

# **Child Trafficking: Collateral Consequences of Delinquency Adjudications**

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## Learning Objectives

### Participants will be able to:

- **Identify the possible indicators of human trafficking**
- **Identify court case types that may involve juvenile human trafficking victims**
- **Anticipate how adjudication of delinquency for crimes coerced by a trafficker might affect the process, outcomes and range of available options in a juvenile case**

# Identifying the Human Trafficking Victim

## What is Human Trafficking?

- **Under Uniform Law Commission’s Uniform State Trafficking Law, a person commits the crime of human trafficking if the person intentionally, knowingly, or recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices a person for the purposes of forced labor or servitude or commercial sex through coercion, deception, or fraud.**
- **Note that human trafficking does not require movement of an individual from one place to another.**

## Examples of Coercion

- **Causing or threatening harm to the victim or the victim's family**
- **Use or threatened use of law to exert pressure on another person to perform services**
- **Demeaning or demoralizing the victim**
- **Disorienting and depriving the victim of alternatives (e.g. isolation, restricted communication, debts, monitoring)**
- **Diminishing resistance and debilitating the victim (e.g. by denial of food, water, or medical care or by use of drugs)**
- **Deceiving about consequences (e.g. overstating risks of leaving by feigning ties to authorities or hit men/gangs)**
- **Dominating, intimidating, and controlling (e.g. by abuse, an atmosphere of violence, display of weapons)**

## Juveniles as Trafficking Victims

- **Juveniles may be easy prey for human traffickers who deal in prostitution, and identifying juvenile trafficking victims can be difficult.**
- **Traffickers may force the victims into committing other crimes, such as selling drugs for the trafficker, stealing, or even assisting the trafficker in recruiting other victims, thus turning the trafficking victim into a trafficker as well. This makes it difficult to recognize juvenile criminal behavior that is the result of victimization rather than criminal intent.**
- **In addition, juveniles who commit status offenses, such as runaway or truancy, may be trafficking victims or at high risk of becoming trafficking victims.**

# Types of Cases Involving Juvenile Trafficking Victims

## Types of juvenile cases that may involve human trafficking

- **Prostitution is the primary form of human trafficking for juvenile girls.**
- **Trafficking victims may also appear in cases involving other illegal activities, such as selling drugs, theft, peddling, or recruiting other victims for their traffickers.**
- **Trafficking victims may be present in status offense cases such as runaways or truancy.**
- **Trafficking victims may appear in juvenile probation violation cases, such as running away from a placement,**
- **Trafficking of children by family members, for sex or labor, may arise in an abuse or neglect proceeding.**
- **A trafficker may try to get guardianship over a victim.**

# Indicators of Human Trafficking Victims

**Some possible indicators that a juvenile may be a human trafficking victim include:**

- **Homelessness**
- **Lack of education or not attending school**
- **Work in massage parlors, dance halls, or other similar establishments**
- **Unexplained bruises**
- **Unusual behavior, such as uncooperativeness, fear, or anger**
- **Dependency relationships with older adults**
- **Possession of unusually expensive items such as jewelry or expensive cell phones**

## **Indicators of Human Trafficking Victims, Cont.**

**Indicators of a disruptive home or school environment that might come from prior court contacts of the family or child:**

- **Absence of supervision at home;**
- **Parents who are or have been in prison;**
- **A history of involvement with child welfare;**
- **Multiple foster care placements or schools attended;**
- **A family history of domestic violence;**
- **Frequent runaway or truancy - three or more runaways in a 12 month period, or a runaway at age 12 or younger;**
- **A history of alcohol or drug abuse;**
- **Behavioral problems at school; and**
- **Behind in grade level.**

## Indicators of Human Trafficking Victims, Cont.

Behaviors that reveal a mindset of fear, distrust, denial, and conflicting loyalties, including:

- General feelings of helplessness, shame, guilt, self-blame, and humiliation;
- Shock and denial, phobias, panic attacks, anxiety, and depression;
- Sleep or eating disorders;
- Addiction to drugs and alcohol;
- Emotional detachment and “flat affect;” and
- Trauma bonding with the trafficker, believing that, despite repeated abuse, the trafficker is a loving boyfriend

## **Decision Points In the Dependency Process Where Trafficking Issues May Be Investigated**

- **Removal of child from a home: Evidence regarding the conditions in the home may provide an indication of trafficking.**
- **Child custody or placement decision: Evidence of the suitability of a parent for custody or the suitability of extended family members for placement of a dependent child may indicate the possibility of family trafficking.**

# **Decision Points in the Delinquency Process Where Trafficking Issues May Be Investigated**

- **Delinquency plea colloquy:** Trafficking issues may arise in assuring that a plea was knowingly and willingly entered.
- **Disposition and determination of mitigating factors for conviction and sentencing:** With victim-defendants, investigating mitigating factors may uncover that the defendant engaged in the criminal activity due to the coercion of a trafficker or the trauma of victimization.
- **Juvenile diversion decision:** Placing a juvenile into a diversion program may be based on trafficking-involved factors.
- **Juvenile detention decision:** Placing a juvenile into detention may be based on trafficking-involved factors, particularly if there is a need to separate the juvenile from a trafficker.
- **Determining sanctions for a probation violation:** The behavior may be an expected result of the trauma of victimization.

## **Decision Points In the Probate Court Process Where Trafficking Issues May Be Investigated**

- **Evidence of the suitability of a proposed guardian of a juvenile may indicate the possibility of trafficking.**
  - **Traffickers have been known to seek guardianship over minor victims, so in cases where an unrelated person is seeking guardianship over a minor, the relationship between the two may suggest the existence of trafficking.**
  - **An extended family member of a minor may be engaged in trafficking the minor and apply for guardianship.**
- **If the court denies a guardianship petition on the basis that the proposed guardian may be a trafficker, the evidence for the denial of the guardianship petition may also serve as evidence for SIJS findings.**

## **Decision Points In the Family Court Process Where Trafficking Issues May Be Investigated**

- **In child custody or placement decisions, evidence of the suitability of a parent for custody or the suitability of extended family members for placement of a dependent child may indicate the possibility of family trafficking.**
- **If a parent files for a restraining order against a family member or an unrelated person for alleged trafficking of his or her child, the evidence of possible trafficking might form the basis for the SIJS findings or for eligibility for a T or U visa.**

# Collateral Consequences of Delinquency Adjudications

## Juvenile Pleas And Advisement

- **A juvenile's judgment can affect competence to plead guilty. A juvenile may be more likely to focus on the short term benefits of pleading guilty, such as immediate release, rather than long term consequences or collateral consequences.**
- **A juvenile trafficking victim may plead guilty in order to return to the trafficker. For an immigrant juvenile, this may increase the control that the trafficker has over the victim.**

## Eligibility for Employment

**Some juvenile offenses can affect eligibility for certain types of employment and can also affect access to other privileges that may be a requirement for certain jobs, such as driving**

- **Employers may take into account any criminal or juvenile conviction that reasonably relates to the fitness of an individual for a particular job**
- **Delinquency adjudications for sex offenses are likely to bar juveniles from working with young children in schools, summer camps and swimming programs**
- **Delinquency adjudications for aggravated assault may bar juveniles from working with the elderly**
- **Some delinquency adjudications can affect the ability to work in different human service occupations**

## Eligibility for Employment, Cont.

- **Juvenile offenses may affect eligibility for entry into a state-licensed occupation**
- **Juvenile offenses may affect an individual's eligibility for employment either as a juvenile or later when applying for employment as an adult**

## **Eligibility for Employment: Good Moral Character MCL 338.41**

- **Sec. 1. (1) The phrase “good moral character”, or words of similar import, when used as a requirement for an occupational or professional license ... shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.**
- **Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.**
- **NOTE: In federal immigration law, acts committed as a juvenile can be considered by USCIS in determining a person’s good moral character. This may affect a person’s ability to naturalize or, in some circumstances, to attain lawful permanent resident status.**

## **Ability to Enter the Military**

**A delinquency adjudication may affect an application for military service**

- **A delinquency adjudication is considered a conviction for a criminal offense under Army regulations**
- **The Air Force, Navy and Marines examine delinquency adjudications on a case-by-case basis**

## **Eligibility for Other State or Federal Benefits**

**A juvenile delinquency conviction, or in some cases even an arrest for certain offenses, can affect the juvenile's eligibility for other state or federal benefits or privileges**

- **juvenile offenses, particularly offenses involving possession of drugs or alcohol, DUI, and other driving offenses, may result in the suspension of driving privileges**
- **Some serious juvenile offenses may prohibit an individual from obtaining a license to possess or use a firearm for a specified period of time**
- **Conviction or even arrest for certain offenses, particularly offenses involving a crime of violence or a weapon, may result in suspension or expulsion from school**
- **Certain delinquency adjudications can make the juvenile ineligible for public or subsidized housing**

## **Driving Privileges, MCLS 257.303**

**A person may not obtain a driver's license if the person has received juvenile dispositions or been determined responsible for:**

- **Two or more moving violations within the preceding 3 years**
- **Certain crimes involving the use of an automobile**
- **Manufacture, possession, or use of a controlled substance**
- **DUI**
- **Purchase, consumption, or possession of alcohol by a minor**

# Immigration Consequences of Juvenile Delinquency Pleas

## Immigration Consequences of Juvenile Pleas

- **There are some acts committed by juveniles that do not require a criminal conviction to put a juvenile at risk for immigration consequences, so admissions made in a delinquency case may affect the juvenile's immigration rights.**
- **A delinquency plea can affect deportability.**
- **A delinquency plea can affect eligibility for some forms of immigration relief.**
- **A delinquency plea can affect the ability of a juvenile to adjust to lawful permanent resident status or to naturalize as a U.S. citizen.**

# Juvenile Behavior That Can Carry Immigration Consequences Without a Criminal Conviction

The following behaviors or conditions do not require a criminal conviction to put a juvenile at risk for immigration consequences. All of these can be associated with being a trafficking victim.

- Being a habitual drunkard
- Being a drug addict or abuser
- Known or reasonably believed to have engaged in drug trafficking
- Engaging in prostitution or commercialized vice
- Violating a protection order
- Having a mental condition that is a threat to others

## Special Immigrant Juvenile Status (SIJS)

- **Special Immigrant Juvenile Status (SIJS) is a form of temporary immigration relief that provides an abused, neglected, or abandoned juvenile who meets certain requirements with some important immigration rights, including the right to work.**
- **A trafficked juvenile who is also an undocumented immigrant may be eligible to apply for SIJS under certain conditions specified by Federal immigration law.**
- **The juvenile must file an application with the United States Citizenship and Immigration Services (USCIS) for the grant of SIJS, and the granting of status is discretionary with USCIS.**
- **In order to remain permanently in the U.S., the juvenile must also file a separate application for adjustment to lawful permanent resident (LPR) status.**

# Eligibility for T Visas for Human Trafficking Victims

- The T visa is a non-immigrant visa available for individuals who have been the victims of human trafficking and meet the following requirements:
  - The person is the victim of a severe form of trafficking. Federal immigration law classifies any sex trafficking of a person under age 18 as severe trafficking.
  - If the person is 18 or older, the person is complying with a reasonable request to assist in the investigation or prosecution of the traffickers.
- The maximum length of stay under the T visa status is four years, unless extended. The holder of a T visa is eligible to apply for lawful permanent resident status after three years.
- The person must show good moral character.

## Severe Form of Trafficking

The term “severe form of trafficking in persons” means:

- The recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act in which the 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
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

## Definition of Coercion and Fraud

**Coercion is defined in 22 U.S.C. § 7102 (2) as:**

- **Threats of serious harm or physical restraint against a person;**
- **Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or**
- **The abuse or threatened abuse of the legal process.**

**Fraud is the intentional and knowing concealment or false representation of fact by words or conduct to induce another to act to his or her legal detriment.**

## Process for Obtaining a T Visa

- **The T visa requires application to the United States Citizenship and Immigration Services (USCIS).**
- **There is no specific requirement in federal immigration law that the applicant for a T visa obtain a law enforcement certification that the person is a victim of human trafficking, but such a certification could be helpful. A child protective worker might be a source of evidence for law enforcement that the applicant is a victim of human trafficking.**
- **The T Visa holder is eligible to apply to lawful permanent resident status after 3 years of continuous residence if the holder is admissible and of good moral character.**

## Eligibility for U Visas

- **U visas are non-immigrant visas with a duration of up to four years for a non-citizen who:**
  - **has suffered severe physical or mental abuse as a result of being a victim of certain specified criminal activity;**
  - **has been, is being, or is likely to be of help to a federal, state, or local investigation of the criminal activity causing the abuse; and**
  - **has certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity**
- **After three years in U visa status, person may be able to adjust status to lawful permanent residence**

## **U Visa Required Certification**

- **The applicant must have certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity that he or she has been, is being, or is likely to be of help to a federal, state, or local investigation of the criminal activity causing the abuse.**
- **A Child Protective Services worker can make the certification if the judge has knowledge that the applicant meets the above requirements.**
- **If a parent files for a restraining order against a family member or an unrelated person for alleged trafficking of his or her child, the evidence of trafficking might form the basis for eligibility for a U visa.**

## Requirement of Willingness To Assist in the Prosecution of the Perpetrator

- There is no exemption for persons under the age of 18 from the requirement of willingness to assist in the prosecution of the perpetrator, as there is for the T visa.
- This may be a burden that many juvenile human trafficking victims cannot or will be unwilling to meet, either out of fear of the trafficker or loyalty to the trafficker.

# **Delinquency Adjudications Affecting Admissibility and Good Moral Character**

- **The be eligible for lawful permanent residency pursuant to a U visa or T visa, the applicant must meet the requirements of admissibility to the U.S. under federal immigration law. A variety of crimes can affect admissibility.**
- **USCIS can waive most of the requirements of admissibility, and in particular requirements based on criminal convictions caused by or related to victimization as a result of trafficking.**
- **With regard to juvenile behavior that can affect admissibility, USCIS is particularly concerned about crimes related to a controlled substance, gang activity, and violent offenses.**
- **To be eligible to naturalize, an applicant must show good moral character. In assessing good moral character, USCIS can consider behavior over the lifetime of the applicant, including acts committed as a juvenile.**

## **Delinquency Adjudications Affecting Admissibility and Good Moral Character, Cont.**

- **There may be no secure housing available for a juvenile victim of sex trafficking unless the juvenile is convicted of prostitution and sentenced to a juvenile detention facility. The conviction, which is aimed at protecting the juvenile, may end up making an immigrant juvenile ineligible for discretionary immigration relief or benefits requiring admissibility or a showing of good moral character, such as the T visa.**
- **Some states have options for certain juveniles charged with prostitution to be classified as sexually exploited juveniles and sent to diversion programs. One state makes it an affirmative defense to a charge of prostitution that the defendant was either a victim of human trafficking or under the age of 18 at the time of commission of the act.**

## **Delinquency Adjudications Affecting Admissibility and Good Moral Character, Cont.**

- **If a trafficked juvenile also engages in other illegal activities for a trafficker, such as selling drugs or recruiting other juveniles, that additional criminal behavior, if admitted to in a delinquency hearing, could also affect an immigrant trafficking victim's immigration rights.**

## Access to Juvenile Court Records

- In most states juvenile court records of individuals who have not yet attained the age of 18 are not public records, although some states make juvenile court records open to the public except in very limited circumstances
- The rules of public access to juvenile court records may depend on the crime committed, other criminal convictions of the juvenile, the age of the offender at the time that access to the juvenile court records is being sought, or the person or agency requesting the records
- Prospective employers may request a job applicant to provide records pertaining to juvenile offenses as a precondition to an offer of employment

## Sealing Juvenile Court Records

- **Sealing a record will make it non-public, but the record is not destroyed**
- **A sealed record may still be available to a court, a justice system agency, a law enforcement agency, a prosecutor, the attorney general, or the governor for certain specified purposes, including consideration for licensing and consideration for employment in a law enforcement agency**
- **Sealed records of delinquency adjudications may be available to school officials**

## Michigan Juvenile Records

- **712A.28 Case records. (2) Beginning June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. Except as otherwise provided in this subsection, records of a case brought before the court shall be open to the general public.**
- **If an arrest results in a juvenile adjudication, unless the adjudication is expunged the juvenile's criminal record will contain information about the arrest, the charges that were brought, and the charges adjudicated.**

# Options for Legal Relief From Criminal Liability for Juveniles Who Commit Crimes Coerced by a Trafficker

# Classifying Juvenile Trafficking Victims as Children in Need of Services

- **Some states provide options for classifying cases involving children who engaged in prostitution as a result of trafficking as a dependency cases rather than a delinquency cases. The difference could be critical to the juvenile victim by avoiding the collateral consequences of a conviction.**

## Michigan MCLS 750.451(6)

- In any prosecution of a person under 18 years of age for [certain prostitution offenses], it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity ... by another person engaged in human trafficking in violation.
- The state may petition the court to find the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm ... .

## Michigan Juvenile Diversion

- **MCLS 722.821 – Applies to juveniles under the age of 17.**
- **MCLS 722.823 – (1) If in the course of investigating an alleged offense by a minor a petition has not been filed with the court, or if a petition has not been authorized, a law enforcement official or court intake worker may do 1 of the following: (a) Release the minor into the custody of his or her parent, guardian, or custodian and discontinue the investigation. (b) Divert the matter ... to a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.**
- **MCLS 722.828 - A minor's record kept under this act shall be destroyed within 28 days after the minor becomes 17 years of age.**
- **Note that these sections are not limited to trafficking victims.**

## Coercion as Negating Criminal Intent

- **The prosecution has the burden of proving beyond a reasonable doubt every element of the crime charged. If the coercion is such that it negates the requisite criminal intent for a crime, once the issue of coercion has been raised, the burden of disproving coercion is placed on the prosecution. This is the case even if state law labels the defense an “affirmative defense.” The only burden placed on the defendant is the burden of producing some evidence in order to create a factual issue as to the lack of criminal intent due to coercion. Once this is done, the state then has the burden of proving beyond a reasonable doubt the absence of coercion.**

## Expunging a Juvenile Record

- **Once a former juvenile offender attains the age of 18, it may be possible for the person to have the juvenile court record expunged. The rules vary from state to state as to which types of offenses can be expunged or vacated and who may be eligible or ineligible.**
- **Some juvenile crimes may be ineligible for expungement. Some of these crimes may have been committed as a result of trafficking victimization.**
- **Some states will not consider a motion to expunge or vacate a conviction if there are any criminal charges pending against the applicant in any court.**

## Michigan Expungement for Trafficking Victims

- **MCLS 712A18e** - a person who has been adjudicated of not more than 1 juvenile offense that would be a felony if committed by an adult and not more than 3 juvenile offenses, of which not more than 1 may be a juvenile offense that would be a felony if committed by an adult and who has no felony convictions may file an application with the adjudicating court or adjudicating courts for the entry of an order setting aside the adjudications. Assaultive crimes are excluded.
- **MCLS 780.621 [relating to adult convictions]** - A person who is convicted of [certain prostitution offenses] may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.