

HUMAN TRAFFICKING OVERVIEW

Federal definition: “(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 an 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.” Trafficking Victims Protection Act of 2000 §22 U.S.C. 7102 (2008); Priv. L. No. 106-386, 8 C.F.R. §1003.19 (2008). (TVPA)

The Preventing Sex Trafficking and Strengthening Families Act of 2014 (P.L. 113–183) requires the state plan for foster care and adoption assistance to demonstrate that the state agency has developed policies and procedures for identifying, documenting in agency records, and determining appropriate services with respect to, any child or youth over whom the state agency has responsibility for placement, care, or supervision who the state has reasonable cause to believe is, or is at risk of being, a victim of sex trafficking or a severe form of trafficking in persons.

State law: §787.06(2)(d), F.S., defines human trafficking as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.” The statute also outlines Florida’s goals of assisting victims and prosecuting offenders.

- Using Coercion for labor or services is a 1st Degree Felony. §787.06(3)(a), F.S.
- Using Coercion for commercial sexual activity is a 1st Degree Felony. §787.06(3)(b), F.S.
- Anyone who knowingly or in reckless disregard of the facts engages in or benefits financially by receiving anything of value from trafficking can be prosecuted §787.06(3), F.S.
- All human trafficking offenses can be prosecuted as RICO offenses in Florida as organized crime. §895.02(1)(a)26, F.S.
- Minors cannot consent to commercial sex. §796.001, F.S.
- Minors are not subject to arrest/prosecution for offering to commit prostitution. §796.07(2)(e), F.S. (effective Oct. 1, 2016)
- Buyers of minors for commercial sexual activity may be charged as human traffickers. §§796.001; 787.06(3)(g), F.S.
- Coercion is not an element for foreign or domestic minor sex trafficking.

Florida Safe Harbor Law (2012) §409.1678, F.S., Establishes that the dependency track rather than the delinquency track will be the standard approach in dealing with minors found to be engaged in commercial sex (domestic minor sex trafficking victims). It also establishes a limited number of beds for victims in various locations, and gives law enforcement the option of referring minors to DCF safe harbor facilities (with 24 hour supervision) instead of detention facilities.

Smuggling vs. Trafficking:

- Individual’s choice = smuggling
- Force, fraud, coercion = trafficking
- Traffickers maintain ongoing control after border is crossed

Who are the victims? Victims of human trafficking can usually be divided into three populations:

- Children under age 18 induced into commercial sex

- Adults age 18 or over induced into commercial sex through force, fraud, or coercion
- Children and adults induced to perform labor or services through force, fraud, or coercion

Identifying human trafficking cases: (one or more may be present)

- Evidence of being controlled
- Evidence of an inability to move or leave job due to threats or coercion
- Bruises or other signs of battering
- Fear or depression
- Non-English speaking
- Recently brought to United States
- Lacks passport, immigration or identification documentation
- Inability to change housing/living conditions
- Deprivation of food, water, sleep or medical care
- Permission needed to eat, sleep or go to the bathroom
- Locks on doors and windows to keep victim from leaving
- Threats of serious harm to the victim's family or another person
- Causing or threatening to cause financial harm to a person
- Providing a controlled substance as outlined in Schedule [I]-[II] of §893.03, F.S. to any person for the purpose of exploitation of that person
- Permanent branding (*see* §787.06 4(b), F.S.)
- Children and teens missing school, possession of new and expensive items
- Anybody under the age of 18 offering sex acts

What to do if you believe you have a trafficking victim in court:

It is not recommended that the court question the potential victim in open court as his/her trafficker (or associate of the trafficker) may be present. If the potential victim is represented by counsel, conduct a sidebar conference and inquire of the attorney and seek his/her assistance in reporting the issue to law enforcement. Neutral interpreting service is vital.

If it is suspected that a minor is a victim or potential victim of human trafficking, a report must be made to the Florida Abuse Hotline as this is a reportable abuse even if the trafficker is not a caregiver or is unknown.

Contact your local law enforcement agency or human trafficking task force immediately. Other options include contacting your local SAO's SVU, the child protection team, the Office of Statewide Prosecution, and/or filing an abuse report.

If your circuit has victim advocates or social workers, one should be contacted to assist the victim in navigating the various resources available.

If the victim is not represented by counsel, appoint counsel pursuant to the process in §39.01305(e), F.S.

Appoint the Guardian ad Litem program.

Remedies available for victims:

- Continued Presence (CP) is temporary immigration relief that can be granted when a federal law enforcement agency petitions to allow victims as potential witnesses to remain in the U.S. Someone with CP can legally live and work in the U.S. while the criminal case against the trafficker proceeds.
- The T Visa is a four year visa that is available to a “victim of a severe form of trafficking” who, among other things, complies with reasonable requests of law enforcement for help in the investigation or prosecution of the trafficker. The T Visa also can provide immigration relief to the victim’s immediate family and allows victims of human trafficking who are under 21 to petition for their spouse, children, parents, and unmarried siblings less than 18 years of age in the T Visa application. Adult victims of trafficking who are over 21 are eligible to include their spouse and unmarried children under 21.
- The U Visa is a remedy available to persons who are victims of certain violent crimes and have suffered serious and substantial abuse. They too must be helping in the investigation and prosecution of the crimes committed against them and like a T Visa, a U Visa also grants the applicant a four year visa, and can also include immigration relief for the victim’s immediate family.
- Asylum is an available remedy for those who can show that they suffered persecution or have a well-founded fear of persecution on account of membership in a social group.
- Special Immigrant Juvenile Status provides abused, abandoned, and neglected children a pathway to legal status in the U.S.
- VAWA relief provides the applicant with a way to “self-petition” for immigration status without the consent or knowledge of the abusive spouse or, in the case of a child, a parent who is either a U.S. citizen or lawful permanent resident.
- Trafficked persons are also eligible for a range of benefits under civil law. The federal 2002 Reauthorization of the Trafficking Victims Protection Act (TVPA) created a private right of action and successful cases have been brought under this law. Trafficking survivors also have rights of civil relief under labor laws, tort law, contracts and have also successfully sued under homeowners’ policies: this is particularly relevant for people who have been trafficked into domestic servitude. Section 772.104, F.S. also provides for a civil remedy against traffickers.
- A victim may petition the court for an expunction of a criminal history record resulting from the arrest or charges associated with crimes committed while the person was a victim of human trafficking. §943.0583(3), F.S.
- Florida labor trafficking victims can sue their traffickers for three times their financial damages. §772.104, F.S.
- Florida sex trafficking victims can sue their traffickers for three times the profits made by their pimps. §772.104, F.S.
- Trafficking victims under age 18 cannot be prosecuted for prostitution. Ch.2016-24, L.O.F. (Effective October 1, 2016).

Service needs of child victims:

Physical Health – referral and follow-up medical services with trauma-sensitive providers and consideration of gender and trafficking experiences

Safe Harbor Homes/ Safe Foster Homes/ Other placement for coordination of medical services

- Comprehensive health assessment
- Reproductive health – pregnancy testing and family planning

Medical problems associated with risk and maltreatment history

- Sexually transmitted infections
- Nutritional status
- Other specific medical issues

Mental Health – trauma-informed treatment services with licensed and experienced providers

- Trauma history/assessment of risk
- Treatment services over time with providers who have training and supervision to address sexual abuse and commercial sexual exploitation of children

Shelters, Drop-in Centers and Housing Services for Trafficked Youth – specific to each community

Specialized Services for Pregnant and Parenting Youth - Teen mothers who have been involved in trafficking need healthy interactions, supportive relationships, and treatment of social, emotional, and interpersonal dysfunction to break the intergenerational cycle of abuse, and to protect and promote positive outcomes for their babies.

- Identification of teen parents and custody status of their infant or young child
- Physical health and periodic developmental assessments of young child with attention to medical problems associated with risk such as ...lack of immunizations, malnutrition, etc.
- Infant Mental Health assessment to include strengths and impact of the trauma on the mom/baby attachment and developing relationship
- Child Parent Psychotherapy or similar evidence-based program with trained clinicians to build parenting capacity over time
- Individualized service plan that may include:
 - Residential placements for mom and baby together with parenting support for maintaining custody and promoting attachment relationship
 - Teen Parent Programs (specialized school programs)
 - Home visiting programs
 - Early Head Start and quality child care placements
 - Part C – Early Steps referrals to assess development of the young child
 - Specialized services for court-involved young parents

Coordination of victim services

- Regular ongoing, multi-disciplinary meetings of stakeholders who are addressing the needs of trafficked youth and those that are parents in each community
- Victims services programs specific to each area

Resources:

- Center for the Advancement of Human Rights (CAHR), Florida State University 850-644-4550; www.cahr.fsu.edu.
- VIDA Legal Assistance – 786-525-9178.
- Florida Department of Children and Families, Office of Refugee Services, 850-488-3791.
- Human Trafficking and the State Courts Collaborative <http://www.htcourts.org/>.

- State Justice Institute, *A Guide to Human Trafficking for State Courts*, July 2014, http://www.htcourts.org/wp-content/uploads/00_EntireGuide_140726_v02.pdf.
- State Justice Institute, *Post-Conviction Relief for Human Trafficking Victims Convicted of Crimes Coerced by a Trafficker*, August, 2015 http://www.htcourts.org/wp-content/uploads/150904_PostConviction_Relief_forHTvictims_v05.pdf.
- Weller, Steven and Martin, John A., *A Guide for State Courts in Cases Involving Child Trafficking Victims Coerced into Criminal Behavior*, September, 2015. http://www.htcourts.org/wp-content/uploads/150923_HT_ChildVictims_Coerced_v05WEBversion.pdf.
- National Human Trafficking Resource Center (NHTRC) www.traffickingResourceCenter.org.
- Victims Services Directory <http://myfloridalegal.com/directory>