE REPORT, *supra* note 34, at 16.

<sup>38</sup> *Id.* at 16-17.

<sup>39</sup> *Id.* at 17-18.

<sup>40</sup> For more information about this convergence, see "Sex Trafficking and Labor Trafficking: Overlap and Convergence" by Lori L. Cohen, *available at*: [www.nycourts.gov/ip/womeninthecourts/LMHT.pdf](http://www.nycourts.gov/ip/womeninthecourts/LMHT.pdf).

<sup>41</sup> Massachusetts Interagency Human Trafficking Policy Task Force, [www.mass.gov/ago/about-the-attorney-generals-office/community-programs/anti-human-trafficking/human-trafficking-task-force/](http://www.mass.gov/ago/about-the-attorney-generals-office/community-programs/anti-human-trafficking/human-trafficking-task-force/).



### 3. Introduction to Human Trafficking Law

This section provides an introduction to international, federal, and state human trafficking laws. In particular, it focuses on the recent Massachusetts legislation, An Act Relative to the Commercial Exploitation of People (“Massachusetts Trafficking Statute”), and describes its history, objectives, and unique aspects as compared to federal law.

#### 3.1 HUMAN TRAFFICKING UNDER INTERNATIONAL LAW

In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, otherwise known as the Palermo Protocol.<sup>1</sup> The Palermo Protocol provides a comprehensive definition of “trafficking in persons,” and requires state parties to criminalize trafficking and provide information and assistance to trafficking victims. The Palermo Protocol defines “trafficking in persons” to mean:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>2</sup>

The United States ratified the Palermo Protocol, with reservations, in November 2005.<sup>3</sup>

#### 3.2 FEDERAL LEGISLATION: TRAFFICKING VICTIMS PROTECTION ACT

The Trafficking Victims Protection Act (“TVPA”), originally enacted in 2000, was the first comprehensive national human trafficking legislation in the United States. Congress subsequently reauthorized the TVPA in 2003, 2005, 2008, and 2013. In pertinent part, the TVPA:<sup>4</sup>

- Creates federal human trafficking crimes, including forced labor;<sup>5</sup> trafficking with respect to peonage, slavery, involuntary servitude, or forced labor;<sup>6</sup> sex trafficking by force, fraud, or coercion;<sup>7</sup> sex trafficking in children;<sup>8</sup> and associated attempt and conspiracy crimes;<sup>9</sup>
- Establishes the T visa<sup>10</sup> and “Continued Presence”<sup>11</sup> immigration status for noncitizen trafficking victims;<sup>12</sup>
- Creates a federal civil cause of action that allows trafficking victims to sue their traffickers;<sup>13</sup>



- Establishes public awareness programs regarding human trafficking;<sup>14</sup>
- Gives protections and assistance to foreign national victims of human trafficking to the same extent as refugees, including education services, health care, job training, and other social services;<sup>15</sup>
- Creates the State Department’s Office to Monitor and Combat Trafficking, which is responsible for ranking and reporting on countries’ efforts to combat trafficking, and authorizes the President to impose sanctions on that basis; and<sup>16</sup>
- Expands U.S. jurisdiction for trafficking crimes to certain U.S. citizens abroad.<sup>17</sup>

Federal statutes do not formally define human trafficking or trafficking in persons. Instead, Section 103(8) of the TVPA defines “severe forms of trafficking in persons” to mean:

- (A) 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
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>18</sup>

### 3.3 MASSACHUSETTS TRAFFICKING STATUTE

The Massachusetts Trafficking Statute was signed into law on November 21, 2011, and took effect on February 19, 2012. Prior to enactment of the Massachusetts Trafficking Statute, Massachusetts was one of only three states (along with West Virginia and Wyoming) that had not expressly criminalized human trafficking.<sup>19</sup> Since then, the Massachusetts Trafficking Statute has been praised by the Polaris Project, which ranked Massachusetts as the “Most Improved” state with respect to combating human trafficking, “catapult[ing] the state from the worst tier to the best . . . .”<sup>20</sup>

During the legislative process, Attorney General Martha Coakley offered key testimony regarding the importance of and purposes behind the Massachusetts Trafficking Statute.<sup>21</sup> Her testimony called attention to the young age at which child victims of sex trafficking are forced into the sex trade, and how violence and abuse compel them to stay in exploitative situations.<sup>22</sup> She also observed that the proposed law would “go after the [trafficking] supply” by creating the crimes of sex trafficking and labor trafficking, “address the demand that feeds this industry” by increasing the penalty for clients of commercial sex, and “support its victims” by creating a task force to study the problem and recommend further solutions.<sup>23</sup>

Among other key provisions, the Massachusetts Trafficking Statute:

- Establishes the crimes of “trafficking of persons for sexual servitude” to combat sex trafficking,<sup>24</sup> and “trafficking of persons for forced services” to combat labor trafficking.<sup>25</sup> Both crimes are punishable by up to 20 years in prison, with a mandatory minimum of 5 years,<sup>26</sup> and by a fine of up to \$25,000 for individuals<sup>27</sup> and up to \$1 million for businesses.<sup>28</sup>
- Creates a civil tort cause of action for victims of sexual servitude and forced services crimes.<sup>29</sup>
- Establishes an enhanced penalty for trafficking in children (“persons under 18 years of age”), punishable by up to life imprisonment, with a mandatory minimum of 5 years.<sup>30</sup>
- Criminalizes enticing a child to engage in prostitution via electronic communication, punishable by up to 2½ years imprisonment in a house of correction or up to 5 years in state prison and/or by a fine of up to \$2,500.<sup>31</sup>
- Creates an affirmative defense for adult victims who committed prostitution-related crimes under duress or coercion, and an avenue to “safe harbor” for child victims of sex trafficking accused of certain sex crimes.<sup>32</sup>
- Adds “sexually exploited child” to the definition of a “child requiring assistance,”<sup>33</sup> and requires the Massachusetts Department of Children and Families (“DCF”) to immediately report any trafficked or sexually exploited child to the district attorney and local law enforcement.<sup>34</sup>
- Creates a trust fund for victims of human trafficking, funded by penalties for trafficking offenses, to be used to provide grants to groups providing services to victims of human trafficking.<sup>35</sup>
- Creates an interagency task force to assess what must be done to further implement the law and its purposes.<sup>36</sup>

The Massachusetts Trafficking Statute defines the crime of trafficking of persons for sexual servitude as:

subject[ing], or attempt[ing] to subject, or recruit[ing], entic[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means, or attempt[ing] to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity,<sup>37</sup> a sexually-explicit performance<sup>38</sup> or the production of unlawful pornography in violation of chapter 272, or caus[ing] a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefit[ing], financially or by receiving anything of value, as a result of a violation of [the preceding clause].

The Massachusetts Trafficking Statute defines the crime of trafficking of persons for forced service as:

subject[ing], or attempt[ing] to subject, or recruit[ing], entic[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means, or attempt[ing] to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services;<sup>39</sup> or (ii) benefit[ing], financially or by receiving anything of value, as a result of a violation of [the preceding clause].

### **3.4 SUMMARY OF MASSACHUSETTS LEGISLATION**

The following is a helpful summary of the Massachusetts Trafficking Statute created by the Human Trafficking Legal Assistance Center (“HTLAC”) at Lutheran Social Services and used by permission.



## **LEGISLATIVE SUMMARY OF AN ACT RELATIVE TO THE COMMERCIAL EXPLOITATION OF PEOPLE**

### **CONTENTS**

#### **1 COMBATING HUMAN TRAFFICKING**

- 1.1 Criminal Penalties for Human Traffickers
  - 1.1.1 Definition of Sexual Servitude and Forced Services
  - 1.1.2 Increased Penalties for Human Trafficking Offenses
- 1.2 Fighting Demand for Human Trafficking

#### **2 PROTECTING SURVIVORS OF HUMAN TRAFFICKING**

- 2.1 Affirmative Defense for Trafficking Survivors
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  - 2.3.3 Trafficking Caseworker Privilege
- 2.4 Civil Remedy for Trafficking Survivors

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This summary was produced by the Human Trafficking Legal Assistance Center (HTLAC) at Lutheran Social Services. This document does not reflect every aspect of the legislation and only provides a general introduction to its contents. Special thanks to Gina Kim, HTLAC intern, for her assistance.

# **LEGISLATIVE SUMMARY OF AN ACT RELATIVE TO THE COMMERCIAL EXPLOITATION OF PEOPLE<sup>40</sup>**

## **1 COMBATING HUMAN TRAFFICKING**

### **1.1 Criminal Penalties for Human Traffickers**

#### **1.1.1 Definition of Sexual Servitude and Forced Services**

- **“Sexual servitude”** is a crime involving an individual who knowingly “subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272” or “benefits, financially or by receiving anything of value, as a result of [such] a violation.” (Section 5)
- **“Commercial sexual activity”** is defined as “any sexual act on account of which anything of value is given, promised to or received by any person.” (Section 23)
- **“Forced services”** is defined as “services performed or provided by a person that are obtained or maintained by another person who:
  - (i) causes or threatens to cause serious harm to any person;
  - (ii) physically restrains or threatens to physically restrain another person;
  - (iii) abuses or threatens to abuse the law or legal process;
  - (iv) knowingly destroys, conceals, removes, confiscates or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;
  - (v) engages in extortion under section 25; or
  - (vi) causes or threatens to cause financial harm to any person.” (Section 23)

#### **1.1.2 Increased Penalties for Human Trafficking Offenses**

- **Enticing a child under 18 via electronic communication to engage in prostitution:** punishable by a maximum of 2.5 years in a house of correction or a maximum of 5 years in state prison and/or a fine of not less than \$2,500. A second or subsequent offense is punishable by a minimum of 5 years in state prison and a fine of not less than \$10,000. (Section 22)
- **Sexual servitude or forced services involving a survivor under 18:** punishable by a minimum of 5 years and a maximum of life imprisonment in state prison. (Section 23)

- **Sexual servitude or forced services involving a survivor over 18:** punishable by a minimum of 5 years and a maximum of 20 years of imprisonment, and a maximum fine of \$25,000. (Section 23)
- **Businesses involved in trafficking:** a business entity convicted of human trafficking for sexual servitude or forced labor may be fined up to \$1 million. (Section 23)

## 1.2 Fighting Demand

- **Increased penalties for buyers of commercial sex:** “Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct” shall be punished by a maximum sentence of 2.5 years and/or a fine between \$1,000 and \$5,000. (Section 25)

## 2 PROTECTING SURVIVORS OF HUMAN TRAFFICKING

### 2.1 Affirmative Defense Available for Trafficking Survivors

- Establishes an affirmative defense to prostitution charges if “such person was under duress or coerced into committing the offenses for which such person is being prosecuted.” (Section 23)

### 2.2 Safe Harbor for Minor Trafficking Survivors

- The definition of a “child in need of services” shall include a “sexually exploited child.” (Section 7)
- There will be “safe harbor” available to sexually exploited children from prosecution of “common night walking” and “common streetwalking.” (Section 9)
- The Massachusetts Department of Children and Families (“DCF”) shall immediately report to the district attorney and local law enforcement authorities any sexually exploited child or child trafficking survivor. (Section 11)
- DCF shall provide an advocate or member of the multi-disciplinary service team to accompany a sexually exploited child at all court appearances. The DCF Commissioner, subject to appropriation, will be allowed to contract with non-governmental organizations with experience working with sexually exploited children to provide training to law enforcement. (Section 9)

### 2.3 Resources for Trafficking Survivors

#### 2.3.1 Interagency Task Force to Combat Human Trafficking

- A 19-member interagency task force, chaired by the Attorney General, will be created to address all aspects of human trafficking—including sex and labor trafficking. The task

force shall consist of representatives from state government, local law enforcement, and eight gubernatorial appointees representing various areas of expertise and interest groups. (Section 31)

### **2.3.2 Victims of Human Trafficking Trust Fund**

- A Victims of Human Trafficking Trust Fund will be established from asset forfeitures, fines and assessments, and any interest and earnings made related to trafficking offenses prosecuted under this act. Proceeds from the fund will be awarded through grants to state, private non-profit, or community-based programs in the Commonwealth to provide services to survivors of trafficking crimes. (Section 5)

### **2.3.3 Trafficking Caseworker Privilege**

- Establishes a trafficker caseworker privilege. A human trafficking caseworker is a “person who is employed by or volunteers with a program serving human trafficking victims...” (Section 17)

### **2.3.4 Civil Remedy for Trafficking Survivors**

- Establishment of a civil remedy for human trafficking offenses, which has a 3-year statute of limitations (with some exceptions). (Section 20)



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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 53, available at [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf) [hereinafter the “Palermo Protocol.”].

<sup>2</sup> Palermo Protocol, *supra*, note 1, at Art. 3.

<sup>3</sup> United Nations Treaty Collection, CHAPTER XVIII: PENAL MATTERS: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Aug. 29, 2013), [www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html](http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html). The United States’ ratification included some reservations, including a refusal to submit to arbitration disputes regarding the protocol with other State Parties. *See id.*

<sup>4</sup> For a more extended summary of key provisions in the TVPA, *see Trafficking Victims’ Protection Act (TVPA) – Fact Sheet*, [www.polarisproject.org/resources/state-and-federal-laws](http://www.polarisproject.org/resources/state-and-federal-laws) (last visited Aug. 29, 2013) (Follow “Click Here” hyperlink).

<sup>5</sup> 18 U.S.C.A. § 1589 (West 2013).

<sup>6</sup> *Id.* § 1590.

<sup>7</sup> *Id.* § 1591.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* § 1594.

<sup>10</sup> *Id.* § 1101(a)(15)(T).

<sup>11</sup> 22 U.S.C.A. § 7105 (West 2013).

<sup>12</sup> *See infra* [Section 5.1](#) for more details [add hyperlink].

<sup>13</sup> 18 U.S.C.A. § 1595.

<sup>14</sup> 22 U.S.C.A. § 7104.

<sup>15</sup> *Id.* § 7105(b)(1)(A) (“Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101 (a)(15)(T)(ii) of Title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of Title 8.”).

<sup>16</sup> 22 U.S.C.A. § 7103; *id.* § 7107

<sup>17</sup> 18 U.S.C.A. § 1596 (trafficking crimes committed abroad by U.S. citizens and permanent residents).

<sup>18</sup> 22 U.S.C.A. § 7102(9).

<sup>19</sup> *See* Press Release, Polaris Project, Massachusetts Passes Its First Human Trafficking Bill (Nov. 15, 2011), [www.polarisproject.org/media-center/news-and-press/press-releases/524-massachusetts-passes-first-ever-human-trafficking-bill-nov-15-2011](http://www.polarisproject.org/media-center/news-and-press/press-releases/524-massachusetts-passes-first-ever-human-trafficking-bill-nov-15-2011).

<sup>20</sup> Press Release, Polaris Project, Majority of States Actively Passing Laws to Combat Human Trafficking (Aug. 7, 2012), [www.polarisproject.org/media-center/news-and-press/press-releases/634-majority-of-states-actively-passing-laws-to-combat-human-trafficking](http://www.polarisproject.org/media-center/news-and-press/press-releases/634-majority-of-states-actively-passing-laws-to-combat-human-trafficking).

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<sup>21</sup> *Joint Committee on the Judiciary Public Hearing: Hearing on T.S. 827/H. 2850, An Act Relative to the Commercial Exploitation of People, Before the Joint Committee on the Judiciary*, 187th Sess. (Mass. 2011) (statement of Martha Coakley, Att’y Gen. of Mass.), available at [www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf](http://www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf).

<sup>22</sup> *Id.* at 1-2.

<sup>23</sup> *Id.* at 2-3.

<sup>24</sup> M.G.L. c. 265, § 50.

<sup>25</sup> *Id.* § 51.

<sup>26</sup> *Id.* § 50(a); *id.* § 51(a).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* § 50(c); *id.* § 51(c).

<sup>29</sup> *Id.* § 50(d); *id.* § 51(d).

<sup>30</sup> *Id.* § 50(b); *id.* § 51(b).

<sup>31</sup> *Id.* § 26D.

<sup>32</sup> M.G.L. c. 119, § 39L.

<sup>33</sup> *Id.* § 21.

<sup>34</sup> *Id.* § 51B(a).

<sup>35</sup> M.G.L. c. 10, § 66A.

<sup>36</sup> 2011 Mass. Legis. Serv. c. 178 § 31 (West).

<sup>37</sup> “Commercial sexual activity” is defined as “any sexual act on account of which anything of value is given, promised to or received by any person.” M.G.L. c. 265, § 49.

<sup>38</sup> “Sexually-explicit performance” is defined as “an unlawful live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.” *Id.*

<sup>39</sup> “Forced services” are defined as “services performed or provided by a person that are obtained or maintained by another person who: (i) causes or threatens to cause serious harm to any person; (ii) physically restrains or threatens to physically restrain another person; (iii) abuses or threatens to abuse the law or legal process; (iv) knowingly destroys, conceals, removes, confiscates or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) engages in extortion under section 25; or (vi) causes or threatens to cause financial harm to any person.” *Id.*

<sup>40</sup> Chapter 178 of the Acts of 2011. The legislation is found online at: [www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter178](http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter178).



## 4. Working With Vulnerable And Diverse Populations

### 4.1 DEVELOPING RAPPORT AND BUILDING TRUST

Establishing trust between attorney and client can be challenging in any context, but may be particularly difficult with victims of human trafficking. These clients may have suffered betrayal, threats, and/or abuse from people they previously trusted—especially individuals viewed as authority figures. This can make it difficult for lawyers to establish the trust necessary to understand clients' stories and ultimately pursue their cases.

Lawyers should approach any meeting with a suspected victim of human trafficking with an appreciation and understanding of the strength and courage it took the victim to survive the trafficking situation and discuss it with a relative stranger. Focusing on these strengths and the client as an individual, rather than assuming that victims are helpless or passive, will help avoid creating a potentially harmful power dynamic between the attorney and client. It is natural for clients to be hesitant to open up to strangers who they assume will not understand their experiences, and it is difficult for some clients to admit that someone else may have taken advantage of them. Therefore, the goal of any interview of a trafficking victim should be to create a level playing field that enables a trafficking victim to relate to and converse easily with the lawyer.<sup>1</sup> Otherwise, a client may be hesitant to open up to someone she perceives as disconnected from her own reality and unable to understand her story.<sup>2</sup>

One way to develop trust with a client is to begin an honest dialogue about the lawyer's role and listen to the client's concerns. Clients may be embarrassed or otherwise reluctant to share their experiences, especially if they involve past criminal conduct or sexual exploitation. Therefore, it may take a series of meetings before a lawyer is able to develop the relationship necessary to delve into sensitive topics. And even after establishing a trust relationship, some victims may never disclose the extent of their exploitation to their lawyers. It is helpful to gauge a client's comfort level by his or her responses.

Below are some tips for how to develop rapport and build trust with a potential trafficking victim.<sup>3</sup>

- **Clarify your role as an advocate.** Trafficking victims may be distrustful of authority figures, including attorneys, based on past traumatic experiences. They may also have been coached by their traffickers on how to respond to questions from attorneys, social workers, or law enforcement.<sup>4</sup> At the beginning of your representation, inform your client that you work for her and will act as her zealous advocate. Explain that your goal is to hear her story and understand what she hopes to accomplish with your help.
- **Emphasize that you will keep all communications with her confidential.** Emphasize that this is a rule to which all attorneys are bound, and that its purpose is to encourage honest and complete communication between clients and attorneys. Explain that the privilege belongs to the client, and that you, as her attorney, are ethically bound not to disclose any information without her permission. You may also need to explain any limits of the privilege

(including that it does not apply if a mandated reporter or certain other individuals are present during confidential discussions), and any potential conflicts of interest if representing more than one victim in a particular trafficking scheme. This applies when working with minor victims as well as adult victims.

- ***Ensure your client's safety.*** Select a location to meet with your client that is safe, considering the location of your client's traffickers. Determine other steps that you can take to keep your client's identity and location secure, such as using pseudonyms in pleadings, or asking the court to impound her address and other personal information.<sup>5</sup>
- ***Communicate effectively.*** Ensure that you communicate effectively and collaborate with your client as an equal partner. Do not speak in "legal-ese"; use language that is readily accessible given your client's experience and education. Determine whether an interpreter is necessary and, if so, choose an appropriate person (*see infra* [Section 4.3](#)). In particular, make referrals to survivor-led or worker-led programs. Clients may feel more comfortable sharing their stories with others who have had similar experiences.
- ***Avoid preconceived notions of what constitutes a trafficking victim.*** Trafficking victims may be male or female, citizens or noncitizens, young or old. They may act passively or they may appear confident, even abrasive. There is no one profile of a trafficking victim, and each person and circumstance is unique.
- ***Be attentive to indicators of vulnerability to traffickers.*** Lawyers should be alert to indicators of vulnerability to traffickers, such as a client being disconnected from her family, school, work, and/or community; lacking the education and skills necessary to support herself; and relying on others in potentially coercive and abusive relationships. Economic need and a lack of marketable skills in the job market may drive victims into a trafficking situation, keep them in it, and cause them to return to the situation after they have left it.
- ***Be sensitive to symptoms of distress and trauma and signs of discomfort.*** Trafficking victims may suffer from post-traumatic stress, anxiety, or depression, or may be in physical pain due to abuse. Be attentive to signs of distress and, if appropriate, refer your client to support hotlines or individuals trained in working with victims of trauma. Try to meet in a professional, private, but friendly environment. Pay attention to what puts your client at ease and what puts her on edge. Consider putting your phone on silent during the meeting, ensure that others will not pass by or interrupt you, and think of ways that you can promote a comfortable environment. If your client is noticeably uncomfortable with a particular line of questioning and becomes overly emotional, angry, or unresponsive, be prepared to change the topic to something less upsetting, or take a break.
- ***Be non-judgmental and exercise patience with your client.*** A client may take a long time to open up to you, may be indecisive or ambivalent, or may talk endlessly about seemingly

irrelevant details or frustrations. Whatever the case, remain patient and focused on what is important to your client. Also be mindful that behaviors such as inattentiveness, anxiety, or irritability may be symptomatic of post-traumatic stress, and that drug or alcohol dependency are common coping mechanisms.

- **Inform your client about resources available to meet non-legal needs.** Even if you are not equipped to assist your client with non-legal or pseudo-legal needs, such as immigration, health, or housing issues, be ready to refer her to other professionals or local organizations that can assist her.
- **Follow-through.** Be realistic. Do not give your client false hope. Do not make any promises that you can't guarantee, i.e. safety of family or friends that exploiter is threatening. Be consistent, show up, and do what you say you are going to do.
- **Empower your client.** Representation of trafficking victims must be victim centered where he or she is making the decisions. If this is not the focus there is the risk of re-victimizing the individual all over again. Make sure that you are empowering your client to make decisions and be careful not to think that as an attorney, you know best.
- **Be attentive to issues specific to child victims.** For particular considerations in building trust and working with minors, see *infra* [Section 6](#).

## 4.2 WORKING WITH DISTINCT CULTURAL COMMUNITIES

When asking a client about her history of exploitation, an attorney working with a foreign victim should be aware that a her cultural or religious beliefs may have been exploited by traffickers to maintain control. For example, in some cultures, it may be common for a trafficker to threaten to expose a victim as a “prostitute” in her home community, play upon her sense of obligation to a marriage proposal, play upon her fear of corrupt attorneys or law enforcement, refuse to allow her to practice her religion, or threaten her with deportation.<sup>6</sup>

This sort of coercion may be difficult for attorneys and law enforcement officials to identify or appreciate without a sufficient understanding of a victim's culture and beliefs. Attorneys should therefore try to obtain an understanding of their clients' backgrounds and consider whether and how cultural beliefs may have been leveraged against the client.

## 4.3 WORKING WITH INTERPRETERS

Communicating through interpreters presents unique challenges. Any interpreter that you choose to use to communicate with clients should be screened to ensure that he or she is competent, trustworthy, and professional, and will treat your client with sensitivity and respect.<sup>7</sup> Doing so is crucial to facilitating open and honest conversations with your client.

First, consider an interpreter's gender and ethnic background. For example, assess whether the interpreter has connections to your client's kinship group or to that of her exploiters. If such connections exist, you should find someone else; while an interpreter from your client's ethnic community may help to build trust and rapport, it may also have the opposite effect if the victim feels too ashamed to discuss culturally stigmatizing subjects in front of someone from the same background who shares the same cultural norms. It is suggested that you avoid using a friend or associate of the client to interpret—at least at the outset of representation—as it is difficult to determine if such associates have ties to traffickers.<sup>8</sup> Moreover, using a client's friend as a translator may have implications with respect to the attorney-client privilege.

Second, consider an interpreter's experience with victims of human trafficking. Ideally, an interpreter will be specifically trained to work with human trafficking victims. In that regard, it may be advisable to work with an interpreter or individual involved in a local organization that works with trafficking victims, or other victims of violence. If you choose an interpreter who does not have such experience, prepare him or her to work with your client by emphasizing the duty of confidentiality, explaining the nature of the crime, and providing tips for how to appropriately interact with a victim.<sup>9</sup>

If you have any ability to communicate with your client independently, it is advisable to ask your client after using the interpreter for the first time whether he or she is comfortable working with that individual again.<sup>10</sup>

It may be helpful to meet with an interpreter after meeting with a client to ask if he or she had any insights from the meeting based on his or her cultural background. Interpreters are sometimes able to share culturally relevant details that may help elucidate a client's story.

For more information and suggested best practices for working with interpreters, please see [masslegalservices.org/content/working-with-interpreter-tip-sheet](https://masslegalservices.org/content/working-with-interpreter-tip-sheet).

#### **4.4 SPECIAL CONSIDERATIONS WHEN WORKING WITH SEX TRAFFICKING VICTIMS**

It is essential to establish rapport and an atmosphere of trust and non-judgment when working with sex trafficking victims. It may take several meetings for the survivor to feel comfortable sharing his or her story, and at first she may be very hesitant to provide an attorney with all of the information relevant to her case. To this end, it is important that attorneys inform their clients about the legal process at the outset and throughout the representation. Explaining all options carefully and making it clear that the client can choose how to proceed will help build trust. It will also reduce the effect of the hierarchy inherent in the attorney-client relationship by allowing the client to feel in control of the process. Many victims were in situations in which they lacked power, and it is helpful to promote trust by demonstrating that the client is able to make important decisions about his or her future.

It is also essential that an attorney only make commitments to a client that he or she can keep. Trust is an essential component of the attorney-client relationship, but it is often difficult to build with survivors

because they may be distrustful of authorities, such as attorneys, law enforcement, and government officials, due to their past experiences. Thus, it is important that attorneys clearly state what they can and cannot do for their clients, and follow through on whatever commitments they make. In addition, it may take a long time to develop a relationship with a survivor, so it is important to build adequate time into the representation process.

#### **4.4.1 Importance of Survivor-Led Advocacy and Mentorship for Victims of Sex Trafficking**

One of the most effective non-legal services available to victims of sex trafficking are survivor-led advocacy programs. In these programs, adult and child victims work directly with survivors for the purposes of support and finding paths to exit commercial sexual exploitation situations.

These programs encourage victims to build a sense of community by promoting a non-judgmental and collaborative environment. Many victims find it extremely helpful to connect with other sex trafficking survivors—most of whom have been disconnected from friends, family, and their communities for years, and suffer detachment or feelings of shame. Victims are encouraged to form strong bonds with advocates that can last for years. Survivor-led programs also empower survivors to overcome their own and others’ perceptions of them as powerless victims, and help survivors see themselves as members of a community with a voice that deserves to be heard.

From a legal perspective, connecting clients to survivor-led advocacy services often makes an enormous difference in their ability to effectively follow up with attorneys and exit exploitative situations. Also, many of the legal benefits available to victims are dependent on their ability to leave exploitation and demonstrate evidence of “good moral character.”<sup>11</sup> Access to survivor-led services can enable clients to demonstrate their ability to follow up with services and leave exploitative situations.

Survivor-led mentorship programs in Massachusetts accepting referrals from attorneys include:

- **The E.V.A. Center** (formerly known as Kim’s Project)  
(accepts women 18 years and older)  
989 Commonwealth Avenue  
Brighton, MA 02215  
(617) 779-2133  
[www.kimsproject.org](http://www.kimsproject.org)
- **My Life My Choice, A Program of Justice Resource Institute**  
(accepts referrals for girls ages 12-18)  
989 Commonwealth Ave  
Boston, MA 02215  
Lisa Goldblatt Grace, Director  
617-779-2179



617-779-2172 (fax)

[www.fightingexploitation.org](http://www.fightingexploitation.org)

- **Surviving Our Struggle** (accepts boys, young men, and transgender individuals regardless of gender status, ages 13-25)

The Trauma Center at JRI

1269 Beacon Street

Brookline, MA 02446

[www.traumacenter.org/initiatives/SOS.php](http://www.traumacenter.org/initiatives/SOS.php)

Steven Procopio

(617) 266-3349 x-2322

#### 4.5 RELATIONSHIP BETWEEN HUMAN TRAFFICKING AND DOMESTIC VIOLENCE

Domestic violence often serves as a gateway, or “push factor,” into trafficking: domestic violence victims may fall prey to traffickers while attempting to escape abuse in their homes. Conversely, trafficking victims may become trapped in abusive intimate-partner relationships once a victim of sex or labor trafficking. These victims are often isolated and lacking the financial support, education, or skills to exit out of abuse. It is important for attorneys to recognize the relationship between domestic violence and human trafficking and gently inquire about abuse at the outset.<sup>12</sup>

The relationship between domestic violence and trafficking is amplified when an individual is exploited by a family member or intimate partner. Trafficking perpetrated by family members or intimate partners is believed to be highly underreported, and usually involves complex emotional ties between the victim and perpetrator. A traffickers may establish a victim’s trust with promises of love and protection, make her dependent for shelter and economic support, and then pressure or coerce her into prostitution or other forms of trafficking. This type of bond, forged through manipulation and abuse, is difficult to break and is particularly effective on younger victims. Such victims may not self-identify as victims of trafficking at all, but may instead wish to protect their perpetrators.

When screening cases for signs of human trafficking, attorneys must remain cognizant of this dynamic in order to fully recognize the crimes perpetrated and the remedies available. Certain forms of abuse in the context of an intimate relationship or marriage may constitute the crimes of trafficking *and* domestic violence. In fact, domestic violence and trafficking often arise from the same set of circumstances or involve similar forms of physical, sexual, and/or psychological abuse, and other control tactics, such as threats, isolation, intimidation, economic abuse, or manipulation of fears of law enforcement involvement or deportation. Victims of domestic violence and trafficking often suffer similar physical injuries and emotional trauma, such as post-traumatic stress, depression, anxiety, or suicidal ideations.

Attorneys representing trafficking victims that are also victims of domestic violence should particularly consider the following:

- *First*, victims of domestic violence may have additional protections available to them, including housing and social service options, immigration relief, and public or subsidized housing priorities. Also, a history of domestic violence may be important to document when establishing hardship or reasons why a client cannot return to his or her country for purposes of immigration relief. (See *infra* [Section 5](#)). For example, in the housing context, if an individual has a criminal history related to sexual exploitation, he or she may present a history of domestic violence or human trafficking as “mitigating circumstances.”
- *Second*, understanding prior domestic abuse suffered by a human trafficking victim may uncover the type of manipulation and coercion tactics employed by a victim’s trafficker, which in turn can be communicated to the court or the jury. It is therefore important to document both the domestic abuse and trafficking when presenting the client’s case.
- *Third*, it is important to recognize that a client may be vulnerable to domestic violence even after exiting the human trafficking relationship. Therefore, if signs of domestic violence emerge, it is essential to understand the warning signs and be prepared to make appropriate emergency and long-term referrals. For more information about domestic violence resources in Massachusetts, see the [Massresources.org](https://www.massresources.org) website.<sup>13</sup> Also, attorneys or clients can contact [SafeLink](#), a 24-hour hotline for domestic abuse survivors, at (877) 785-2020.
- *Fourth*, victims of domestic violence and human trafficking frequently do not disclose their circumstances to authority figures, and may recant their initial accusations in order to protect themselves or their abusers.

For more information about the connection between domestic violence and human trafficking, see “[The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation](#)” by Amy Barasch and Barbara C. Kryszko.<sup>14</sup>

#### **4.5.1 Examples of the relationship between human trafficking and domestic violence**

The following case examples illustrate the connection between domestic violence and human trafficking.

- **Lola** fled her native country of Uganda because her husband was abusive. He beat her almost every week and threatened to kill her. She feared for her life and eventually sought a way to leave Uganda. She talked with a friend who told her about a position working as a nanny in the United States. She was told that she would be paid one thousand dollars per month and would be able to go to school. She also believed that she could send the money home to her young child so that he could have an education. The Ugandan family paid for

her air travel to the United States, but when she arrived, she found a very different reality than she expected. She was told to work every day for over fourteen hours per day. She was paid only \$300 per month, and she could not leave the apartment complex. She could only call her family in the presence of her employers. She worked tirelessly to care for two children, cook for the family, and clean the apartment. However, her employers often became angry with her, insulting her and cursing. They threatened to deport her, and she feared that she would be sent back to her husband in Uganda and killed.

- **Dadao** married her husband in China and hoped to start a family. When she became pregnant with a girl, her husband became upset with her and became physically and emotionally abusive. She gave birth and later became pregnant again despite her use of the government-prescribed intra-uterine device. She and her husband faced fines and punishment from the Chinese government for failure to obey the one-child policy. This made her husband increasingly abusive to her. She felt like she had nowhere to turn. Eventually, fearing for her life, Dadao contracted with a “snakehead” to flee to the United States. When she arrived in the United States, she was faced with a debt of \$20,000 for her travel. She wanted to file for asylum, but she could not afford an attorney. She desperately sought employment and found work in a massage parlor out of state. When she arrived at the massage parlor, she was told that she could not leave. The owner took her passport and refused to give it back until she finished working. She was pressured to provide sexual services to clients. The owner told her that the police and local judges were customers at the massage parlor, and she had no power because she was not in the country legally. Dadao feared being sent back to China to her abusive husband.

## **4.6 SAMPLE INTAKE QUESTIONS & RESPONSES TO CLIENT CONCERNS**

### **4.6.1 Massachusetts Interagency Human Trafficking Policy Task Force Suggested Questions**

The Massachusetts Interagency Human Trafficking Policy Task Force (the “Task Force”) has developed a set of guiding principles and potential screening questions that are helpful in navigating conversations with potential victims, both minor and adult, about their experiences to identify indicators of human trafficking.<sup>15</sup> As discussed in preceding sections, trafficking situations are often complex and ambiguous, and trafficking victims may not be forthcoming about exploitation experiences or self-identify as victims of a crime. Thus, lawyers must be equipped to recognize indicators of exploitation (*see supra* Section 2.1.2) and must be particularly sensitive and carefully consider appropriate screening questions in initial interviews.

At the outset, attorneys should identify any language or cognitive barriers to the questions. Trained third-party translators should be used where appropriate. Attorneys should also try to ensure the safety

of a potential victim before he or she leaves, and determine if any immediate safety planning, medical, or mental health needs exist.<sup>16</sup>

It is essential to begin an interview with an explanation of the attorney-client privilege and an assurance of confidentiality. It is also important to explain to the client that she can stop the interview at any time or take a break if she would like. Note that it may be overwhelming to the client to share information about all of the topics below in the first few meetings, and attorneys should provide clients with the opportunity to direct the fact-gathering process. Inappropriate persistence on the part of the attorney may result in a client becoming fearful or withdrawn. Thus, attorneys must carefully gauge the client's reactions and perhaps refrain from the more sensitive questions until later interviews, when the client may be more receptive to them.

The following are potential screening questions the Task Force has developed for case workers and law enforcement. Questions such as these should be asked in a conversational style, and not read as a checklist.<sup>17</sup>

- How old are you?
- Where do you live (where do you sleep and eat)?
  - Who else lives there?
  - Do you feel that you can leave if you want? Do you have to ask permission to leave?
  - Have you ever been threatened if you tried to leave?
- Does anyone stop you from getting food, water, sleep, or medical care?
- Do you work? (Alternative: Do you get paid for what you do?)
  - How do you get to and from work?
  - Do you get paid for your work?
  - How did you find your job?
  - Do you owe anyone money because they helped you find your job?
  - Have you ever felt like you could not leave your job or felt pressured to work?
- Have you ever exchanged sex for anything of value such as shelter, food, clothing, or money?
- Have your identification or travel documents been taken from you?
- Have you ever been physically harmed in any way or seen anyone else harmed?
- Has anyone ever threatened you or your family?
- Has anyone ever threatened you with calling immigration authorities or the police?
- Is anyone making you do anything that you do not want to do?
- How are you feeling?
  - Do you need any medical assistance?
  - Do you feel safe?

The following questions are questions particularly useful in meetings with victims who appear to be minors:

- How old are you?
- Are you in school?
  - If yes, where do you go to school?
- Where do you live?
  - Who else lives there?
  - Can you come and go as you please?
  - Have you ever been threatened if you tried to leave?
- Whom would you contact in an emergency?
- Do you work or how do you get money?
- Have you ever exchanged sex for food, clothing, shelter or money?
- Has anyone forced you to do something that you did not want to do?
- Did someone ever touch you in a way you did not like?
- Has anyone hurt or tried to hurt you?
- How are you feeling?
  - Do you need any medical assistance?
  - Do you feel safe?
- Are you lonely? Do you get to see your friends?

#### **4.6.2 Checklist of Additional Topics to Discuss with Potential Trafficking Victims**

In addition to the Task Force questions listed above, attorneys may find it useful to discuss the topics below with their clients to elicit factual information important in trafficking cases.

##### **1. Assessment of security**

- ☐ Has the client ever spoken to an attorney before? What was the experience like?
- ☐ Did the client express any concerns about carrying out the interview, or think talking with an attorney would pose problems with the client's employer, family, friends, or anyone else?
- ☐ Did the client feel secure in the location of the interview? If not, did the client express a preference for another time or place?
- ☐ Did the client express concerns about the attorney leaving voicemails, sending emails or postal mail to him or her?

##### **2. Topics specific to potential labor trafficking cases**

- ☐ How did the client come to his or her current employment (newspaper or internet advertisement, e.g.)?
- ☐ What kind of work does the client do? What is an average day like for the client?
- ☐ Was the client lied to about the kind of work he or she would be doing?

- ☐ Is this the work he or she expected to be doing? Is he or she doing more or less than expected?
- ☐ For whom did the client expect to work? Is he or she working for that person(s) now, or working for more than that person(s)?
- ☐ Under what conditions does the client works?
  - ☐ What are the client's hours, and how many days a week does he or she work?
  - ☐ Does the client live in his or her employer's home?
  - ☐ Does the client know his or her work address?
  - ☐ Does the client have to ask permission to eat, sleep or go to the bathroom? Where does he or she eat and sleep?
- ☐ How is the client being paid, if at all?
  - ☐ Does the client believe that he or she owes a debt, whether to his or her employer or someone else? If so, is he or she working to pay off a debt?
  - ☐ Is the client receiving his or her wages directly? Does the client have control over those wages?
- ☐ Is the client fearful of his or her employer, or has the client been threatened at work?
  - ☐ Has the client ever been forced or pressured to work? Did anyone ever threaten to hurt the client, or the client's family, if the client did not work?
  - ☐ Was the client ever beaten or assaulted by his or her employer, or others at work?
  - ☐ Is the client's ability to communicate with family and friends restricted by his or her employer?
  - ☐ Does the client feel free to come and go as you please? Did you fear what would happen if you left?
  - ☐ Does the client feel free to find another job if he or she wanted?
- ☐ Are the client's co-workers treated similarly to the client?
- ☐ Does the client get any time off? If so, what does the client do in his or her leisure time?

**Practice Tip:** Some domestic workers may not understand the term “work” in the same way as lawyers. For example, some workers may believe they are not “working” when the children they care for are napping. In reality, they are working. Thus, it is important to make sure the advocate and the worker have the same understanding of working time. Additionally, asking more open-ended questions might be helpful in understanding the hours and specific tasks a client in fact works. For example, ask the client to walk you through a typical day and, as the client is talking, ask about details about the jobs tasks being performed (such as, Who is cleaning up the house? Who makes the baby formula?).

Additionally, some domestic workers may be borrowed by other employers, or shared. It is very important to understand who the worker thinks he or she works for, especially in suits for back wages and fines.

### 3. Topics specific to potential sex trafficking cases

- ☐ Does the client have family or friends? If so, are they nearby? Is the client disconnected from them?
- ☐ Did the client report a history of physical or sexual abuse? Was the client ever forced to do something sexual, or touched or treated in a way that made him or her uncomfortable?
- ☐ Does the client appear to currently be in an abusive relationship? Does the client show any signs of physical discomfort as a result of beatings or other abuse?
- ☐ Has the client ever done something sexual with someone in exchange for money, shelter, food, or something else? If so, how was the client paid? Does the client have a pimp or manager?
- ☐ Has the client had any prior experience with the criminal or juvenile justice systems? If so, does the client have any sort of criminal record?
- ☐ Does the client have a history of running away from home, or being in and out of foster homes?

### 4. Client’s living conditions and eating and sleeping habits

- ☐ Where does the client eat and sleep? Does the client have somewhere he or she considers a home? If so, are the living conditions poor? Do others stay there? Are there locks on the doors or windows that the client cannot unlock?
- ☐ What does the client typically eat in a day? How many times a day does the client typically eat?
- ☐ How many hours does the client sleep in a typical day? Does the client have any problems with sleeplessness?
- ☐ Are there limits on how much the client can eat or sleep?

- ☐ Is the client's sleep interrupted to work?
- ☐ Is the client charged for eating and, if so, is it added to his or her "debt"?

**5. Immigration, control over money and identification documents**

- ☐ Does the client have a passport, visa or any other identification documents? If so, are they in the client's possession? Were they ever taken from the client?
- ☐ How did the client enter the United States?
- ☐ Does the client have a bank account?
- ☐ Is the client paid directly, or not?
- ☐ Has anyone ever taken the money that the client earned for work?

**6. General physical health, healthcare and hospital visits**

- ☐ Does the client have any health insurance?
- ☐ Has the client ever visited a hospital or medical clinic?
  - ☐ If so, what for?
  - ☐ Who took the client?
  - ☐ What was the client diagnosed with, if anything?
  - ☐ What was the client prescribed, if anything?
- ☐ Does the client have any chronic health conditions?
- ☐ Does the client currently have any cuts, bruises, aches or pains?
- ☐ Does the client currently suffer from any physical pain?

**7. General psychological health**

- ☐ Does the client appear anxious, afraid or depressed?
- ☐ Does the client exhibit behavior associated with complex trauma, described *supra*, [Section 6.1.1](#)?
- ☐ Does the client feel lonely or isolated from family and friends?
- ☐ When does the client feel the most relaxed and happy?

**8. Alcohol / drug use**

- ☐ Does the client use drugs or alcohol? If so, under what circumstances?



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<sup>1</sup> Indeed, that is precisely why survivor-led mentor programs are so successful. *See infra* Section 4.4.1.

<sup>2</sup> Telephone Interview with Cherie Jimenez, Founder & Executive Director, E.V.A. Center, Boston, MA (Oct. 9, 2013).

<sup>3</sup> *See* SUPREME COURT OF N.Y., APPELLATE DIV., FIRST DEP'T & NEW YORK STATE JUDICIAL COMM. ON WOMEN IN THE COURTS, ATTORNEY'S MANUAL ON HUMAN TRAFFICKING 176-80 (2011) [hereinafter N.Y. MANUAL ON HUMAN TRAFFICKING], *available at* [www.nycourts.gov/ip/womeninthecourts/LMHT.pdf](http://www.nycourts.gov/ip/womeninthecourts/LMHT.pdf); CATHY ZIMMERMAN & CHARLOTTE WATTS, WORLD HEALTH ORGANIZATION, WHO ETHICAL AND SAFETY RECOMMENDATIONS FOR INTERVIEWING TRAFFICKED WOMEN 14-17 (2003) [hereinafter WHO ETHICAL & SAFETY RECOMMENDATIONS], *available at* [www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf](http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf).

<sup>4</sup> FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING SERVICE PROVIDER MANUAL FOR CERTIFIED DOMESTIC VIOLENCE CENTERS 17 (2004), *available at* [www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf](http://www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf).

<sup>5</sup> For a discussion of using pseudonyms in pleadings, *see* Nat'l Crime Victim Law Inst., *Protecting Victims' Privacy Rights: The Use of Pseudonyms in Civil Law Suits*, VIOLENCE AGAINST WOMEN BULLETIN, July 2011, at 1, *available at* [law.lclark.edu/live/files/11778-protecting-victims-privacy-rights-the-use-of](http://law.lclark.edu/live/files/11778-protecting-victims-privacy-rights-the-use-of); DAVID WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING 12 (3d ed. 2008), *available at* [www.splcenter.org/sites/default/files/downloads/splc\\_human\\_trafficking.pdf](http://www.splcenter.org/sites/default/files/downloads/splc_human_trafficking.pdf).

<sup>6</sup> *See* FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING SERVICE PROVIDER MANUAL FOR CERTIFIED DOMESTIC VIOLENCE CENTERS 10 (2004), *available at* [www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf](http://www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf); U.S. CONF. OF CATHOLIC BISHOPS, ET AL., A GUIDE FOR LEGAL ADVOCATES PROVIDING SERVICES TO VICTIMS OF HUMAN TRAFFICKING § 2.2 (2004), *available at* [www.uscritefugees.org/2010Website/5\\_Resources/5\\_4\\_For\\_Attorneys/5\\_4\\_3\\_Human\\_Trafficking\\_Resources/5\\_4\\_3\\_1\\_Human\\_Trafficking\\_Manuals/AGuidefor\\_LegalAdvocates.pdf](http://www.uscritefugees.org/2010Website/5_Resources/5_4_For_Attorneys/5_4_3_Human_Trafficking_Resources/5_4_3_1_Human_Trafficking_Manuals/AGuidefor_LegalAdvocates.pdf);

<sup>7</sup> For information on obtaining an interpreter in Massachusetts state court, *see* THE COMMITTEE FOR THE ADMINISTRATION OF INTERPRETERS FOR THE TRIAL COURT, STANDARDS AND PROCEDURES OF THE OFFICE OF COURT INTERPRETER SERVICES 29-32 (2009), *available at* [www.mass.gov/courts/ocis-standards-procedures.pdf](http://www.mass.gov/courts/ocis-standards-procedures.pdf).

<sup>8</sup> *See* N.Y. MANUAL ON HUMAN TRAFFICKING, *supra* note 3, at 176-77; WHO ETHICAL & SAFETY RECOMMENDATIONS, *supra* note 3, at 14-17.

<sup>9</sup> *See id.*

<sup>10</sup> N.Y. MANUAL ON HUMAN TRAFFICKING, *supra* note 3, at 176.

<sup>11</sup> For example, to qualify for a waiver of inadmissibility in order to obtain T or U nonimmigration status, an applicant must demonstrate that it is in the public interest for the waiver to be granted. 8 U.S.C.A. § 1182(d). This is often shown through signs of rehabilitation or good moral character.

<sup>12</sup> *See* JEAN BRUGGEMAN & ELIZABETH KEYES, AMERICAN BAR ASSOCIATION, MEETING THE NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 7-8, 13-14 (Amanda Kloer et al. eds., 2009), *available at* [apps.americanbar.org/humanrights/docs/project\\_docs/DV\\_Trafficking.pdf](http://apps.americanbar.org/humanrights/docs/project_docs/DV_Trafficking.pdf).

<sup>13</sup> *Available at* [www.massresources.org/domestic-violence.html](http://www.massresources.org/domestic-violence.html).

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<sup>14</sup> Amy Barasch & Barbara C. Kryszko, *The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 83 (Jill Laurie Goodman & Dorchon A. Leidholdt, eds., 2011), available at [www.americanbar.org/content/dam/aba/multimedia/trafficking\\_task\\_force/resources/Nexus\\_DV\\_TraffickingCommercialSexualExploitation.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/trafficking_task_force/resources/Nexus_DV_TraffickingCommercialSexualExploitation.authcheckdam.pdf).

<sup>15</sup> MASS. INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE, FINDINGS AND RECOMMENDATIONS 69-74 (August 19, 2013) [hereinafter, TASK FORCE REPORT]; see also Jean Bruggeman & Elizabeth Keyes, American Bar Association, Meeting the Needs of Human Trafficking Victims: An Introduction for Domestic Violence Attorneys and Advocates 11 (Amanda Kloer et al. eds., 2009), available at [apps.americanbar.org/humanrights/docs/project\\_docs/DV\\_Trafficking.pdf](http://apps.americanbar.org/humanrights/docs/project_docs/DV_Trafficking.pdf); Cathy Zimmerman & Charlotte Watts, World Health Organization, WHO Ethical and Safety Recommendations for Interviewing Trafficked Women 5 (2003), available at [www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf](http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf); Heather J. Clawson & Nicole Dutch, U.S. Dep't of Health & Human Servs., Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the Field 6 (2008), available at [aspe.hhs.gov/hsp/07/humantrafficking/IdentVict/ib.htm](http://aspe.hhs.gov/hsp/07/humantrafficking/IdentVict/ib.htm); Cathy Zimmerman & Charlotte Watts, WORLD HEALTH ORGANIZATION, WHO ETHICAL AND SAFETY RECOMMENDATIONS FOR INTERVIEWING TRAFFICKED WOMEN 4 (2003), available at [www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf](http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf).

<sup>16</sup> TASK FORCE REPORT, *supra* note 15, at 71, 73.

<sup>17</sup> *Id.* at 69-70.



## 5. Immigration Remedies for Victims of Human Trafficking

**Note:** *Victims of human trafficking often face a constellation of legal issues. While this chapter summarizes special considerations for clients with immigration issues, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.*

### 5.1 OVERVIEW OF VICTIM-BASED VISAS

#### 5.1.1 T Visas for Victims of Human Trafficking

The Trafficking Victims Protection Act (“TVPA”) provides a pathway to legal immigration status known as T nonimmigrant status, or a “T visa,” for non-citizen victims of a severe form of human trafficking who will suffer hardship if they are forced to return to their countries of origin. 5,000 T visas are available annually.<sup>1</sup>

##### 5.1.1.1 Requirements to obtain a T visa

To qualify for a T visa, an individual must meet the following four requirements:

1. The individual must be a victim of a “severe form of trafficking.”<sup>2</sup>

A severe form of trafficking is defined as: (1) “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 (2) “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>3</sup> Many of these terms are further outlined in 8 C.F.R. § 214.11(a).

2. The victim must be currently present in the United States on account of trafficking.<sup>4</sup>

A victim must demonstrate that: (1) she is physically present in the United States; and that (2) her presence in the United States is “on account of trafficking.”<sup>5</sup> If a victim is not currently held by her traffickers, she must prove that she has had no “clear chance to leave” the United States since escaping her trafficking situation.<sup>6</sup> This requirement is assessed in light of “circumstances attributable to the trafficking in persons situation,” including “trauma, injury, lack of resources, or travel documents that have been seized by the traffickers.”<sup>7</sup> If a victim left the United States after escaping her trafficking situation, she cannot satisfy this requirement unless her reentry into the United States was either due to human trafficking or was in order to assist in the investigation or prosecution of human trafficking.<sup>8</sup>

Note that there is no requirement that a victim *entered* the United States on account of trafficking. Therefore, if a client became involved in human trafficking after entering the

United States, she may still meet this requirement if she can show that her current presence is on account of human trafficking. For example, if she is cooperating with law enforcement and her presence is necessary for a successful prosecution, attorneys may argue that her presence in the United States is on account of trafficking.<sup>9</sup>

3. The victim must have complied with a reasonable request for assistance from federal, state, or local law enforcement in the investigation of trafficking.<sup>10</sup>

The best evidence to satisfy this requirement is a certification by a law enforcement agency on [Form I-914, Supplement B](#).<sup>11</sup> Attorneys are strongly encouraged to obtain this certification when applying for a T visa. However, this requirement can also be fulfilled with secondary evidence, including a detailed statement by the applicant explaining: (1) all attempts to cooperate with law enforcement, including dates, places, and names and positions of law enforcement contacted; and (2) efforts undertaken by the client to obtain [Form I-914, Supplement B](#).<sup>12</sup> Attorneys are encouraged to document all attempts to cooperate and to request the Supplement B and submit such documentation as secondary evidence if they cannot obtain the Supplement B from law enforcement.

Note that two categories of individuals are exempt from the cooperation requirement: (1) children under 18 years of age; and (2) victims who are “unable to cooperate . . . due to physical or psychological trauma.”<sup>13</sup> To demonstrate physical or psychological trauma, a victim should submit evidence from mental health or medical professionals to show why she would be unable to comply with a reasonable request for assistance.<sup>14</sup>

4. The victim is likely to suffer extreme hardship involving unusual and severe harm if removed from the United States.<sup>15</sup>

Attorneys should carefully document why it would be especially problematic for the victim to return to her former country. Economic need alone is not sufficient to meet this standard; however, economic hardship that increases the likelihood of re-victimization upon return may be considered.<sup>16</sup> The statutory factors considered in determining whether an applicant satisfies this requirement include, but are not limited to:

1. The age and personal circumstances of the applicant;
2. Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
3. The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
4. The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking

in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;

5. The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
6. The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
7. The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
8. The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.<sup>17</sup>

For more information about T visa eligibility requirements and the process of applying for a T visa, see Suzanne B. Seltzer et al., NY Anti-Trafficking Network Legal Subcommittee, Identification and Legal Advocacy for Trafficking Survivors (3d ed. 1998), available at [aaldef.org/docs/T-visa-manual-3rd-ed\(1208\).pdf](https://aaldef.org/docs/T-visa-manual-3rd-ed(1208).pdf).

#### 5.1.1.2 Waiver of Inadmissibility

With few exceptions, a victim must not be “inadmissible” to qualify for a T visa.<sup>18</sup> This requirement is often a challenge for trafficking victims. Grounds for inadmissibility include entry without inspection, certain criminal convictions, prostitution, unlawful presence in the United States (*i.e.*, presence after the expiration of the period of stay authorized by the Attorney General or presence without having been admitted or paroled), making material misrepresentation to obtain an immigration benefit, making false claims to U.S. citizenship, and prior removal orders.<sup>19</sup>

However, an expansive waiver of inadmissibility is available when applying for a T visa.<sup>20</sup> The Attorney General may waive most grounds of inadmissibility for T visa applicants if the waiver is in the national interest and the activities rendering the person inadmissible were caused by, or were incident to, the severe trafficking.<sup>21</sup> An applicant may obtain a waiver of inadmissibility by submitting a completed [Form I-192](#) with supporting documentation.<sup>22</sup>

**Practice Tip:** If a T visa applicant is inadmissible based on grounds that are not related to severe trafficking, the applicant may still be eligible for other forms of immigration relief. For example, there is a similarly expansive waiver of inadmissibility available to applicants for U visas, and the inadmissibility ground need not be connected to the victimization. In addition, other forms of immigration relief have different requirements regarding applicable waivers, and attorneys should consider all potential forms of relief and applicable waivers before deciding which, if any, immigration benefits to pursue.

#### **5.1.1.3 Benefits of the T visa**

A T visa provides a number of benefits to recipients. It grants permission to remain in the United States for four years, authorizes employment for this duration, and grants eligibility for permanent resident status after three years or termination of the trafficking investigation or prosecution (whichever is earlier). A T visa also provides an avenue to apply for T nonimmigrant status to certain qualifying relatives. Applicants over 21 years of age can apply for T nonimmigrant status for their spouses and children, and applicants under 21 can apply for their spouses, children, parents, and unmarried siblings who are under 18 years old.<sup>23</sup>

Once a victim is approved to receive a T visa, she becomes eligible to receive a “Certification Letter” from the Department of Health and Human Services. This letter entitles a T visa holder to numerous public benefits. For details regarding this certification letter and benefits, *see infra* [Section 10](#).<sup>24</sup>

#### **5.1.1.4 Adjustment to Permanent Resident Status**

A T visa recipient’s status may be adjusted to permanent residence and eventual citizenship if he or she meets the following criteria:

1. The victim was physically present in the U.S. for three years in T nonimmigrant status or physically present in the U.S. during the investigation and prosecution of the trafficking case and the Attorney General determines that the investigation or prosecution is complete, whichever time period is shorter;
2. The victim has maintained good moral character throughout her status as a T nonimmigrant visa holder; and
3. The victim (i) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; (ii) would suffer extreme hardship involving unusual and severe harm if removed; or (iii) was younger than 18 years of age at the time of victimization.<sup>25</sup>

If a victim is otherwise inadmissible to the United States, she may not be adjusted to permanent resident status, unless she obtains a waiver of inadmissibility on the same grounds as described in [Section 5.1.1.2](#) above.<sup>26</sup> Note that if a victim’s grounds for inadmissibility were already waived during the T visa application process, the victim need not obtain an additional waiver for adjustment to permanent resident status.<sup>27</sup>

As long as a victim applies for permanent resident status, those with derivative T nonimmigrant status (*i.e.*, those who obtained a T visa through a relative who was the victim of severe trafficking) may also apply for an adjustment of status as long as they already hold T nonimmigrant status in the United States.<sup>28</sup>

#### 5.1.1.5 Citizenship

Lawful permanent residents may apply for naturalization to U.S. citizenship after maintaining lawful permanent resident status for five years (three years if married to a U.S. citizen). Children who are legal immigrants may automatically become citizens when their parents become citizens.

**Practice Tip:** It may be to a client’s benefit to apply for naturalization as early as possible. Clients who may face prostitution-related or other criminal charges may risk losing their green card on that basis. Early naturalization helps minimize the chance that this will happen. For more information about representing human trafficking victims who are also defendants or potential defendants in criminal matters, *see infra* [Section 7](#), Issues Specific to Criminal Defendants.

#### 5.1.2 Continued Presence: Temporary Relief Before Obtaining a T Visa

A noncitizen victim of severe forms of trafficking may be eligible to receive temporary legal immigration status (“Continued Presence status”) prior to the issuance of the T visa if the victim assists a federal law enforcement agency as a potential witness in a human trafficking case.<sup>29</sup> The victim needs only to be a *potential* witness; there is no requirement that there be an active prosecution or active assistance by the victim. For an adult victim to acquire Continued Presence status, the federal law enforcement agency must place a request for the continued presence through the Immigration and Customs Enforcement (“ICE”) Parole Unit.<sup>30</sup> If granted, the victim’s Continued Presence status is valid for one year and is renewable by the federal agency that submitted the original application.

As with the T visa, once a victim of severe trafficking is granted Continued Presence status, she becomes eligible to receive a “Certification Letter” from the Department of Health and Human Services, which entitles her to numerous federal benefits and services. For details regarding this process, *see infra* [Section 10](#).<sup>31</sup>

One advantage of applying for Continued Presence status is speed: an application for Continued Presence can be processed within six to eight weeks, which is significantly faster than the process for T visa relief, and does not preclude the victim from later applying for a T visa or other immigration relief.<sup>32</sup>

Obtaining Continued Presence status is particularly useful for victims who need immediate immigration relief but who plan to obtain a T visa in the future. Having been granted Continued Presence status is also supporting evidence that the individual is a trafficking victim and responded to a reasonable request for assistance from law enforcement for purposes of a T visa application. Continued Presence status may also be attractive to victims who do not wish to remain in the U.S. indefinitely. However, attorneys should keep in mind that the Continued Presence status is tied to the client’s continued cooperation in the investigation and/or prosecution of the trafficking crime. Therefore, if the client is not interested in cooperating or changes her mind, it may be difficult to retain Continued Presence status.



### 5.1.3 U Visas for Victims of Violent Crime

A U visa may also be an avenue to immigration relief for victims of human trafficking. U visas provide a route to legal immigration for victims of certain crimes, including domestic violence and human trafficking. It is available to victims who cooperate with in the law enforcement investigation and/or prosecution of the crimes of which they were victims. The number of U visas that may be issued per year is capped by statute at 10,000.<sup>33</sup>

#### 5.1.3.1 Requirements to obtain a U visa

To obtain a U visa, an applicant must satisfy four requirements:

1. The individual is a victim of certain kinds of criminal activity, such as domestic violence or human trafficking;<sup>34</sup>
2. The victim suffered substantial physical or mental abuse due to the criminal activity;
3. The victim possesses information concerning the criminal activity;
4. The victim “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the criminal activity, as certified by a law enforcement agency; and
5. The criminal activity violated the laws of the U.S. or occurred in the U.S. (including in Indian country and military institutions) or the territories and possessions of the U.S.<sup>35</sup>

To demonstrate cooperation with law enforcement, the victim must obtain a “U Nonimmigrant Status Certification,” or [Form I-918, Supplement B](#), from a law enforcement official prosecuting the underlying criminal activity or from a judge. The requirement to cooperate with law enforcement continues after the U visa is issued. In contrast to the T visa context, the Supplement B is required, and the individual is not eligible to apply for a U visa absent certification.

As with the T visa, an applicant must not be “inadmissible” in order to obtain a U visa.<sup>36</sup> U visa applicants are often “inadmissible” for many of the same reasons as T visa applicants,<sup>37</sup> and likewise, an expansive waiver of inadmissibility is available for U visa applicants.<sup>38</sup> However, the Attorney General has even greater power to waive inadmissibility than in the T visa context because the grounds for inadmissibility need not be related to human trafficking crime to be waived. Also, there are fewer grounds that are expressly excluded from the Attorney General’s discretionary waiver.<sup>39</sup> As with T visa applicants, a U visa applicant may obtain a waiver of inadmissibility by submitting a completed [Form I-192](#) with supporting documentation.<sup>40</sup>

For more information about U visa eligibility requirements and the process of applying for a U visa, see SUZANNE B. SELTZER ET AL., NY ANTI-TRAFFICKING NETWORK LEGAL SUBCOMMITTEE, IMMIGRATION RELIEF FOR CRIME VICTIMS: THE U VISA MANUAL (2010), available at [aaldef.org/docs/U-Visa-Manual.pdf](http://aaldef.org/docs/U-Visa-Manual.pdf).

### **5.1.3.2 Benefits of the U visa**

A U visa offers victims a number of benefits including authorization to stay in the U.S. for four years,<sup>41</sup> employment authorization,<sup>42</sup> and eligibility for permanent resident status after three years.<sup>43</sup> U visa applicants can also file for certain derivative family members: all applicants may file for spouses and children, and applicants under 21 may also file for parents and certain siblings.<sup>44</sup>

### **5.1.3.3 Adjustment to Permanent Resident Status**

A U visa holder's status may be adjusted to permanent residence if he or she meets the following requirements:

1. The Secretary of the Department of Homeland Security ("DHS") must not have determined, based on affirmative evidence, that the U visa holder unreasonably refused to provide assistance in a criminal investigation or prosecution;
2. The individual must have been physically present in the U.S. for a continuous period of three years; and
3. In the opinion of the DHS Secretary, the holder's continued presence in the U.S. must be justified on humanitarian grounds, to ensure family unity, or otherwise be in the public interest.<sup>45</sup>

Adjustment to permanent residence status is discretionary, and the burden is on the applicant to show that discretion should be exercised in his or her favor. As in the T visa context, a waiver of inadmissibility may be submitted if there are additional inadmissibility grounds present at adjustment that were not waived in the initial U visa application. Derivative U visa holders are also eligible to adjust their status to permanent residents. In addition, unlike derivative T visa holders, certain derivative family members may qualify to apply for adjustment of status if they have not yet received U visa status.

A maximum of 10,000 U visas, excluding visas for derivative family members, may be issued annually. When the quota is reached, additional applicants may be eligible for deferred action and employment authorization while their applications are pending.<sup>46</sup>

## **5.1.4 Comparing T Visas and U Visas**

Attorneys should carefully consider whether a T visa or U visa is more appropriate for certain clients. T visa recipients may receive greater access to public benefits and may be able to adjust their status to permanent residence earlier than U visa recipients if the trafficking investigation is complete. On the other hand, U visas require law enforcement certification, whereas T visas do not (although it is strongly recommended). In addition, waivers of inadmissibility for T visa applicants are generally available only if the inadmissibility grounds are related to trafficking, whereas U visa applicants do not have this limitation. Also, the T and U visas have different statutory requirements, Attorneys should review and consider these differences carefully when deciding which types of visa applications to file. For example, a U visa applicant need not independently demonstrate hardship to return to his or her country of origin whereas a T visa applicant must meet this requirement.

**Practice Tip:** If appropriate, attorneys may submit both a T visa application and a U visa application concurrently on behalf of a client. If an attorney decides to submit both applications concurrently or consecutively, the attorney should request that one application be decided first while the other application is held in abeyance.

## 5.2 OTHER IMMIGRATION REMEDIES

### 5.2.1 Violence Against Women Act Self-Petitions

The Violence Against Women Act (“VAWA”) allows non-citizen spouses and children of abusive U.S. citizens and lawful permanent residents to petition for lawful permanent residence without relying on their abusers to file for them. In family based petitions, a U.S. citizen or lawful permanent resident usually files for his spouse or child. Congress recognized that in such situations an abusive spouse or parent could exercise great power making it very difficult for abused spouses and children to leave the relationship. In recognition of this dynamic, VAWA created an alternative route for abused spouses and children to self-petition for status and apply independently for immigration relief.

#### 5.2.1.1 Requirements of VAWA Self-Petitions

To qualify for a VAWA self-petition, an adult applicant must satisfy five requirements:

1. The abuser is a U.S. citizen or lawful permanent resident;
2. The petitioner has or had a good faith (*i.e.*, non-fraudulent) marriage with the abuser (if the application is based on marriage as opposed to a parent-child relationship);<sup>47</sup>
3. The petitioner is subject to battery or extreme cruelty;
4. The petitioner resided with the abuser; and
5. The petitioner possesses good moral character.<sup>48</sup>

For more information about VAWA Self-Petition eligibility requirements and the process of applying, see Cecelie Friedman Levin, *Self-Petitioning Under the Violence Against Women Act*, in *Family-Based Immigration Law: A Lawyer’s Guide VII-1* (2013), available at [www.asistahelp.org/documents/resources/Chapter\\_8\\_Final\\_BF060A4F3042E.pdf](http://www.asistahelp.org/documents/resources/Chapter_8_Final_BF060A4F3042E.pdf).

#### 5.2.1.2 Benefits of VAWA Self-Petitions

A VAWA self-petition provides applicants work permits while the application is pending, limited eligibility for federally funded public benefits, and eventual eligibility for lawful permanent resident status and citizenship. Children of petitioners may be derivative beneficiaries and receive similar benefits.<sup>49</sup>

For more information on VAWA self-petitions, see National Immigrant Justice Center, *Pro Bono Attorney Manual on Legal Immigration Protections for Immigrant Survivors of Domestic Violence* (2011), available at [www.immigrantjustice.org/sites/immigrantjustice.org/files/VAWA%20Pro%20Bono%20Manual%202011.04.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/VAWA%20Pro%20Bono%20Manual%202011.04.pdf)

## 5.2.2 Asylum

Seeking asylum is another potential avenue for a trafficking victim to remain in the U.S.

### 5.2.2.1 Requirements for asylum

Applicants for asylum must satisfy four requirements:

1. The individual is a victim of past persecution or has a well-founded fear of future persecution in her country of origin;<sup>50</sup>
2. The persecution was or will be committed by the government or by non-governmental actors whom the government is unable or unwilling to control;<sup>51</sup>
3. The victim's persecution is on account of race, religion, nationality, political opinion, or membership in a particular social group;<sup>52</sup> and
4. The application is filed within one year of arriving in the United States<sup>53</sup>

If a victim can demonstrate changed circumstances that “materially affect the applicant’s eligibility for asylum” or “extraordinary circumstances” that explain the delay in filing for an asylum application, the victim’s application for asylum may still be considered even if it is filed more than a year after the victim’s arrival in the United States.<sup>54</sup>

Human trafficking victims applying for asylum often seek to establish eligibility based on membership in a particular social group. Arguments that “victims of human trafficking” comprise a “particular social group” have generally not been successful, but attorneys should continue to make colorable arguments for relief. In addition, some trafficking victims also faced persecution in their country of origin on other bases. For example, many survivors were victims of domestic abuse in their home countries and may qualify on account of a “particular social group.” Similarly, certain survivors fled China due to forced abortions and may qualify on this basis as well. Attorneys should make as many potential arguments in support of their application for asylum and include as many different social groups as apply in their cases.

**Practice Tip:** Asylum cases are very difficult to win, particularly for trafficking victims. Applicants frequently lack the documentation they need to support their claims. Applicants’ stories and documents are scrutinized for inconsistencies, and any discrepancy, no matter how small, can be grounds for denial.<sup>55</sup> The particular trauma trafficking victims have experienced may make them even less likely than other applicants to describe their experiences clearly and consistently. Given that a victim will be referred to immigration court if her asylum application is not granted, attorneys should carefully consider other options before applying for asylum for trafficking victims. If the client decides to move forward, the attorney should work closely with the applicant to document his or her claim. This may include requesting medical or psychological evaluations and gathering as many supporting statements as possible.

### **5.2.2.2 Benefits of asylum**

Individuals seeking asylum are eligible for work authorization after 180 days and can apply for work eligibility after 150 days. Once granted asylum, asylees can apply for legal permanent residence after they have been present in the United States for one year after the asylum grant.

### **5.2.3 Special Immigrant Juvenile Status**

A child who has been abused, abandoned, or neglected by one or both of her parents may petition for Special Immigrant Juvenile status (“SIJS”) if she can show that reunification with one or both of her parents is not viable due to that abuse, abandonment, and/or neglect, or a similar basis under State law; that she has been declared dependent on a juvenile court or placed under state custody or that of a state-appointed guardian; and that it would not be in her best interest to return to her home country.<sup>56</sup> Once a child has been granted SIJS, she may be eligible to apply for lawful permanent residence.

#### **5.2.3.1 Requirements of SIJS Petitions**

To qualify for SIJS, the individual must satisfy three requirements:

1. The petitioner is a “child” (under 21 for immigration purposes, but under 18 under Massachusetts law );
2. The petitioner was abused, abandoned, or neglected by one or both of her parents, under the state law definitions of “abuse,” “neglect,” and/or “abandonment” or a similar basis under state law;
3. A state court has declared that reunification of the petitioner with one or both of her parents is not viable due to that abuse, abandonment, and/or neglect; and
4. A state court has determined that it would not be in the child’s best interest to return to her country of origin.

Once the state court makes these findings of fact and rulings of law, the petitioner is eligible to apply for SIJS. If she is not in removal proceedings, she may apply for both SIJS and lawful permanent residence concurrently. However, if she is in removal proceedings, she must take each step in turn, by first submitting the order from the state court, along with an I-360 (SIJS) application and any supporting evidence to USCIS. The petitioner will then attend an interview on the I-360 petition with a USCIS official. If the self-petition for SIJS is granted, the petitioner may then be eligible to apply for lawful permanent residence. For more information about SIJS self-petition eligibility requirements and the process of applying, see Immigrant Legal Resource Center, “Introduction and Overview to Special Immigrant Juvenile Status” (Jan. 2010), available at [www.ilrc.org/files/2010\\_sijs-chapter\\_03-sijs\\_overview.pdf](http://www.ilrc.org/files/2010_sijs-chapter_03-sijs_overview.pdf).

#### **5.2.3.2 Benefits and Drawbacks of SIJS Petitions**

An SIJS self-petition provides applicants with a path to lawful permanent resident status and employment authorization. However, the applicant should be made aware that a grant of SIJS will prohibit her from petitioning for immigration status for her parents in the future.<sup>57</sup> Please note that,

because the age of majority in Massachusetts is 18, it is important to ensure that the applicant obtains an order from a Massachusetts court before her eighteenth birthday. In certain circumstances, courts may entertain an equity petition beyond the age of 18 for the predicate order, but attorneys should seek to obtain the findings prior to the child's 18th birthday.

#### **5.2.4 Additional Immigration Remedies**

Trafficking victims may be eligible for other immigration remedies as well, such as a waiver of the joint filing requirement to petition to remove conditions of residence and/or VAWA Cancellation of Removal.<sup>58</sup> Attorneys should think broadly about possible immigration remedies for their clients, particularly if a client's situation does not fit easily into one of the remedies previously described.

## COMPARISON OF THE REQUIREMENTS OF VARIOUS IMMIGRATION REMEDIES

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
T visa	1. Victim of a "severe form of trafficking"	<ul style="list-style-type: none"> <li>• Permission to remain in the U.S.</li> </ul>	<ul style="list-style-type: none"> <li>• Requirements of: "severe form of trafficking;" "in U.S. due to trafficking," and "likely to suffer extreme hardship involving unusual and severe harm if removed"</li> </ul>	<ul style="list-style-type: none"> <li>• Victims who meet the "severe form of trafficking" and "extreme hardship involving unusual and severe harm if removed" requirements</li> </ul>
	2. Currently present in the U.S. due to trafficking	<ul style="list-style-type: none"> <li>• Employment authorization for up to four years</li> </ul>	<ul style="list-style-type: none"> <li>• Adult victims must cooperate with law enforcement ("respond to a reasonable request from law enforcement") unless they meet the trauma exception.</li> </ul>	
	3. Responded to a reasonable request for assistance from law enforcement investigating the trafficking (no certification required)	<ul style="list-style-type: none"> <li>• Eligibility for permanent resident status after three years or termination of investigation or prosecution (whichever is earlier)</li> </ul>	<ul style="list-style-type: none"> <li>• Inadmissibility grounds must be "caused by" or "incident to" human trafficking</li> </ul>	
	4. Victim is likely to suffer extreme hardship involving unusual and severe harm if removed <sup>59</sup>	<ul style="list-style-type: none"> <li>• If applicant is over 21, ability to apply for T nonimmigrant status for spouses and children</li> <li>• If applicant is under 21, ability to apply for T nonimmigrant status for spouses, children, parents, and certain siblings</li> </ul>		

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
Continued Presence	1. Victim is assisting a federal law enforcement agency as a potential witness to that trafficking <sup>60</sup>	<ul style="list-style-type: none"> <li>Application can be processed within six to eight weeks</li> </ul>	<ul style="list-style-type: none"> <li>Does not make victim eligible for permanent immigration status</li> </ul>	<ul style="list-style-type: none"> <li>Victims who need immediate immigration relief but planned to obtain the more permanent T visa in the future</li> </ul>
	2. Federal law enforcement agency places the request through the Immigration and Customs Enforcement ("ICE") Parole Unit	<ul style="list-style-type: none"> <li>Victim is also eligible for employment authorization and public benefits to the same extent as a refugee</li> <li>Does not preclude the victim from later applying for a T visa or other relief</li> </ul>		<ul style="list-style-type: none"> <li>Victims who do not wish to remain in the U.S. but need time to get their affairs in order before returning home</li> </ul>
REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
U visa	1. Victim of certain kinds of criminal activity, including domestic abuse and human trafficking	<ul style="list-style-type: none"> <li>Authorization to stay in the U.S. for four years<sup>61</sup></li> <li>Employment authorization<sup>62</sup></li> </ul>	<ul style="list-style-type: none"> <li>A maximum of 10,000 U visas, plus visas for derivative family members, issued annually</li> </ul>	<ul style="list-style-type: none"> <li>Victims who were not married to their abusers and thus are ineligible for remedies under the VAWA</li> <li>Victims whose abuse amounts to a qualifying crime but not to severe trafficking as required for a T visa</li> </ul>
	2. Suffered substantial physical or mental abuse due to the criminal activity	<ul style="list-style-type: none"> <li>Eligibility for permanent resident status after three years<sup>63</sup></li> </ul>	<ul style="list-style-type: none"> <li>Note that additional applicants placed in deferred action status may be eligible for employment authorization<sup>64</sup></li> </ul>	<ul style="list-style-type: none"> <li>Victims not <i>currently</i> in the U.S. "on account of human trafficking" as required for a T visa (note however that a T visa does not require a victim to have <i>entered</i> the U.S. on account of human trafficking)<sup>65</sup></li> </ul>
	3. Possesses information concerning the criminal activity	<ul style="list-style-type: none"> <li>Ability to extend U visa status to spouses and children</li> </ul>	<ul style="list-style-type: none"> <li>Fewer public benefits available than in the T visa context</li> </ul>	<ul style="list-style-type: none"> <li>Victims who would not suffer extreme hardship if removed, as required for a T visa<sup>66</sup></li> </ul>
	4. "Has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the criminal activity (certified by the agency) <sup>67</sup>	<ul style="list-style-type: none"> <li>Ability to extend U visa status to certain siblings and parents if under 21 years of age<sup>68</sup></li> </ul>	<ul style="list-style-type: none"> <li>Requirement of certification by government agency</li> </ul>	



REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
	5. The criminal activity violated the laws of the U.S. or occurred in the U.S. (including in Indian country and military institutions) or the territories and possessions of the U.S. <sup>69</sup>			
REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
VAWA Self-Petition (for spouses)	1. The abuser is a U.S. citizen or lawful permanent resident	• Work permit	• Victim must be married to (or a child of) her abuser	• Spouses and children of U.S. citizen or lawful permanent resident abusers
	2. Petitioner is in a good faith marriage with the abuser	• Limited eligibility for federally funded public benefits	• Abuser must be a U.S. citizen or lawful permanent resident.	
	3. Petitioner was subject to battering or extreme cruelty	• Eventual eligibility for lawful permanent resident status and citizenship		
	4. Petitioner lived with the abuser	• Children of petitioners may be derivative beneficiaries		
	5. Petitioner possesses good moral character			

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
Asylum	1. Victim of past persecution or well-founded fear of future persecution <sup>70</sup>	<ul style="list-style-type: none"> <li>Can apply for eligibility to work after 180 days</li> </ul>	<ul style="list-style-type: none"> <li>If application fails, referred to immigration court for deportation proceedings</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Members of social groups with well-founded fears of persecution in their home country</li> </ul>
	2. Persecution committed by government or by people the government is unable to control <sup>71</sup>	<ul style="list-style-type: none"> <li>Can apply for legal permanent residence after one year in asylee status</li> </ul>	May be difficult to establish relevant social group related to human trafficking (check relevant case law)	
	3. Persecution is on account of race, religion, nationality, political opinion, or membership in a particular social group <sup>72</sup>			
	4. Application is filed within one year of arriving in U.S. <sup>73</sup>			

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<sup>1</sup> 8 U.S.C.A. § 1184(o)(2) (West 2013). Derivatives (*i.e.*, immediate family members planning to join the principal) are not subject to an annual cap. *Id.* § 1184(o)(3).

<sup>2</sup> 8 U.S.C.A. § 1101(a)(15)(T)(i)(I) (West 2013).

<sup>3</sup> 22 U.S.C.A. § 7102(9)(A)-(B) (West 2013).

<sup>4</sup> 8 U.S.C.A. § 1101(a)(15)(T)(i)(II) (West 2013).

<sup>5</sup> *Id.*

<sup>6</sup> 8 C.F.R. § 214.11(g)(2).

<sup>7</sup> *Id.*

<sup>8</sup> *See* 8 U.S.C.A. § 1101(a)(15)(T)(i)(II) (West 2013); 8 C.F.R. § 214.11(g)(3).

<sup>9</sup> *See* 8 C.F.R. § 214.11(g).

<sup>10</sup> 8 U.S.C.A. § 1101(a)(15)(T)(i)(III) (West 2013).

<sup>11</sup> *See* 8 C.F.R. § 214.11(h)(1).

<sup>12</sup> *See* 8 C.F.R. § 214.11(h)(2); SUZANNE B. SELTZER ET AL., NY ANTI-TRAFFICKING NETWORK LEGAL SUBCOMMITTEE, IDENTIFICATION AND LEGAL ADVOCACY FOR TRAFFICKING SURVIVORS A-17 (3d ed. 1998), *available at* [aaldef.org/docs/T-visa-manual-3rd-ed\(1208\).pdf](http://aaldef.org/docs/T-visa-manual-3rd-ed(1208).pdf).

<sup>13</sup> 8 U.S.C.A. § 1101(a)(15)(T)(i)(III)(bb)-(cc) (West 2013).

<sup>14</sup> SELTZER ET AL., *supra* note 12, at A-17.

<sup>15</sup> 8 U.S.C.A. § 1101(a)(15)(T)(i) (West 2013).

<sup>16</sup> *See* 8 C.F.R. § 214.11(i).

<sup>17</sup> *Id.*

<sup>18</sup> 8 U.S.C.A. § 1182(a) (West 2013).

<sup>19</sup> *Id.*

<sup>20</sup> 8 U.S.C.A. § 1182(d)(13) (West 2013).

<sup>21</sup> *Id.* Note that, if a T visa applicant is inadmissible on health-related grounds under 8 U.S.C.A. § 1182(a)(1), the activities rendering the alien inadmissible do not need to be related to the severe trafficking. 8 U.S.C.A. § 1182(d)(13)(B)(i) (West 2013).

<sup>22</sup> 8 C.F.R. § 214.11(j).

<sup>23</sup> *Id.* § 1101(a)(15)(T)(ii)(I)-(II) (West 2013).

<sup>24</sup> Child victims of severe trafficking can instead obtain access to federal benefits and services by applying for an Eligibility letter, which does not require them to have granted a T visa. *See infra* [Section 10.1.1](#).

<sup>25</sup> *Id.* § 1255(I)(1) (West 2013).

<sup>26</sup> 8 U.S.C.A. § 1255(I)(2) (West 2013).

<sup>27</sup> *Id.*

<sup>28</sup> 8 C.F.R. § 245.23(b). Derivative T visa holders outside of the U.S. are ineligible for adjustment of their status if they have not yet entered the United States.

<sup>29</sup> 28 C.F.R. § 1100.35(a); *see also* 22 U.S.C.A. § 7105(b)(1)(E) (West 2013).

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<sup>30</sup> 28 C.F.R. § 1100.35(a)

<sup>31</sup> Child victims of severe trafficking can instead obtain access to federal benefits and services by applying for an Eligibility letter, which does not require them to have been granted Continued Presence status. *See infra* Section 10.1.1.

<sup>32</sup> As of the time of writing, T visas took approximately four months to process. *See* U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *USCIS Processing Time Information for our Vermont Service Center*, <https://egov.uscis.gov/cris/processTimesDisplayInit.do> (last visited Sept. 20, 2013) (at bottom of page in Service Center drop-down menu, select “VSC – Vermont Service Center,” then click “Service Center Processing Dates”).

<sup>33</sup> 8 U.S.C.A. § 1184(p)(2)(A) (West 2013). Derivatives (*i.e.*, immediate family members planning to join the principal) are not subject to an annual cap. *See id.* § 1184(p)(2)(B).

<sup>34</sup> The enumerated crimes are: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, 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, fraud in foreign labor contracting, or attempt, conspiracy, or solicitation to commit any of the aforementioned crimes. 8 U.S.C.A. § 1101(a)(15)(U)(iii) (West 2013).

<sup>35</sup> 8 U.S.C.A. § 1101(a)(15)(U)(i) (West 2013); 8 C.F.R. § 214.14(b).

<sup>36</sup> 8 U.S.C.A. § 1182(a) (West 2013).

<sup>37</sup> *See supra* Section 5.1.1.2.

<sup>38</sup> 8 U.S.C.A. § 1182(d)(14) (West 2013).

<sup>39</sup> *Compare* 8 U.S.C.A. § 1182(d)(14) (West 2013) *with* 8 U.S.C.A. § 1182(d)(13) (West 2013); *compare* 8 C.F.R. § 212.17 *with* 8 C.F.R. § 212.17.

<sup>40</sup> 8 C.F.R. § 214.14(c)(2)(iv).

<sup>41</sup> *Id.* § 214.14(g).

<sup>42</sup> *Id.* § 214.14(c)(7).

<sup>43</sup> 8 U.S.C.A. § 1255(m) (West 2013).

<sup>44</sup> *Id.* § 1101(a)(15)(U)(i) (West 2013); 8 C.F.R. § 214.14(f)(1).

<sup>45</sup> 8 U.S.C.A. § 1255(m) (West 2013); 8 C.F.R. 245.24(b).

<sup>46</sup> 8 U.S.C.A. § 1184(p)(2) (West 2013); 8 C.F.R. § 214.14(d).

<sup>47</sup> A self-petitioner must apply within two years of divorce from the abuser or two years from termination of his status or death. 8 U.S.C.A. §§ 1154(a)(1)(CC).

<sup>48</sup> 8 U.S.C.A. §§ 1154(a)(1)(A)(iii)-(iv), 1154(a)(1)(B)(ii)-(iii) (West 2013).

<sup>49</sup> *Id.* § 1154(a)(1)(B)(ii).

<sup>50</sup> *Id.* § 1101(a)(42)(A).

<sup>51</sup> *See Anacassus v. Holder*, 602 F.3d 14, 20 (1st Cir. 2010) (persecution must be “the direct result of government action, government-supported action, or government's unwillingness or inability to control private conduct”) (quoting *Sok v. Mukasey*, 526 F.3d 48, 53 (1st Cir. 2008)).

<sup>52</sup> 8 U.S.C.A. § 1101(a)(42)(A) (West 2013).

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<sup>53</sup> *Id.* § 1158(a)(2)(B) (West 2013).

<sup>54</sup> *Id.* § 1158(a)(2)(D) (West 2013).

<sup>55</sup> When determining credibility in asylum cases, adjudicators may take into account “any inaccuracies or falsehoods in [an applicant’s or witness’s] statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim . . . .” 8 U.S.C.A. § 1158(b)(1)(B)(iii) (West 2013).

<sup>56</sup> 8 U.S.C.A. § 1101 (a)(27)(J) (West 2013).

<sup>57</sup> *Id.* § 1101(a)(27)(J)(iii)(II) (West 2013).

<sup>58</sup> See JEAN BRUGGEMAN & ELIZABETH KEYES, AMERICAN BAR ASSOCIATION, MEETING THE NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 22-24 (Amanda Kloer et al. eds., 2009), available at [http://apps.americanbar.org/humanrights/docs/project\\_docs/DV\\_Trafficking.pdf](http://apps.americanbar.org/humanrights/docs/project_docs/DV_Trafficking.pdf).

<sup>59</sup> 8 U.S.C.A. § 1101(a)(15)(T)(i) (West 2013). Note that there is an exception to the requirement to assist law enforcement for children under age 18, and for those who are “unable to cooperate . . . due to physical or psychological trauma” (in consultation with the Attorney General). *Id.* § 1101(a)(15)(T)(i)(III).

<sup>60</sup> 28 C.F.R. § 1100.35(a); see also 22 U.S.C.A. § 7105(b)(1)(E) (West 2013).

<sup>61</sup> 8 C.F.R. § 214.14(g).

<sup>62</sup> *Id.* § 214.14(c)(7).

<sup>63</sup> 8 U.S.C.A. § 1255(m) (West 2013).

<sup>64</sup> *Id.* § 1184(p)(2); 8 C.F.R. § 214.14(d).

<sup>65</sup> See *supra* [Section 5.1.1.1](#).

<sup>66</sup> JEAN BRUGGEMAN & ELIZABETH KEYES, AMERICAN BAR ASSOCIATION, MEETING THE NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 25 (Amanda Kloer et al. eds., 2009).

<sup>67</sup> 8 U.S.C.A. § 1101(a)(15)(U)(i) (West 2013); 8 C.F.R. § 214.14(b).

<sup>68</sup> 8 U.S.C.A. § 1101(a)(15)(U)(i); 8 C.F.R. § 214.14(f).

<sup>69</sup> 8 U.S.C.A. § 1101(a)(15)(U)(i) (West 2013); 8 C.F.R. § 214.14(b).

<sup>70</sup> 8 U.S.C.A. § 1101(a)(42)(A).

<sup>71</sup> See *Anacassus v. Holder*, 602 F.3d 14, 20 (1st Cir. 2010) (persecution must be “the direct result of government action, government-supported action, or government's unwillingness or inability to control private conduct” (quoting *Sok v. Mukasey*, 526 F.3d 48, 53 (1st Cir. 2008))).

<sup>72</sup> 8 U.S.C.A. § 1101(a)(42)(A).

<sup>73</sup> *Id.* § 1158(a)(2)(B) (West 2013).



## 6. Issues Specific to Children

**Note:** *Victims of human trafficking often face a constellation of legal issues. While this chapter summarizes special considerations for representing minors who are victims of human trafficking, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.*

### 6.1 WORKING WITH MINOR TRAFFICKING VICTIMS

#### 6.1.1 The Experience of Minor Victims of Trafficking, Particularly Sex Trafficking

Minor victims of trafficking have often endured particularly traumatic experiences, both as victims of trafficking and prior to being recruited by traffickers. This is especially true of child victims of sex trafficking, who make up a large percentage of sex trafficking victims in Massachusetts: the average age of entry into prostitution is 12-15 years old.<sup>1</sup> From 2005 through May 2012, at least 480 children from Suffolk County alone received services related to commercial sexual exploitation.<sup>2</sup> The median age of these victims was 15 years old.<sup>3</sup> Fifteen percent were age 13 or younger, and the youngest of these victims was age 11.<sup>4</sup> The vast majority of the victims (98 percent) were girls, and a majority (65 percent) were girls of color.<sup>5</sup> Most were runaways or had a history of child abuse, or both.<sup>6</sup> Ten percent of these girls had been arrested for prostitution, and over 40 percent had confirmed or suspected involvement in out-of-state trafficking.

The lives of child victims of sex trafficking are often marked by severe trauma, instability, and abandonment, rendering them more emotionally and situationally vulnerable to predators.<sup>7</sup> Many are victims of sexual or physical abuse, chronic incest, or severe neglect.<sup>8</sup> Many have experienced other disruptive family traumas as well, such as witnessing addiction or domestic violence, or separation from or the death of family members.<sup>9</sup>

Prolonged exposure to severe trauma may result in what practitioners refer to as “complex trauma.” Children have varying and different reactions to such trauma. Behaviorally,

[a] child with a complex trauma history may be easily triggered or “set off” and is more likely to react very intensely. The child may struggle with self-regulation (*i.e.*, knowing how to calm down) and may lack impulse control or the ability to think through consequences before acting. As a result, complexly traumatized children may behave in ways that appear unpredictable, oppositional, volatile, and extreme. A child who feels powerless or who grew up fearing an abusive authority figure may react defensively and aggressively in response to perceived blame or attack, or alternately, may at times be overcontrolled, rigid, and unusually compliant with adults. If a child dissociates often, this will

also affect behavior. Such a child may seem “spacey”, detached, distant, or out of touch with reality. Complexly traumatized children are more likely to engage in high-risk behaviors, such as self-harm, unsafe sexual practices, and excessive risk-taking such as operating a vehicle at high speeds. They may also engage in illegal activities, such as alcohol and substance use, assaulting others, stealing, running away, and/or prostitution, thereby making it more likely that they will enter the juvenile justice system.<sup>10</sup>

Lawyers should be aware of the link between complex trauma and a child’s behavior, and should also be aware that children who have suffered complex trauma are particularly vulnerable to traffickers. Children may be recruited outside child welfare sites, at public transport hubs, or on the Internet.<sup>11</sup> A trafficker may initially establish a child’s trust with promises of love, care, and protection, thereby establishing financial or emotional dependence, and later leverage that control to coerce the child into prostitution or other forms of trafficking.

### **6.1.2 Challenges of Working with Minor Trafficking Victims**

Attorneys face unique challenges when working with child trafficking victims. In particular, because child victims are emotionally and economically dependent upon their traffickers, they are often more reluctant or fearful to leave their traffickers than adult victims.<sup>12</sup> Lisa Goldblatt Grace, director of My Life My Choice, has summarized the effect on child victims as follows: “This process, and the violence, degradation, and brainwashing that follows, renders adolescent girls similar to battered women; the girl is both terrified of her perpetrator and willing to lay down her life, and her body, for his needs.”<sup>13</sup> She has described this attachment as “trauma bonds”: fear mixed with psychological dependence, which creates an intense and powerful connection between the trafficker and the child victim.<sup>14</sup> This unique form of coercion may make a child victim more reluctant to work with an attorney.<sup>15</sup>

Child trafficking victims may be highly distrustful of adults, including attorneys, based on traumatic experiences with adults in the past. They may also have been coached by their traffickers on how to respond to questions from attorneys, social workers, or law enforcement personnel.<sup>16</sup> In addition, as a result of past abuse or to cope with current exploitation, child victims frequently suffer from drug or alcohol addiction and may have violated other criminal laws.<sup>17</sup>

### **6.1.3 Advice for Attorneys Representing Minor Trafficking Victims**

Given the unique challenges presented by child trafficking victims, attorneys must approach the representation of child victims with extra care.

First, attorneys representing children in non-sex-related delinquency matters or status offense proceedings, especially when the child has been on the run for any amount of time, should be attentive to signs that a child may be a victim of trafficking.<sup>18</sup> Child victims may be reluctant to tell adults about their situations due to shame or fear of being prosecuted. This reluctance to be forthcoming about



exploitation experiences makes it particularly important for attorneys to be vigilant in identifying the risk factors that often indicate exploitation. These factors are discussed in more detail in [Section 4](#), *supra*. Other victims may not self-identify as victims of trafficking, but may instead wish to protect their perpetrators, as described above.

Second, attorneys must be particularly sensitive and patient when representing child victims. A child victim may avoid disclosing important information if she believes her attorney will be judgmental or not understand her experiences. A child victim may not understand the attorney client privilege and may not believe that an attorney owes her a duty of confidentiality. Attorneys must listen carefully to minor clients, and treat them with respect and compassion. Attorneys must also remain mindful that their job is not to “rescue” their clients, but rather to act as legal guides and zealous advocates. This means practicing client-directed representation, even if a child’s wishes conflict with what others feel is in his or her best interest.

Third, attorneys representing child trafficking victims who have been accused of crimes may consider, with their client’s permission, sharing information necessary to help law enforcement and prosecutors understand the coercion that may have contributed to the crimes.<sup>19</sup> Under federal and Massachusetts law, a child who is engaged in a commercial sexual act is by definition a victim of human trafficking.<sup>20</sup>

Fourth, attorneys must be prepared to connect with other professionals who are able to address the child’s non-legal needs to ensure coordinated provision of services like stable housing, food, medical care, and mental health support.<sup>21</sup> Connecting a victim to such resources may be more urgent than the victims’ legal issues. It may be helpful to discuss these issues with the client’s case coordinator and multidisciplinary team to ensure coordinated care and avoid duplication of referrals or conflicting service plans.

## **6.2 SAFE HARBOR FOR MINORS INVOLVED IN CRIMINAL PROSECUTION**

### **6.2.1 Background**

The Massachusetts Trafficking Statute created a “Safe Harbor” from prosecution for prostitution for sexually exploited children in order to ensure that they are treated as victims of child abuse, rather than as delinquents.<sup>22</sup> The law recognizes that sexually exploited children should, under all circumstances, be treated as victims rather than criminals, and should have access to the same services as other victims of child abuse.<sup>23</sup> Thus, the Safe Harbor is designed to divert children from juvenile courts or district courts to services provided by the state or non-profit organizations.<sup>24</sup>

Specifically, the Safe Harbor provides:

Upon a motion by a party to the juvenile delinquency or criminal proceeding or by a guardian ad litem, unless the district attorney or the attorney general objects, and upon a finding that a child alleged to be a juvenile delinquent by reason of violating section 53 of chapter 272

[common night walking or streetwalking] or subsection (a) of section 53A of said chapter 272 [engaging in sexual conduct for a fee] is a child in need of care and protection or a child in need of services, the court shall, if arraignment has not yet occurred, indefinitely stay arraignment and place the proceeding on file.<sup>25</sup>

Under this provision, the default course of action is for a Care and Protection (“C&P”) Petition or a Child Requiring Assistance (“CRA”) Petition to be filed on behalf of a child believed to have been sexually exploited.<sup>26</sup> Any person—including the child—can file a C&P Petition.<sup>27</sup> For more on the procedural process underlying these petitions, see *infra* [Section 6.2.4](#).

Upon receipt of a C&P Petition, a court may appoint a *guardian ad litem* for the child and hold a hearing on the merits of the petition.<sup>28</sup> Attorneys representing victims should move for their client’s arraignment to be postponed while that hearing is pending because if the child has not been arraigned at the time of the hearing, the attorney can request that the court indefinitely stay arraignment and place the proceedings on file.<sup>29</sup> If the court determines the child is a victim of sexual exploitation (and if the prosecutor does not object), the court *must* grant that motion under the Safe Harbor provision.<sup>30</sup> However, if the child subsequently fails “to substantially comply with the requirements of services,” the court may restore the proceedings to the docket.<sup>31</sup>

If, on the other hand, the child was arraigned prior to the hearing, the court will place the child on pretrial probation, even upon a finding that the child was sexually exploited. As with a stay of arraignment, the court may restore the proceedings to the docket if the child fails to “substantially comply” with the conditions of probation.<sup>32</sup>

In most cases, preventing arraignment is the most advantageous course because it prevents a child’s criminal record from being tarnished, and it provides the child access to services appropriate for youth who have been sexually exploited.<sup>33</sup> Nonetheless, attorneys should be aware that, in certain cases, the Safe Harbor process may not be in a client’s best interests. For example, a judge will require that a child participate in certain services as a condition of delaying arraignment, such as complying with obligations imposed by the Department of Children and Families (“DCF”). Clients may not want to involve DCF or may not be willing to comply with services.<sup>34</sup> In such cases, clients may prefer to proceed with their criminal cases. In such situations, attorneys should consider using the affirmative defense of coercion available under the Massachusetts Trafficking Statute. See *infra* [Section 7](#), for more information on this affirmative defense.

### **6.2.2 Multidisciplinary Service Team Response Triggered by 51A Report**

The Massachusetts Trafficking Statute requires mandated reporters<sup>35</sup> to file a [Report of Child Alleged to be Suffering from Serious Physical Injury or Emotional Injury by Abuse or Neglect](#) (“51A Report”) with DCF if they suspect that a child is the victim of sexual exploitation or human trafficking.<sup>36</sup>

Filing a 51A Report triggers a “multidisciplinary service team” response under the Massachusetts Trafficking Statute.<sup>37</sup> This team may include a police officer or other person designated by a police chief, an employee of DCF, a representative of the appropriate district attorney, a social service provider, and a medical professional or a mental health professional.<sup>38</sup>

The team must determine “whether the child has been sexually exploited or is otherwise a human trafficking victim and to recommend a plan for services to [DCF] that may include, but shall not be limited to, shelter or placement, mental health and medical care needs and other social services.”<sup>39</sup>

The cornerstone of this multi-disciplinary approach is the case conference, which provides a forum for the various professionals involved in the child’s life (*e.g.*, clinicians, DCF, defense attorneys, prosecutors) to work together and share information.<sup>40</sup> In Suffolk and Middlesex counties, the case coordinator is employed by the county Children’s Advocacy Center (“CAC”), a non-profit organization that works with police, prosecutors, social workers, advocates, medical and mental health professionals and others to provide services for abused children and their families. The contact information of the case coordinator in those counties is available on the CAC websites.<sup>41</sup>

**Practice Tip:** Since attorneys do not automatically receive notice that a client has been or will be the subject of a case conference, attorneys should contact the case coordinator immediately upon learning that a 51A Report has been filed or that a child is being exploited, in order to be included in the case conference planning. It is critical for the attorney to participate in these conversations in order to have the knowledge necessary to zealously represent a client’s position as well as prevent duplication of services. Note that any information shared during the case conference is not privileged, so it is important not to disclose information that a client does not want to be shared. Attorneys should ask their clients for input on what they would like shared and what they would like kept confidential.<sup>42</sup>

In Suffolk and Middlesex counties, the “multidisciplinary” approach also includes a “forensic interview” at the CAC.<sup>43</sup> These interviews are optional and participation is determined by the child. Both Middlesex and Suffolk counties have the same process in place for conducting forensic interviews. The forensic interview is an investigative tool coordinated by the CAC and the assigned Assistant District Attorney (“ADA”). During the interview, a client will be asked about his or her experiences, which may involve the child discussing other criminal activity not protected by the Safe Harbor.<sup>44</sup>

**Practice Tip:** Determine if your client has been asked to participate in a forensic interview and discuss with your client what such an interview would entail. Advise your client that what she or he says to a prosecutor is not privileged and can be used against her. In practice, we have found that it is rare for statements made by a child victim in a forensic interview to be used against the child. However, you should discuss any concerns about potential prosecution of your client with the prosecutor.

Although this multidisciplinary approach is mandated by law statewide, as of the date of publication of this Guide, it has so far only been adopted in Suffolk County, through the Children’s Advocacy Center, and in Middlesex County, through the Middlesex Children’s Advocacy Center’s “TRACE” program.<sup>45</sup> In

Suffolk County, the case coordinator (the person who coordinates the response) is managed by Susan Goldfarb through the CAC.<sup>46</sup> Attorneys may also find it helpful to contact the Support to End Exploitation Now (“SEEN”), which is a program housed by the Children’s Advocacy Center of Suffolk County. The contact information for SEEN is:

Children’s Advocacy Center of Suffolk County  
Support to End Exploitation Now (SEEN)  
989 Commonwealth Avenue  
Boston, MA 02215  
(617) 779-2145  
[www.suffolkcac.org/programs/seen/](http://www.suffolkcac.org/programs/seen/)

### 6.2.3 Role of Department of Children and Families

The Massachusetts Trafficking Statute requires DCF to provide for a sexually exploited child’s “welfare needs.”<sup>47</sup> Specifically, it:

- Defines a “child requiring assistance”<sup>48</sup> to include “a sexually exploited child”;<sup>49</sup>
- Requires a DCF-provided advocate to accompany a sexually exploited child to all court appearances;<sup>50</sup>
- Requires DCF to immediately report to the district attorney and local law enforcement authorities any sexually exploited child or child trafficking victim;<sup>51</sup>
- Permits DCF (subject to appropriation) to contract with certain NGOs to train law enforcement officials likely to encounter sexually exploited children in their duties;<sup>52</sup> and
- Allows DCF to apply for grants from the Victims of Human Trafficking Trust Fund, grants from the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention or any other federal agency, or grants from any other private source to fund the law enforcement training and services for sexually-exploited children.”<sup>53</sup>

Children who are victims of commercial sexual exploitation may already be involved with DCF or another agency.<sup>54</sup> DCF can open a case to serve a child only if the abuse or exploitation involves a caretaker, and DCF must pay for services and treatment for the child. If DCF cannot open a case because the trafficker is not the child’s caretaker, the child will need another means to pay for necessary treatment.<sup>55</sup>

**Practice Tip:** Some children lack accurate information about DCF or have strong opinions about DCF based on past experiences. If a child is not already involved with DCF, she may be wary of informing or involving the agency out of fear that her current guardians will lose custody. Thus, it is important to ensure that your client has accurate information about what DCF involvement may entail and that you are aware of any prior history the client may have with DCF.

## **6.2.4 Child Requiring Assistance and “Care and Protection” Petitions**

The Safe Harbor provision presumes that either a Care and Protection (“C&P”) Petition or a Child Requiring Assistance (“CRA”) Petition will be filed.<sup>56</sup>

### **6.2.4.1 Care and Protection Petition**

Under a C&P Petition, the petitioner must swear that the child:

1. Is without necessary and proper physical or educational care and discipline;
2. Is growing up under conditions or circumstances damaging to the child’s sound character development;  
Lacks proper attention of the parent, guardian with care and custody or custodian; or
3. Has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention.<sup>57</sup>

If a court grants a C&P Petition, custody of a child will be granted to someone other than the current custodian. The parent(s) or guardian(s) will be notified to appear in court and show cause why custody of the child should not be transferred to DCF or another appropriate agency or individual.<sup>58</sup>

The court may also issue an emergency order granting temporary custody to DCF if the petitioner can show “reasonable cause” to believe that:

1. The child is suffering from serious abuse or neglect or is in immediate danger of serious abuse or neglect; and
2. That immediate removal of the child is necessary to protect the child from serious abuse or neglect.<sup>59</sup>

The parties have a right to a hearing on the issue of temporary custody within 72 hours of an emergency order. A court investigator is appointed to investigate the case. Then, unless the parent or guardian consents, there is a hearing on the merits of the C&P Petition under M.G.L. c. 119, §26.<sup>60</sup>

### **6.2.4.2 Child Requiring Assistance Petition**

Effective November 5, 2012, the legislature replaced what was formerly known as a Child In Need of Services (“CHINS”) Petition with the Child Requiring Assistance (“CRA”) Petition.<sup>61</sup> A minor’s parent, legal guardian, or custodian can file a CRA Petition as long as the minor meets any of the following:

1. Repeatedly runs away from the home of the child’s parent, legal guardian or custodian;
2. Repeatedly fails to obey the lawful and reasonable commands of the child’s parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child;
3. Repeatedly fails to obey the lawful and reasonable school regulations of the child’s school;
4. Is habitually truant; or
5. Is a sexually exploited child.<sup>62</sup>

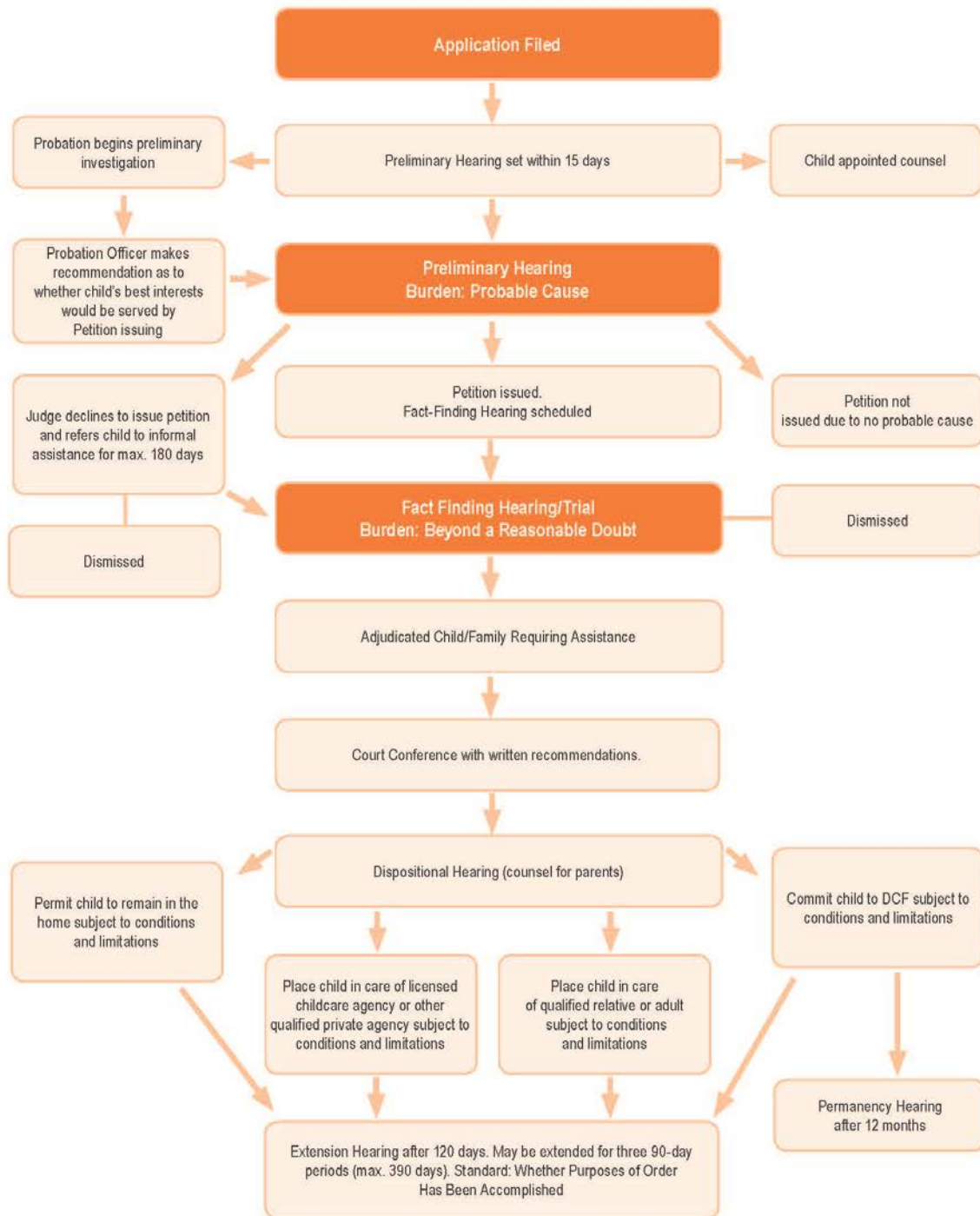
If the court finds that a minor falls under one of the above categories, it will grant the CRA Petition and require the minor to engage in social services.

The Act Regarding Families and Children Engaged in Services (“FACES”) defines a “sexually exploited child” as a child who:

1. Is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
2. Engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
3. Is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under section 4A of chapter 272; or
4. Engages in common night walking or common streetwalking under section 53 of chapter 272.<sup>63</sup>

Note that a police officer, not just the minor’s guardian, may file a CRA Petition for a sexually exploited child if the child repeatedly runs away from home or repeatedly fails to obey lawful and reasonable commands of a parent or guardian to the extent that it interferes with the guardian’s ability to adequately care for and protect the child.<sup>64</sup> However, any party, including the minor, may file a motion to dismiss the CRA Petition.<sup>65</sup>

Because FACES was so recently enacted, it may be helpful to note the differences between a CHINS Petition and a CRA Petition. For more information comparing the two, see the [Juvenile Court’s memorandum regarding the Massachusetts Trafficking Statute](#).<sup>66</sup>



## COMPARISON OF CHINS PETITION AND CRA PETITION<sup>67</sup>

CHILD IN NEED OF SERVICES PETITION	CHILD REQUIRING ASSISTANCE PETITION
Clerk Magistrate is not required to provide applicant with information about the court process, services, resources, or make referrals.	Clerk Magistrate required to provide applicant with information about the court process, services, resources, and make referrals.
No time requirement for when application must be heard by court addressed in statute.	Application must be heard within 15 days of the filing date.
Arrest warrant may be issued for child who does not respond to the summons to appear in court.	Arrest warrant may not be issued for child who does not respond to summons to appear. Warrant of Protective Custody may be issued.
A police officer may file an application for a runaway or stubborn petition	A police officer may not file an application except for a child who is stated to be sexually exploited.
Child brought to court under arrest may be held in court lock-up until child brought before judge.	Child brought to court under custodial protection or pursuant to Warrant of Protective Custody may not be shackled, restrained, or held in court lock-up.
Child may be released on bail or held in lieu of bail at the Department of Children and Families. If held or bail ordered, right to Superior Court bail review.	Child may be placed in the temporary custody of the Department of Children and Families. Bail not applicable to temporary custody orders.
Court issues the petition	Court accepts the application.
Court holds hearing on the merits.	Court holds fact-finding hearing.
Maximum period of informal assistance is 1 year: Initial order for 6 months (with one 6 month extension)	Maximum period of informal assistance is 180 days: Initial order for 90 days with one 90 day extension
Child has a right to jury trial.	Child does not have a right to jury trial.
No maximum period of disposition order: Initial order for 6 months with possible extensions of 6 months per extension until child turns 18 (16 for school based case).	Maximum period of disposition is 390 days: Initial order for 120 days with three possible extensions of 90 days per extension until child turns 18 (or 16 for school-based case). Thereafter case must be dismissed with exception of young adult in DCF care requiring permanency hearings.
No requirement to expunge court records if case dismissed.	All court records must be expunged if case dismissed before fact-finding hearing.

For a description of the procedural process surrounding a CRA petition, the Committee for Public Counsel Services has created a [flow chart](#) that may be helpful to attorneys.<sup>68</sup>

**Practice Tip:** A court may delay arraignment under the Safe Harbor provision to hear either a C&P Petition or a CRA Petition.<sup>69</sup> Thus, these petitions may be helpful in preventing an arraignment under the statute.<sup>70</sup>

**Practice Tip:** There may be some strategic value to filing a C&P Petition instead of a CRA Petition, based on the difference in emphasis between the two types of proceedings. With respect to a C&P Petition, the parent’s ability and current fitness is central to the court’s concern, along with the best interest of the child. Often, the child’s behavior is viewed as a result of parental unfitness. In considering a CRA Petition, the court focuses is on the child and what he or she—and not the parent—is “doing wrong.” However, keep in mind that a client may not want to become involved with DCF or leave his/her parents. Carefully explain the consequences of each type of proceeding to your client.



### **6.2.5 Why Safe Harbor Is Important to Child Victims of Trafficking**

Providing children with treatment is crucial to begin to reverse the harm caused by sexual exploitation.<sup>71</sup> Treatment is particularly essential because children involved in commercial sexual exploitation face many risks, including:

- Post-traumatic stress disorder (“PTSD”);
- Trauma from physical, emotional, or sexual abuse;
- Substance abuse and addiction; and
- Contracting sexually transmitted diseases, including HIV/AIDS.<sup>72</sup>

As a result, early intervention and providing supportive services—instead of threatening criminal prosecution—is particularly important.<sup>73</sup> Recovery is a lengthy process, but interpersonal support is essential to increasing a victim’s chances of recovery.<sup>74</sup>

### **6.2.6 Development and Application of Safe Harbor Provisions in Other State Anti-Trafficking Statutes**

At the time the legislature enacted the Massachusetts Trafficking Statute, five other states had enacted similar Safe Harbor provisions.<sup>75</sup> As in Massachusetts, there is limited court interpretation of these states’ respective Safe Harbor statutes. Because the case law is limited and rapidly developing, it is important to conduct research before filing any brief with a court. It may be helpful to set Westlaw/Lexis alerts to keep you up to date in case you need to amend a brief/motion if helpful law develops after you file.

## **6.3 REMEDIES FOR CHILD VICTIMS OF LABOR TRAFFICKING**

Minors who are victims of trafficking may be entitled to additional protections provided by federal and state employment and labor laws.

### **6.3.1 Federal Fair Labor Standards Act**

The Federal Fair Labor Standards Act (“FLSA”) forbids “oppressive child labor,”<sup>76</sup> defined as: (1) any employment of a child under the age of 16, except as otherwise determined by the Secretary of Labor; and (2) any “particularly hazardous” employment of a child ages 16 or 17.<sup>77</sup> Accompanying federal regulations list the types of jobs that children ages 14 and 15 may lawfully hold, and limit the employment of children in those jobs to hours outside of normal school hours and within specified limitations.<sup>78</sup> Children employed in farm labor outside of school hours are excepted from many of these requirements;<sup>79</sup> however, certain farm activities are considered so hazardous that they cannot lawfully be performed by children under the age of 16 unless the child is employed on a farm owned by his or her parent or guardian.<sup>80</sup>

There is no private right of action under the child labor provisions of the FLSA.<sup>81</sup> However, employers who violate the child labor provisions of the FLSA may be fined up to \$11,000 by the Department of Labor, or up to \$50,000 if the violation results in the “death or serious injury” of the child employee.<sup>82</sup> Businesses that ship or receive goods produced by establishments that violate the child labor provisions of the FLSA may also be subject to these fines.<sup>83</sup> Furthermore, the Secretary of Labor may seek injunctive relief from a federal district court preventing further violations of the child labor provisions of the FLSA.<sup>84</sup> Individuals who are aware of violations of the child labor provisions of the FLSA can file a complaint with the Wage and Hour Division of the Department of Labor by calling 1-866-487-9243 or by visiting [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

### 6.3.2 Massachusetts Laws Regulating Child Labor

Massachusetts law also imposes restrictions on child labor.<sup>85</sup> Employers must have work permits on file for employees under 18 years old, and generally must provide direct supervision by an adult of any child working after 8 p.m.<sup>86</sup> Children ages 16 and 17 are permitted to engage in most types of work, with certain exceptions for particularly dangerous jobs.<sup>87</sup> Children under the age of 16 are precluded from working “in, about or in connection with any factory, workshop, manufacturing or mechanical establishment at any time.”<sup>88</sup> Generally, children ages 16 and 17 may only work between 6 a.m. and 10 p.m. (or 11:30 p.m. when not preceding a school day).<sup>89</sup> Children ages 14 and 15 are permitted to work outside school hours between 7 a.m. and 7 p.m. (or until 9 p.m. between July 1 and Labor Day) in limited types of non-hazardous jobs.<sup>90</sup> Children under the age of 14 may not work, with exceptions for certain types of jobs, such as news carriers, on farms, and in entertainment (with a special permit).<sup>91</sup>

If there is a conflict between Federal law and Massachusetts law, the stricter law will govern.<sup>92</sup> For a summary of permitted jobs and working hours in Massachusetts, visit the website of the [Executive Office of Labor and Workforce Development](#).<sup>93</sup>

Employers that violate Massachusetts child labor laws are subject to criminal and civil penalties. An employer who violates these laws may be fined \$500-\$5,000, or be imprisoned for up to one month, or both.<sup>94</sup> Moreover, children who are injured while employed in violation of Massachusetts child labor laws are entitled to double compensation under the Workers’ Compensation Act.<sup>95</sup>

“Any person” may prosecute violations of Massachusetts child labor laws.<sup>96</sup> That said, the Attorney General’s Office is primarily responsible for enforcement, largely through inspections of businesses that employ children and the investigation of complaints it receives.<sup>97</sup> For more information about filing a complaint under the Massachusetts child labor laws, visit the website of the [Attorney General’s Office](#).<sup>98</sup>

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<sup>1</sup> Lisa Goldblatt Grace et al., *Commercial Sexual Exploitation of Children and the School Nurse*, THE JOURNAL OF SCHOOL NURSING, 24 May 2012, at 1.

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<sup>2</sup> SUZANNE PIENING AND THEODORE CROSS, FROM ‘THE LIFE’ TO MY LIFE: SEXUALLY EXPLOITED CHILDREN RECLAIMING THEIR FUTURES: SUFFOLK COUNTY MASSACHUSETTS’ RESPONSE TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) 6 (2012), *available at* [www.suffolkcac.org/assets/pdf/From the Life to My Life Suffolk Countys Response to CSEC June 2012.pdf](http://www.suffolkcac.org/assets/pdf/From_the_Life_to_My_Life_Suffolk_Countys_Response_to_CSEC_June_2012.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Lisa Goldblatt Grace, *Understanding the Commercial Sexual Exploitation of Children*, THE LINK: CONNECTING JUVENILE JUSTICE AND CHILD WELFARE, Winter 2009, at 1, 3. Of 106 women arrested or incarcerated for prostitution in Boston, 68% reported sexual abuse, and almost half reported being raped, before the age of 10. *Id.* at 1.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> National Child Traumatic Stress Network, Effects of Complex Trauma, [www.nctsn.org/trauma-types/complex-trauma/effects-of-complex-trauma](http://www.nctsn.org/trauma-types/complex-trauma/effects-of-complex-trauma) (last visited Oct. 16, 2013).

<sup>11</sup> Grace, *supra* note 8, at 4.

<sup>12</sup> EVA KLAIN AND AMANDA KLOER, AMERICAN BAR ASSOCIATION, MEETING THE LEGAL NEEDS OF CHILD TRAFFICKING VICTIMS: AN INTRODUCTION FOR CHILDREN’S ATTORNEYS & ADVOCATES 13 (2009), *available at* [www.americanbar.org/content/dam/aba/migrated/2011\\_build/domestic\\_violence/child\\_trafficking.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/domestic_violence/child_trafficking.authcheckdam.pdf).

<sup>13</sup> Grace, *supra* note 8, at 4.

<sup>14</sup> *Id.*

<sup>15</sup> Telephone Interview with Lisa Goldblatt Grace, Director, My Life My Choice (Feb. 15, 2013).

<sup>16</sup> FLORIDA COALITION AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING SERVICE PROVIDER MANUAL FOR CERTIFIED DOMESTIC VIOLENCE CENTERS 17 (2004), *available at* [www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf](http://www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf).

<sup>17</sup> *See* Grace, *supra* note 6, at 4.

<sup>18</sup> *See supra* [Section 2](#), Defining and Recognizing Human Trafficking.

<sup>19</sup> *See supra* [Section 7](#), Issues Specific to Criminal Defendants.

<sup>20</sup> 18 U.S.C.A. § 1591(a) (West 2013); M.G.L. c. 265, § 50; M.G.L. c. 119, § 21.

<sup>21</sup> *See supra* [Section 10](#), Non-Legal Benefits and Resources Available to Victims of Human Trafficking; [Section 8.2](#), Safe Harbor for Minors Involved in Criminal Prosecution.

<sup>22</sup> Telephone Interview with Susan Goldfarb, Executive Director, Children’s Advocacy Center (Feb. 22, 2013).

<sup>23</sup> *Joint Committee on the Judiciary Public Hearing: Hearing on T.S. 827/H. 2850, An Act Relative to the Commercial Exploitation of People, Before the Joint Committee on the Judiciary*, 187th Sess. (Mass. 2011) (statement of Martha Coakley, Att’y Gen. of Mass.), *available at* [www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf](http://www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf).

<sup>24</sup> *Id.*

<sup>25</sup> M.G.L. c. 119, § 39L(c).

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<sup>26</sup> *Id.* § 39L. A Care and Protection Petition is a statement under oath that a child under the jurisdiction of the court: “(a) is without necessary and proper physical or educational care and discipline; (b) is growing up under conditions or circumstances damaging to the child’s sound character development; (c) lacks proper attention of the parent, guardian with care and custody or custodian; or (d) has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention.” M.G.L. c. 119, § 24. A copy of the Care and Protection Petition can be found at

[www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/forms/jv-13-care-protection-petition.pdf](http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/forms/jv-13-care-protection-petition.pdf). If the petition is granted, the court can grant temporary protective custody of the child for up to 72 hours. M.G.L. c. 119, § 24.

<sup>27</sup> M.G.L. c. 119, § 39L(a).

<sup>28</sup> *Id.* § 39L(b).

<sup>29</sup> *See id.*

<sup>30</sup> M.G.L. c. 119, § 39L(c).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Telephone Interview with Cecely Reardon, Attorney-in-Charge, Youth Advocacy Division, Committee for Public Counsel Services (March 3, 2013).

<sup>34</sup> *Id.*

<sup>35</sup> A mandated reporter includes: “any physician; medical intern; hospital personnel engaged in the examination, care or treatment of persons; medical examiner; psychologist; emergency medical technician; dentist; nurse; chiropractor; podiatrist; osteopath; public or private school teacher; educational administrator; guidance or family counselor; day care worker or any person paid to care for or work with a child in any public or private facility, or home or program funded by the Commonwealth or licensed pursuant to the provisions of M.G.L. c. 28A, which provides day care or residential services to children or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs; probation officer; clerk/magistrate of the district courts; parole officer, social worker; foster parent; firefighter; or police officer, office for children licenser, school attendance officer, allied mental health and human services professional as licensed pursuant to the provisions of M.G.L. c. 112, § 165, drug and alcoholism counselor, psychiatrist, and clinical social worker.” M.G.L. c. 119, § 21 (2013); 110 C.M.R. 2.00 (2012). Although attorneys are not mandated reporters, the Massachusetts Rules of Professional Conduct permit (but do not require) the disclosure of confidential information “to prevent the commission of a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm, or in substantial injury to the financial interests or property of another.” Rule 1.6(b)(1).

<sup>36</sup> M.G.L. c. 119, § 51A(a) (2013).

<sup>37</sup> *See id.* § 51D.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Telephone Interview with Susan Goldfarb, *supra* note 23.

<sup>41</sup> See [www.suffolkcac.org/](http://www.suffolkcac.org/) for Suffolk County. For Middlesex County, visit [middlesexcac.org/](http://middlesexcac.org/).

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<sup>42</sup> Telephone Interview with Cecely Reardon, *supra* note 34.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*; see MIDDLESEX CHILDREN’S ADVOCACY CTR., *Middlesex Trace Program “Team Response Against Child Exploitation,”* MIDDLESEXCAC.ORG, [www.middlesexcac.org/trace/](http://www.middlesexcac.org/trace/) (last visited Sept. 8, 2013).

<sup>46</sup> Telephone Interview with Cecely Reardon, *supra* note 34.

<sup>47</sup> M.G.L. c. 119, § 39K(a) (2013).

<sup>48</sup> Technically, the Massachusetts Trafficking Statute amended the definition of a “child in need of services”—not a “child requiring assistance”—because that was the statutory scheme in place when the Massachusetts Trafficking Statute was drafted and enacted. In February 2013, a later bill amended the definition of a “child requiring assistance” to include a sexually exploited child. To avoid confusion, this Guide refers to the Massachusetts Trafficking Statute as if it amended the current statutory scheme.

<sup>49</sup> M.G.L. c. 119, § 21.

<sup>50</sup> *Id.* § 39K(a).

<sup>51</sup> *Id.* § 51B(a).

<sup>52</sup> *Id.* § 39K(d).

<sup>53</sup> *Id.* § 39K(e).

<sup>54</sup> SUZANNE PIENING & THEODORE CROSS, SUFFOLK COUNTY MASSACHUSETTS’ RESPONSE TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC), FROM ‘THE LIFE’ TO MY LIFE: SEXUALLY EXPLOITED CHILDREN RECLAIMING THEIR FUTURES, at 5 (2012).

<sup>55</sup> Telephone Interview with Susan Goldfarb, *supra* note 23.

<sup>56</sup> M.G.L. c. 119, § 39L(a).

<sup>57</sup> *Id.* § 24.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> TRIAL CT. OF MASS., ADMIN. OFFICE OF THE JUVENILE CT., CHILD REQUIRING ASSISTANCE MEMORANDUM 1 (Oct. 26, 2012) (hereinafter CHILD REQUIRING ASSISTANCE MEMORANDUM), available at [www.publiccounsel.net/practice\\_areas/cafl\\_pages/Child\\_Requiring\\_Assistance\\_Memorandum\\_-\\_FACES.pdf](http://www.publiccounsel.net/practice_areas/cafl_pages/Child_Requiring_Assistance_Memorandum_-_FACES.pdf).

<sup>62</sup> M.G.L. c. 119, §§ 39E, 21.

<sup>63</sup> *Id.* § 21.

<sup>64</sup> See TRIAL COURT OF MASS., JUVENILE CT. DEP’T, *Parent/Legal Guardian/Custodian/Law Enforcement Application for a Child Requiring Assistance for Sexually Exploited Child* (hereinafter *Application for a Child Requiring Assistance for Sexually Exploited Child*), available at [www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/forms/cra-application-sexually-exploited-child-jv-087-re.pdf](http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/forms/cra-application-sexually-exploited-child-jv-087-re.pdf) (last accessed Sept. 8, 2013).

<sup>65</sup> M.G.L. c. 119, § 39G.

<sup>66</sup> CHILD REQUIRING ASSISTANCE MEMORANDUM, *supra* n. 61.

<sup>67</sup> *Id.*

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<sup>68</sup> COMM. FOR PUB. COUNSEL SERVS., *Chart B: Child Requiring Assistance: Fact-Finding Hearing to Disposition*, available at [www.publiccounsel.net/Practice\\_Areas/cafl\\_pages/pdf/11Juvenile Court Flow Chart of CRA Case.pdf](http://www.publiccounsel.net/Practice_Areas/cafl_pages/pdf/11Juvenile_Court_Flow_Chart_of_CRA_Case.pdf) (last visited Sept. 8, 2013).

<sup>69</sup> M.G.L. c. 119, §39L(c).

<sup>70</sup> Telephone Interview with Cecely Reardon, *supra* note 34.

<sup>71</sup> See Telephone Interview with Lisa Goldblatt Grace, *supra* note 16; telephone Interview with Susan Goldfarb, *supra* note 23.

<sup>72</sup> See Megan Annitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 YALE L. POL'Y REV. 1, 10-11 (2011).

<sup>73</sup> Telephone Interview with . Lisa Goldblatt Grace, *supra* note 16.

<sup>74</sup> *Id.*

<sup>75</sup> See N.Y. SOC. SERV. LAW §§ 447-a, 447-b (McKinney 2008); N.Y. FAM. CT. ACT § 311.4 (2010); TEX. FAM. CODE ANN. § 51.03(b)(7), § 43.02(d) (West 2011); CONN. GEN. STAT. §§ 53a-82(c) (2004); FLA. STAT. §39.001(4), § 39.524 (2004); MO. REV. STAT. § 556.203 (2004).

<sup>76</sup> 29 U.S.C.A. § 212 (West 2013).

<sup>77</sup> *Id.* § 203(l).

<sup>78</sup> See 29 C.F.R. § 570.119.

<sup>79</sup> 29 U.S.C.A. § 213(c)(1)-(2) (West 2013).

<sup>80</sup> See 29 C.F.R. § 570.71.

<sup>81</sup> See, e.g., *Breitwieser v. KMS Indus., Inc.*, 467 F.2d 1391, 1394 (5th Cir. 1972) (declining to create a private right of action based on a violation of the child labor provisions of the Fair Labor Standards Act).

<sup>82</sup> 29 C.F.R. § 579.1(a)(1)(i). For more detail regarding civil money penalties for child labor violations, see *id.* § 579.1-5.

<sup>83</sup> *Id.* § 579.3(a)(1).

<sup>84</sup> 29 U.S.C.A. § 217.

<sup>85</sup> M.G.L. c. 149 §§ 56-105.

<sup>86</sup> *Id.* §§ 66, 86-89.

<sup>87</sup> See *id.* § 62 (listing prohibited positions for minors under 18).

<sup>88</sup> *Id.* § 60.

<sup>89</sup> *Id.* § 66.

<sup>90</sup> NADINE COHEN ET AL., MASSACHUSETTS WAGE AND HOURS HANDBOOK 277 (2008); see also EXECUTIVE OFFICE OF LABOR & WORKFORCE DEV., *Summary of Massachusetts Laws Regulating Minors' Work Hours and Occupation Restrictions*, MASS.GOV (hereinafter *Summary of Massachusetts Laws Regulating Minors' Work Hours and Occupation Restrictions*), [www.mass.gov/lwd/labor-standards/dls/youth-employment/summary-of-massachusetts-laws-regulating.html](http://www.mass.gov/lwd/labor-standards/dls/youth-employment/summary-of-massachusetts-laws-regulating.html) (last visited Sept. 8, 2013).

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<sup>91</sup> For a summary of child labor requirements, see MASS. ATTORNEY GENERAL'S OFFICE, *Summary of Youth Employment*, MASS.GOV, [www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/youth-employment/age-requirements.html](http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/youth-employment/age-requirements.html) (last visited Sept. 8, 2013).

<sup>92</sup> DEPARTMENT OF LABOR, WAGE & HOUR DIVISION, *Fact Sheet #43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations* (July 2010), [www.dol.gov/whd/regs/compliance/whdfs43.htm](http://www.dol.gov/whd/regs/compliance/whdfs43.htm).

<sup>93</sup> See *Summary of Massachusetts Laws Regulating Minors' Work Hours and Occupation Restrictions*, *supra* note 91.

<sup>94</sup> M.G.L. c. 149, § 78. Importantly, once an employer has been notified in writing by “any authorized inspector or supervisor of attendance,” every subsequent day during which the illicit employment of the minor continues counts as a separate offence. *Id.* For additional rules regarding penalties for employers who violate Massachusetts child labor laws, see *id.* §§ 57, 79, 80, 86, 90.

<sup>95</sup> M.G.L. c. 152, § 28.

<sup>96</sup> M.G.L. c. 149, § 76.

<sup>97</sup> *Id.* §§ 76, 92.

<sup>98</sup> See MASS. ATTORNEY GENERAL'S OFFICE, *File a Child Labor Complaint*, MASS.GOV, [www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/youth-employment/child-labor-complaint.html](http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/youth-employment/child-labor-complaint.html) (last visited Sept. 8, 2013).





## 7. Issues Specific to Criminal Defendants

**Note:** Victims of human trafficking often face a constellation of legal issues. While this chapter summarizes special considerations for representing victims of human trafficking who are defendants in criminal matters, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.

### 7.1 DEFENDING RIGHTS OF HUMAN TRAFFICKING SURVIVORS

Many human trafficking victims first encounter the criminal justice system when they are arrested for a crime such as prostitution.<sup>1</sup> This section provides resources for attorneys defending human trafficking victims in criminal cases.

For more information on prostitution-related crimes, see the Criminal Penalties for Prostitution-Related Crimes table on [page 87](#).

**Practice Tip:** In many cases, the first step is to identify the victim of human trafficking as such, particularly in cases where the criminal charge was for something other than prostitution, such as drug use. Attorneys should look for indicators, for example, a client who is disconnected from family and/or community, has lost custody of children, has had travel and/or communications restricted, or is a child runaway; see *supra* [Section 2.1.2](#) for other common signs of trafficking.

**Practice Tip:** As noted elsewhere in this Guide, attorneys should also be attentive to the non-legal needs of a trafficking victim. Throughout the entire process, however, attorneys should employ a client-centered approach and not substitute their judgment for their clients'. For example, if a client refuses non-legal assistance, or does not want to disclose information to prosecutors that could be used to prosecute her traffickers, the attorney must abide by the client's wishes. It may be helpful to reach out to other attorneys and social service providers who work with trafficking victims for support and advice.

#### 7.1.1 Affirmative Defense of Duress or Coercion

The Massachusetts Trafficking Statute establishes an affirmative defense to a charge of prostitution or "common night walking" if "while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted . . . ."<sup>2</sup> As of the date of publication of this Guide, there are no reported Massachusetts cases discussing or applying this defense. Although four other states have similar statutory affirmative defenses available to victims of human trafficking, there are no reported cases from those jurisdictions interpreting their respective statutes.<sup>3</sup>

The Massachusetts Trafficking Statute does not explicitly enumerate the elements that must be satisfied to assert the affirmative defense of duress or coercion. It could be interpreted to require proof that the victim is both a human trafficking victim and also under duress or coercion. Alternatively, it may only

require a showing that the individual is a human trafficking victim and thus, by default, under duress or coercion.

Although there are no reported cases directly on point, Massachusetts courts have found coercion or duress to be a valid defense to other crimes. The Supreme Judicial Court has held that to prove duress or coercion, there must be “a present, immediate, and impending threat of such a nature as to induce a well-founded fear of death or of serious bodily injury if the criminal act is not done; the actor must have been so positioned as to have had no reasonable chance of escape.”<sup>4</sup>

#### ***7.1.1.1 Traditional view of duress or coercion in self-defense cases***

Massachusetts courts have most frequently considered the defense of duress or coercion in self-defense cases. However, jurisprudence in the self-defense context raises two potential challenges for human trafficking victims:

- First, proving “duress” requires a showing of threat of imminent or immediate harm. It may be challenging to prove imminent or immediate harm in the trafficking context, since some victims form emotional ties with their exploiters that make it difficult for them to leave trafficking situations.<sup>5</sup>
- Second, because the defense of coercion has most often been used as a defense for use of force against another, courts have analyzed defendants’ “reasonable apprehension” of harm, which is either irrelevant or difficult to prove in most human trafficking cases.

Massachusetts courts have, however, found that the inability to escape or involuntary intoxication from drugs or alcohol is evidence of duress or coercion, making these arguments more promising for attorneys representing human trafficking victims.<sup>6</sup>

The Supreme Judicial Court has assumed, without deciding, that the Commonwealth has the burden of disproving duress beyond a reasonable doubt as a matter of constitutional law.<sup>7</sup> However, other states vary in regard to which party bears the burden and the standard of proof.<sup>8</sup>

#### ***7.1.1.2 Analogy to Battered Woman Syndrome Defense***

Cases involving a claim of battered woman syndrome as a defense to a criminal act may be more analogous to a duress defense in human trafficking cases, since such cases do not require a showing of an imminent threat. In cases involving claims of battered woman syndrome, courts have found beatings, controlling behavior limiting the victims’ social contacts with the outside world, and threats to take away children, persuasive evidence that victims were controlled and coerced by their abusers.<sup>9</sup>

#### ***7.1.1.3 Duress and coercion in practice***

In cases unrelated to human trafficking, courts have been hesitant to recognize duress and coercion as defenses. For example, in *Doe v. Westlake Academy*, a civilly committed mentally ill teenager unsuccessfully attempted to establish that she had been coerced to have sex with an employee at a mental health facility, in violation of the Massachusetts Civil Rights Act.<sup>10</sup> Although the court recognized

that the intercourse was nonconsensual on account of the plaintiff's mental illness, it held that the plaintiff failed to prove coercion, *i.e.*, that she had a well-founded fear of death or of serious bodily injury, because the defendant employee did not use either physical or psychological force.<sup>11</sup>

In *United States v. Sabatino*, the First Circuit reversed a sentencing increase that the district court had imposed because the defendant coerced vulnerable victims into joining a prostitution ring in violation of the Mann Act.<sup>12</sup> Even though the victims were single teenage mothers and sent to violent customers by their pimps as punishment, the First Circuit refused to find that the teenagers were coerced into prostitution.<sup>13</sup> Rather, the Court found that "economic consequences" of not participating in prostitution could not constitute "coercion," particularly in light of the fact that many of the participants voluntarily quit.<sup>14</sup>

Similarly, in a Texas case, *Thornberg v. State*, a female prostitute and a male acquaintance abducted and sexually abused a child.<sup>15</sup> The female defendant asserted that she participated only because she feared that her companion would kill her. However, the Texas Court of Appeals upheld the jury's guilty verdict, holding that the jury could reasonably have determined that the female defendant was not coerced. The court reasoned that the jury could have credited evidence that the defendant was not verbally or physically threatened during the kidnapping, that she never acted afraid, mad or upset, and that she "voluntarily" engaged in and "seemed to enjoy" the sexual activity.<sup>16</sup>

In an attempt to persuade courts not to apply this line of cases to the human trafficking context, it may be useful to note that these cases do not reflect the changing legislative landscape.<sup>17</sup> Rather, they were decided before human trafficking was specifically outlawed in Massachusetts. The Massachusetts Trafficking Statute was enacted, in part, to shift focus toward punishing traffickers instead of their victims.<sup>18</sup> Moreover, attorneys may make the statutory construction argument that because the Legislature is presumed to be aware of previous judicial decisions when enacting or amending a statute, it can be inferred that the Legislature implicitly disapproved of these cases by including an affirmative defense of coercion in the Massachusetts Trafficking Statute.<sup>19</sup>

**Practice Tip:** Because clients may not wish to proceed to trial out of a fear of re-experiencing trauma, attorneys should consider other options short of seeking a verdict of not guilty. For example, an attorney may attempt to convince the prosecutor to file a *nolle prosequi* (declining to prosecute) or recommend pre-trial probation to the court. An attorney may also argue that a trafficking-related crime—at least one involving prostitution—should not be prosecuted if it was a result of force, fraud, or coercion, as may occur in a human trafficking situation. It may be helpful to cite to the affirmative defense in the Massachusetts Trafficking Statute. The typical disposition of a prostitution-related case is Continuance Without A Finding ("CWOA"). Even if the prosecution does not agree with this recommendation, many judges will accept it. However, attorneys should be aware of the immigration consequences of this disposition, *see infra* [Section 7.2.2](#). Regardless of whether a client chooses to go to trial, clients should specify what attorneys disclose to prosecutors.<sup>20</sup>

**Practice Tip:** It may be helpful to file a motion *in limine* to admit background information (e.g., a history of sexual assault, culturally-specific experiences of oppression) to support a client’s defense of coercion.

## 7.2 CONSEQUENCES OF A CRIMINAL CONVICTION

### 7.2.1 Barriers to Employment, Housing, and Other Benefits

Human trafficking victims should carefully consider the collateral consequences of a criminal conviction before pleading guilty to a trafficking-related crime. All criminal convictions appear on a Criminal Offender Record Information (“CORI”) report, which may be viewed by potential employers or landlords. The collateral effects of an arrest or criminal conviction can be devastating, although recent legislation has limited the impact somewhat in the employment context. This section describes some of the consequences of a criminal conviction in the areas of employment, housing, and other public benefits.

#### 7.2.1.1 Effects of criminal conviction on employment

Recent legislation has made it unlawful for most employers to ask applicants about their criminal history on a job application prior to the interview stage of the hiring process.<sup>21</sup> Employers are exempt from this requirement if a federal or state law or regulation creates mandatory or presumptive disqualification based on a criminal conviction (e.g., jobs that require working with children or the elderly).<sup>22</sup> Employers may ask applicants for permission to obtain a copy of their CORI report at a job interview.<sup>23</sup> The CORI report that most employers receive shows only Massachusetts convictions and Massachusetts cases that are currently open. In later stages of the application process, such as the final job interview, employers may ask applicants about their history of criminal convictions. Employers may not ask about an arrest or prosecution that did not lead to a conviction, nor may they inquire about a juvenile record.<sup>24</sup> Employers may legally ask about only two types of criminal convictions:

1. Felony convictions; and
2. Misdemeanor convictions where the date of the convictions or jail time were within the last 5 years. However, employers may not ask about first time offenses for public drunkenness, simple assault, speeding, a minor traffic violation, affray (*i.e.*, fighting in a public place causing fear of others), or disturbing the peace.<sup>25</sup>

Employers may *not* ask applicants about any of the following:

1. An arrest that did not result in a conviction;
2. A criminal detention or disposition that did not result in a conviction;
3. A first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;
4. A conviction for a misdemeanor where the date of the conviction predates the inquiry by more than 5 years;
5. Sealed records; and
6. Juvenile offenses.<sup>26</sup>

Attorneys should counsel their clients on the potential impact of having a criminal conviction, as well as the privacy guidelines governing disclosure of a CORI report. Even though employers may not access an applicant's CORI report without his or her permission, failing to grant permission can legally keep applicants from being offered a job. On the other hand, granting access to a CORI report allows employers to view convictions and open cases—also potentially preventing applicants from obtaining the position.

#### ***7.2.1.2 Effects of criminal conviction on housing***

A landlord, property manager, housing authority, or real estate agent may request a CORI report for the purpose of evaluating applicants for housing.<sup>27</sup> As with most employers, the CORI report that housing authorities and landlords receive includes only convictions and open cases.

Unfortunately, either producing or failing to produce the report may negatively impact an applicant's chance of securing stable housing. Public housing authorities may request a CORI report for all members of an applicant's household with their permission, and they may lawfully disqualify applicants based on this information.<sup>28</sup> However, applicants have the right to a hearing to contest the accuracy or relevance of the information on a CORI report.<sup>29</sup>

#### ***7.2.1.3 Effects of criminal conviction on other benefits***

A criminal conviction may impact a client's right to access other benefits. For example:

- A criminal conviction may prevent a client from becoming a foster or adoptive parent.<sup>30</sup>
- It may also prevent a client from working in certain fields or internships that require contact with children, the elderly, or people with disabilities.<sup>31</sup>
- Applicants for Transitional Aid to Families with Dependent Children ("TAFDC") benefits from the Department of Transitional Assistance ("DTA") will be denied benefits if they were convicted of a drug-related felony, and released from prison fewer than 12 months ago (and not granted a domestic violence waiver).<sup>32</sup> This waiting period does not apply if an applicant was not sentenced to prison. Applicants will also be denied if:
  - The applicant has an outstanding default warrant (for example, for not paying a fine or missing a court date);
  - The applicant is an undocumented noncitizen;
  - The applicant violated probation or parole assigned after September 25, 1996; or
  - The applicant is fleeing prosecution or punishment for a felony.

### **7.2.2 Immigration Law: Grounds of Removal and Consequences for Eligibility**

A criminal conviction—or even just criminal conduct—may have severe consequences on a client's immigration status by either making a client ineligible for immigration relief or by providing grounds for

removal (*i.e.*, deportation), regardless of whether a client is documented. Furthermore, the prostitution conduct itself (even if it does not result in a conviction) can make the client inadmissible and jeopardize eligibility for certain immigration benefits. It may also jeopardize eligibility for certain immigration benefits, such as adjustment of status (*i.e.*, being granted a “green card”) and citizenship. In addition, convictions for certain prostitution-related offenses are grounds for deportation, even if a client legally resides in the United States. Note that under immigration law, a Continuance Without a Finding (“CWO”) is considered a conviction. Therefore, it is essential that attorneys clearly understand the implications when advising clients on potential dispositions for prostitution-related offenses.

In order to advise a client of the impact of a possible criminal conviction (or allegation), an attorney must first determine the client's immigration status, prior criminal history, and whether the pending charges qualify as a “crime involving moral turpitude” or another category that may impact the client’s immigration status.<sup>33</sup> This is a very complicated area of law, and it is strongly recommended that attorneys speak with an expert on the immigration consequences of criminal convictions to assess fully the impact of any criminal conduct on their clients’ immigration status.

Note that the term “conviction” in the immigration context is different than in the Massachusetts criminal context. Under the Immigration and Nationality Act, a “conviction” is defined as a finding of guilt or sufficient admission and that the judge has ordered some form of punishment, penalty, or other restraint on liberty.<sup>34</sup> A “sentence” includes any term of incarceration whether committed or suspended. For example, if a judge imposes a two year sentence of imprisonment with six months served, and then suspends the balance for one year, the “sentence” in immigration terms is still a two year sentence of imprisonment.<sup>35</sup>

The following chart details which common Massachusetts dispositions qualify as a “conviction” under immigration law.

MASSACHUSETTS DISPOSITIONS UNDER FEDERAL IMMIGRATION LAW<sup>36</sup>

MASSACHUSETTS DISPOSITION	FEDERAL IMMIGRATION LAW	JUVENILE DISPOSITIONS
Continuation Without a Finding (“CWO”)	Conviction	A finding of delinquency is not a conviction for immigration purposes.
Pre-trial Probation (no admission)	Not a conviction	A youthful offender adjudication may be a conviction for immigration purposes.
Guilty File	Might not be a conviction <sup>37</sup>	
Accord & Satisfaction	Not a conviction	
Conversion to Civil Infraction (per M.G.L. c. 277, § 70C)	Not a conviction	

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**Practice note:** A conviction is not necessary to render a client inadmissible or subject to removal. For example, juvenile delinquency dispositions, which are not convictions for immigration purposes, may still impact a client’s immigration status. Similarly, involvement in prostitution is sufficient to make a client inadmissible.

Whether a client can be physically removed from the U.S. based on grounds of “inadmissibility” or “deportability” is determined by the client’s status. If a client was lawfully admitted to the U.S., she may be removed based on grounds of deportability.<sup>38</sup> If your client was never lawfully admitted to the U.S. (e.g., she illegally crossed the U.S. border), she can be removed based on grounds of inadmissibility. And as discussed above, grounds of inadmissibility and deportability can also bar clients from obtaining immigration benefits. For example, in order to obtain a T visa or become a lawful permanent resident (i.e., get a “green card”) an applicant must be admissible. An inadmissible applicant will be denied a green card unless eligible for and granted one of the few discretionary waivers of inadmissibility.<sup>39</sup>

The following chart provides the criminal grounds for inadmissibility and removability for trafficking victims:

#### CATEGORIES OF CRIMINAL GROUNDS OF INADMISSIBILITY AND REMOVABILITY<sup>40</sup>

INADMISSIBILITY (8 U.S.C. § 1182(A)(2))	REMOVABILITY (8 U.S.C. § 1227(A)(2))
Crimes involving moral turpitude (8 U.S.C. § 1182(a)(2)(A)(i)(I))	Crimes involving moral turpitude (8 U.S.C. § 1227(a)(2)(A)(i))
Controlled Substance Offense (8 U.S.C. § 1182(a)(2)(A)(i)(II))	Controlled Substance Offense (8 U.S.C. § 1227(a)(2)(B))
Prostitution related offenses (8 U.S.C. § 1182(a)(2)(D))	Firearms offenses (8 U.S.C. § 1227(a)(2)(C))
Conviction of multiple offenses (5 years or more) (8 U.S.C. § 1182(a)(2)(B))	Domestic Violence offenses (8 U.S.C. § 1227(a)(2)(E))
	Aggravated Felonies (8 U.S.C. § 1227(a)(2)(A)(iii))

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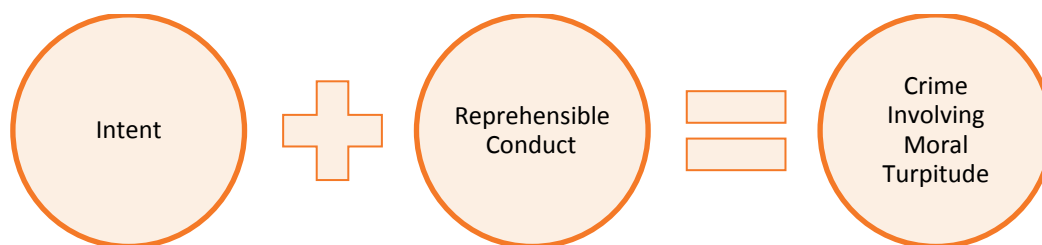
Note that prostitution is considered a crime involving moral turpitude for determining inadmissibility. If a client was convicted of or admits to committing a crime of moral turpitude, she will be inadmissible unless: (1) the crime was committed before she was 18 years old and was committed at least five years before her admission to the United States; or (2) the maximum penalty is one year or less and the sentence of imprisonment is six months or less (either suspended or imposed).<sup>41</sup> As reflected above, however, there is separate ground of inadmissibility based on prostitution. A person is inadmissible if she has “engaged in prostitution” within the past ten years.<sup>42</sup> This ground of inadmissibility does not require a conviction, although attorneys may argue that “engaging in” prostitution requires more than a single incident of prostitution.<sup>43</sup>

Prostitution is also considered a “crime involving moral turpitude” for purposes of deportation. A person is removable based on a conviction of one crime involving moral turpitude committed within five years of admission to the U.S. (as long as the offense carries a maximum possible penalty of one year or

more) or for convictions of two crimes involving moral turpitude occurring at any time not arising out of a single scheme.<sup>44</sup>

More generally, to determine whether a crime involved “moral turpitude,” a crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness.<sup>45</sup>

In short:



*See Matter of Silva-Trevino*, 24 I&N Dec. 687 (2008).<sup>46</sup>

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Note, however, that previous case law defining certain offenses as crimes of moral turpitude still govern and not all such crimes will fit this scheme.

For more on the impact of a criminal conviction or criminal conduct on your client’s immigration status, *see supra* [Section 5](#), Immigration Remedies for Trafficking Survivors.

Defense attorneys representing indigent defendants in Massachusetts may contact the Immigration Impact Unit of the Committee for Public Counsel Services for detailed advice regarding the immigration consequences of criminal dispositions.

CPCS Immigration Impact Unit  
21 McGrath Highway  
Somerville, MA 02143  
TEL: 617-623-0591  
FAX: 617-623-0936  
[iiu@publiccounsel.net](mailto:iiu@publiccounsel.net)  
[www.publiccounsel.net/practice\\_areas/immigration/immigration\\_index.html](http://www.publiccounsel.net/practice_areas/immigration/immigration_index.html)

### **7.2.3 Actions to Alleviate Collateral Consequences of Criminal Allegations**

Removing an outstanding warrant, vacating a conviction, and sealing a CORI report may help alleviate the effects of criminal allegations for a client in certain contexts. This section provides the procedural background for each of these steps.



### 7.2.3.1 *Removing an outstanding warrant*

If your client has an outstanding warrant for failure to appear or failure to pay court-imposed fees, it may be advisable to go to the court from which the warrant was issued to remove the warrant. An attorney should explain to a client that she could be arrested if the outstanding warrant is not removed.<sup>47</sup> Additionally, her driver's license will be revoked until the warrant is resolved.<sup>48</sup> However, it is also important to inform a client that in some Massachusetts courts, the policy may be to place the individual in custody until she can go before the judge. For this reason, the Committee for Public Counsel Services ("CPCS") recommends not attempting to remove a warrant on a Friday, to avoid the risk of being held in custody through the weekend if the court is too busy to hear the case that day. Additionally, a client should be informed that if the failure to appear is willful and without sufficient excuse, she may be (but often is not) charged with the substantive offense of bail jumping under M.G.L. c. 276, § 82A.<sup>49</sup> If there was a reason that your client did not appear (for example, if she was being threatened or could not escape her traffickers), you should explain that to the judge and provide any documentation you have, as the default on her record may be removed for "good cause."<sup>50</sup> CPCS recommends that a client bring an affidavit of indigency, if applicable, as well as letters of support from employers, treatment providers, social workers, and others who can show that the individual is making an effort to be an upstanding citizen.<sup>51</sup> If a client has not yet been arraigned, the court may do so when a defendant appears to remove a warrant. If a client is a child and the outstanding warrant relates to a prostitution charge, consider whether the Safe Harbor will apply. *See supra* [Section 6.2](#). If a client is arraigned, a bail hearing will be held, and it is possible that the client may be held on bail.<sup>52</sup> If a client was already arraigned and out on bail when she failed to appear, the district attorney may also seek to raise the bail or seek to revoke it and have the client taken into custody.<sup>53</sup>

### 7.2.3.2 *Sealing a CORI Record*

An individual may request that certain convictions and other criminal case dispositions be sealed so they will not appear on a CORI Report. However, such records may still be viewed by certain agencies, including but not limited to select employers, law enforcement, immigration agencies, and housing authorities.<sup>54</sup> Whether a client is able to seal CORI information depends on a variety of factors, including: (1) how much time has elapsed since the conviction or incarceration; (2) which type of crime(s) are involved; and (3) whether the client is a registered sex offender.<sup>55</sup>

The first step is for the individual to request a copy of her CORI from the Massachusetts Department of Criminal Justice Information ("DCJIS") either online, at [www.mass.gov/eopss/agencies/dcjis/](http://www.mass.gov/eopss/agencies/dcjis/), or by mail. The CORI request form must be notarized if sent by mail, and is available, along with instructions, from [MassLegalHelp.org](http://MassLegalHelp.org). Each CORI request costs \$25, but the fee can be waived if the individual requesting the report also includes an affidavit of indigency.<sup>56</sup> Before requesting that a CORI be sealed, it is a good idea to obtain certified copies of the complaint and docket for the client's records.<sup>57</sup>

There is a waiting period for criminal convictions to be eligible to be sealed. The waiting period to seal a misdemeanor conviction is five years from the time of conviction or release from incarceration, whichever is later; probation and parole are not included in this wait time. For felony convictions, the waiting period is ten years. If an individual is convicted of another crime during the waiting period but before filing a petition to seal, the waiting period clock starts again. “Not guilty” findings, dismissals, and *nolle prosequi* dispositions can be sealed by a judge without any waiting period. A judge also has the discretion to seal a first-time drug possession conviction as long as the individual did not violate the terms of her probation or CWOFF or any other requirements ordered by the court, such as mandatory drug treatment.<sup>58</sup>

However, some exceptions exist. For example, convictions for violating an abuse or harassment prevention order are treated as felonies for purposes of sealing records and have a 10 year waiting period. Sex offense convictions have a 15 year waiting period, including any period of parole, probation, or supervision.<sup>59</sup> Although juvenile cases are not considered criminal records and cannot be viewed by employers or landlords, your client may still choose to have juvenile records sealed.

Juvenile records may be sealed in Massachusetts three years after release from prison and closing of a case; exceptions exist for sex offenses and offenses in which a juvenile was tried as an adult.<sup>60</sup>

The sealing of a CORI will seal only Massachusetts criminal cases, so if your client has a criminal record in other states, an attorney may need to research those states’ procedures for sealing criminal records.

### **7.2.3.3 *Vacating a conviction***

Massachusetts has no specific remedy to vacate convictions for offenses resulting from human trafficking.

However, in 2010, New York enacted a law providing victims of human trafficking with an appeals process to vacate convictions for prostitution-related offenses resulting from human trafficking.<sup>61</sup> Although Hawaii, Illinois, Maryland, Nevada, Vermont, and Washington have since passed similar laws,<sup>62</sup> Massachusetts has no such remedy for trafficking victims.

An individual may appeal a conviction by filing a Notice to Appeal within 30 days of sentencing.<sup>63</sup> In the alternative, under Massachusetts Rule of Criminal Procedure 30(b), an individual may move for new trial if “at any time if it appears that justice may not have been done.”<sup>64</sup> A defendant’s motion may be based on either an error of law or new evidence.<sup>65</sup> The motion must be accompanied by an affidavit supporting any facts asserted, and must be served on the Commonwealth.<sup>66</sup> It may be helpful to contact the district attorney’s office to provide notice that a defendant may file a motion for new trial and discuss the case, as it is possible that the Commonwealth may not oppose the motion. The motion “is addressed to the sound discretion of the trial judge, and [ . . . ] will not be reversed unless it is manifestly unjust, or unless the [proceeding] was infected with prejudicial constitutional error.”<sup>67</sup>

A motion for new trial under Rule 30 may also be used to set aside a guilty plea. Courts “apply the standard set out in Mass. R. Crim. P. 30(b) rigorously, and allow defendants to withdraw their pleas after sentencing only ‘if it appears that justice may not have been done.’”<sup>68</sup> The Supreme Judicial Court has held that “[e]vidence of battered woman syndrome may be considered newly discovered evidence warranting a new trial because usually there is delay in coming forward with information on the abuse, even if there were some knowledge of the abuse at trial.”<sup>69</sup> In the case of a guilty plea, evidence of battered woman syndrome can be used to argue that defendant did not have the “mental competency to assist her attorney in establishing a defense and to plead guilty voluntarily.”<sup>70</sup>

It is very important to document the facts of a client’s abuse in as much detail and with as much corroborating evidence as possible. For example, in one successful case, the defendant filed an affidavit describing her extensive physical and psychological abuse, psychiatric records indicating she had “past tendencies to be lorded over by abusive males,” testimony from her boyfriend’s trial detailing his acts of violence and abuse, and investigative reports from the district attorney, describing her boyfriend as “violent and abusive person, especially toward women and children.”<sup>71</sup>

In the case of noncitizens, when applicable, a judge’s failure to warn a criminal defendant who is pleading guilty or admitting sufficient facts of the immigration consequences thereof may be grounds for a motion to vacate a conviction under M.G.L. c. 278, § 29D.<sup>72</sup> A defense attorney’s failure to advise a client to the immigration consequences of a plea may also form a basis for a motion to vacate a conviction based on ineffective assistance of counsel.<sup>73</sup> Using Mass. R. Crim. P. 29 to argue that the severity of the conviction be adjusted downward may also be useful to show that an offense is not an aggravated felony<sup>74</sup> or crime involving moral turpitude<sup>75</sup> for deportation purposes when the client is a noncitizen.<sup>76</sup>

It is important to assess *all* potential grounds for vacating convictions prior to moving to vacate a conviction, as any grounds not raised in the motion for new trial “are waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.”<sup>77</sup>

If a motion for new trial is granted, the case will be referred back to the district attorney’s office. Attorneys should communicate with the prosecutor at that point to discuss the possibility of dropping the charges.

## CRIMINAL PENALTIES FOR PROSTITUTION-RELATED CRIMES

STATUTE	RELEVANT LANGUAGE	PENALTY
Engaging in sexual conduct for a fee; engaging in sexual conduct with child under age 18 for a fee; penalties M.G.L. c. 272, § 53A (2013)	<p>"(a) Whoever engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, shall be punished by imprisonment"</p> <p>"(b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct, or to agree to engage in sexual conduct with another person"</p> <p>"(c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18"</p>	<p>(a) Maximum 1 year in the house of correction; maximum \$500 fine</p> <p>(b) Maximum 2 and one-half years in a house of correction; \$1000-\$5000 fine</p> <p>(c) Maximum of 10 years imprisonment or incarceration in the house of correction for not more than 2 and one-half years; \$3000-\$10,000 fine</p>
"Common night walking" M.G.L. c. 272, §53 (2013)	"Common night walkers, common street walkers, both male and female, persons who with offensive and disorderly acts or language accost or annoy persons of the opposite sex, lewd, wanton and lascivious persons in speech or behavior, keepers of noisy and disorderly houses, and persons guilty of indecent exposure"	Maximum of 6 months in a jail or house of correction; \$200 fine
Inducing a Minor into prostitution M.G.L. c. 272, § 4A (2013)	"Whoever induces a minor to become a prostitute, or who knowingly aids and assists in such inducement"	3-5 years in a state prison, \$5000 fine
Living off or sharing earnings of minor prostitute M.G.L. c. 272, § 4B (2013)	"Whoever lives or derives support or maintenance, in whole or in part, from the earnings or proceeds of prostitution committed by a minor, knowing the same to be earnings or proceeds of prostitution, or shares in such earnings, proceeds or monies"	Minimum of 5 years in a state prison, \$5000 fine
Owner of place inducing or suffering person to resort in such place for sexual intercourse M.G.L. c. 272, § 6 (2013)	"Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse for money or other financial gain"	5 years in a state prison, \$5000 fine
Support from, or sharing, earnings of prostitute M.G.L. c. 272, § 7 (2013)	"Whoever, knowing a person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of his prostitution, from moneys loaned, advanced to or charged against him by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall share in such earnings, proceeds or moneys"	5 years in a state prison, \$5000 fine
Soliciting for prostitute M.G.L. c. 272, § 8 (2013)	"Whoever solicits or receives compensation for soliciting for a prostitute"	Maximum of 2 and one-half years in a house of correction, or by a fine of not less than \$1000 and not more than \$5000 or by both
Keeping house of ill fame M.G.L. c. 272, § 24 (2013)	"Keeping a house of ill fame which is resorted to for prostitution or lewdness"	Maximum of 2 years imprisonment

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<sup>1</sup> THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS ET AL., A GUIDE FOR LEGAL ADVOCATES PROVIDING SERVICES TO VICTIMS OF HUMAN TRAFFICKING, § 2.7 (Nov. 2004), *available at* [www.uscrlrefugees.org/2010Website/5\\_Resources/5\\_4\\_For\\_Lawyers/5\\_4\\_3\\_Human\\_Trafficking\\_Resources/5\\_4\\_3\\_1\\_Human\\_Trafficking\\_Manuals/AGuidefor\\_LegalAdvocates.pdf](http://www.uscrlrefugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_3_Human_Trafficking_Resources/5_4_3_1_Human_Trafficking_Manuals/AGuidefor_LegalAdvocates.pdf).

<sup>2</sup> M.G.L. c. 265, § 57 (2013).

<sup>3</sup> *See, e.g.*, N.J. ANN. § 2C:34-1(4)(e) (West 2012); VT. STAT. ANN. tit. 13, § 2652(c)(1)(A)(2) (West 2012); ALA. CODE 1975 § 13A-6-159 (2013); S.D. CODIFIED LAWS § 22-23-1.2 (2013); OKLA. STAT. ANN. tit. 21, § 748(E) (West 2012); WASH. REV. CODE ANN. § 9A.88.040 (West 2012); MINN. STAT. ANN. § 609.325 (West 2012); S.C. CODE ANN. §16-3-2020 (West 2012); TENN. CODE ANN. § 39-13-513 (West 2012).

<sup>4</sup> *See Commonwealth v. Robinson*, 382 Mass. 189, 199 (1981).

<sup>5</sup> Trauma bonds refer to the emotional tie that forms between a victim and her abuser resulting from cycles of physiological and/or physical abuse. *See* INT'L ENCYCLOPEDIA OF THE SOC. SCIENCES, *Traumatic Bonding*, ENCYCLOPEDIA.COM (2008), [www.encyclopedia.com/doc/1G2-3045302802.html](http://www.encyclopedia.com/doc/1G2-3045302802.html).

<sup>6</sup> *Commonwealth v. Melzer*, 14 Mass. App. Ct. 174, 181 & n.3 (1982).

<sup>7</sup> *See Robinson*, 382 Mass. at 206-07. *See also Commonwealth v. Vasquez*, No. 01-11195, 2005 WL 6802084 (Mass. Super. Aug. 19, 2005) (holding that Commonwealth bears burden of negating duress.)

<sup>8</sup> *See, e.g., Thornburg v. State*, 699 S.W.2d 918, 920 (Tex. App. 1985) ("Duress is an affirmative defense, which the defendant must establish by a preponderance of the evidence.").

<sup>9</sup> *See, e.g., Commonwealth v. Adkinson*, 80 Mass. App. Ct. 570, 586-87 (2011).

<sup>10</sup> *See Doe v. Westlake Acad.*, No. Civ. A. 97-2187, 2000 WL 1724887, at \*3 (Mass. Super. Nov. 21, 2000).

<sup>11</sup> *Id.*

<sup>12</sup> *See United States v. Sabatino*, 943 F.2d 94, 102 (1st Cir. 1991).

<sup>13</sup> *See id.* at 102, 104.

<sup>14</sup> *See id.*

<sup>15</sup> *See Thornburg*, 699 S.W.2d at 920.

<sup>16</sup> *Id.* at 921-22.

<sup>17</sup> *See, e.g.*, N.J. STAT. ANN. § 2C:34-1(4)(e) (West 2012), VT. STAT. ANN. tit. 13, § 2652(c)(1)(A)(2) (West 2012); ALA. CODE 1975 § 13A-6-159 (2013); S.D. CODIFIED LAWS § 22-23-1.2 (2013); OKLA. STAT. ANN. tit. 21, § 748(E) (West 2012); WASH. REV. CODE ANN. § 9A.88.040 (West 2012); MINN. STAT. ANN. § 609.325 (West 2012); S.C. CODE ANN. §16-3-2020 (West 2012); TENN. CODE ANN. § 39-13-513 (West 2012).

<sup>18</sup> Testimony of Attorney General Martha Coakley S. 827/H. 2850, *An Act Relative to the Commercial Exploitation of People*, before the Joint Committee on the Judiciary, May 18, 2011, *available at* [www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf](http://www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf) ("We know the best way to stop human trafficking is by addressing all three fronts of the problem. We need to go after the supply, address the demand that feeds this industry, and support its victims.").

<sup>19</sup> *See McCarty's Case*, 445 Mass. 361, 366 (2005) (noting that the Legislature is presumed to be aware of previous judicial decisions when amending a statute); *Commonwealth v. Callahan*, 440 Mass. 436, 440-41 (2003) (same); *Waldman v. Am. Honda Motor Co., Inc.*, 413 Mass. 320, 323 (1992) (same).

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<sup>20</sup> Mass. R. Crim. P. 12(f) bars the use of evidence in any criminal proceeding of a withdrawn plea. Additionally, evidence of statements made in connection with and relevant to any of the foregoing withdrawn pleas is not admissible. Thus, an attorney may relay to a client that the information will be used for the limited purpose of resolving his or her criminal case.

<sup>21</sup> M.G.L. c. 151B, § 4(9½). Employers who employ six or more persons are subject to the provisions of M.G.L. c. 151B. Public employers are included regardless of the number of people employed. For more information about the new legislation, see MASS. COMM’N AGAINST DISCRIMINATION, *Criminal Offender Record Information Administrative Procedure Reforms Fact Sheet* (Nov. 2010), available at [www.mass.gov/mcad/documents/Criminal%20Records%20Fact%20Sheet.pdf](http://www.mass.gov/mcad/documents/Criminal%20Records%20Fact%20Sheet.pdf).

<sup>22</sup> M.G.L. c. 151B, § 4(9½).

<sup>23</sup> *Criminal Records and Applying for Jobs*, MASSLEGALHELP.ORG, [www.masslegalhelp.org/cori/applying-for-jobs](http://www.masslegalhelp.org/cori/applying-for-jobs) (last updated March 2013). A CORI details an individual’s criminal history and is maintained by the Massachusetts Department of Criminal Justice Information Services (DCJIS). The DCJIS can help address any inaccuracies in the report.

<sup>24</sup> M.G.L. c. 151B, § 4 (2007).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 803 C.M.R. §§ 5.04, 5.05.

<sup>28</sup> *Applying for Housing*, MASSLEGALHELP.ORG, [www.masslegalhelp.org/cori/housing/apply-for-housing](http://www.masslegalhelp.org/cori/housing/apply-for-housing) (last visited Sept. 5, 2013).

<sup>29</sup> *What problems will I face if I have a CORI?*, MASSRESOURCES.ORG, [www.massresources.org/cori.html#problems](http://www.massresources.org/cori.html#problems).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 106 C.M.R. § 701.110(B).

<sup>33</sup> Committee for Public Counsel Services, Immigration Impact Unit, *Immigration Consequences of Criminal Conduct* (2012), available at [www.publiccounsel.net/practice\\_areas/immigration/PDF%20NOV%202012/11Imm\\_conseqs\\_training\\_Feb\\_2012\\_2\\_hour.pdf](http://www.publiccounsel.net/practice_areas/immigration/PDF%20NOV%202012/11Imm_conseqs_training_Feb_2012_2_hour.pdf), (hereinafter CPCS Presentation). All text reproduced with permission.

<sup>34</sup> 8 U.S.C.A. § 1101(a)(48) (West 2013); CPCS Presentation, *supra* note 33, at slide 8.

<sup>35</sup> CPCS Presentation, *supra* note 33, at slide 12.

<sup>36</sup> *Id.* at slides 9-10.

<sup>37</sup> A Guilty Filed is considered a conviction if the disposition was in consideration for a term of probation already served or another penalty was attached. See *Griffiths v. Immigration and Naturalization Serv.*, 243 F.3d 45 (1st Cir. 2001).

<sup>38</sup> 8 U.S.C.A. § 1227 (West 2013).

<sup>39</sup> *Id.* at § 1182; CPCS Presentation, *supra* note 33, at slide 18.

<sup>40</sup> *Id.* at slide 8.

<sup>41</sup> *Id.* at slides 20, 22.

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<sup>42</sup> 8 U.S.C. § 1182(a)(2)(D)(i).

<sup>43</sup> See *Matter of T*, 6 I&N Dec. 474 (BIA 1955).

<sup>44</sup> CPCS Presentation, *supra* note 33, at slide 24.

<sup>45</sup> *Id.* at slide 19.

<sup>46</sup> *Id.* at slide 13.

<sup>47</sup> See Memorandum from the Committee for Public Counsel Services, *Suggested Procedures for Warrant Removal* (Aug. 29, 2012), available at [www.masslegalservices.org/content/instructions-removing-default-warrant](http://www.masslegalservices.org/content/instructions-removing-default-warrant).

<sup>48</sup> *Suspensions & Hearings: Criminal Defaults*, MASSACHUSETTS REGISTRY OF MOTOR VEHICLES, [www.massrmv.com/rmv/suspend/criminal.htm](http://www.massrmv.com/rmv/suspend/criminal.htm) (last visited October 18, 2013).

<sup>49</sup> BLUMENSON ET AL., MASSACHUSETTS CRIMINAL PRACTICE 163 (3d ed. 2001).

<sup>50</sup> M.G.L. c. 276, § 36.

<sup>51</sup> See Memorandum from the Committee for Public Counsel Services, *supra* note 47.

<sup>52</sup> *Id.*

<sup>53</sup> M.G.L. c. 276, § 58 (“Except where the defendant has defaulted on his recognizance or has been surrendered by a probation officer, an order of bail or recognizance shall not be revoked, revised or amended by the district court”) (emphasis added).

<sup>54</sup> Greater Boston Legal Services, *Know Your CORI Rights: Criminal Record Information (CORI) Sealing and CORI Reform* 11-12, Mar. 12, 2013, available at [www.masslegalservices.org/content/know-your-cori-rights-criminal-record-information-cori-sealing-and-cori-reform](http://www.masslegalservices.org/content/know-your-cori-rights-criminal-record-information-cori-sealing-and-cori-reform).

<sup>55</sup> *Id.* at 6-8.

<sup>56</sup> *Id.* at 5.

<sup>57</sup> *Id.* at 9.

<sup>58</sup> *Id.* at 6-8.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 10.

<sup>61</sup> POLARIS PROJECT, *Human Trafficking Legislative Issue Brief: Vacating Convictions*, available at [www.polarisproject.org/storage/documents/vacating\\_convictions\\_issue\\_brief\\_september\\_2012.pdf](http://www.polarisproject.org/storage/documents/vacating_convictions_issue_brief_september_2012.pdf).

<sup>62</sup> *Id.*

<sup>63</sup> Mass. R. App. P. 4(b).

<sup>64</sup> Mass. R. Crim. P. 30(b).

<sup>65</sup> See *Commonwealth v. Grace*, 397 Mass. 303, 305 (1986) (“A judge ‘may grant a new trial at any time if it appears that justice may not have been done.’ The judge must make ‘such findings of fact as are necessary to resolve the defendant’s allegations of error of law.’ A defendant seeking a new trial on the ground of newly discovered evidence must establish both that the evidence is newly discovered and that it casts real doubt on the justice of the conviction.”) (quoting Mass. R. Crim. P. 30 (b)).

<sup>66</sup> Mass. R. Crim. P. 30(c)(1).

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<sup>67</sup> *Commonwealth v. Colon*, 439 Mass. 519, 524 (2003) (quoting *Commonwealth v. Russin*, 420 Mass. 309, 318 (1995)).

<sup>68</sup> *Commonwealth v. DeMarco*, 387 Mass. 481, 487 (1982) (citations and internal quotation marks omitted).

<sup>69</sup> *Commonwealth v. Conaghan*, 433 Mass. 105, 110 (2000) (remanding motion to trial court for expert evaluation of defendant to determine whether she was suffering from battered women's syndrome and whether it prevented her from making a voluntary plea).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 107-09.

<sup>72</sup> COMMITTEE FOR PUBLIC COUNSEL SERVICES IMMIGRATION IMPACT UNIT, *Immigration Consequences of Massachusetts Criminal Convictions* 24 (2012), available at [www.publiccounsel.net/Practice\\_Areas/immigration/pdf/5.IIU%20crim-imm%20guide%20March%202013.pdf](http://www.publiccounsel.net/Practice_Areas/immigration/pdf/5.IIU%20crim-imm%20guide%20March%202013.pdf).

<sup>73</sup> *Id.* at 27; see *Padilla v. Kentucky*, 559 U.S. 356 (2010).

<sup>74</sup> See 8 U.S.C. § 1101(a)(43) (defining "aggravated felony").

<sup>75</sup> See 8 U.S.C. § 1227(a)(2)(A)(i).

<sup>76</sup> COMMITTEE FOR PUBLIC COUNSEL SERVICES IMMIGRATION IMPACT UNIT, *supra* note 78, at 28.

<sup>77</sup> Mass. R. Crim. P. 30(c)(2).





## 8. Issues Specific to Aiding Prosecution of Traffickers

### 8.1 MASSACHUSETTS TRAFFICKING STATUTE CRIMES AND PENALTIES: OVERVIEW AND CHALLENGES TO PROSECUTION

The Massachusetts Trafficking Statute created the crime of human trafficking and imposed severe penalties against the traffickers. This section provides an overview of the criminal enforcement aspects of the Massachusetts Trafficking Statute and highlights challenges of assisting with the prosecution of traffickers for attorneys representing trafficking victims.

#### 8.1.1 Examples of Recent Prosecutions of Traffickers

The following are examples of ongoing prosecutions under the Massachusetts Trafficking Statute. Note that as these examples of human trafficking in Massachusetts courts are current prosecutions, the facts contained in the summaries below are merely allegations.

- In June 2013, the Essex County District Attorney's Office indicted a local woman for trafficking for sexual servitude, maintaining a house of prostitution, deriving support from prostitution, witness intimidation, and videotaping unsuspecting nude persons in connection with her operation of a "day spa" for men. The defendant allegedly videotaped women performing sexual acts in order to prevent them from quitting their jobs and going to the police.
- In April 2012, the Attorney General's Office indicted four individuals for trafficking for sexual servitude in connection with allegedly running two houses of prostitution. It is alleged that the defendants operated a human trafficking organization in which women were recruited and transported from New York. When the women arrived in Massachusetts, they were housed in squalid conditions and told to have sex with men who came to the business for that purpose. The women sometimes had sex with up to fifteen men per day. The defendants also allegedly ran an "outcall" prostitution business and supplied prostitution services to men at their homes.
- In June 2013, the Attorney General's Office indicted two individuals for trafficking for sexual servitude, deriving support from prostitution, keeping a house of ill fame, and money laundering. The defendants are alleged to have owned and operated "bodywork" massage businesses in six communities in Middlesex County that were fronts for prostitution and money laundering. These two defendants allegedly recruited recent Chinese immigrants, mainly residents of New York, and arranged for them to come to Massachusetts to work in the bodywork businesses. Once the female employees arrived at their place of employment, they were expected to sleep on mattresses on the floor or on massage tables. They worked twelve hour days, seven days per week, for a month at a time. The female

employees believed that they were expected to perform sexual services as part of their employment and allegedly did provide such services.

- In October 2012, the Middlesex District Attorney's Office indicted a man for trafficking of persons for sexual servitude, deriving support from prostitution, various assault crimes, threats, and drug possession. The defendant is alleged to have made his female victim work for him as a prostitute and give him all the money she earned. The defendant used intimidation to keep her in a relationship with him and working for him. The defendant continued to force the victim into prostitution until an incident of domestic violence occurred in July 2012.

### **8.1.2 New Tools Available for Prosecution**

The Massachusetts Trafficking Statute established four new crimes: trafficking of persons for sexual servitude, trafficking of persons for forced labor, organ trafficking, and child enticement by electronic communication. The Act also increased the penalties for some existing crimes related to the solicitation of prostitutes, increased services for child victims of sexual exploitation, and created a civil remedy for trafficking victims.

## RELEVANT MASSACHUSETTS HUMAN TRAFFICKING STATUTES

LAW	RELEVANT LANGUAGE	PENALTY	ISSUES/ADDITIONAL INFORMATION
<b>Deriving Support from Prostitution</b> M.G.L. c. 272, § 7	Whoever, knowing a person to be a prostitute, shall live or derive maintenance, in whole or in part from the earnings or proceeds of his prostitution . . . or shall share in such earnings, proceeds or moneys.	<ul style="list-style-type: none"> <li>• Five years imprisonment and a fine of \$5000.</li> <li>• The sentence shall not be reduced to less than two years.</li> </ul>	<ul style="list-style-type: none"> <li>• Statute is intended to punish “pimping” and not those who play a lesser role in commercial sexual exploitation.</li> <li>• <i>Commonwealth v. Thetonia</i>, 27 Mass. App. Ct. 783 (1989).</li> </ul>
<b>Deriving Support from a Minor Prostitute</b> M.G.L. c. 272, § 4B	In addition to the elements needed to prove that a person derived support from prostitution; must prove that the person engaged in prostitution was under 18.	<ul style="list-style-type: none"> <li>• Imprisonment for not less than five years and a \$5000 fine.</li> <li>• The sentence shall not be reduced to less than five years.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not require proof that the defendant knew or should have known that the child was under 18 years old.</li> </ul>
<b>Inducing a Minor into Prostitution</b> M.G.L. c. 272, § 4A	<p>Whoever induces a minor to become a prostitute or knowingly aids and assists in such inducement.</p> <p>Must prove that the defendant induced a minor, who was not then so engaged in prostitution, to engage in prostitution.</p>	<ul style="list-style-type: none"> <li>• Imprisonment for not less than three years and not more than five years and a fine of \$5000.</li> <li>• The sentence shall not be reduced to less than three years.</li> </ul>	<ul style="list-style-type: none"> <li>• The statute does not punish the conduct of inducing a minor into a single act of sex for a fee.</li> <li>• Also requires proof that the minor had never before engaged in prostitution, or abandoned prostitution, before being induced back into commercial sex by the defendant.</li> <li>• <i>Commonwealth v. Matos</i>, 78 Mass. App. Ct. 578 (2011).</li> </ul>
<b>Keeping a House of Prostitution</b> M.G.L. c. 272, § 6	Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or on such a place for the purpose of unlawfully having sexual intercourse for money or other financial gain.	<ul style="list-style-type: none"> <li>• Five years imprisonment and \$5000 fine.</li> <li>• Sentence shall not be reduced to less than two years.</li> </ul>	<ul style="list-style-type: none"> <li>• Sexual intercourse is defined only as penile-vaginal penetration.</li> <li>• <i>Commonwealth v. Purdy</i>, 459 Mass. 442 (2011).</li> </ul>

## CRIMINAL STATUTES CREATED BY THE MASSACHUSETTS TRAFFICKING STATUTE

LAW	RELEVANT LANGUAGE	PENALTY
<b>Trafficking in Persons for Sexual Servitude</b> M.G.L. c. 265, § 50	Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i).	Imprisonment for not less than five years and not more than twenty years and a fine of not more than \$25,000.  Sentence shall not be reduced to less than five years. If victim is a minor: Maximum sentence is life or any term of years.  If subsequent offense: Imprisonment for not less than ten years with a maximum of a sentence of life or any term of years.
<b>Trafficking in Persons for Forced Services</b> M.G.L. c. 265, § 51	Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i).	Same penalty as trafficking for sexual servitude.
<b>Organ Trafficking</b> M.G.L. c. 265, § 53	Whoever: (i) recruits, entices, harbors, transports, delivers or obtains by any means, another person, intending or knowing that an organ, tissue or other body part of such person will be removed for sale, against such person's will; or (ii) knowingly receives anything of value, directly or indirectly as a result of a violation of clause (i).	Imprisonment for not more than fifteen years, or by a fine of not more than \$50,000, or both.  When the victim is under the age of 18, punishment shall be imprisonment for five years.
<b>Enticement of a Child by Means of Electronic Communications</b> M.G.L. c. 265, § 26D	Whoever, by electronic communication, knowingly entices a child under the age of 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so.	Imprisonment in the House of Correction for not more than two and one half years or State Prison for not more than five years, or by a fine of not less than \$2,500, or both.

### **8.1.3 Strategies for Effective Prosecution Under the Act**

It is important for those who prosecute human trafficking cases to use a trauma-informed approach to working with trafficking victims. Human trafficking victims often present with complex issues stemming from domestic violence, sexual assault, drug abuse, and childhood sexual and physical assault. Because of these complex dynamics, victims of human trafficking are often afraid, unwilling, or unable to participate in the prosecution of their traffickers.

To prosecute human traffickers effectively, it is best to use a multidisciplinary team, victim-centered approach. This multidisciplinary team ideally consists of local, state, and federal law enforcement, victim service providers, and those who can assist in the provision of food, housing, and benefits as needed. When a victim is represented by counsel, the prosecution team may work with the victim's attorney to ensure that the victim's concerns are adequately addressed. Prosecutors and law enforcement should also strive to build cases against traffickers that require little to no victim participation whenever possible. Although it is the goal of a criminal prosecution to obtain a conviction, a successful prosecution, with or without victim participation, ideally concludes with the victim being able to live a life free of human trafficking.

### **8.1.4 Victim Rights Under The Massachusetts Victim Bill of Rights**

The Massachusetts Victim Bill of Rights provides several rights to victims of state law crimes, their family members, and other witnesses.<sup>1</sup> These rights allow victims to attend and participate in criminal proceedings, to be heard and informed, and to be protected and compensated.

Some of the rights afforded to victims of and witnesses to state law crimes include:

- The right to be informed about:
  - the rights and the services available;
  - the criminal case as it progresses through the court;
  - what is expected of victims and witnesses;
  - court dates and continuances in a timely manner;
  - the final disposition of the case; and
  - the sentence imposed.
- The right to speak with the prosecutor before:
  - the case begins;
  - the case is dismissed; and
  - the sentence recommendation is made to the court.

- The right to be present at all court proceedings (unless the person is required to testify and the judge determines that the testimony may be influenced by his or her presence in court).
- The right to agree or to refuse to participate in interviews with the defense attorney or investigator (and to set reasonable conditions on such interviews).
- The right to provide a Victim Impact Statement at sentencing, which informs the court about the physical, emotional and financial impact of the crime, and any opinions regarding sentencing.
- The right to financial assistance, which may include:
  - restitution for a financial or property loss, or a physical injury;
  - if eligible, the right to apply for Victim Compensation for certain out-of-pocket expenses, including medical, counseling or funeral costs; and
  - the right to receive a witness fee (if the person received a summons to appear in court).
- The right, upon request, to be notified of an offender’s temporary, provisional or final release from custody.<sup>2</sup>

### **8.1.5 Role of Victims’ Advocates in Massachusetts**

Throughout the prosecution of human trafficking cases under Massachusetts law, victim witness advocates are responsible for informing victims of the rights afforded to them under the Victim Bill of Rights and liaising between victims, law enforcement, and local social service agencies.<sup>3</sup> In addition, the primary role of the victim witness advocate is to help ensure the safety and overall well-being of victims. This can include helping victims gain access to medical care, mental health services, and emergency shelter or housing. It is critical that victim witness advocates work collaboratively with experienced social services agencies that specialize in working with survivors of human trafficking.

### **8.1.6 Challenges When Cooperating with Law Enforcement**

Although victims are afforded several rights under the Victim Bill of Rights, they nonetheless may face barriers to cooperating fully with law enforcement:

- Trauma may prevent victims from wishing—or being able— to relay their experiences to their attorneys or to law enforcement.<sup>4</sup>
- The relationship between traffickers and victims is complex, and much like domestic violence victims, trafficking victims may be reluctant to cooperate with law enforcement.<sup>5</sup>
- Traffickers often threaten victims not to talk to law enforcement or tell them that immigration officials will arrest or deport them.<sup>6</sup>

- Foreign victims may be distrustful of law enforcement based on experiences in their native countries.<sup>7</sup>
- Victims and their attorneys may find it challenging to refuse to comply with requests from law enforcement authority figures, “especially those who have the power to detain, arrest, and prosecute.”<sup>8</sup>
- Victims may have first encountered law enforcement during an arrest or at a crime scene. Victims may be arrested or incarcerated instead of initially being recognized by law enforcement as victims of human trafficking.<sup>9</sup>
- Cooperating with law enforcement may involve multiple interviews with the victim, which may result in the client feeling overwhelmed or serve to re-traumatize the client.<sup>10</sup>

It is important to note, however, that despite these challenges, a “Law Enforcement Agency” certification is required to attain a U visa.<sup>11</sup> For more on these immigration remedies, *see supra* [Section 5](#).

### **8.1.7 Criminal Restitution in Massachusetts**

If available, prosecutors should seek restitution under either the state or federal anti-trafficking acts.<sup>12</sup> Although restitution is mandatory under the Trafficking Victims Protection Reauthorization Act (“TVPRA”), victims must request that restitution be granted for prosecutions under the Massachusetts Trafficking Statute.<sup>13</sup> Victims may obtain assistance from the prosecutor in documenting their losses in state cases. However, below are some practice tips to maximize the amount of restitution granted.

- Use experts on wage rates and calculating the victim’s “losses”;
- Calculate the value to the defendant of the victim’s forced services;
- Insist that plea agreements include restitution orders;
- Make pleas contingent upon pre-payment of restitution into an escrow account; and
- Argue to include liquidated damages in forced labor wage calculations.

Under Massachusetts law, a court can order that restitution be paid to victims out of seized asset. Such assets must be distributed first before any forfeited assets.<sup>14</sup>

For information about criminal restitution under the TVPRA, *see* Daniel Werner & Kathleen Kim, [\*Civil Litigation on Behalf of Victims of Trafficking\*](#) (3d ed. Oct. 13, 2008).<sup>15</sup>



## **8.2 FEDERAL TRAFFICKING CRIMES AND PENALTIES (TRAFFICKING VICTIMS PROTECTION ACT): OVERVIEW AND CHALLENGES TO PROSECUTION**

### **8.2.1 Examples of Federal Prosecution of Traffickers**

- In 2012, federal prosecutors successfully brought charges against sex and labor traffickers in New York and Texas who trafficked and subjected to commercial sexual exploitation young U.S. citizens from “troubled backgrounds.”
- DOJ also successfully prosecuted an “MS-13 gang member who forced a 12-year-old victim into prostitution in Virginia” and a Chicago-based sex trafficker who used beatings, threats, and sexual assault to force Eastern European victims to perform sexual favors for clients in massage parlors.<sup>16</sup>
- In Massachusetts, the U.S. Attorney indicted a Boston man with two charges of sex trafficking by force, fraud or coercion. The case is currently being prosecuted by members of the U.S. Attorney’s Office’s Civil Rights Enforcement Team.<sup>17</sup>

### **8.2.2 Federal Legislation: Available Tools for Prosecution**

Federal prosecutors have several statutes with which to prosecute traffickers. The following table provides a brief summary of each.<sup>18</sup>

## RELEVANT FEDERAL STATUTES

LAW	RELEVANT LANGUAGE	PENALTY
<b>Trafficking Victims Protection Act ("TVPPRA")</b> <b>18 U.S.C. § 1589.</b>	<p><b>§ 1589. Forced labor</b></p> <p>(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—</p> <ol style="list-style-type: none"> <li>(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;</li> <li>(2) by means of serious harm or threats of serious harm to that person or another person;</li> <li>(3) by means of the abuse or threatened abuse of law or legal process; or</li> <li>(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).</li> </ol> <p>(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).</p>	<p>Subsection (d) provides that: Whoever violates this section shall be fined under this title, imprisoned for not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.</p>
<b>Trafficking Victims Protection Act ("TVPPRA")</b> <b>18 U.S.C. § 1591.</b>	<p><b>§ 1591. Sex trafficking of children or by force, fraud, or coercion</b></p> <p>(a) Whoever knowingly —</p> <ol style="list-style-type: none"> <li>(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or</li> <li>(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1); knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).</li> </ol>	<p>Subsection (b) provides that:</p> <ol style="list-style-type: none"> <li>(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or</li> <li>(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.</li> </ol>

LAW	RELEVANT LANGUAGE	PENALTY
The Mann Act 18 U.S.C. §§ 2421. “transportation of individuals across state lines for purposes of engaging in prostitution or other criminal sexual activity.” <sup>19</sup>	<b>18 U.S.C. § 2421 (Adults)</b>  Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned for not more than ten years.	10 years imprisonment, fines, or both.
The Mann Act 18 U.S.C. § 2423(a).	<b>18 U.S.C. § 2423 (Minors)</b>  A person who knowingly transports an individual who has not attained the age of eighteen years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned for not less than ten years or life.	10 years imprisonment and fines
The Travel Act 18 U.S.C. § 1952 “Unlawful activity” under the Travel Act includes prostitution. 18 U.S.C. §§ 1952(a)(3), (b).	Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—  (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform—	For acts covered by paragraphs (1) or (3):  Fined, imprisoned for not more than 5 years or both.  For any crime of violence to further unlawful activity:  Fined, imprisoned for not more than 20 years, or both
Alien Smuggling, Harboring and Transportation 8 USC § 1324.	Any person who—  (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;  (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;  (iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or  (v)(i) engages in any conspiracy to commit any of the preceding acts, or (ii) aids or abets the commission of any of the preceding acts.	For commercial advantage or private financial gain: Fined, maximum of 10 years imprisonment, or both.  Violation of paragraph (ii),(iii), or (iv):  Maximum of five years imprisonment, fines, or both  Serious bodily injury or jeopardizes life: Maximum of 20 years imprisonment, fined, or both

### 8.3 ADDITIONAL RESOURCES/APPENDICES

See the [Appendix](#) at the end of this Guide for a list of portal organizations that serve as gateways to victim services, law enforcement, and investigative agencies, as well as non-profit agencies, healthcare providers, and community centers that provide services to victims of human trafficking.

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<sup>1</sup> M.G.L. c. 258B.

<sup>2</sup> *Id.*

<sup>3</sup> For more information on the role of victim witness advocates, see generally MASS. DIST. ATTORNEYS ASS'N (MDAA), *The Massachusetts Victim-Witness Advocate Reference Manual* (2d ed. 2010), available at [www.mass.gov/mdaa/docs/victim-witness-ref-manual-2010.pdf](http://www.mass.gov/mdaa/docs/victim-witness-ref-manual-2010.pdf).

<sup>4</sup> *Id.* at 5-6.

<sup>5</sup> Lauren Hersh, *Sex Trafficking Investigations and Prosecutions*, in SUPREME COURT OF THE STATE OF NEW YORK ET AL., *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 254, 256 (Jill Laurie Goodman et al. eds., 2011) (hereinafter, *PURSUING JUSTICE FOR VICTIMS*), available at [www.nycourts.gov/ip/womeninthecourts/LMHT.pdf](http://www.nycourts.gov/ip/womeninthecourts/LMHT.pdf) ("The trafficker often serves as the victim's employer, family, landlord, and sexual partner or love interest.").

<sup>6</sup> *Id.* at 161.

<sup>7</sup> U.S. CONFERENCE OF CATHOLIC BISHOPS, MIGRATION & REFUGEE SERVS. ET AL., *A GUIDE FOR LEGAL ADVOCATES PROVIDING SERVICES TO VICTIMS OF HUMAN TRAFFICKING* § 2.7 (Nov. 2004), available at [www.uscritefugees.org/2010Website/5 Resources/5 4 For Lawyers/5 4 3 Human Trafficking Resources/5 4 3 1 Human Trafficking Manuals/AGuidefor LegalAdvocates.pdf](http://www.uscritefugees.org/2010Website/5%20Resources/5%20For%20Lawyers/5%204%20Human%20Trafficking%20Resources/5%204%203%201%20Human%20Trafficking%20Manuals/AGuidefor%20LegalAdvocates.pdf).

<sup>8</sup> IMMIGRANT LEGAL RES. CTR., *REPRESENTING SURVIVORS OF HUMAN TRAFFICKING: A PROMISING PRACTICES HANDBOOK* § 7.2 (Sept. 2010).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at § 7-4.

<sup>11</sup> NY ANTI-TRAFFICKING NETWORK LEGAL SUBCOMMITTEE, *IDENTIFICATION AND LEGAL ADVOCACY FOR TRAFFICKING SURVIVORS* (3d ed. 2009). "Law Enforcement Agency" (LEA) refers to any federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. Qualified LEAs include, but are not limited to, the offices of the Department of Justice, the United States Attorneys, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation, the United States Citizen and Immigration Services, the Immigration and Customs Enforcement, the United States Marshals Service, and the Diplomatic Security Service of the Department State. 8 C.F.R. § 214.11(a).

<sup>12</sup> 18 U.S.C. § 1593 (mandatory restitution under the TVPA); M.G.L. c. 258B, § 3(o) (a victim may request restitution).

<sup>13</sup> 18 U.S.C. § 1593; M.G.L. c. 258B, § 3(o).

<sup>14</sup> M.G.L. c. 265, § 55 ("All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B").

<sup>15</sup> Available at [http://www.splcenter.org/sites/default/files/downloads/splc\\_human\\_trafficking.pdf](http://www.splcenter.org/sites/default/files/downloads/splc_human_trafficking.pdf).

<sup>16</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2012* 361 (June 2012), available at [www.state.gov/documents/organization/192598.pdf](http://www.state.gov/documents/organization/192598.pdf).

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<sup>17</sup> Press Release, U.S. Attorney’s Office Dist. of Mass., Boston Man Charged With Human Trafficking (Sept. 6, 2012), available at [www.justice.gov/usao/ma/news/2012/September/GrahamDarrellPR.html](http://www.justice.gov/usao/ma/news/2012/September/GrahamDarrellPR.html).

<sup>18</sup> For a more in-depth analysis, including case citations, see PURSUING JUSTICE FOR VICTIMS, *supra* note 5, at 271.

<sup>19</sup> *Id.*



## 9. Remedies Available to Victims of Human Trafficking

### 9.1 CIVIL REMEDIES AVAILABLE TO VICTIMS OF HUMAN TRAFFICKING

Civil litigation is a crucial tool for victims of human trafficking who wish to seek redress for the physical, psychological, and financial harms they have suffered. Civil suits provide victims the opportunity to vindicate their own rights, attain economic independence, and hold unindicted or acquitted perpetrators or co-conspirators accountable. Damage awards in civil cases are often substantial, aimed not only to compensate victims for the harm they have suffered but also to punish traffickers for their outrageous conduct and to deter future trafficking activities.<sup>1</sup>

This section provides an overview of the various federal and state causes of action that may be available to trafficking victims in Massachusetts. It is not, however, an exhaustive exploration of all the issues and strategy questions an attorney will face when litigating a civil case. For a more comprehensive resource, see Daniel Werner & Kathleen Kim, *Civil Litigation on Behalf of Victims of Trafficking* (3d ed. Oct. 13, 2008).<sup>2</sup>

#### 9.1.1 Federal Trafficking Victims Protection Act

The Trafficking Victims Protection Act (“TVPA”) provides trafficking victims with a private right of action against perpetrators of human trafficking.<sup>3</sup> Pursuant to the TVPA,

An individual who is a victim of a violation of [the Act] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knows or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.<sup>4</sup>

Although the statute enables victims to seek damages, it does not explicitly specify *what* damages are available. Courts that have considered the issue have held that the statute sounds in tort, and that it therefore allows for the recovery of punitive damages.<sup>5</sup> Indeed, litigants have recovered extensive punitive damages for egregious harms suffered while trafficked.<sup>6</sup> Note, however, that the civil remedy provision has been held not to apply retroactively to conduct occurring prior to its enactment in 2003.<sup>7</sup>

A civil lawsuit under the TVPA may be initiated in a variety of situations, including:

- following a criminal conviction for a trafficking crime;
- following a criminal conviction for a lesser crime;
- following a criminal plea;



- following an acquittal; or
- where there has been no criminal prosecution at all.

However, civil actions will be stayed “during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.”<sup>8</sup> There is a ten-year statute of limitations on civil claims under the TVPA.<sup>9</sup>

Attorneys should note that the civil remedy provision is not limited to trafficking crimes but extends to all violations of Chapter 77, Title 18 of the U.S. Code (“Chapter 77”),<sup>10</sup> including peonage,<sup>11</sup> enticement into slavery,<sup>12</sup> sale into involuntary servitude,<sup>13</sup> or confiscation of passports or other immigration documents in furtherance of such crimes.<sup>14</sup> A complaint should thus incorporate these violations, where applicable, into a claim for relief under the civil remedy provision.

### **9.1.2 The Thirteenth Amendment to the U.S. Constitution**

The Thirteenth Amendment to the U.S. Constitution and its enabling statute, 18 U.S.C. § 1584, prohibit “involuntary servitude.”<sup>15</sup> However, neither expressly provides a private civil remedy for victims of involuntary servitude, and the U.S. Supreme Court has yet to decide whether such a remedy is available. Lower courts are divided.<sup>16</sup> Even so, as discussed in the preceding subsection, the civil remedy provision of the TVPA incorporates violations of § 1584.<sup>17</sup>

Thus, a claim for involuntary servitude should be included in a complaint, whether it is asserted as an independent cause of action or is incorporated within the civil remedy provision of the TVPA.<sup>18</sup> Involuntary servitude is defined as “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.”<sup>19</sup> To establish a claim, the plaintiff must show that she was “intentionally held in service against her will (i) by actual physical restraint or physical force or (ii) by legal coercion or (iii) by plausible threats of physical harm or legal coercion.”<sup>20</sup> Courts may consider a victim’s age or other “special vulnerability” when “determining whether a particular type or a certain degree of physical or legal coercion is sufficient to hold that person to involuntary servitude.”<sup>21</sup> For example, threatening an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude even though such a threat to a citizen likely would not.<sup>22</sup>

### **9.1.3 Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”)**

The Racketeer Influenced and Corrupt Organizations Act (“RICO”) provides a private right of action to “[a]ny person injured in his business or property” by a violation of its provisions.<sup>23</sup> A human trafficking victim can state a claim under RICO by alleging: 1) an injury to her “business or property” resulting from 2) the defendant’s use of a “pattern of racketeering activity” or “collection of an unlawful debt” so as to 3) acquire, invest, or maintain any interest in an “enterprise” engaged in interstate commerce, or participate in such an enterprise.<sup>24</sup>

Importantly, the statute defines “racketeering activity” to include human trafficking.<sup>25</sup> A “pattern” requires at least two acts of racketeering activity, the last of which occurred within ten years of a prior act of racketeering.<sup>26</sup>

Under RICO, a plaintiff may recover treble damages, costs, and attorney’s fees.<sup>27</sup>

#### **9.1.4 Remedies Available Under Massachusetts Trafficking Law**

The Massachusetts Trafficking Statute also provides trafficking victims with a private right of action against traffickers. Pursuant to the Massachusetts Trafficking Statute,

A victim of trafficking of persons for sexual servitude under [M.G.L. c. 265, § 50] or of trafficking of persons for forced services under [M.G.L. c. 265, § 51] may bring a civil action for trafficking of persons for forced labor or services or sexual servitude. The court may award actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages may be awarded on proof of actual damages if the defendant’s acts were willful and malicious.<sup>28</sup>

Unlike the TVPA, the Massachusetts Trafficking Statute explicitly provides that victims may receive actual, compensatory, and punitive damages, and further allows for recovery of treble damages where a defendant’s acts are proved willful and malicious.<sup>29</sup> Business entities that knowingly aid traffickers, or that are joint venturers, may also be liable.<sup>30</sup>

The statute of limitations for civil actions under the Massachusetts Trafficking Statute is three years, beginning from the date a victim is freed from trafficking or, if a minor victim, turns 18 years old, whichever is later.<sup>31</sup>

Under the Massachusetts Act, unlike the TVPA, there is no automatic stay provision for civil cases while a criminal action is ongoing. However, a prosecutor may still intervene and attempt to stay a civil action. From a prosecutor’s perspective, a stay of the civil proceeding may be desirable to avoid criminal defendants from engaging in the more permissive civil discovery process while a criminal case is ongoing.<sup>32</sup> A stay may also benefit a civil plaintiff in terms of fact gathering and estopping a civil defendant from raising contradictory arguments or certain defenses.<sup>33</sup> On the other hand, a stay may pose a challenge to a civil plaintiff as it may provide a civil defendant the opportunity to manipulate evidence, and defending the criminal action may exhaust a defendant’s assets (to the extent there is private representation) such that there will be fewer assets left to satisfy a civil judgment.<sup>34</sup> There is thus a potential for conflict between private and public interests that attorneys should carefully consider when determining how to proceed with their cases.

### **9.1.5 Massachusetts Civil Rights Act**

A trafficking victim may establish a claim under the Massachusetts Civil Rights Act (“MCRA”) if she is able to prove that her exercise or enjoyment of rights secured by the Constitution or laws of the United States or Massachusetts has been interfered with, or attempted to be interfered with, by threats, intimidation, or coercion.<sup>35</sup> The MCRA is the state law parallel to Section 1983 claims under federal law, except that the MCRA specifically provides a right of action against private actors, in addition to state actors.<sup>36</sup>

There is a three year statute of limitations on MCRA claims.<sup>37</sup> Damages available under the statute include injunctive and other appropriate equitable relief, compensatory money damages, costs, and attorneys' fees.<sup>38</sup> Punitive damages are not available.

### **9.1.6 Intentional Tort and Negligence Claims**

Labor or sex trafficking often involves torts including assault and battery, false imprisonment, invasion of privacy, trespass to chattels, conversion, fraudulent misrepresentation, intentional and negligent infliction of emotional distress, and general or gross negligence.

Attorneys should therefore consider including common law and statutory tort claims in any civil complaint. Such claims have been successfully litigated in several recent cases, and their inclusion maximizes a victim’s chances of recovering damages for the physical and emotional harms inflicted.<sup>39</sup> Victims may be entitled to punitive and compensatory damages for torts committed intentionally and maliciously.<sup>40</sup> Under settled principles of tort law, punitive damages are particularly appropriate to punish “conduct that is outrageous, because of the defendant’s evil motive or his reckless indifference to the rights of others,” and “to deter him and others like him from similar conduct in the future.”<sup>41</sup> Because human trafficking is often lucrative for traffickers, hefty punitive damages may be necessary to effectively punish and deter such conduct.<sup>42</sup>

In Massachusetts, tort actions must be commenced within three years after the cause of action accrues.<sup>43</sup>

### **9.1.7 Contractual/Quasi-Contractual Claims**

Victims are often lured into trafficking with false promises of employment, wages, living conditions, and support for family members. In such circumstances, it may be advisable to include contract or quasi-contract claims in addition to statutory employment claims in a civil lawsuit. Appropriate claims may include breach of an oral or written contract, breach of the covenant of good faith and fair dealing, unjust enrichment, and/or quantum meruit.

Although punitive damages are not available for contract claims, courts may award compensatory damages sufficient to put the injured party in as good a position as he or she would have been in had the contract been performed.<sup>44</sup> In the context of trafficking cases, this could mean an award for past wages, overtime, and/or the value of services provided.<sup>45</sup>

In Massachusetts, contract actions generally must be commenced within six years after the cause of action accrues.<sup>46</sup> In contrast, the statute of limitations for minimum wage and overtime claims in Massachusetts is two years. Thus, an attorney should consider filing a contract claim where a wage claim is no longer available.

The following table summarizes key decisions in which compensatory and punitive damages were awarded in civil lawsuits brought by survivors against their traffickers.<sup>47</sup>

#### DAMAGE AWARDS IN CIVIL TRAFFICKING LAWSUITS

CASE	FACTS	DURATION OF LABOR	JUDGMENT
<i>Ballesteros v. Al-Ali</i> , C.A. No. 11-152, 2012 WL 8017783 (D.R.I. Dec. 26, 2012)	<p>Plaintiff was recruited from the Philippines with a false employment contract requiring plaintiff to care for defendants' youngest child 40 hours per week in exchange for \$1,600 per month and \$10 per hour for overtime. Instead, plaintiff was forced to work 120 hours per week caring for all five of defendants' children, cooking three meals a day for the family, cleaning the house, doing the laundry and ironing, taking out the garbage, washing the cars, and cleaning the garage and the yard.</p> <p>Plaintiff was never paid what the contract had promised and never received overtime. Her passport was confiscated, and her travel and communications restricted.</p>	3 months	<p>Default judgment for :</p> <ul style="list-style-type: none"> <li>• \$130,600 in unpaid wages, overtime pay and compensation for "additional work that was at least triple the contracted-for work" (breach of contract).</li> <li>• \$261,200 for (1) forced labor and involuntary servitude under the TVPA, and (2) minimum wage violations under the FLSA.</li> <li>• \$840,000 for false imprisonment, negligent and intentional infliction of emotional distress, and fraud.</li> </ul> <p><b>Total award = \$1,231,800 plus interest</b></p>
<i>Doe v. Howard</i> , No. 11-cv-1105, 2012 WL 3834867 (E.D. Va. Sept. 4, 2012)	Plaintiff was recruited from Yemen by false promises regarding salary, benefits, and working and living conditions. Instead, she was forced to work 80 hours or more per week as a house cleaner. She was repeatedly raped, otherwise sexually abused, and starved. Her passport was confiscated, she was a virtual prisoner in the defendants' house, and her telephone calls were strictly monitored. She was threatened with arrest, imprisonment, and deportation.	3 months	<ul style="list-style-type: none"> <li>• \$44,500 in compensatory damages for forced labor and trafficking under the TVPA.</li> <li>• \$500 in compensatory emotional distress damages for forced labor under the TVPA.</li> <li>• \$1.25 million in compensatory emotional distress for sexual servitude under the TVPA.</li> <li>• \$2 million in punitive damages for forced labor, trafficking, and sexual servitude under the TVPA.</li> <li>• \$11,968 in wage restitution for forced labor and trafficking.</li> </ul> <p><b>Total award = \$3,306,468</b></p>

CASE	FACTS	DURATION OF LABOR	JUDGMENT
<i>Fernandes v. Hayes</i> , No. W-11-CA-137 (W.D. Tex. Apr. 27, 2012)	<p>Plaintiff recruited in Kuwait by false promises regarding salary, working conditions, and support to plaintiff's family in India. Instead, plaintiff was forced to work more than 40 hours per week as a live-in maid to defendants, and was at times forced to work for defendants' friends.</p> <p>Plaintiff's passport and possessions were confiscated, and her travel and communications were restricted.</p>	2 years	<p>Default judgment for :</p> <ul style="list-style-type: none"> <li>• \$808,897 in damages for violations of the FLSA, forced labor under the TVPA, theft, conversion, false imprisonment, and breach of contract.</li> <li>• \$20,700 attorney's fees.</li> <li>• \$430 court costs.</li> </ul> <p><b>Total award: \$830,027</b></p>
<i>Gurung v. Malhotra</i> , 851 F. Supp. 2d 583 (S.D.N.Y. 2012)	<p>Plaintiff was recruited in India when she was 17 years old by false promises regarding salary and working conditions. Instead, she was forced to work 16 hours a day cooking and cleaning, and providing daily massages to one of the defendants. She was forced to sleep on the floor in the living room and was essentially starved.</p> <p>She was paid less than \$120 in over 3 years. Her passport was confiscated, her travel was severely restricted, and she was not allowed to telephone her family. She was subject to physical and mental abuse, and restricted in her ability to practice religion. She was repeatedly threatened with arrest, abuse, imprisonment, and deportation.</p>	3 years	<ul style="list-style-type: none"> <li>• \$392,721 for unpaid wages (including liquidated damages) and overtime pay under the FLSA, state labor laws, and breach of contract.</li> <li>• \$36,076 in prejudgment interest on state law claims.</li> <li>• \$500,000 for emotional distress under the TVPA and New York common law.</li> <li>• \$300,000 in punitive damages.</li> <li>• \$199,893 in attorney's fees.</li> <li>• \$8,640 in costs.</li> </ul> <p><b>Total award: \$1,458,335</b></p>
<i>Shukla v. Sharma</i> , No. 07-cv-2972, 2012 WL 481796 (E.D.N.Y. Feb. 4, 2012)	<p>Plaintiff was recruited from India by false promises regarding salary and living conditions. Instead, he was forced to work 17 hours a day as a priest and a janitor. His living space was cramped, dirty, and infested with rats. His passport was confiscated, his movements and privacy monitored, and he was threatened with arrest, imprisonment, and deportation.</p>	7 years	<ul style="list-style-type: none"> <li>• \$250,000 in compensatory damages for forced labor under the TVPA.</li> <li>• \$750,000 in compensatory damages for trafficking under the TVPA.</li> <li>• \$1 million in punitive damages for trafficking under the TVPA</li> <li>•</li> </ul> <p><b>Total award = \$2 million</b></p>

CASE	FACTS	DURATION OF LABOR	JUDGMENT
<i>Mazengo v. Mzengi</i> , No. 07-756, 2007 WL 8026882 (D.D.C. 2008)	<p>Plaintiff was recruited from Tanzania with a false employment contract requiring plaintiff to perform childcare and normal housework for forty hours a week, at \$900 per month plus overtime and other benefits. Instead, plaintiff was forced to work 16 hours a day, seven days a week. She cared for the defendants' three children, cleaned the house, cooked meals for the family, cared for the yard and shoveled snow, and cooked food for catering company. She was subjected to physical and emotional abuse.</p> <p>In four years, she was never paid. Her passport was confiscated, and her travel and communications were severely restricted.</p>	4 Years	<ul style="list-style-type: none"> <li>• \$510,249.21 for past wages, overtime pay, and treble damages under Maryland Wage and Hour Law.</li> <li>• \$45,101.69 in restitution for unjust enrichment.</li> <li>• \$19,961.64 in compensatory damages for fraudulent inducement.</li> <li>• \$250,000.00 for emotional distress damages arising from negligent conduct.</li> <li>• \$150,000.00 in punitive damages under Maryland law for fraud perpetrated with "actual malice."</li> <li>• \$84,036.25 in attorney's fees.</li> </ul> <p><b>Total Award = \$1,059,348.79</b></p>
<i>Peña Canal v. de la Rose Dann</i> , No. 09-03366, 2010 WL 3491136 (N.D. Cal. Sept. 2, 2010)	<p>Plaintiff was recruited from Peru with false promises that she would work as a daycare provider for defendant's children at \$600 per month plus free room and board (with her own private living space), working five days a week during regular business hours. Instead, she worked 15 hours per day, 7 days per week caring for three children, cooking, and cleaning houses for defendant's real estate business. She was forced to sleep on living room floor and kept from communicating with family in Peru. She was also subject to verbal abuse.</p> <p>Her identification documents were confiscated, her travel, communications, and meals were restricted, and she was threatened with arrest and deportation.</p>	1 Year, 9 Months	<ul style="list-style-type: none"> <li>• \$340,746.75 in past wages, increased by state labor code penalties; reduced by criminal restitution order of \$123,740.34.</li> <li>• \$92,400 in compensatory damages for emotional distress and other tort damages.</li> <li>• \$309,406.41 in punitive damages for conscious violation of state and federal trafficking statutes and the Thirteenth Amendment.</li> </ul> <p><b>Total Award = \$618,812.82</b></p>

### 9.1.8 Protective Orders

A civil protective order (also known as a restraining order) may be a valuable tool to protect a victim of human trafficking. In Massachusetts, abuse prevention orders are available under M.G.L. c. 209A, §§ 1-12, and harassment prevention orders are available under M.G.L. c. 258E, §§ 1-12.

#### 9.1.8.1 Chapter 209A Abuse Prevention Orders

Chapter 209A permits a victim who has suffered physical harm, attempted physical harm, or who has been placed in fear of physical harm, or who has been forced to have sex by force, threats, or duress, to seek an abuse prevention order from the court if the victim is, or has been, in any of the following relationships with an abuser:

1. living together in the same household;
2. in a substantive dating relationship;
3. related by blood or marriage;
4. have a child in common; or
5. engaged or married.<sup>48</sup>

Abuse prevention orders under Chapter 209A provide several important remedies. For example, the court can require:

- a defendant to refrain from abusing, refrain from contacting, or merely stay away from a plaintiff, whether at home, at work or at school;
- that plaintiff have temporary custody of children;
- a defendant to surrender any firearms and firearm identification cards;
- a defendant to pay the plaintiff for losses suffered as a direct result of the abuse, such as costs related to moving, changing locks, medical expenses, lost wages, destruction of property, and reasonable attorney's fees; and
- that plaintiff's address and other information be impounded so they remain unknown to the defendant.<sup>49</sup>

Chapter 209A also contains a catchall provision that can be used to order that a plaintiff be allowed to collect, in the presence of the police, any personal belongings that a defendant has confiscated, such as a passport or other immigration documents.

The court is initially limited to entering a temporary (*i.e.*, ten business days) order, and then a one-year protection order, but the court may enter a permanent order on a request to renew the initial order.<sup>50</sup>

Violation of a 209A protective order is a criminal offense, punishable by imprisonment, a fine, or both.<sup>51</sup>



### **9.1.8.2 Chapter 258E Harassment Prevention Orders**

Chapter 258E harassment prevention orders are similar to 209A abuse prevention orders, but they are not contingent on the parties' relationship. Rather, they are available to anyone subject to "harassment," defined as:

1. Three or more acts of willful and malicious conduct<sup>52</sup> aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that do in fact cause fear, intimidation, abuse or damage to property; or
2. An act that:
  - a) by force, threat or duress causes another to involuntarily engage in sexual relations; or
  - b) constitutes certain enumerated crimes, such as indecent assault, rape, stalking or criminal harassment.<sup>53</sup>

## **9.2 REMEDIES AVAILABLE TO VICTIMS OF LABOR TRAFFICKING**

Victims of labor trafficking may find relief under federal and state employment laws that address abusive working conditions. Federal and Massachusetts law provide remedies for worker rights violations relating to minimum wage and overtime, discrimination, and sexual harassment in the workplace, and the right to organize. This section summarizes potential causes of action under labor and employment laws that can be brought on behalf of trafficking victims.

### **9.2.1 Claims Under Federal and Massachusetts Wage and Hour Laws**

#### **9.2.1.1 Federal Fair Labor Standards Act**

The federal Fair Labor Standards Act ("FLSA")<sup>54</sup> guarantees most employees a minimum wage of \$7.25 per hour<sup>55</sup> and overtime pay when they work more than forty hours per week.<sup>56</sup> Note, however, that if an employee is entitled to Massachusetts's minimum wage, which is \$8.00, the Department of Labor ("DOL") will enforce the \$8.00 minimum wage instead.<sup>57</sup> These provisions are enforceable regardless of an employee's immigration status.<sup>58</sup> Victims of FLSA violations are eligible to recover both compensatory damages and liquidated damages.

Under the FLSA, employers may not retaliate by threatening to contact immigration authorities against employees for making a complaint about violations of the FLSA.<sup>59</sup> Moreover, the DOL and the Department of Homeland Security ("DHS") have signed a memorandum of understanding that DHS will not intervene or investigate the presence of undocumented workers (via , for example, I-9 audits) while a DOL investigation is ongoing.<sup>60</sup> Some courts have held If an employee files an FLSA claim, employers may not seek discovery of an employee's immigration status due to its chilling effect on an employee's decision to exercise his or her rights.<sup>61</sup>

Employers are permitted to deduct certain benefits from employees' salaries. Generally, the cost of food, board, and other facilities provided to employees can be credited against their wages or overtime.<sup>62</sup> However, no credit applies if: (1) the employee's acceptance was not "voluntary and uncoerced;"<sup>63</sup> (2) the employee was given facilities "primarily for the benefit or convenience of the employer;"<sup>64</sup> (3) the benefit violates the law;<sup>65</sup> or (4) the credit exceeds the item's reasonable cost.<sup>66</sup> For example, in *Lopez v. Rodriguez*, the U.S. Court of Appeals for the D.C. Circuit stated that in order for a trafficked worker's employer to receive credit for board and lodging, the district court must determine whether the employment "conditions [were] so onerous and restrictive that the employee's continued employment and acceptance of board and lodging ceases to be voluntary."<sup>67</sup>

Employers may attempt to classify their workers as something other than "employees" to avoid certain requirements under the FLSA. However, courts are sometimes willing to look beyond an employer's classification of its own workers. For example, in *Chellen v. John Pickle Co.*, citizens from India were brought to work in Oklahoma and then denied minimum wages and overtime pay because the employer claimed they were "trainees."<sup>68</sup> The court disagreed, and held that the workers were employees and were therefore entitled to damages under the FLSA.<sup>69</sup>

### 9.2.1.2 Massachusetts: Wage and Hour Laws

Massachusetts wage and hour laws provide additional protections to employees in Massachusetts.<sup>70</sup> These laws require most employers to pay most employees a minimum wage of \$8.00 per hour<sup>71</sup> and time-and-a-half for every hour worked over forty hours per week.<sup>72</sup> Massachusetts law also mandates the timely and full payment of all wages once they are earned.<sup>73</sup> Plaintiffs who prevail in minimum wage, overtime, and nonpayment of wages claims through private actions are entitled to treble damages as well as costs and attorneys' fees.<sup>74</sup> However, Massachusetts exempts several types of work from some of these requirements.<sup>75</sup> In particular, janitors and caretakers of residential property, and employees engaged in fishing, agriculture, farming, and restaurant work, are not entitled to compensation for overtime.<sup>76</sup> The statute of limitations for minimum wage and overtime claims in Massachusetts is two years,<sup>77</sup> and the statute of limitations for nonpayment of wage claims is three years.<sup>78</sup>

**Practice Tip:** Attorneys should assess whether their clients are excluded from coverage under the FLSA or Massachusetts wage and hour laws. For example, the FLSA covers restaurant workers while Massachusetts's overtime provisions do not. In contrast, domestic workers are generally covered under Massachusetts wage and hour laws, whereas certain types of domestic workers are excluded from coverage under the FLSA.

Deductions from wages are generally restricted to those required by law and those authorized by an employee for his or her own benefit.<sup>79</sup> Any other deduction is generally prohibited unless it represents a "valid set-off" to satisfy a "clear and established debt" owed to the employer by the employee.<sup>80</sup> Similarly, the law prohibits "special contracts" or other devices whereby employers recoup earned wages.<sup>81</sup> Examples of improper deductions and charges include fees charged as a condition of

employment,<sup>82</sup> premiums for an employer's liability and workers' compensation insurance,<sup>83</sup> damage to the employer's property where liability was not established through a procedurally fair process,<sup>84</sup> and costs for uniforms or uniform maintenance.

Massachusetts retaliation laws prohibit employers from punishing or harming employees in any way—including by threatening to harm employees or their families—because the employees exercised wage and hour rights. Protected activities include complaining to any person regarding the employee's or a co-worker's rights; initiating, participating in, or assisting in an investigation or proceeding concerning an alleged violation; and testifying in any such proceeding.<sup>85</sup> Employers may face civil or criminal penalties for engaging in retaliation, and employees may receive payment of up to two months' wages.<sup>86</sup>

Employers may try to avoid the requirements of wage and hour laws by denying that their workers should be classified as "employees." However, there is a presumption under Massachusetts law that anyone performing services is an employee.<sup>87</sup> Moreover, Massachusetts courts have resisted employers' efforts to classify certain employees as independent contractors in order to avoid wage and hour law requirements. For example, in *Chaves v. King Arthur's Lounge, Inc.*, the court found that the employer failed to meet its burden of proving that exotic dancers were independent contractors under M.G.L. c. 149 §148B.<sup>88</sup> The court held that the dancers were employees with a potential cause of action under Massachusetts's wage and hour laws.<sup>89</sup>

**Practice Tip:** Attorneys should consider including claims under Massachusetts wage and hour laws in lawsuits on behalf of victims of labor trafficking. Wage and hour claims are routinely overlooked, as attorneys are often most concerned about getting their clients out of exploitive situations. However, considering that treble damages under Massachusetts's wage and hour laws are often automatic,<sup>90</sup> the relief that can be provided for workers under Massachusetts's wage and hour laws is substantial and potentially life-changing.

## 9.2.2 Claims Under Federal and Massachusetts Anti-Discrimination Laws

### 9.2.2.1 Title VII of the Federal Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (the "Civil Rights Act") prohibits employers with 15 or more employees from discriminating in the hiring and firing of employees, as well as the terms and conditions of employment, with respect to sex (including pregnancy), race, national origin, religion, and color.<sup>91</sup> Sexual harassment is considered discrimination based on sex under the statute.<sup>92</sup> Importantly, the Civil Rights Act's protections apply regardless of immigration status.<sup>93</sup>

### 9.2.2.2 Massachusetts Fair Employment Practices Act

The Massachusetts Fair Employment Practices Act<sup>94</sup> ("FEPA") similarly prohibits employers from discriminating on the basis of sex, race, national origin, religion, and color. However, it goes further than the Civil Rights Act in that it also prohibits discrimination based on ancestry, sexual orientation, age, handicap status, and genetic information. Additionally, the FEPA prohibits employers from

retaliating against employees who make complaints.<sup>95</sup> The FEPA applies to employers with six or more employees.<sup>96</sup>

### **9.2.2.3 Labor Organizing Claims: National Labor Relations Act**

The National Labor Relations Act (“NLRA”) was designed to protect the rights of employees to organize for their collective benefit. It protects any activity by at least two employees, or one employee acting in common cause with others, for their “mutual aid or protection.”<sup>97</sup> Union action is not necessary for the activity to be protected under the NLRA. Certain types of employees are excluded from the NLRA’s protections, however, including farm workers, individuals employed by parents or spouses, and independent contractors.<sup>98</sup>

The NLRA applies to all employees covered by the Act regardless of their immigration status.<sup>99</sup> In *Sure-Tan, Inc. v. National Labor Relations Board*, the Supreme Court found that retaliating against employees’ union activities by reporting them as undocumented immigrants violated the NLRA.<sup>100</sup> When the National Labor Relations Board investigates a claim under the NLRA, it does not inquire into immigration status, and routinely objects to employers’ attempts to obtain discovery of this information.<sup>101</sup>

In *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, the Supreme Court held that the remedies of reinstatement and back pay are generally not available for undocumented immigrants under the NLRA.<sup>102</sup> There are, nevertheless, some factors that mitigate the effects of this decision. First, the party alleging undocumented status has the burden of proving that the individual in question is undocumented.<sup>103</sup> Second, reinstatement conditional upon employment status verification remains an appropriate remedy in some cases.<sup>104</sup> And third, back pay may still be sought through parallel employment discrimination and wage claims.

## **9.2.3 Remedies and Challenges for Domestic Workers**

### **9.2.3.1 Federal Fair Labor Standards Act**

Although domestic workers are generally covered by the minimum wage<sup>105</sup> and overtime<sup>106</sup> provisions of the FLSA, some categories of domestic workers are excluded. Casual babysitters, as well as domestic workers who provide “companionship services” for aged or infirm persons who cannot care for themselves, are generally excluded from FLSA minimum wage and overtime coverage.<sup>107</sup> However, domestic workers who provide “companionship services” are eligible for minimum wage and overtime benefits if:

- The domestic worker’s “general household work” exceeds 20 percent of total weekly hours worked (“general household work,” however, does *not* include work related to care for the aged or infirmed person, such as meal preparation, bed making, clothes washing, etc.);<sup>108</sup> or
- The domestic worker qualifies as “trained personnel, such as a registered or practical nurse.”<sup>109</sup>

In addition, individuals who are “employed in domestic service in a household and who reside[] in such household” are not entitled to overtime benefits under the FLSA.<sup>110</sup> However, courts have made clear that these employees are still entitled to minimum wages for all hours worked. For example, in *Kiwanuku v. Bakilana*, a domestic servant in Virginia arrived from Tanzania only to have her passport confiscated, be threatened with deportation, and receive less than the minimum wage for working twenty-four hours a day.<sup>111</sup> The court noted that even though domestic workers living in the home cannot receive overtime, they must still be paid at least the minimum wage for all hours worked.<sup>112</sup>

When a domestic worker performs both work that is exempt from the FLSA’s coverage and non-exempt work, some federal courts have been willing to treat the worker’s entire work week as covered by the FLSA’s wage and overtime provisions. In *Marshall v. Intraworld Commodities Corp.*, the court found a willful violation of the FLSA, because the trafficker “took advantage of an ignorant alien, unable to speak English when he arrived here, and put him to work in his house and in his office without paying any substantial amount.”<sup>113</sup> The trafficking victim<sup>114</sup> performed both live-in domestic work and factory work, but the court found that where both exempt and non-exempt work are performed during the work week the entire week is treated as non-exempt.<sup>115</sup> Additionally, the employer was not entitled to credit against wages for meals, lodgings, and other facilities, because the worker’s acceptance of these conditions was not voluntary and uncoerced.<sup>116</sup>

#### **9.2.3.1.1 New Protections for Domestic Workers under the FLSA Effective January 1, 2015**

On September 17, 2013, the Department of Labor announced a final rule,<sup>117</sup> to take effect on January 1, 2015, which will extend minimum wage and overtime protections to many previously excluded domestic workers.<sup>118</sup> Among other key provisions, the new rule:

- Requires third party employers of domestic workers to provide domestic worker employees with minimum wages and overtime, regardless of whether these employees are live-in domestic workers or are providing “companionship services”;<sup>119</sup>
- Clarifies the definition of the “companionship services” to mean domestic workers who primarily provide “fellowship” and “protection” services to the ill, disabled and elderly, such as conversation, games, and accompaniment on walks or errands;<sup>120</sup>
- Excludes from the definition of “companionship services” medical-related services that are typically performed by trained personal, regardless of the training or occupation of the domestic worker performing the services;<sup>121</sup>
- Entitles a domestic worker who provides “companionship services” to minimum wage and overtime benefits if:

- she spends more than 20% of her work week providing assistance with activities of daily living, such as dressing, feeding, bathing, meal preparation, housework, managing finances, and arranging medical care;<sup>122</sup> or
- she does housework that primarily benefits members of the household apart from the ill, disabled or elderly person;<sup>123</sup> and
- Requires individuals, families, or households (*i.e.*, non-third party employers) who employ live-in domestic workers (who do not fall under the “companionship services exemption”) to maintain records of all hours worked, in order to ensure that the domestic worker is being paid minimum wage for all worked hours.<sup>124</sup>

### **9.2.3.2 Title VII of the Federal Civil Rights Act**

Domestic workers are not usually protected by the Federal Civil Rights Act, since it applies to employers with fifteen or more employees.<sup>125</sup>

### **9.2.3.3 Federal National Labor Relations Act**

Domestic workers are explicitly excluded from the definition of an employee under the NLRA and thus are not eligible for its protections.<sup>126</sup>

### **9.2.3.4 Massachusetts Wage and Hour Laws**

Massachusetts wage and hour laws apply to domestic workers.<sup>127</sup> As such, domestic workers are entitled to minimum wage and/or overtime, as well as rights provided by other Massachusetts wage and hour laws,<sup>128</sup> regardless of whether they live in the home or conduct companion services. Note, however, that janitors or caretakers of residential property are not entitled to overtime under Massachusetts laws.<sup>129</sup>

As with other employers, employers of domestic workers are prohibited from retaliating against their domestic worker employees for complaining of violations of Massachusetts wage and hour laws. Also as with other employers, employers of domestic workers may face civil or criminal penalties for engaging in retaliation, and certain domestic worker employees may receive payment of up to two months’ wages.<sup>130</sup>

### **9.2.3.5 Massachusetts Anti-Discrimination Laws**

#### **9.2.3.5.1 Fair Employment Practices Act**

The FEPA excludes domestic workers from the definition of “employee” as well as anyone employed by her parent, spouse, or child.<sup>131</sup> However, whether or not an individual is a domestic worker under the FEPA is not always clear. For example, in *Hudson v. Barter*, an employee, whose primary duties were to live in her employer’s home and care for his wife, brought a claim for sexual harassment and hostile work environment against her employer under the FEPA.<sup>132</sup> The court denied the defendant’s motion to dismiss on the basis that there was a factual dispute regarding whether the employee should be

characterized as a “home health aide” (covered by the statute) or a “domestic services employee” (not covered by the statute).<sup>133</sup>

#### ***9.2.3.5.2 Right to Freedom from Sexual Harassment: M.G.L. c. 214 § 1C***

A domestic worker may bring a suit in Superior Court against an employer for sexual harassment pursuant to M.G.L. c. 214, § 1C. This law has been found to apply where the FEPA does not, in order to prevent sexual harassment.<sup>134</sup>

#### ***9.2.3.5.3 Massachusetts Equal Rights Act: M.G.L. c. 93 § 102***

A domestic worker may also have a claim for sex race, color, creed, national origin, disability and or age discrimination pursuant to the Massachusetts Equal Rights Act (M.G.L. c. 93, § 102). This act applies where the FEPA does not and has been found to apply to employers with fewer than six employees.<sup>135</sup> Note, however, that to raise a claim under the Massachusetts Equal Rights Act, the worker must file a complaint directly in Superior Court.<sup>136</sup>

### **9.2.4 Remedies and Challenges under Employment Laws for Victims of Sex Trafficking**

Protections provided to employees under employment and labor laws are usually not available to sex trafficking victims because forced prostitution is either not acknowledged as employment or is explicitly excluded under most state statutes.<sup>137</sup>

Likewise, the FLSA does not apply to forced prostitution.<sup>138</sup> However, exotic dancers in a number of jurisdictions have successfully argued for minimum wage under the FLSA using the “economic realities” test. This test determines whether a worker is an employee, and thus afforded protection by the FLSA, or an independent contractor, based on whether the worker is economically dependent on the employer.<sup>139</sup>

Whether forced prostitution is covered by the NLRA or Title VII of the Civil Rights Act has not been tested in any reported cases as of the date of publication of this Guide. Nor does the statutory language indicate on its face whether forced prostitution is excluded from the NLRA<sup>140</sup> or Title VII.<sup>141</sup>

Similarly, no reported cases have tested whether Massachusetts labor and employment laws apply to prostitution. Nor do the statutes specify whether they exclude forced prostitution.

In addition to legal ambiguities, there are practical reasons why sex trafficking victims may not wish to bring employment law claims against their traffickers. Criminal prosecution of traffickers is much more likely in sex trafficking cases than in labor trafficking cases. Therefore, sex trafficking victims may be satisfied with the compensation available through restitution, particularly because of the trauma many of these victims would be forced to relive if they were to initiate civil litigation.<sup>142</sup> If victims were to pursue civil litigation, tort, or contract claims may be more straightforward.<sup>143</sup> Claims may also be possible under RICO and the Alien Tort Claims Act.<sup>144</sup>

### 9.3 COMPENSATION FOR VICTIMS OF VIOLENT CRIME UNDER MASSACHUSETTS LAW

Attorneys representing human trafficking victims in Massachusetts should also determine whether their clients are eligible for compensation under M.G.L. c. 258C, §§ 1-13. Pursuant to that statute, the Massachusetts Victim Compensation and Assistance Division provides eligible victims of violent crime reimbursement for out-of-pocket expenses (e.g., uninsured medical and dental care, mental health counseling, funeral and burial costs, and income lost due to the inability to work). The Victim Compensation and Assistance Division uses funds obtained primarily from fines paid by criminal defendants, and assists with expenses up to a maximum of \$25,000 per crime.

Please note, however, that victim compensation funds are funds of last resort and are to be awarded only after all other forms of insurance or other assistance have been exhausted.

Information on how to determine eligibility and apply for compensation is provided below. For more information, contact the Victim Compensation staff at the Office of Attorney General Martha Coakley, (617) 727-2200 ext. 2160, or visit that [office's website](#).<sup>145</sup>

#### 9.3.1 Who is eligible for victim compensation?

- Victims of violent crimes occurring in Massachusetts;<sup>146</sup>
- Dependents and family members of homicide victims; and
- Any person responsible for the funeral expenses of a victim of a crime occurring in Massachusetts.<sup>147</sup>

#### 9.3.2 Who is ineligible for compensation?

- An offender or accomplice of an offender is not eligible to receive compensation with respect to a crime committed by an offender.
- To the extent the victim's acts or conduct provoked or contributed to the injuries, the Victim Compensation and Assistance Division shall reduce or deny an award.
- A claimant is not eligible for compensation if such compensation would unjustly benefit the offender. However, a claimant will not be denied compensation because of his or her familial relationship with the offender or because of a shared residence with the offender.<sup>148</sup>

#### 9.3.3 Requirements for victim compensation

- The division must find that a crime was committed and that it directly resulted in physical or psychological injury to, or death of, the victim;
- The crime must have been reported to police within five days unless there was good cause for delay; and



- Claimant must cooperate with law enforcement officials in the investigation and prosecution of the crime unless there is a reasonable excuse not to cooperate.<sup>149</sup>

#### **9.3.4 Compensable expenses**

- The maximum award is \$25,000.
- To the extent insurance or other funds do not cover crime-related expenses, claimant may be reimbursed for:
  - Hospital services, medical or dental expenses as the direct result of injury to the victim (including equipment, supplies and medications);
  - Counseling expenses (for victims, for family members of homicide victims, and for children who witness violence against a family member);
  - Funeral/burial costs up to \$6,500;
  - Lost wages (for victims only);
  - Loss of financial support (for dependents of homicide victims); and
  - Homemaker expenses.
- Additional expenses covered for crimes that occurred on or after November 5, 2010:

Ancillary funeral/burial;

Replacement bedding/clothing;

Crime scene cleanup;

Forensic Sexual Assault Exam;

Security measures; and

Counseling for non-offending parents of a child victim.<sup>150</sup>

#### **9.3.5 Expenses not covered**

- Property losses;
- compensation for pain and suffering; and
- all losses not included in the list of compensable expenses above.

#### **9.3.6 Filing and proof of claims<sup>151</sup>**

A claim for compensation must be filed within three years of the crime. Victims under the age of 18 at the time of the crime may apply until age 21, or later in certain limited circumstances. The claimant has

the burden of proving by a preponderance of the evidence that he or she is eligible to receive compensation.

Complete [the application](#) and return it to the Victim Compensation and Assistance Division for verification.<sup>152</sup> A decision is generally received within four to six months. A claim may be reopened for future expenses.

#### **9.3.7 Judicial review<sup>153</sup>**

Within 30 days of mailing the notice of award or denial by the program director, the claimant may petition for judicial review in the district court within the judicial district in which the claimant resides or, in the case of a nonresident claimant, in the Boston Municipal Court.

#### **9.3.8 Attorney's fees<sup>154</sup>**

The statute permits claimants to retain counsel to represent them in their claims for compensation. It provides that attorney's fees will be deducted from the total award for compensation. Attorneys must submit an affidavit setting forth the hours worked and the services rendered. The Victim Compensation and Assistance Division may then include as part of its award, reasonable attorney's fees to be determined by the Division in an amount not to exceed 15 percent of the total award for compensation.

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<sup>1</sup> For a summary of damages awarded in several recent civil cases, see the table on [pages 109-111](#).

<sup>2</sup> Available at [www.splcenter.org/sites/default/files/downloads/splc\\_human\\_trafficking.pdf](http://www.splcenter.org/sites/default/files/downloads/splc_human_trafficking.pdf).

<sup>3</sup> See 18 U.S.C.A. § 1595 (West 2013).

<sup>4</sup> *Id.* at § 1595(a). As originally enacted, the TVPA did not provide a civil remedy. The civil remedy provision was added in the 2003 reauthorization. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2878 (2003) (effective Dec. 19, 2003). At that time, it was available to victims of forced labor and sexual servitude. See *id.* § 4(a)(4)(A). In the 2008 reauthorization, the statute was amended to allow for recovery against individuals who benefit from participation in a trafficking venture. See Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, Title II, § 221(2)(A), 122 Stat. 5067 (2008) (effective Dec. 23, 2008).

<sup>5</sup> See *Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011); *Francisco v. Susano*, No. 12-1376, 2013 WL 2302691, at \*4-5 (10th Cir. May 28, 2013); *Doe v. Howard*, C.A. No. 11-cv-1105, 2012 WL 3834867, at \*4 (E.D. Va. Sept. 4, 2012).

<sup>6</sup> See, e.g., *Doe*, 2012 WL 3834867, at \*5 (awarding \$2 million punitive damages for forced labor, trafficking, and sexual servitude); *Shukla v. Sharma*, No. 07-cv-2972, 2012 WL 481796 (E.D.N.Y. Feb. 4, 2012) (awarding \$1 million in punitive damages for trafficking); *Peña Canal v. de la Rosa Dann*, No. 09-03366, 2010 WL 3491136 (N.D. Cal. Sept. 2, 2010) (awarding \$309,406.41 in punitive damages for violation of state and federal trafficking statutes and the Thirteenth Amendment).

<sup>7</sup> See *Velez v. Sanchez*, 693 F.3d 308, 325 (2d Cir. 2012); *Ditullio*, 662 F.3d at 1099-1100.

<sup>8</sup> 18 U.S.C.A. § 1595(b)(1). “[A] ‘criminal action’ includes investigation and prosecution and is pending until final adjudication in the trial court.” *Id.* § 1595(b)(2).

<sup>9</sup> *Id.* § 1595(c) (“No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose”).

<sup>10</sup> See Pub. L. No. 110-457, § 221, 122 Stat. 5044, 5067 (2008) (amending civil cause of action to remove references to specific crimes and thus expanding its scope to include all violations of Chapter 77).

<sup>11</sup> 18 U.S.C.A. § 1581 (West 2013).

<sup>12</sup> *Id.* § 1583.

<sup>13</sup> *Id.* § 1584.

<sup>14</sup> *Id.* § 1592.

<sup>15</sup> U.S. Const. amend. XIII, §§ 1-2; 18 U.S.C.A. § 1584.

<sup>16</sup> Compare, e.g., *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1357 (6th Cir. 1996) (holding § 1584 does not provide for a private civil remedy); with *Manliguez v. Joseph*, 226 F. Supp. 2d 377, 384 (E.D.N.Y. 2002) (holding that an implied private right of action exists under § 1584).

<sup>17</sup> See *supra* Part 9.1.1. Furthermore, “[u]nlike the Fourteenth Amendment, the Thirteenth Amendment and its enabling statute apply not only to state action but also to private conduct.” *Manliguez*, 226 F. Supp. 2d at 383.

<sup>18</sup> See DANIEL WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING 35-37 (3d ed. 2008), available at [www.splcenter.org/sites/default/files/legacy/pdf/static/splc\\_human\\_trafficking.pdf](http://www.splcenter.org/sites/default/files/legacy/pdf/static/splc_human_trafficking.pdf) (hereinafter CIVIL

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LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING); *see also Canal v. Dann*, No. 09-03366, 2010 WL 3491136, at \*4 (N.D. Cal. Sept. 2, 2010) (entering default judgment of \$309,406.41 in punitive damages for conscious violation of state and federal trafficking statutes and the Thirteenth Amendment, stating that defendant “acted with a conscious disregard for [plaintiff’s] right to be free from involuntary servitude and she intentionally misrepresented facts for the purpose of depriving her of this right. The Court concludes that a punitive damages award in an amount equal to her compensatory damages is justified in light of [defendant’s] disregard of [plaintiff’s] basic rights.”).

<sup>19</sup> *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

<sup>20</sup> *See United States v. Alzanki*, 54 F.3d 994, 1001 (1st Cir. 1995).

<sup>21</sup> *Kozminski*, 487 U.S. at 948; *Alzanki*, 54 F.3d at 1001.

<sup>22</sup> *See Kozminski*, 487 U.S. at 948.

<sup>23</sup> 18 U.S.C.A. § 1964(c) (West 2013).

<sup>24</sup> *Id.* §§ 1962, 1964(c).

<sup>25</sup> *Id.* § 1961(1)(B). “Other racketeering activities that qualify as criminal predicate acts for bringing a civil RICO claim in the trafficking context include: Mail and wire fraud; Fraud in connection with identification documents; Forgery or false use of passport; Fraud and misuse of visas, permits, and other documents; Peonage and slavery; Activities prohibited under the Mann Act; Importation of an alien for immoral use; Extortion (i.e., an employer threatening deportation when an employee complains about minimum wage or overtime amounts to unlawful extortion of employee’s property interest in minimum wage or overtime.)” *Werner & Kim, supra* note 2 at 45.

<sup>26</sup> *Id.* § 1961(5).

<sup>27</sup> *Id.* § 1964(c).

<sup>28</sup> M.G.L. c. 260, § 4D.

<sup>29</sup> What constitutes “willful and malicious” actions in the context of this crime is unclear. For an interpretation of that state of mind in other contexts, *see Commonwealth v. Doyle*, 83 Mass. App. Ct. 384, 388 (2013) (with respect to malicious destruction of property, “willful and malicious” means “a state of mind infused with cruelty, hostility or revenge” (internal quotation omitted)); *Commonwealth v. McDonald*, 462 Mass. 236, 242 (2012) (“Willful conduct is that which is ‘intentional rather than accidental’; it requires no evil intent, ill will, or malevolence. A ‘malicious act,’ as defined in Black’s Law Dictionary 1043 (9th ed. 2009), is an ‘intentional, wrongful act done willfully or intentionally against another without legal justification or excuse.’”) (internal citation omitted).

<sup>30</sup> M.G.L. c. 265, § 50(d); *id.* § 51(d).

<sup>31</sup> M.G.L. c. 260, § 4D(b).

<sup>32</sup> CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING, *supra* note 18, at 5-6.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 6-7.

<sup>35</sup> *See* M.G.L. c. 12, §§ 11I-H. “A threat is ‘the intentional exertion of pressure to make another fearful or apprehensive of injury or harm.’ Intimidation ‘involves putting in fear for the purpose of compelling or deterring conduct.’ And coercion is ‘the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.’” *Ayasli v. Armstrong*, 56 Mass. App. Ct. 740, 750-51 (2002) (internal citation omitted).

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<sup>36</sup> See *id.* § 11I, referencing § 11H, which specifies that the statute applies “whenever *any person or persons*, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth . . . .” *Id.* § 11H (emphasis added).

<sup>37</sup> *Flynn v. Associated Press*, 401 Mass. 776, 782 (1988) (noting that a violation of civil rights is governed by the general three-year statute of limitations for tort actions under M.G.L. c. 260, § 2A).

<sup>38</sup> M.G.L. c. 12, § 11I. A violation of an injunction under this section is a criminal offense for which the violator may be fined, imprisoned, or both. *Id.* § 11J.

<sup>39</sup> See, e.g., *Ballesteros v. Al-Ali*, C.A. No. 11-00152, 2012 WL 8017783 (D.R.I. Dec. 26, 2012) (awarding \$840,000 for false imprisonment and negligent and intentional infliction of emotional distress); see also Note, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 HARV. L. REV. 2574, 2588-91 (2006) (discussing benefit of tort claims in human trafficking suits, including the greater flexibility and adaptability of tort law and the availability of greater damage awards in comparison to statutory law).

<sup>40</sup> See, e.g., *Peña Canal v. de la Rose Rosa Dann*, No. 09-03366, 2010 WL 3491136, at \*4 (N.D. Cal. Sept. 2, 2010) (“[Plaintiff] is also entitled to punitive damages under several of her state and federal causes of action. Here, [defendant] acted with a conscious disregard for [plaintiff’s] right to be free from involuntary servitude and she intentionally misrepresented facts for the purpose of depriving her of this right.”); *Mazengo v. Mzengi*, No. 07-756, 2007 WL 8026882, at \*8 (D.D.C. Dec. 20, 2008) (awarding punitive damages after determining that defendant acted with “actual malice”).

<sup>41</sup> RESTATEMENT (SECOND) OF TORTS § 908 (1979).

<sup>42</sup> See *Remedying the Injustices of Human Trafficking Through Tort Law*, *supra* note 39, at 2590 (“Because the trafficking industry has proven so profitable, substantial deterrents are needed to begin to dismantle current trafficking operations and to discourage future trafficking rings from forming. Until traffickers are faced with real risks of suffering substantial penalties, they will continue to view victims as ‘expendable, reusable, and resalable cheap commodities’”).

<sup>43</sup> M.G.L. c. 260, § 2A.

<sup>44</sup> RESTATEMENT (SECOND) OF CONTRACTS § 344 (1981).

<sup>45</sup> See, e.g., *Ballesteros v. Al-Ali*, C.A. No. 11-152 M (D.R.I. Dec. 26, 2012) (for breach of written contract, awarding \$129,600 in unpaid wages, overtime pay and compensation for “additional work that was at least triple the contracted-for work”); *Gurung v. Malhotra*, 851 F. Supp. 2d 583 (S.D.N.Y. 2012) (for breach of written contract, awarding \$392,721 for unpaid wages, including liquidated damages); *Mazengo v. Mzengi*, No. 07-756, 2007 WL 8026882, at \*4-5 (D.D.C. Dec. 20, 2008) (awarding \$45,101.69 in restitution under a theory of unjust enrichment for the value of the services plaintiff provided to defendants “to the extent that the value of her services exceeds the damage award to which she is entitled under [Maryland’s] Wage and Hour Law”).

<sup>46</sup> M.G.L. c. 260, § 2. However, contract actions to recover for personal injuries and actions of replevin must be brought with three years. *Id.* § 2A.

<sup>47</sup> There are not yet any decisions interpreting the Massachusetts anti-trafficking statute, given how recently it was enacted. However, indictments under the statute may be imminent. See, e.g., Evan Allen, *Massage Parlor Owners*

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in *Wellesley and Revere Indicted on Human Trafficking, Prostitution Charges*, BOSTON GLOBE (Jan. 25, 2013), [www.boston.com/yourtown/news/wellesley/2013/01/owners\\_of\\_massage\\_parlors\\_in\\_w.html](http://www.boston.com/yourtown/news/wellesley/2013/01/owners_of_massage_parlors_in_w.html).

<sup>48</sup> M.G.L. c. 209A, § 1. To determine whether the parties were in a substantive dating relationship, the court will consider the following factors: “(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.” *Id.*

<sup>49</sup> *Id.* at § 3. A blank Abuse Prevention Order is available online at [www.mass.gov/courts/209a/forms/fa-2.pdf](http://www.mass.gov/courts/209a/forms/fa-2.pdf).

<sup>50</sup> M.G.L. c. 209A, § 3; *Vittone v. Clairmont*, 64 Mass. App. Ct. 479, 486-87 (2005) (“The judge is to consider the basis for the initial order in evaluating the risk of future abuse should the existing order expire”).

<sup>51</sup> M.G.L. c. 208, § 34C.

<sup>52</sup> “Malicious” is defined as “characterized by cruelty, hostility or revenge.” M.G.L. c. 258E, § 1.

<sup>53</sup> M.G.L. c. 258E, §§ 1-3. Specifically, the enumerated crimes include: indecent assault and battery on a child under 14, on a mentally retarded person, or on a person 14 years old or older; rape; rape of a child using force; rape and abuse of a child; assault with intent to commit rape; assault of a child with the intent to commit rape; enticement of a child; criminal stalking; criminal harassment; and drugging for sexual intercourse. *Id.* § 1.

<sup>54</sup> 29 U.S.C.A. §§ 201-219 (West 2013).

<sup>55</sup> *Id.* § 206.

<sup>56</sup> *Id.* § 207.

<sup>57</sup> *Questions and Answers About the Minimum Wage*, DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, [www.dol.gov/whd/minwage/q-a.htm](http://www.dol.gov/whd/minwage/q-a.htm) (last visited October 16, 2013).

<sup>58</sup> See, e.g., *Montoya, et al. v. S.C.C.P. Painting Contractors, Inc., et al.*, 530 F. Supp. 2d 746, 751 (D. Md. 2008); *Galaviz-Zamora, et al. v. Brady Farms, Inc.*, 230 F.R.D. 499, 502 (W.D. Mich. 2005).

<sup>59</sup> 29 U.S.C.A. § 215(a)(3) (West 2013); see also *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F. Supp. 2d 1056, 1059 (N.D. Cal. 2002) (“reporting an illegal alien with a retaliatory motive was prohibited conduct under § 215(a)(3)”).

<sup>60</sup> *Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites* (Dec. 7, 2011), available at [www.dol.gov/sec/media/reports/HispanicLaborForce/DHS-DOL-MOU.pdf](http://www.dol.gov/sec/media/reports/HispanicLaborForce/DHS-DOL-MOU.pdf). Note, however, that this is only an agreement of operation between two agencies, and that it is subject to change depending on the will of the administration.

<sup>61</sup> See, e.g., *Flores v. Albertsons, Inc.*, No. 0100515, 2002 WL 1163623 (C.D. Cal. Apr. 9, 2002); *Zeng Liu v. Donna Karan Int'l, Inc.*, 207 F. Supp. 2d 191, 193 (S.D.N.Y. 2002).

<sup>62</sup> 29 C.F.R. § 531.30.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* § 531.3(d)(1).

<sup>65</sup> *Id.* § 531.31.

<sup>66</sup> *Id.* §§ 531.3, 531.33.

<sup>67</sup> *Lopez v. Rodriguez*, 668 F.2d 1376, 1380 (D.C. Cir. 1981). Rodriguez was not explicitly referred to as a trafficking victim by the court; however, the district court found that after she was brought to the United States from Bolivia,

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“[s]he worked seven days per week, ten to twelve hours per day, without vacation and with minimal time off. She received room, board, miscellaneous clothing and toiletries, medical expenses, and minimal pocket money. Although appellants told appellee that they were putting money in the bank for her, appellee never received payment for her work, even after she demanded it.” *Id.* at 1378. *See also* *Marshall v. IntraWorld Commodities Corp.*, No. 79 C 918, 1980 WL 2097 (E.D.N.Y. June 9, 1980), described *infra* [Section 9.2.3.1](#).

<sup>68</sup> *Chellen v. John Pickle Co.*, 344 F. Supp.2d 1278, 1290 (N.D. Okla. 2006).

<sup>69</sup> *See id.* at 1294.

<sup>70</sup> M.G.L. c. 151.

<sup>71</sup> *Id.* § 1.

<sup>72</sup> *Id.* § 1A.

<sup>73</sup> M.G.L. c. 149, § 148.

<sup>74</sup> *Id.* § 150; M.G.L. c. 151, § 19.

<sup>75</sup> *See id.* § 1A; *id.* § 7.

<sup>76</sup> *Id.* § 1A.

<sup>77</sup> *See id.* § 20A.

<sup>78</sup> M.G.L. c. 149, § 150.

<sup>79</sup> *See* M.G.L. c. 149, § 150. (455 C.M.R. 2.04 further limits deductions that bring pay below the minimum wage).

<sup>80</sup> *See Somers v. Converged Access, Inc.*, 454 Mass. 582, 593 (2009).

<sup>81</sup> *See Awuah v. Coverall North America*, 460 Mass. 484 nn.22 & 24 (2011).

<sup>82</sup> *Id.* at 498.

<sup>83</sup> *Id.* at 484, 495-97 & n.22.

<sup>84</sup> *Camara v. Atty. Gen.*, 458 Mass. 756, 763 (2011).

<sup>85</sup> M.G.L. c. 149 § 148A; M.G.L. c. 151, §§ 19(1) and (5); ATTORNEY GENERAL OF MASSACHUSETTS, ANTI-RETALIATION PROTECTIONS UNDER THE MASSACHUSETTS WAGE AND HOUR LAWS, available at [www.mass.gov/ago/docs/workplace/anti-retaliation/anti-retaliation.pdf](http://www.mass.gov/ago/docs/workplace/anti-retaliation/anti-retaliation.pdf).

<sup>86</sup> *Id.*

<sup>87</sup> M.G.L. c. 149, § 148B.

<sup>88</sup> *See Chaves v. King Arthur's Lounge, Inc.*, 2009 Mass. Super. LEXIS 298, at \*4-5, 20 (Mass. Super. July 20, 2009); *see also Sandoval v. M.J.F. Bowery Corp.*, 2011 Mass. Super. LEXIS 228, at \*15 (Mass. Super. July 22, 2011) (finding that the club failed to meet all the elements to prove the dancers were independent contractors).

<sup>89</sup> *See Chaves*, 2009 Mass. Super. LEXIS 298, at \*3.

<sup>90</sup> *Id.* § 150; M.G.L. c. 151, § 19.

<sup>91</sup> 42 U.S.C.A. § 2000e-2 (West 2013).

<sup>92</sup> *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 753-54 (1998) (“When a plaintiff proves that a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands, he or she establishes that the employment decision itself constitutes a change in the terms and conditions of employment that is actionable under Title VII.”).

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<sup>93</sup> JEAN BRUGGEMAN & ELIZABETH KEYES, AMERICAN BAR ASSOCIATION, MEETING THE NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 19 (Amanda Kloer et al. eds., 2009).

<sup>94</sup> M.G.L. c. 151B.

<sup>95</sup> *Id.* § 4.

<sup>96</sup> *Id.* § 1(5).

<sup>97</sup> 29 U.S.C.A. § 157 (West 2013).

<sup>98</sup> *Id.* § 152(3).

<sup>99</sup> *Hoffman Plastic Compounds, Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137, 137-38 (2002).

<sup>100</sup> *Sure-Tan, Inc. v. Nat'l Labor Relations Bd.*, 467 U.S. 884, 895-96 (1984).

<sup>101</sup> Memorandum GC 02-06 from Arthur F. Rosenfeld, General Counsel for the National Labor Relations Board, to All Regional Directors, Officers-in-Charge and Resident Officers, regarding Procedures and Remedies for Discriminatees Who May Be Undocumented Aliens After *Hoffman Plastics Compounds, Inc.* at \*2 (July 19, 2002) [hereinafter *NLRB Gen. Couns. Hoffman Mem.*], available at [www.nlrb.gov/reports-guidance/general-counsel-memos?memo\\_number=GC%5C+02](http://www.nlrb.gov/reports-guidance/general-counsel-memos?memo_number=GC%5C+02) (follow hyperlink for memo number GC 02-06) (last visited Aug. 31, 2013).

<sup>102</sup> *Hoffman*, 535 U.S. at 140, 144 (2002). A recent Second Circuit case has found that back pay is not available to undocumented workers regardless of whether those workers submit false documentation to their employers. *Palma v. Nat'l Labor Relations Bd.*, No. 12-1199, 2013 U.S. App. LEXIS 13911, at \*25 (2d Cir. July 10, 2013).

<sup>103</sup> *NLRB Gen. Couns. Hoffman Mem.* at \*5-6; see also *Asgar-Ali v. Hilton Hotels Corp.*, 798 N.Y.S.2d 342 n. 2 (Sup. Ct. 2004) (describing a case that placed the burden of proof of employment authorization on the employee as “fl[y]ing in the face of every other decision rendered subsequent to *Hoffman*”) (internal quotation marks omitted).

<sup>104</sup> *Id.* at \*3; see also *Palma*, 2013 U.S. App. LEXIS 13911, at \*29 (“Thus, although the *Hoffman Plastic* Court did not directly deal with an issue of reinstatement, its discussion plainly did not foreclose relief in the nature of an order for reinstatement conditioned upon an employee’s submission of documentation as required by IRCA.”).

<sup>105</sup> 29 U.S.C.A. § 206(f) (West 2013).

<sup>106</sup> *Id.* § 207(l).

<sup>107</sup> *Id.* § 213(a)(15). Companionship services are generally defined as providing “fellowship, care and protection” for an aged or infirmed person. 29 C.F.R. § 552.6.

<sup>108</sup> 29 C.F.R. § 552.6.

<sup>109</sup> *Id.* However, trained personnel such as nurses, especially registered nurses, may be exempt from coverage under the FLSA based on their status as learned professionals. See U.S. Dep’t of Labor, Wage and Hour Division, *Fact Sheet #17N: Nurses and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)*, July 2008, [www.dol.gov/whd/regs/compliance/fairpay/fs17n\\_nurses.htm](http://www.dol.gov/whd/regs/compliance/fairpay/fs17n_nurses.htm).

<sup>110</sup> *Id.* § 213(b)(21).

<sup>111</sup> *Kiwanuka v. Bakilana*, 844 F.Supp.2d 107, 111-12 (D. D.C. 2012).

<sup>112</sup> See *id.* at 117.

<sup>113</sup> *Marshall v. Intraworld Commodities Corp.*, No. 79 C 918, 1980 WL 2097 at \*3 (E.D.N.Y. June 9, 1980).



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<sup>114</sup> While he was not referred to as such by the court, the facts indicate that he was brought to the U.S. from India where he worked for years for no pay. When he asked to return to India, his “employer” misled him into believing he could get a green card if he stayed, and on that basis persuaded him to stay. *Id.*

<sup>115</sup> *Id.* at \*4.

<sup>116</sup> *Id.* at \*4-5.

<sup>117</sup> Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,454 (Oct. 1, 2013) (to be codified at 29 C.F.R. pt. 552).

<sup>118</sup> *Minimum wage, overtime protections extended to direct care workers by US Labor Department*, U.S DEP’T OF LABOR, WAGE AND HOUR DIVISION (Sept. 17, 2013), [www.dol.gov/opa/media/press/whd/WHD20131922.htm](http://www.dol.gov/opa/media/press/whd/WHD20131922.htm).

<sup>119</sup> *Fact Sheet: Application of the Fair Labor Standards Act to Domestic Services, Final Rule*, U.S DEP’T OF LABOR, WAGE AND HOUR DIVISION (Sept. 2013), [www.dol.gov/whd/regs/compliance/whdfsFinalRule.htm](http://www.dol.gov/whd/regs/compliance/whdfsFinalRule.htm).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Fact Sheet #79C: Recordkeeping Requirements for Individuals, Families, or Households Who Employ Domestic Service Workers Under the Fair Labor Standards Act (FLSA)*, U.S DEP’T OF LABOR, WAGE AND HOUR DIVISION (Sept. 2013), [www.dol.gov/whd/regs/compliance/whdfs79c.pdf](http://www.dol.gov/whd/regs/compliance/whdfs79c.pdf).

<sup>125</sup> 42 U.S.C.A. § 2000e (West 2013).

<sup>126</sup> 29 U.S.C.A. § 152(3) (West 2013).

<sup>127</sup> See M.G.L. c. 151 §§ 1A, 2.

<sup>128</sup> See M.G.L. c. 149 §§ 148 *et seq.*

<sup>129</sup> See M.G.L. c. 151 § 1A; *id.* § 7.

<sup>130</sup> M.G.L. c. 149 § 148A; M.G.L. c. 151, §§ 19(1) and (5); ATTORNEY GENERAL OF MASSACHUSETTS, ANTI-RETALIATION PROTECTIONS UNDER THE MASSACHUSETTS WAGE AND HOUR LAWS, *available at* [www.mass.gov/ago/docs/workplace/anti-retaliation/anti-retaliation.pdf](http://www.mass.gov/ago/docs/workplace/anti-retaliation/anti-retaliation.pdf). Compensation for retaliation is limited to domestic workers in the home who work more than 16 hours a week. M.G.L. c. 151, § 19(1).

<sup>131</sup> *Id.* § 1(6).

<sup>132</sup> “[W]hile the plaintiff accompanied the defendant and his wife to Florida, he attempted to kiss her, make overt and suggestive invitations to engage in sexual contact with him, and climbed into her bed uninvited . . . .” Memorandum and Order, *Hudson v. Barter*, 98-J-655 (Mass. App., Jan. 5, 1999), at 1.

<sup>133</sup> Memorandum and Order, *Hudson v. Barter*, 98-J-655 (Mass. App., Jan. 5, 1999), at 3-5. Although the Fair Employment Practices Act is generally limited to employers with six or more employees, the court found that, under *Guzman v. Lowinger*, 422 Mass. 570 (1993), that M.G.L. c. 214 § 1C provides a remedy against employers with five or fewer employees. Memorandum and Order, *Hudson v. Barter*, 98-J-655 (Mass. App. Jan. 5, 1999), at 2-3.

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<sup>134</sup> See *Guzman v. Lowinger*, 422 Mass. 570, 572 (1993) (G.L. c. 214, § 1C . . . permits employees [of companies with fewer than six employees] such as the plaintiff to bring suit in the Superior Court for damages [a]rising from sexual harassment in employment.”).

<sup>135</sup> *Thurdin v. IED*, 895 N.E.2d 446 (Mass. 2008)

<sup>136</sup> M.G.L. c. 93 § 102.

<sup>137</sup> WERNER & KIM, *supra* note 18, at 11.

<sup>138</sup> *Id.* at 56.

<sup>139</sup> Sarah Chun, *An Uncommon Alliance: Finding Empowerment for Exotic Dancers Through Labor Unions*, 10 HASTINGS WOMEN’S L.J. 231, 239-40 (1999) (“Under the FLSA, an ‘economic realities’ test is used which looks at whether the putative employee is economically dependent upon the alleged employer. A number of cases challenging the independent contractor characterization under the FLSA have resulted in a finding that dancers are employees, not independent contractors. Jurisdictions in Alaska, Colorado, Florida, Illinois, Oregon and Texas have found that dancers under the conditions presented were employees entitled to minimum wage in addition to any tips they earned. Likewise, under workmen’s compensation laws, courts in Oregon and Idaho have found dancers to be entitled to benefits as employees”) (footnotes omitted).

<sup>140</sup> It has been argued that sex workers are not covered under the NLRA, because the client alone determines the length and limit of the employment. Oliver J. McKinstry, Note, *We’d Better Treat Them Right: A Proposal for Occupational Cooperative Bargaining Associations of Sex Workers*, 9 U. PA. J. LAB. & EMP. L. 679, 692 (2007). However, it could also be argued that a trafficking victim engaged in forced sex is employed, not by the client, but by her pimp and trafficker, who determines her employment’s limit and length. This is particularly true given that the NLRA has been willing to protect semi-unlawful employment before, such as with undocumented workers.

<sup>141</sup> Vicki Schultz, *Sex and Work*, 18 YALE J.L. & FEMINISM 223, 234 n.7 (2006). (“Nothing in the language of Title VII precludes its application to employment in activities or industries that are illegal. I could not find any case law directly addressing the issue.”). It is also of interest that the Seventh Circuit affirmed the dismissal of a Title VII sexual harassment claim against an employer in a “house of prostitution,” not on the basis that prostitution is not covered under Title VII, but rather because there were too few employees for coverage under Title VII. *Stinnett v. Iron Works Gym/Executive Health Spa, Inc.*, 301 F.3d 610, 612-616 (7th Cir. 2002).

<sup>142</sup> WERNER & KIM, *supra* note 18, at 11.

<sup>143</sup> See *supra* [Sections 9.1.6](#), Intentional Torts and Negligence and 9.1.7, Contractual/Quasi-Contractual Claims.

<sup>144</sup> *Id.* RICO, or the Federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1960-68, creates civil liability for people involved in “a pattern of racketeering activity,” 18 U.S.C.A. § 1962. “Racketeering activity” includes “trafficking in persons.” *Id.* § 1961. The Alien Tort Claims Act extends federal jurisdiction to include “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C.A. § 1350. See *supra* [Section 9.1.3](#), Civil Remedies.

<sup>145</sup> M.G.L. c. 258C, §§ 1-13; see Massachusetts Attorney General’s Office, *Massachusetts Victims of Violent Crime Compensation*, [www.mass.gov/ago/public-safety/resources-for-victims/victims-of-violent-crime/victim-compensation.html](http://www.mass.gov/ago/public-safety/resources-for-victims/victims-of-violent-crime/victim-compensation.html) (last visited Sept. 7, 2013).

<sup>146</sup> A “crime” is defined as “an act committed by a person which, if committed by a mentally competent, criminally responsible adult who has no legal exemption or defense, would constitute a crime. Crime shall apply to an act

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occurring within the commonwealth, and to an act of terrorism ... occurring outside the United States or territories against a resident of the commonwealth.” M.G.L. c. 258C, § 1. A “victim” is defined as “ a person who suffers personal physical or psychological injury or death: (a) as a direct result of a crime as defined in this section; (b) as a result of attempting to assist a person against whom a crime was attempted or committed; or (c) as a result of efforts to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence.” *Id.*

<sup>147</sup> M.G.L. c. 258C, § 2.

<sup>148</sup> *Id.*

<sup>149</sup> *See id.*

<sup>150</sup> *Id.* § 3.

<sup>151</sup> *See id.* § 5.

<sup>152</sup> OFFICE OF ATTORNEY GENERAL, VICTIM COMPENSATION & ASSISTANCE DIVISION, *Victim Compensation: Financial Assistance for Victims of Crime in the Commonwealth of Massachusetts*, available at [www.mass.gov/ago/docs/victim/victim-comp-app-updated.pdf](http://www.mass.gov/ago/docs/victim/victim-comp-app-updated.pdf).

<sup>153</sup> M.G.L. c. 258C, § 9.

<sup>154</sup> *See id.* § 2(g).



## 10. Non-Legal Benefits and Resources Available to Victims of Human Trafficking

**Note:** *Victims of human trafficking often face a constellation of legal issues. While this chapter summarizes the non-legal benefits and resources available to victims of human trafficking, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.*

### 10.1 IMPORTANCE OF DETERMINING NON-LEGAL NEEDS

When an attorney encounters a victim shortly after he or she has left a trafficking situation, urgent issues such as safety, housing, or medical needs may be more pressing than her legal case. This section discusses resources that may be available to meet victims' immediate non-legal needs. Being able to guide clients through the requirements for these benefits and resources may help attorneys build rapport with their clients and alleviate some of the burdens faced by victims, so that they can focus on the legal matters at hand.

#### 10.1.1 Federal Benefits & Services

The U.S. Department of Health and Human Services ("HHS") is empowered by the TVPA to certify foreign victims of severe forms of trafficking, "making these individuals eligible for federally funded benefits and services to the same extent as refugees."<sup>1</sup> Such benefits may include cash, employment and housing assistance, food stamps, and medical and mental health care services.

HHS regulations define a "foreign" victim as an individual who is neither a U.S. citizen nor a lawful permanent resident.<sup>2</sup> The process of certification and available benefits and services upon certification varies depending on whether the victim is an adult or a minor:

- **Adult foreign national victims** of human trafficking must receive a "Certification Letter" from HHS before they will have access to federal benefits and services.<sup>3</sup> The TVPA imposes three requirements for certification:
  1. An individual must have been subjected to a severe form of human trafficking, as defined in the TVPA;
  2. A victim must be willing to assist in every reasonable way in the investigation and prosecution of the trafficking case, or is unable to cooperate with such a request due to physical or psychological trauma; and
  3. The U.S. Department of Homeland Security ("DHS") must have granted Continued Presence to the victim, or notified the victim that his or her T visa application is *bona fide* or approved.<sup>4</sup>

- **Minor foreign national victims** of human trafficking must receive an “Eligibility Letter” from HHS (the same letter needed by adult victims) before they will have access to federal benefits and services. Minor foreign victims are not required to comply with requests to assist law enforcement investigation or prosecution, nor to have been granted Continued Presence or a T visa.<sup>5</sup> Instead, they can apply directly to HHS for certification and receive the letter qualifying them for benefits.

Furthermore, the TVPA directs HHS, upon receipt of credible information that a child may have been subjected to trafficking, to make a prompt determination if the child is eligible for up to 90 days of interim assistance.<sup>6</sup> Before the 90-day period has expired, HHS, in consultation with the U.S. Department of Justice (“DOJ”), DHS, and nongovernmental organizations with expertise in human trafficking, must determine if the child is eligible for long-term assistance.<sup>7</sup> During the interim period, the child will have access to the same benefits as they would upon receipt of an Eligibility Letter (e.g., cash assistance, food stamps, and certain foster care/residential programs).<sup>8</sup>

Note that even foreign victims who have not received a Certification or Eligibility Letter from HHS are nevertheless eligible for some limited federal benefits and services. They may also obtain assistance from community resources, such as food pantries, soup kitchens, domestic violence shelters, faith-based shelters, community health centers, migrant health clinics, and legal aid.<sup>9</sup>

The following tables list the types of federal benefits and services available to adult trafficking victims who have received a Certification Letter and minor trafficking victims who have received an Eligibility Letter.<sup>10</sup> They also list the types of federal benefits and services available to adult trafficking victims who have not received a Certification and minor trafficking victims who do not have an Eligibility Letter.<sup>11</sup>

## 10.2 FEDERAL BENEFITS AND SERVICES AVAILABLE TO ADULT TRAFFICKING VICTIMS WHO HAVE BEEN CERTIFIED AND MINOR TRAFFICKING VICTIMS WHO HAVE RECEIVED AN ELIGIBILITY LETTER<sup>12</sup>

### PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ("HHS")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	MASSHEALTH	CHILDREN'S HEALTH INSURANCE PROGRAM ("CHIP")	HEALTH RESOURCES AND SERVICES ADMINISTRATION PROGRAMS	SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION PROGRAMS
Certified Adult	Yes	Yes	No	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes	Yes	Yes

### PROGRAMS ADMINISTERED BY HHS OFFICE OF REFUGEE RESETTLEMENT ("ORR") PROGRAMS

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	REFUGEE CASH ASSISTANCE ("RCA")	REFUGEE MEDICAL ASSISTANCE ("RMA")	REFUGEE SOCIAL SERVICES AND TARGETED ASSISTANCE	VOLUNTARY AGENCY MATCHING GRANT PROGRAM
Certified Adult	Yes, available up to eight months from the date of Certification.	Yes, available up to eight months from the date of Certification.	Yes, available up to 60 months from the date of Certification.	Yes, enrollment must occur within 31 days of the date of Certification; only available for six months from the date of Certification.
Minor with Eligibility Letter (Under 18)	No	Yes, available up to eight months from the date of Eligibility.	Yes, available up to 60 months from the date of Eligibility for minors 16 years of age and older who are not full-time students.  Full-time students may apply if they are seeking part-time or temporary employment while a student, or full-time permanent employment upon completion of school.	Children under 18 are only eligible if they are part of a family/case where there is an employable adult; the adult/case must enroll within 31 days of Eligibility.

PROGRAMS ADMINISTERED BY HHS -ORR PROGRAMS (CONTINUED)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	ORR MEDICAL SCREENINGS	UNACCOMPANIED REFUGEE MINORS (URM) PROGRAM	SERVICES FOR SURVIVORS OF TORTURE
Certified Adult	Yes	No	Must meet definition of torture victim.
Minor with Eligibility Letter (Under 18)	Yes	Yes	Must meet definition of torture victim.

PROGRAMS ADMINISTERED BY THE U.S. DEPARTMENT OF AGRICULTURE ("USDA")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	CHILD NUTRITION PROGRAMS	SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (FOOD STAMP PROGRAM)	SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)
Certified Adult	No	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	PUBLIC HOUSING PROGRAM	TENANT-BASED VOUCHERS
Certified Adult	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes

PROGRAMS ADMINISTERED BY THE U.S. DEPARTMENT OF JUSTICE ("DOJ")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	VICTIMS OF CRIME (VOCA) EMERGENCY FUNDS	VICTIM RIGHTS AND SERVICES – FEDERAL VICTIM-WITNESS COORDINATORS	EMERGENCY WITNESS ASSISTANCE	WITNESS SECURITY PROGRAM
Certified Adult	Yes	Yes	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes	Yes



PROGRAMS ADMINISTERED BY THE DOJ (CONTINUED)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	OVC SERVICES FOR TRAFFICKING VICTIMS DISCRETIONARY GRANT <sup>13</sup>	VOCA VICTIM ASSISTANCE	VOCA VICTIM COMPENSATION
Certified Adult	No	Yes <sup>14</sup>	Subject to specific state guidelines.
Minor with Eligibility Letter (Under 18)	No	Yes	Subject to specific state guidelines.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF LABOR ("DOL")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	ONE-STOP CAREER CENTERS CORE SERVICES	ONE-STOP CAREER CENTERS INTENSIVE SERVICES	JOB CORPS
Certified Adult	Yes	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. SOCIAL SECURITY ADMINISTRATION ("SSA")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	SUPPLEMENTAL SECURITY INCOME
Certified Adult	Yes
Minor with Eligibility Letter (Under 18)	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF EDUCATION ("ED")

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	TITLE IV FEDERAL STUDENT FINANCIAL AID
Certified Adult	Yes
Minor with Eligibility Letter (Under 18)	Yes

Source:

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, SERVICES AVAILABLE TO VICTIMS OF HUMAN TRAFFICKING: A RESOURCE GUIDE FOR SOCIAL SERVICE PROVIDERS (2012), *available at* [www.apiidv.org/files/ORR\\_Trafficking\\_Svcs\\_9\\_30\\_11.pdf](http://www.apiidv.org/files/ORR_Trafficking_Svcs_9_30_11.pdf).

### 10.3 FEDERAL BENEFITS AND SERVICES AVAILABLE TO UNCERTIFIED ADULT TRAFFICKING VICTIMS AND MINOR TRAFFICKING VICTIMS WITHOUT AN ELIGIBILITY LETTER<sup>15</sup>

- “Unlawfully Present in the U.S.” includes persons who entered the United States without inspection or who overstayed their visas, and persons not in compliance with the terms of their visas or orders of the Immigration Court.
- “Lawfully Present in the U.S.” includes persons paroled for at least one year, persons whom the Government has agreed not to remove from the United States for a temporary period, and some other categories. Also includes nonimmigrants who are persons admitted to the United States on a temporary basis, such as a person on a student visa, exchange visit or visa, or temporary worker visa.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”):

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	MASSHEALTH	CHILDREN'S HEALTH INSURANCE PROGRAM (“CHIP”)	HEALTH RESOURCES AND SERVICES ADMINISTRATION PROGRAMS	SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION PROGRAMS
Unlawfully Present in U.S., Adult or Minor (Under 18)	No	No	No	Yes	Yes
Lawfully Present in U.S. (not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No	No	Yes	Yes
Refugees, asylees, and Cuban/Haitian entrants	Yes	Yes	Yes	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes, after a five-year waiting period.	Yes, after a five-year waiting period.	No for adults; yes, after a five-year waiting period for minors.	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes	No for adults; yes for minors.	Yes	Yes

PROGRAMS ADMINISTERED BY HHS OFFICE OF REFUGEE RESETTLEMENT ("ORR") PROGRAMS

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	REFUGEE CASH ASSISTANCE ("RCA")	REFUGEE MEDICAL ASSISTANCE ("RMA")	REFUGEE SOCIAL SERVICES AND TARGETED ASSISTANCE	VOLUNTARY AGENCY MATCHING GRANT PROGRAM
Unlawfully Present in U.S., Adult or Minor (Under 18)	No	No	No	No
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No	No	No
Refugees, asylees, and Cuban/Haitian entrants	Yes, if within time limits.	Yes, if within time limits.	Yes, if within time limits.	Yes, if within time limits.
Lawful Permanent Resident, Adult or Minor (Under 18)	No	No	No	No
U.S. Citizen, Adult or Minor (Under 18)	No	No	No	No

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	ORR MEDICAL SCREENINGS	UNACCOMPANIED REFUGEE MINORS ("URM") PROGRAM	SERVICES FOR SURVIVORS OF TORTURE
Unlawfully Present in U.S., Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.
Refugees, asylees, and Cuban/Haitian entrants	Yes, if within time limits.	Yes, if within time limits.	Must meet definition of torture victim.
Lawful Permanent Resident, Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.
U.S. Citizen, Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.

PROGRAMS ADMINISTERED BY THE U.S. DEPARTMENT OF AGRICULTURE ("USDA")

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	CHILD NUTRITION PROGRAMS	SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (FOOD STAMP PROGRAM)	SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)
Unlawfully Present in U.S., Adult or Minor (Under 18)	No for adult; yes for minor.	No	Yes
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No for adult; yes for minor.	No	Yes
Refugees, asylees, and Cuban/Haitian entrants	No for adult; yes for minor.	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	No for adult; yes for minor.	Yes, after a five-year waiting period for adult (contact USDA for other LPR eligibility requirements); yes, no waiting period for minor.	Yes
U.S. Citizen, Adult and Minor (Under 18)	No for adult; yes for minor.	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD")

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	PUBLIC HOUSING PROGRAM	TENANT-BASED VOUCHERS
Unlawfully Present in U.S., Adult or Minor (Under 18)	No	No
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No
Refugees, asylees, and Cuban/Haitian entrants	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes

PROGRAMS ADMINISTERED BY THE U.S. DEPARTMENT OF JUSTICE ("DOJ")

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	VICTIMS OF CRIME ("VOCA") EMERGENCY FUNDS	VICTIM RIGHTS AND SERVICES – FEDERAL VICTIM- WITNESS COORDINATORS	EMERGENCY WITNESS ASSISTANCE	WITNESS SECURITY PROGRAM
Unlawfully Present in U.S., Adult or Minor (Under 18)	Yes	Yes	Yes	Yes
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	Yes	Yes	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes	Yes	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes	Yes	Yes

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	OVC SERVICES FOR TRAFFICKING VICTIMS DISCRETIONARY GRANT	VOCA VICTIM ASSISTANCE	VOCA VICTIM COMPENSATION
Unlawfully Present in U.S., Adult or Minor (Under 18)	Yes	Yes, but see below.	Subject to specific state guidelines.
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	Yes	Yes, but see below.	Subject to specific state guidelines.
Lawful Permanent Resident, Adult or Minor (Under 18)	No	Yes, but see below.	Subject to specific state guidelines.
U.S. Citizen, Adult or Minor (Under 18)	No	Yes, but see below.	Subject to specific state guidelines.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF LABOR ("DOL")

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	ONE-STOP CAREER CENTERS CORE SERVICES	ONE-STOP CAREER CENTERS INTENSIVE SERVICES	JOB CORPS
Unlawfully Present in U.S., Adult or Minor (Under 18)	Yes	No	No
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	Yes	No	No
Refugees, asylees, and Cuban/Haitian entrants	Yes	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. SOCIAL SECURITY ADMINISTRATION ("SSA")

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	SUPPLEMENTAL SECURITY INCOME
Unlawfully Present in U.S., Adult or Minor (Under 18)	No
Lawfully Present in U.S. (not U.S. Citizen or LPR), Adult or Minor (Under 18)	No
Refugees, asylees, and Cuban/Haitian entrants	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes, after a five-year waiting period.
U.S. Citizen, Adult or Minor (Under 18)	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF EDUCATION ("ED")

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	TITLE IV FEDERAL STUDENT FINANCIAL AID
Unlawfully Present in U.S., Adult or Minor (Under 18)	No
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No
Refugees, asylees, and Cuban/Haitian entrants	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes

Source:

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, SERVICES AVAILABLE TO VICTIMS OF HUMAN TRAFFICKING: A RESOURCE GUIDE FOR SOCIAL SERVICE PROVIDERS (2012), *available at* [www.apiidv.org/files/ORR\\_Trafficking\\_Svcs\\_9\\_30\\_11.pdf](http://www.apiidv.org/files/ORR_Trafficking_Svcs_9_30_11.pdf).



#### 10.4 MASSACHUSETTS ORGANIZATIONS PROVIDING SUPPORT AND SERVICES TO VICTIMS OF HUMAN TRAFFICKING

Although some states, including New York and California, have created diversion programs intended to connect adult victims to services and reduce criminal penalties for sex for fee cases, the Massachusetts Trafficking Statute does not create a similar diversion program for adults. It does, however, authorize state-funded services to be available to sexually exploited children. Under the Massachusetts Trafficking Statute, the Department of Children and Families (“DCF”) must “provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child’s welfare.”<sup>16</sup> Benefits range from food and medical care to counseling and assessments for an emergency residential placement.<sup>17</sup> If a child declines these services or is unable or unwilling to participate in them, DCF, or any person, may file a Care and Protection Petition.<sup>18</sup> But, all sexually exploited children will have access to an advocate, who “shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court.”<sup>19</sup>

Organizations providing services and resources to victims of human trafficking, whether adult or children, including the following:

- **The E.V.A. Center (formerly “Kim’s Project”)**, Boston, MA, [www.kimsproject.org/Home.html](http://www.kimsproject.org/Home.html)  
Kim’s Project is a Boston-based program with the goal of creating a sustainable comprehensive exit program for adult women wanting out of the sex trade. It is a survivor-led program that offers individualized support, services, information, and resources.
- **Gaining Independence for Tomorrow (GIFT)**, [www.roxburyyouthworks.org/](http://www.roxburyyouthworks.org/)  
A community-based program at Roxbury Youthworks that provides intensive case management services to assist girls to exit out of commercial sexual exploitation.
- **Lutheran Social Services of New England (“LSS”)**, Boston, MA, and Worcester, MA (508) 754-1121, [www.lssne.org](http://www.lssne.org)  
Provides legal and social services to survivors of labor and sex trafficking throughout Massachusetts. Services include pro bono legal advice and immigration assistance, comprehensive case management services, employment services, ESL classes and educational programs, referrals to community-based organizations. Through case management, advocacy, and legal representation, LSS seeks to remove the barriers faced by survivors, adults and minors, when attempting to leave exploitation.
- **Massachusetts Coalition of Occupational Safety (MassCOSH)**, Dorchester, MA, (617) 825-SAFE (7233), [www.masscosh.org/](http://www.masscosh.org/)  
MassCOSH organizes and trains workers to protect themselves against abusive work

conditions. MassCOSH centers also support collective action by workers and provide a space for workers to express and address their common grievances.

- **Metrowest Worker Center**, Framingham, MA, 508-532-0575  
Metrowest Worker Center is a worker-led program that is available throughout the Commonwealth. This initiative identifies exploited workers and trafficking survivors to support them to receive a just wage.
- **My Life My Choice**, Boston, MA, (617) 779-2179, [www.fightingexploitation.org/](http://www.fightingexploitation.org/)  
A survivor-led Boston-based program of the Justice Resource Institute that offers a continuum of services aimed at preventing commercial sexual exploitation of girls, including training and education, advocacy, and intervention services. Girls who have been exploited receive a survivor mentor who can offer long term support and case management. In addition, girls have opportunities to participate in MLMC groups, leadership opportunities, and various other programming.
- **Project REACH/The Trauma Center**, Brookline, MA, [www.traumacenter.org/](http://www.traumacenter.org/)  
Provides outpatient mental health services as a satellite clinic of the Metrowest Behavioral Health Center of Justice Resource Institute. Clinic services are reimbursable through self-pay, Victim's Compensation Fund, MassHealth administered through the Massachusetts Behavioral Health Partnership (MBHP), and Tufts Health Plan. Clients with out-of-network insurance benefits may also qualify for services.
- **The Support to End Exploitation Now (SEEN)**, Suffolk County, (617) 779-2145, [www.suffolkcac.org/programs/seen/](http://www.suffolkcac.org/programs/seen/)  
SEEN is a ground-breaking partnership operated by the Children's Advocacy Center of Suffolk County that unites more than 35 public and private agencies who partner to coordinate services to sexually exploited youth in order to apprehend adult offenders and best connect exploited youth to needed services.
- **Surviving Our Struggle, Boston GLASS**, Brookline, MA, (617) 266-3349 x 2322, [www.traumacenter.org/initiatives/SOS.php](http://www.traumacenter.org/initiatives/SOS.php)  
Surviving our Struggle is a Boston-based program of the Justice Resource Institute. It is a survivor-led program dedicated to men, boys, and LGBTQ youth who have been forced into commercial sex.

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<sup>1</sup> U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, SERVICES AVAILABLE TO VICTIMS OF HUMAN TRAFFICKING: A RESOURCE GUIDE FOR SOCIAL SERVICE PROVIDERS 1 (2012) (hereinafter HHS RESOURCE GUIDE), *available at* [www.apiidv.org/files/ORR Trafficking Svcs 9 30 11.pdf](http://www.apiidv.org/files/ORR_Trafficking_Svcs_9_30_11.pdf); 22 U.S.C.A. § 7105(b)(1)(A) (West 2013).

<sup>2</sup> See HHS RESOURCE GUIDE, *supra* note 1, at 2. Trafficking victims who are U.S. citizens or lawful permanent residents do not need certification from HHS to be eligible for similar benefits and services. However, lawful permanent residents will have a five-year waiting period before they are eligible to apply for certain benefits and services. See *id.* at 8 & n.1; see also *infra* § 10.2.

<sup>3</sup> See 22 U.S.C.A. § 7105(b)(1)(C), (E) (West 2013); HHS RESOURCE GUIDE, *supra* note 1, at 8. This letter is different from the U or T visa certification that is sought from law enforcement and used as primary evidence in the visa application.

<sup>4</sup> Source: HHS RESOURCE GUIDE, *supra* note 1, at 8; see also 22 U.S.C. § 7105(b)(1)(E).

<sup>5</sup> See 22 U.S.C.A. § 7105(b)(1)(F) (West 2013); HHS RESOURCE GUIDE, *supra* note 1, at 9.

<sup>6</sup> See 22 U.S.C.A. § 7105(b)(1)(F)(i)-(iii) (West 2013); 22 U.S.C.A. § 7105(b)(1)(G) (West 2013) (“Not later than 24 hours after a Federal, State, or local official discovers that a person who is under 18 years of age may be a victim of trafficking in persons, the official shall notify the Secretary of Health and Human Services to facilitate the provision of interim assistance under subparagraph (F).”). “A determination regarding eligibility for interim assistance will not affect the independent determination of whether a minor is a victim of a severe form of trafficking.” 22 U.S.C.A. § 7105(b)(1)(F)(i) (West 2013).

<sup>7</sup> 22 U.S.C.A. § 7105(b)(1)(F)(iv) (West 2013).

<sup>8</sup> See *id.* § 7105(b)(1)(F).

<sup>9</sup> See, e.g., HHS RESOURCE GUIDE, *supra* note 1, at 2-4 (listing various community resources).

<sup>10</sup> See *infra* [Section 10.2](#).

<sup>11</sup> See *infra* [Section 10.3](#).

<sup>12</sup> For additional detail about the programs and program eligibility described in these charts, please see U.S. Department of Health & Human Services, Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers (2012), *available at* [www.apiidv.org/files/ORR Trafficking Svcs 9 30 11.pdf](http://www.apiidv.org/files/ORR_Trafficking_Svcs_9_30_11.pdf).

<sup>13</sup> U.S. Department of Justice Office for Victims of Crime.

<sup>14</sup> OVC provides formula grant funding to the states to support local victim assistance programs that provide direct services to victims. Typically the state awards sub-grants to victim assistance programs to provide specialized services at the community level. Some victim assistance providers serve all crime victims; others may limit services to a specific type of victimization, such as child abuse, sexual assault, or domestic violence. While there are few VOCA-supported programs that are dedicated solely to serving human trafficking victims, many programs, such as rape crisis centers and domestic violence shelters, do provide services to human trafficking victims.

<sup>15</sup> For additional detail about the programs and program eligibility described in these charts, please see U.S. Department of Health & Human Services, Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers (2012), *available at* [www.apiidv.org/files/ORR Trafficking Svcs 9 30 11.pdf](http://www.apiidv.org/files/ORR_Trafficking_Svcs_9_30_11.pdf)

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<sup>16</sup> M.G.L. c. 119, § 39K(a). Note that “[i]f a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24.” *Id.*

<sup>17</sup> “Appropriate services” includes “the assessment, planning and care provided by a state agency or non-governmental organization or entity, through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family-based foster care or the community, including food, clothing, medical care, counseling and appropriate crisis intervention services, provided: (i) that such agency, organization or entity has expertise in providing services to sexually exploited children or children who are otherwise human trafficking victims; and (ii) that such services are provided in accordance with such regulations that the department of children and families may adopt or the policies of such department.” M.G.L. c. 119, § 21.

<sup>18</sup> M.G.L. c. 119, § 39K(a). Such petitions are filed pursuant to M.G.L. c. 119, § 24.

<sup>19</sup> *Id.* § 39K(a).



## Appendix: Resources for Victims of Human Trafficking

Please note that each organization below may not provide specialized services for human trafficking victims, although clients may be eligible for general services. Although this list is not exhaustive, it aims to provide a starting point for attorneys or clients looking for services.

### PORTAL ORGANIZATIONS: GATEWAYS TO SERVICES

The following portal organizations connect victims to human trafficking service providers.

However, attorneys should be aware that resources available to victims are, unfortunately, extremely limited.

NAME	ADDRESS/CONTACT INFO.	WEBSITE	DESCRIPTION
Safelink	PO BOX 180019 Boston, MA 02118 Tel: 877-785-2020. Email: <a href="mailto:info@casamyrna.org">info@casamyrna.org</a>	<a href="http://www.casamyrna.org/index.php?option=com_content&amp;view=article&amp;id=29&amp;Itemid=45">www.casamyrna.org/index.php?option=com_content&amp;view=article&amp;id=29&amp;Itemid=45</a>	<p>SafeLink is Massachusetts' statewide, 24/7, toll-free domestic violence hotline run by CasaMyrna. SafeLink hotline advocates are multilingual, and have access to a translation service that can provide translation in more than 130 languages. All calls to SafeLink are free, confidential and anonymous.</p> <p>Specifically, SafeLink provides:</p> <ul style="list-style-type: none"><li>• Safety Planning – victims of domestic violence learn how they and their families can stay safe</li><li>• Supportive Listening – we provide a safe space in which to talk about what's happening in your relationship</li><li>• Direct connection to domestic violence shelter programs across Massachusetts</li><li>• Referrals to local domestic violence and community services</li><li>• Support and resources for anyone who is concerned about a victim of domestic violence</li></ul>
Polaris Project	P.O. Box 65323 Washington, D.C. 20035 Tel: 202-745-1001 Hotline: 1-888-373-7888 Text: BeFree 233733) Fax: 202-745-1119 Email: <a href="mailto:NHTRC@polarisproject.org">NHTRC@polarisproject.org</a>	<a href="http://www.polarisproject.org">www.polarisproject.org</a>	<p>The National Human Trafficking Resource Center NHTRC-is a national, toll-free hotline, available to answer calls and texts from anywhere in the country, 24 hours a day, 7 days a week, every day of the year. The Hotline is used for:</p> <ul style="list-style-type: none"><li>• Reporting tips</li><li>• Finding anti-trafficking services</li><li>• Requesting training and technical assistance, general information, or more specific anti-trafficking resources</li></ul>

NAME	ADDRESS/CONTACT INFO.	WEBSITE	DESCRIPTION
SEEN Coalition Support to End Exploitation Now	989 Commonwealth Ave. Boston, MA 02215 Tel: 617-779-2145 Email: <a href="mailto:cac@suf.state.ma.us">cac@suf.state.ma.us</a>	<a href="http://www.suffolkcac.org/programs/seen/">www.suffolkcac.org/programs/seen/</a>	SEEN is a partnership among more than 35 public and private agencies working to end child sexual exploitation. It is located at the Child Advocacy Center of Suffolk County, a non-profit organization in partnership with the Suffolk County District Attorney. The SEEN Case Coordinator will contact each provider connected to the child and schedule a conference call in order to develop a comprehensive action plan.
Massachusetts Office for Victim Assistance ("MOVA")	One Ashburton Place, Suite 1101 Boston, MA 02108 Phone: 617-586-1340 Fax: 617-586-1341 Email: <a href="mailto:mov@state.ma.us">mov@state.ma.us</a>	<a href="http://mov.state.ma.us">mov.state.ma.us</a>	MOVA was established in 1984 with the enactment of the Commonwealth's first Victim Bill of Rights. Its purpose is to advocate for and assist victims of crime. Victims can receive assistance through MOVA's Service Programs, the SAFEPLAN Program and through its Help Directory. Through its Victim Services Coordinator, MOVA provides referrals to appropriate programs and service providers and information and advocacy to help victims better understand the justice system.

#### LAW ENFORCEMENT/INVESTIGATIVE AGENCIES

NAME	ADDRESS/CONTACT INFO.	WEBSITE
Department of Justice Trafficking in Persons Hotline	950 Pennsylvania Avenue, NW Washington, D.C. 20530 Tel: 888-428-7581	<a href="http://www.justice.gov/actioncenter/crime.html">www.justice.gov/actioncenter/crime.html</a>
United States Department of State's Bureau of Diplomatic Security's (DS)	Boston Field Office: Thomas P. O'Neill Federal Building 10 Causeway Street Suite 1001 Boston, MA 02222 Tel: 617-565-8200 Fax: 617-565-8222  DC Unit: Human Smuggling and Trafficking Center 1800 G Street NW Suite 2210 Washington, DC 20223 Email: <a href="mailto:HSTC@state.gov">HSTC@state.gov</a>	<a href="http://www.state.gov/m/ds/hstcenter/index.htm">www.state.gov/m/ds/hstcenter/index.htm</a>

NAME	ADDRESS/CONTACT INFO.	WEBSITE
U.S. Department of Justice Human Trafficking Prosecution Unit	Civil Rights Division, Criminal Section 950 Pennsylvania Avenue, NW Washington, D.C. 20530 Tel.: 202-514-3204 Fax: 202-514-8336	<a href="http://www.justice.gov/crt/about/crm/htpu.php#vic">www.justice.gov/crt/about/crm/htpu.php#vic</a>
Federal Bureau of Investigation, Boston Field Office	Attn: Human Trafficking Supervisory Special Agent One Center Plaza, Suite 600 Boston, MA 02108 Tel: 617-742-5533 Fax: 617-223-6327 Email: <a href="mailto:Boston@ic.fbi.gov">Boston@ic.fbi.gov</a>	<a href="http://www.fbi.gov/boston/">www.fbi.gov/boston/</a>
Attorney General Martha Coakley	One Ashburton Place Boston, MA 02108 Tel: 617-727-2200	<a href="http://www.mass.gov/ago/about-the-attorney-generals-office/community-programs/anti-human-trafficking/">www.mass.gov/ago/about-the-attorney-generals-office/community-programs/anti-human-trafficking/</a>
Boston Police Human Trafficking Unit	Sergeant Donna Gavin 989 Commonwealth Avenue Boston, MA 02215 Tel: 617-343-6533 Tel: 617-779-2100 Email: <a href="mailto:GavinD.bpd@ci.boston.ma.us">GavinD.bpd@ci.boston.ma.us</a>	<a href="http://www.cityofboston.gov/police/divisions/familyjustice.asp">www.cityofboston.gov/police/divisions/familyjustice.asp</a>
United States Attorney's Office, District of Massachusetts	Boston: John Joseph Moakley United States Federal Courthouse 1 Courthouse Way, Suite 9200 Boston, MA 02210 Tel: 617-748-3100 Fax: 617-748-3974  Worcester: Donohue Federal Building, Room #206 595 Main St. Worcester, MA 01608 Tel: 508-368-0100 Fax: 508-923-0742  Springfield: Federal Building and Courthouse 300 State Street, Suite 230 Springfield, MA 01105 Tel: 413-785-0235 Fax: 413-785-0394	<a href="http://www.justice.gov/usao/ma/">www.justice.gov/usao/ma/</a>



NAME	ADDRESS/CONTACT INFO.	WEBSITE
U.S. Department of Homeland Security	<p>Department of Homeland Security 245 Murray Lane SW Washington, DC 20528-0075 Tel: 202-282-8000</p> <p>Boston Office of Homeland Security Investigations:</p> <p>Group Supervisor Office Tel: 617-565-4949</p> <p>Victim Assistance Coordinator Office Tel: 617-565-4945</p>	<a href="http://www.dhs.gov/">www.dhs.gov/</a>
U.S. Immigration and Customs Enforcement ICE-Homeland Security Investigations HIS-Tip Line	<p>500 12th St., SW Washington, D.C. 20536 Tel: 802-872-6199</p>	<a href="http://www.ice.gov/about/offices/homeland-security-investigations/">www.ice.gov/about/offices/homeland-security-investigations/</a>
U.S. Department of Labor, Wage and Hour Division	<p>200 Constitution Avenue, NW Washington, D.C. 20210 Help Line: 866-487-9243</p>	<a href="http://www.dol.gov/wb/media/reports/trafficking.htm">www.dol.gov/wb/media/reports/trafficking.htm</a>
U.S. Department of Labor, Office of Inspector General	<p>Special Agent Ed Sarabia United States Department of Labor Office of Inspector General JFK Federal Building - High Rise 25 New Sudbury Street, Suite 675-B Boston, MA 02203 Office: 617-565-2242 Fax: 617-565-2250 Email: <a href="mailto:sarabia.edgar@oig.dol.gov">sarabia.edgar@oig.dol.gov</a></p>	<a href="http://www.oig.dol.gov/hotlinemain.htm">www.oig.dol.gov/hotlinemain.htm</a>
The U.S. State Department Office to Monitor and Combat Trafficking in Persons	<p>Tel: 202-312-9639 Fax: 202-312-9637 Email: <a href="mailto:TIPReport@state.gov">TIPReport@state.gov</a></p>	<a href="http://www.state.gov/g/tip">www.state.gov/g/tip</a>
U.S. Citizenship and Immigration Services Trafficking in Persons and Worker Exploitation Task Force Complaint Line	<p>Tel: 1-800-375-5283</p>	<a href="http://www.uscis.gov">www.uscis.gov</a>
Department of Homeland Security: US Citizenship and Immigration Services USCIS-and Bureau of Immigration and Customs Enforcement ICE)	<p>USCIS Tel: 800-375-5283 ICE Public Affairs Tel: 202-732-4242</p>	<a href="http://www.uscis.gov/portal/site/uscis">www.uscis.gov/portal/site/uscis</a>

