

# **Seeking Justice for Victims of Human Trafficking in Kentucky**

**A Practical Guide for Attorneys and Judges**

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May 2016



*This Guide was made possible through a grant from the Kentucky Bar Foundation.*



## Acknowledgements

The authors are very grateful for the support of the attorneys, social service providers, civil servants, and others who provided us with help and guidance on this publication and who are working diligently to improve the quality of life for so many in the Commonwealth of Kentucky. We would like to offer a special thanks to Laela Kashan, KASAP Staff Attorney, for her invaluable assistance in editing and reviewing this Guide.

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## Foreward

by the **Chief Justice of the Supreme Court of Kentucky**

I am pleased to introduce a new resource for attorneys and judges who work with victims of human trafficking in Kentucky. The Kentucky Association of Sexual Assault Programs has produced *Seeking Justice for Victims of Human Trafficking: A Practical Guide for Attorneys and Judges*. This impressive guide provides a detailed overview of human trafficking for our legal community.

The timing is important as human trafficking escalates in Kentucky and across the nation. Kentucky stepped up its anti-trafficking efforts in 2013 when the state legislature passed the Human Trafficking Victims Rights Act with bipartisan support. The state's legal community has an important role to play as the Commonwealth improves how it identifies and assists victims of human trafficking.

I applaud the Kentucky Association of Sexual Assault Programs for providing this important resource.

***John D. Minton Jr.***  
*Chief Justice of Kentucky*

## SECTION 1: PURPOSE OF THIS GUIDE

Human Trafficking, or Trafficking in Persons, has received increasing attention in Kentucky over the past decade with good reason: human trafficking is one of the fastest growing criminal enterprises in the world.<sup>1</sup> Kentucky's centralized location and cross-country interstates of I-64, I-65, and I-75 make it an attractive hub for trafficking and related activities.

Kentucky has had anti-trafficking laws on its books since 2007 but the Commonwealth bolstered its efforts to fight trafficking and address some of the damaging effects on its citizens in 2013 when the state legislature passed the Human Trafficking Victims Rights Act (HTVRA) with bipartisan support.<sup>2</sup> The HTVRA added several valuable tools to an existing cache of national and state laws meant to punish offenders and offer victims some amelioration of the pain they suffered at the hands of their traffickers. Kentucky became a national leader in highlighting and promoting victim-centered laws when it passed the HTRVA. At its heart are the Act's important "safe harbor" provisions, aimed at protecting child victims from criminalization and mandating services to aid in their physical, emotional, and psychological recovery.

Many in Kentucky's legal community have had some recent human trafficking-related training, however, law practitioners across the state may be uncertain about how they can provide direct or indirect counsel to victims and at-risk individuals within their own areas of practice. There are many good resources available in print and online, however this Guide strives to give Kentucky's attorneys and judges a set of guiding principles in tandem with the practical advice needed to foster effective local victim-centered responses that ultimately will impact anti-trafficking efforts across the Commonwealth.

### Guiding Principles and Considerations

Victims of human trafficking require skilled and competent legal support to receive the protections and remedies under the law to help them restore their lives. The representation of trafficking victims is not easy, but lack of adequate legal services can leave victims subject to revictimization when traffickers abuse the legal process or victims face criminal charges.<sup>3</sup>

The attorneys and judges who work or plan to work with victims are encouraged to read this Guide under the penumbra of the following guiding principles with the aim of: 1) providing victims with effective representation and 2) facilitating an increased understanding of clients' needs.<sup>4</sup> Attorneys ideally should:

- Possess a solid knowledge base about human trafficking and related laws and regulations at the local, state and federal level;
- Understand the effects of trauma on client communication, behavior, decision-making and development of rapport and trust;
- Communicate with clients in a culturally sensitive manner based on each client's personal history, socio-economic background, national origin, and sexual orientation;
- Pursue safety planning in the interest of the client, attorney, and attorney's staff;
- Empower victims to make their own informed choices by taking a victim and client-centered approach to representation;
- Learn about what resources exist locally, regionally, and nationally to better identify and assist clients;
- Espouse "holistic representation"<sup>5</sup> by aligning with related non-legal professionals to support victims' other needs (victim advocacy, food, housing, education, immigration relief, criminal matters, physical and mental health, and child custody).

By embracing these principles, attorneys and judges are well positioned to help victims of human trafficking in Kentucky restore their lives, dignity, and security.

### *Disclaimer*

*This Guide represents the opinions and conclusions of its authors. The content in this Guide is for general informational purposes only and does not represent or communicate legal advice. Use of this Guide does not create an attorney-client relationship. The Guide does not represent any undertaking to keep readers or users advised of legal developments. Readers or users should not take or refrain from taking action based on its content. The authors make no representations or warranty concerning the accuracy or validity of the contents and disclaim any ongoing responsibility for updating the contents. Links to given websites were current as of the time of publication.*

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<sup>1</sup>“Human Sex Trafficking,” Federal Bureau of Investigation Law Enforcement Bulletin, March 2011, Vol. 80, No.3.

<sup>2</sup>Known as House Bill 3, HTVRA was signed into law in March 2013. The 2007 legislation defined human trafficking (KRS 529.010), the crimes of trafficking and promotion of human trafficking (KRS 529.100 and 529.110), the right of victims not to be detained (KRS 431.063), and the right to have confidential communications with a victim counselor (KRS 422.295).

<sup>3</sup>Freedom Network Policy Paper “Comprehensive Legal Services for Trafficked Persons.” April 2015, accessed at <http://freedomnetworkusa.org/wp-content/uploads/2012/05/FINAL-April-2015-Comprehensive-Legal-Services-for-Trafficked-Persons.pdf>.

<sup>4</sup>This list was derived from and inspired by the ABA’s Commission on Domestic Violence Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases (2007), accessed at [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards\\_of\\_Practice\\_for\\_Lawyers\\_Representing\\_Victims\\_of\\_DV\\_SA\\_Stalking\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victims_of_DV_SA_Stalking_authcheckdam.pdf). Many of the “aspirational” guidelines listed in the ABA’s Domestic Violence, Sexual Assault and Stalking SOP would be appropriate for use and consideration by attorneys working with victims of human trafficking given the overlap among these areas.

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



### Key Ideas in this Chapter:

- ◇ Men, women, and children are trafficked in a variety of circumstances and industries, but often are from vulnerable groups.
- ◇ People are trafficked through the use of fraud, force or coercion (with the exception of child victims of sex trafficking).
- ◇ Recognizing the signs and dispelling the myths surrounding human trafficking are critical to identifying victims and at-risk youth and adults.

## SECTION 2: DEFINING HUMAN TRAFFICKING AND ITS SCOPE

### What is Human Trafficking?

- A foster child in a small community is forced by her foster mother to engage in sex acts with an adult man in exchange for furniture and other items of monetary value.
- Two children are dressed up in provocative clothing and paraded in front of a movie theater by their parents, who arrange for adult men to pay them in return for sex with their children.
- A farmworker is forced into labor on a farm in rural Kentucky and monitored at all times. When she escapes and runs almost 10 miles to safety, she is rescued by a fire department and connected to services and safety.
- Restaurant workers labor under extreme conditions, working long hours without a day off, until they are rescued by law enforcement and the traffickers are charged criminally.

**These cases did not take place in Miami, New York or Texas; they were the bases of criminal prosecutions right here in Kentucky.**

At its core, human trafficking is the exploitation of another individual for labor and/or commercial sex through the use of fraud, force, or coercion. Trafficking takes away a person's choices and freedoms; human trafficking is modern day slavery.

### What is Sex Trafficking?

Sex trafficking occurs when someone is induced to engage in commercial sex through fraud, force or coercion. It can take place in massage parlors, online escort services, residential brothels, on city streets and in truck stops, strip clubs, hotels and motels, and in private homes and over the Internet.<sup>1</sup>

Sex trafficking is not synonymous with prostitution. It requires that the individual who engaged in the commercial sex act did so under fraud, force, or coercion unless the individual was under age 18 at the time of those acts. Children and adult victims are often lured in with promises of romantic love or a high paying job only to find that these promises are false. Traffickers then use a variety of tactics to keep control over the victims, including physical and sexual assault, threats of violence, debt bondage, isolation from family and friends, and the withholding of money or identification.<sup>2</sup>

Victims of sex trafficking in the United States typically are U.S.-born minors or foreign-born adults.<sup>3</sup> Child victims of trafficking are frequently recruited by a "boyfriend"/pimp but can also be exploited by another trafficking victim, a family member, or a trusted adult. Runaway and homeless youth are often victimized as well. In 2014, the National Center for Missing and Exploited Children estimated that 1 in 6 endangered runaways reported to them was likely sex trafficked.<sup>4</sup> One may see sex trafficked youth

referred to as “CSECs” (commercially sexually exploited children) and child sex trafficking in the U.S. referred to as “DMST” (domestic minor sex trafficking).

Foreign-born adults often lack legal immigration status. They often work in brothels that cater to migrant male customers, are moved frequently, and are forced to work to pay off debt they incurred to come to the U.S.<sup>5</sup> They also are unlikely to know about immigration protections available to them so they may continue to engage in commercial sex acts out of dependence on the trafficker, fear of detention or lack of other economic prospects.<sup>6</sup>

### What is Labor Trafficking?

Labor trafficking is labor or services compelled by means of force, fraud or coercion. Labor trafficking goes beyond labor law violations like wage and hour theft or illegal deductions (although those violations may co-exist with labor trafficking) and describes a situation in which workers are threatened with harm to themselves or their families, kept on the work premises without the ability to come and go freely, subject to physical and/or sexual abuse, threatened with retaliation, or forced to work against their will.<sup>7</sup>

Victims of labor trafficking exist across a wide swath of industries and sectors, including health care, agriculture and farming, restaurants, factories, cleaning and janitorial work, domestic work, bars/clubs, hospitality, and construction. Door-to-door sales crews or organized begging networks may also be labor trafficking venues.

Foreign-born victims may enter the U.S under a lawful visa program for guest workers but can find themselves at the mercy of traffickers if they try to leave their job and therefore, lose their lawful presence in the country. Workers may pay or sign a document owing recruiters thousands of dollars with the false promise of a good paying job only to find the job promised to them doesn’t exist, forcing them into low-skill work with little chance of paying off their debt. In one recent study of 122 victims of labor trafficking, 71% of victims came to the United States lawfully on guest worker visas.<sup>8</sup> Almost half paid recruitment fees averaging over \$6,000 only to find the job, working conditions, immigration benefits, or pay was misrepresented to them.<sup>9</sup> 823 victims of labor trafficking or exploitation cases reported to the National Human Trafficking Resource Center (NHTRC) hotline and Polaris Project’s Be-Free texting helpline between August 1, 2014 and July 31, 2015 held a temporary visa.<sup>10</sup>

### What Force, Fraud, or Coercion Means...

Force can involve the use of physical restraint or serious physical harm, including rape, beatings, and confinement. It is often employed as a means to control victims, especially during the early stages of victimization. Fraud involves false promises regarding employment, wages, working conditions, or other matters.<sup>11</sup>

Coercion is defined under federal law in 18 U.S.C. Chapter 77 – Peonage, Slavery, and Trafficking in Persons. Coercion is threats of serious harm to any 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.<sup>12</sup> The “serious harm” element of coercion is defined as psychological, financial, or reputational harm that is sufficiently serious, under the surrounding circumstances, to compel a reasonable person of the same background and same circumstances to perform or to continue performing the labor and/or sexual activities to avoid incurring the harm.<sup>13</sup>

Over the past few years, federal prosecutors have made arguments using a broader reading of coercion that has led to successful prosecutions in both labor and sex trafficking cases.<sup>14</sup> In a labor trafficking case brought in Colorado, prosecutors argued that nurses lured from overseas and then trafficked into working in a Colorado nursing home suffered serious harm when the defendant threatened them with cancellation of their work visas if they stopped working.<sup>15</sup> Prosecutors also argued that the victims' shame at not being able to repay family members the money borrowed for the recruiting fees paid to the defendant constituted a serious harm in this particular case.<sup>16</sup> In a sex trafficking case in Florida, prosecutors asserted that the defendant supplied the vulnerable victims with addictive painkillers and coerced them into engaging in commercial sex acts.<sup>17</sup> In this case, prosecutors argued that the serious harm was the victims' fear of withdrawal symptoms when he told them he would cut off their drug supply. They also pointed to his threats to call their probation officers and report their drug use if they refused to participate in commercial sex acts for him.<sup>18</sup>

Under Kentucky law, coercion is defined in KRS 529.010 by reference to the kidnapping statute in KRS 509.010. Read together, "Force, fraud, or coercion" can only be accomplished by physical force, intimidation, or deception, or *by any means* [emphasis added], including acquiescence of a victim, if he is under the age of sixteen (16) years, or is substantially incapable of appraising or controlling his own behavior. Although the state definition does not mirror exactly the federal language, it provides enough latitude to encompass the forms of coercion commonly found in human trafficking cases, including forced drug taking and other methods.

## Scope of Human Trafficking

Human trafficking is a problem all over the world. The International Labour Organization (ILO) estimates that 21 million people around the world are trafficked.<sup>19</sup> The ILO estimates of those who are trafficked, 78 percent are labor trafficked and 22 percent are sex trafficked.<sup>20</sup> Fifty-five percent of all trafficked persons are female, and women and girls comprise the great majority of victims of sex trafficking.<sup>21</sup> Fifty-eight percent of victims of labor trafficking are men, 42 percent are women.

The most recent Trafficking in Persons (TIP) report by the U.S. Department of State gives a picture of what trafficking looks like in the U.S.:

- Federally identified victims consist of U.S. citizens and foreign nationals and include men, women, and children, including those identifying as transgender.<sup>22</sup>
- Trafficking in the U.S. arises in a variety of industries, including manufacturing, agriculture, construction, sales, restaurants, salons, fairs/carnivals, domestic service, health care, and commercial sex.<sup>23</sup>
- While victims originate from all over the world, the top three countries of origin of federally identified victims in FY 2014 were the United States, Mexico, and the Philippines.<sup>24</sup>

These data underscore the fact that human trafficking is a crime that festers in both legal and underground industries, affecting not only foreign nationals, but U.S.-born victims as well. Note that currently there are no reliable estimates for the total number of trafficked persons in the United States nor is there federal data collection on state and local prosecutions for human trafficking offenses.<sup>25</sup>

While it is also difficult to ascertain the exact scope of human trafficking in Kentucky, a few service providers and agencies have started to keep statistics on reports made to them about labor and sex trafficking. Rescue and Restore KY, a Catholic Charities of Louisville program with funding from the U.S. Department of Health and Human Services, reports that as of June 2015, 332 victims of human trafficking have been identified in Kentucky since 2008.<sup>26</sup> Of those identified victims, 78 percent were victims of sex trafficking and 16 percent were victims of labor trafficking.<sup>27</sup> Children made up at least

60 percent of victims reported.<sup>28</sup> The Department of Community Based Services is required under the Human Trafficking Victims Rights Act to make a report to the Legislative Research Commission each year including the number and age of children reported as victims of labor and sex trafficking. These reports show a steady increase in the number of child victims reported, with 40 reports in 2013, 57 reports in 2014 and 96 reports in 2015. (Reports may be accessed online at <http://chfs.ky.gov/dcbs/dpp/childsafety.htm>.) Despite an increase in reporting, only about 1 in ten of the cases resulted in criminal investigations. Kentucky State Police reports that human trafficking charges, including cases involving both adults and minors, were numbered to be 11 in 2013, 8 in 2014 and 25 in 2015.<sup>29</sup>

## Recognizing the Signs of Human Trafficking

While anyone can be a victim of human trafficking, studies indicate there are groups that face a greater vulnerability to being victimized. Individuals vulnerable to human trafficking in the U.S. and of particular interest to law practitioners in Kentucky include:

- children in the child welfare and juvenile justice systems
- runaway and homeless youth (RHY)
- migrant workers
- rural populations
- individuals identifying as LGBTQ
- people with disabilities
- children working in agriculture
- employees of businesses in ethnic communities
- people with limited English proficiency, and
- foreign nationals working in domestic households.<sup>30</sup>

Victims of human trafficking may not always be obvious, however, there are some red flags that should alert an attorney that clients or potential clients should be screened for possible trafficking. Some of these indicators are:

- not free to come and go as they wish
- poor physical health, including malnutrition, poor dentition, or signs of physical and/or sexual abuse
- high security measures in their work and/or living location (cameras, barbed wire, boarded up windows, etc.)
- under 18 and involved with commercial sex
- owe a large debt they cannot pay off
- have few personal possessions
- do not have control or possession of personal documents like passport or other ID
- do not have control of own bank accounts or money
- do not know what city or state they are in; disoriented to time and location
- tattoos or brands with the name or nickname of a boyfriend, gang symbol or other identifying mark
- not permitted to speak for themselves (third party insists on being present or answering questions)<sup>31</sup>

This list is not exhaustive and may, in fact, be indicative of other types of trauma. Attorneys should be sensitive to these indicators during intake or counseling to recognize whether clients require additional screening and support for trafficking in addition to legal counsel.

### *A note about human traffickers...*

*Like most criminals, traffickers come from all walks of life, and are male and female, U.S. and foreign born. Traffickers can be strangers, but often are family members, friends, paramours, acquaintances, or business contacts. While they all look different, the commonality among these perpetrators lies in their opportunity, means, and desire to exploit others for commercial gain, no matter what the cost. Traffickers may use fraud, manipulation, isolation, threats, and even drug/alcohol addiction to keep victims working. As described above, because victims are often members of marginalized groups and traffickers may present like typical business people, experts often describe human trafficking as occurring “in plain sight” on farms, in nail salons and massage parlors, and in restaurant kitchens and on construction sites.<sup>32</sup>*

#### **Practice Tips:**

- ◇ See Appendix B at the end of this Guide for a list of interview techniques and considerations that can help you navigate an interview with someone who may be or who is a trafficking victim. Never ask someone directly if they are a victim, but begin “at the edges.” It is rare for a victim to self-identify as a victim of trafficking, and rare that you will identify a trafficking case at the beginning. Usually it will take several interviews to uncover the pattern of force, fraud and coercion and for the victim to feel safe and able to trust you with his/her whole story.
- ◇ Attorneys interviewing clients should be aware that a family member or community member who accompanies clients could be complicit in trafficking activity, making the client fearful to share information. Where possible, attorneys should attempt to observe the dynamic between clients and their companions to determine what the relationship might be and whether speaking with the client under different conditions (i.e., alone) might be more beneficial.
- ◇ If the client has difficulty reading, speaking, writing or understanding English, and is thus considered “limited English proficient” (“LEP”) under Title VI of the Civil Rights Act of 1964, the attorney should use a competent interpreter in all interactions. A friend, fellow victim, or family member should not be used to interpret as this may violate both federal law and client confidentiality and may adversely impact the accuracy of the client’s statements.
- ◇ Consider the location of the interview. If possible, avoid interviewing the client at the site of the trafficking or in an area that may cause anxiety for the client, including a police station.

## Human Trafficking Myths and Misconceptions

Despite ongoing education in the public sphere, many misconceptions about human trafficking continue to undermine efforts to identify and assist victims and at risk individuals.<sup>33</sup>

- *Myth: Trafficking only occurs in big cities or border states (and not in Kentucky).*  
**FACT:** Both labor and sex trafficking occur where there are vulnerable victims and where there is a market for commercial sex and cheap labor or goods. Both are present across Kentucky, in both urban and rural areas.
- *Myth: Trafficked persons are only foreign nationals.*  
**FACT:** While trafficking can affect foreign nationals legally or illegally present in the U.S., U.S. citizens make up a large number of identified victims.<sup>34</sup>
- *Myth: Only females are trafficked.*  
**FACT:** Men and boys are trafficked, both in the labor context (see ILO report on global labor trafficking) and commercial sex context. A 2008 study from New York estimated that boys made up nearly half of commercially exploited children in the U.S.<sup>35</sup>
- *Myth: Trafficking is the same as smuggling.*  
**FACT:** Smuggling is a crime against a country's border in which a person illegally crosses a border. In contrast, human trafficking is a crime against a person. It does not require any movement or transportation of the person. Trafficking often occurs in a person's country of origin.
- *Myth: Victims will quickly self-identify and ask for help.*  
**FACT:** People are surprised to find that victims won't just gratefully run into the arms of law enforcement when recovered. Many traffickers coach or threaten victims to avoid self-identifying to law enforcement, social services, or other health and welfare professionals. In addition, many victims find it difficult to identify themselves as being trafficked due to lack of trust, shame, fear, or continued trauma-bonding with their trafficker. It can sometimes take months or years for trafficked persons to reveal the harm that has been done to them.
- *Myth: Human trafficking requires physical restraint and abuse.*  
**FACT:** The federal definition of severe trafficking in persons under the TVPA does not require physical harm or abuse. People can be restrained with psychological means, including threats to their safety or their family's safety, abuse of the legal process, and fraud.<sup>36</sup>
- *Myth: Receipt of payment for sex acts or labor negates the crime of trafficking.*  
**FACT:** Payment is not relevant to whether there has been human trafficking, so long as those acts were committed under fraud, force, or coercion (if the victim is under age 18, fraud, force or coercion is not required).

## The Effects of Trauma on Victims of Human Trafficking

Many victims of trafficking experience the "persistent and devastating" effects of trauma as a result of their victimization.<sup>37</sup> They may have been exposed to ongoing physical and sexual violence or threats of violence, captivity, and brainwashing at the hands of their traffickers. Victims may suffer from major depression, PTSD, anxiety, panic disorders, suicidal thoughts (ideation), eating disorders, and substance abuse.<sup>38</sup> Trafficked persons often experience a variety of somatic complaints like headaches, stomachaches, and other ailments that make attending school, participating in investigations, or holding down a job difficult.

Victims often have difficulty developing trusting relationships with others, as they may have suffered repeated betrayals of trust over the years by their trafficker, their family, and the "system." This mistrust is why victims do not immediately embrace and confide in law enforcement and service

providers, making it difficult for victims to seek and accept the assistance and services they need to make an effective recovery.<sup>39</sup> They may seem recalcitrant, uncooperative, and ungrateful, but in truth, they likely are fearful, ashamed, tired, and traumatized by what has happened to them.

Legal professionals who actively partner with knowledgeable trafficking victim advocates and incorporate trauma-informed techniques into their practice may find it easier to collaborate effectively with their clients to achieve their goals.<sup>40</sup> Acknowledging what has happened to the victim, using that knowledge to tailor how, when, and where interactions or communication occur, and learning what can be expected from that individual victim based on where they are in the healing process can create a more productive and fulfilling attorney-client relationship. Appendix E of this Guide provides judges with information on how to work in a trauma-informed manner with children coming before them in court.

#### Practice Tips:

- ◇ Consider the impact of trauma on your client's ability to recall the trafficking situation as well as the trauma that may occur during the retelling of the story and any court appearances.
- ◇ Resources such as the chart developed by Project REACH (Trauma Center, Justice Resource Institute) may help you understand the possible effects of human trafficking related trauma on clients, how those effects might manifest in client disposition and behavior, and how you can mitigate those challenges. "Utilizing Trauma-Informed Approaches to Trafficking-related Work" can be found at [http://www.traumacenter.org/clients/projectreach/H-O%20Trauma-Informed%20Case%20Study\\_final.pdf](http://www.traumacenter.org/clients/projectreach/H-O%20Trauma-Informed%20Case%20Study_final.pdf)

<sup>1</sup>National Human Trafficking Resource Center, <https://traffickingresourcecenter.org/type-trafficking/sex-trafficking>.

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

<sup>3</sup>Kelly Hyland & Kavitha Sreeharsha, *Freedom For All: An Attorney's Guide to Fighting Human Trafficking* (Herein "Freedom For All"), 43 (2014).

<sup>4</sup>*Supra*, note 1.

<sup>5</sup>Terry Coonan, *Human Trafficking: What Kentucky Judges Need to Know*, Powerpoint presentation made on Nov. 5, 2013. Slides found at [www.htcourts.org](http://www.htcourts.org).

<sup>6</sup>*Freedom For All*, *supra* note 3, at 43.

<sup>7</sup>Colleen Owens, Meredith Dank, et. al, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, Urban Institute (Oct. 21, 2014).

<sup>8</sup>*Id.* The victims in the study came to work in the U.S. in the hospitality, domestic service, construction, restaurant, and agricultural industries.

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

<sup>10</sup>Polaris Project, "Temporary Visas" accessed at [www.polarisproject.org/initiatives/temporary-visas](http://www.polarisproject.org/initiatives/temporary-visas).

<sup>11</sup>Lynne Johnson, *Litigation Guide: Illinois' Justice for Victims of Sex Trafficking Crimes Act* (2013), found at [enddemandillinois.org](http://enddemandillinois.org).

<sup>12</sup>See 18 U.S.C. §1589 and 18 U.S.C. §1591.

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

<sup>14</sup>Powerpoint Presentation by Amanda Gregory, U.S. Attorney for Western District of Kentucky, U.S. Department of Justice, made at the State Human Trafficking Task Force (Frankfort) in April 2015.

<sup>15</sup>U.S. v. Kalu, D.C. No 1:12-CR-00106-MSK-1 (Colorado 2013). Appeal to the 10th Circuit affirmed the district court decision.

<sup>16</sup>*Id.*

<sup>17</sup>U.S. v Fields, 2013 U.S. Dist. LEXIS 135763 (2013).

<sup>18</sup>*Id.*

<sup>19</sup>International Labour Organization (2012), found at ilo.org.

<sup>20</sup>Freedom For All, *supra* note 3, at 18.

<sup>21</sup>International Labour Organization (2012), at ilo.org.

<sup>22</sup>U.S. Dep't. of State, Trafficking in Persons Report (2015), available at <http://www.state.gov/j/tip/rls/tiprpt/> (hereafter "TIP 2015").

<sup>23</sup>*Id.*

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

<sup>25</sup>Freedom for All, *supra* note 3, at 12-13.

<sup>26</sup>Rescue and Restore Project of Kentucky, Human Trafficking Fact Sheet (June 2015).

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

<sup>28</sup>*Id.* Age information was not collected or recorded in 8% of cases so the number of child victims could be higher.

<sup>29</sup>Email dated 4/13 from Samantha G. Lickliter, Program Coordinator, Kentucky State Police Criminal ID & Records Branch. Contact info: 502-782-9921, [samantha.lickliter@ky.gov](mailto:samantha.lickliter@ky.gov).

<sup>30</sup>U.S. Department of State Trafficking in Persons Report 2015 (herein "TIP 2015").

<sup>31</sup>Polaris Project.org, "Recognize the Signs" found at [www.polarisproject.org/recognize-signs](http://www.polarisproject.org/recognize-signs).

<sup>32</sup>Owens et al., *supra* note 6.

<sup>33</sup>For other common myths and misconceptions, please see [www.traffickingresourcecenter.org](http://www.traffickingresourcecenter.org).

<sup>34</sup>TIP 2015, *supra* note 29.

<sup>35</sup>R. Curtis, Karen Terry, et al., Commercial Sexual Exploitation of Children in New York City, Volume One: The CSEC Population in New York City: Size, Characteristics and Needs (December 2008). <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>.

<sup>36</sup>[traffickingresourcecenter.org](http://traffickingresourcecenter.org). See also ABA's Voices for Victims: Lawyers Against Human Trafficking Tool Kit for Bar Associations, found at [https://www.americanbar.org/content/dam/aba/multimedia/trafficking\\_task\\_force/resources/TFHT\\_Toolkit/HumanTrafficking\\_Bar.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/multimedia/trafficking_task_force/resources/TFHT_Toolkit/HumanTrafficking_Bar.authcheckdam.pdf).

<sup>37</sup>Heather Clawson, Amy Salomon, and Lisa Goldblatt-Grace, Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking (March 15, 2008), accessed at <https://aspe.hhs.gov/basic-report/treating-hidden-wounds-trauma-treatment-and-mental-health-recovery-victims-human-trafficking>.

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

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

<sup>40</sup>The principles of the trauma-informed approach can be found on the website of federal Substance Abuse and Mental Health Services (SAMHA) division at <http://www.samhsa.gov/nctic/trauma-interventions>.



### Key Ideas in this Chapter:

- ◇ The Trafficking Victims Protection Act (and its subsequent reauthorizations) makes labor and sex trafficking a federal crime, provides victims with certain types of immigration relief, creates a civil cause of action for victims of trafficking, and allows victims to seek restitution.
- ◇ Victims of sex trafficking under age 18 need not show fraud, force, or coercion.
- ◇ Victims may also make civil claims under other federal laws governing fair pay and discrimination.
- ◇ Kentucky criminalizes human trafficking similarly to the federal government.
- ◇ Kentucky's Human Trafficking Victims Rights Act (2013) prohibits child victims from being prosecuted for prostitution and mandates that the Cabinet of Health and Family Services provides trafficked children with services. It also requires the Administrative Office of the Courts and Department of Juvenile Justice to screen incoming minors for human trafficking.
- ◇ Kentucky's Human Trafficking Victims Rights Act allows victims of labor trafficking to seek punitive damages from traffickers and creates a human trafficking fund to give victims and victim advocacy groups additional resources.

## SECTION 3: HUMAN TRAFFICKING LAWS

Current federal and state human trafficking laws attempt to pitch a broad tent over the perpetrators, the consumers, and the victims of trafficking with varying levels of success.

### Federal Laws

The keystone federal trafficking law is the Trafficking Victims Protection Act (TVPA) enacted in 2000. Congress reauthorized the TVPA in 2003, 2005, 2008, and 2013. The legislation frames up a three-pronged approach: prevention, protection, and prosecution.<sup>1</sup> The TVPA describes “severe forms of trafficking in persons” 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 yet attained 18 years of age; or
- B. the recruitment, harboring, transportation, provision, or obtaining a person for labor or services, through the use of fraud, force, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>2</sup>

The provisions of the TVPA and its subsequent reauthorizations:

- Create an Office to Monitor and Combat Trafficking with the State Department and a federal task force to help implement TVPA;<sup>3</sup>
- Make human trafficking a federal crime;<sup>4</sup>
- Provide eligible foreign national victims of trafficking and their extended families with educational, health care, and social service benefits similar to those of refugees;<sup>5</sup>

- Establish the T Visa program for eligible foreign national victims of trafficking;<sup>6</sup>
- Establish Continued Presence legal status for victims cooperating with law enforcement;<sup>7</sup>
- Mandate restitution to victims of human trafficking;<sup>8</sup>
- Create a civil cause of action for victims of trafficking to sue their traffickers;<sup>9</sup>
- Improve federal collaboration with state and local law enforcement to make charging and prosecuting traffickers easier.<sup>10</sup>

### Other Federal Laws

The Mann Act is a federal law from 1910 now only occasionally employed against sex traffickers. It criminalizes the transportation of minors and adults across state and national lines for the purposes of engaging in a federally prohibited sex act.<sup>11</sup> The Mann Act does not require that the prohibited sexual act take place; intent to engage in the prohibited act is sufficient.<sup>12</sup> Violations are punishable by up to 10 years in prison. The Travel Act is another federal law that criminalizes conduct related to running a prostitution business. For a deeper discussion of the possible use of the Mann Act and Travel Act to prosecute traffickers, please see Chen & Ryan’s Chapter on Federal Prosecution of Human Traffickers in a publication produced by the Supreme Court of the state of New York’s Appellate Division.<sup>13</sup>

Labor exploitation often coexists with labor trafficking. While the TVPA specifically bars forced labor, traffickers also frequently violate the Federal Fair Labor Standards Act of 1938 (FLSA) based on lack of overtime pay, poor working conditions, or not meeting minimum wage standards.<sup>14</sup> Claims under federal discrimination laws, such as Title VII, which prohibits discrimination in employment based on national origin, also have been filed by the EEOC on behalf of victims of labor trafficking who may have been singled out for disparate treatment based on their country of origin.<sup>15</sup> Civil remedies under FLSA and Title VII for victims of labor trafficking will be described in greater detail in Section 6 of this Guide. Other federal laws used to pursue traffickers include the RICO statutes.

In 2015, Congress passed the Justice for Victims of Trafficking Act of 2015.<sup>16</sup> This newest law’s numerous provisions include:

- Establishing a domestic trafficking victims’ fund (paid into by an assessment on those convicted of trafficking) that aims to award states and local communities with money for anti-trafficking initiatives and victims’ services;
- Increasing funding for trafficking investigations and other exploitative crimes against children;
- Clarifying that U.S. citizens and legal permanent residents do not require HHS certification (as foreign national victims do) to receive federally funded benefits and services;
- Adding language to the TVPA to make buyers and sellers of sex trafficking equally culpable;
- Expanding the ability of federal prosecutors to get wiretapping warrants;
- Classifying trafficking crimes as crimes of violence under the federal criminal code;
- Extending the state of limitations for civil actions against perpetrators to ten years after a victim reaches age 18.

The Human Trafficking Prosecution Unit of the U.S. Department of Justice coordinates the federal prosecution of human trafficking cases with U.S. Attorneys’ Offices at the regional level.<sup>17</sup> Locally, these cases are argued by U.S. Attorneys and their staff in their offices located in the Eastern District of Kentucky (headquartered in Lexington) and Western District of Kentucky (headquartered in Louisville).

## Kentucky Laws

The Kentucky Constitution prohibits slavery and involuntary servitude,<sup>18</sup> but Kentucky enacted its first set of anti-trafficking laws in 2007.<sup>19</sup> The legislation included statutes that criminalized human trafficking and promotion of human trafficking,<sup>20</sup> gave victims of trafficking the right not to be detained for offenses arising from their human trafficking, and gave victims the right to prevent disclosure of confidential communication with a trafficking victim counselor.<sup>21</sup>

In Kentucky, human trafficking is criminal activity whereby one (1) or more persons are subjected to engaging in:

- a. Forced labor or services; or
- b. Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.<sup>22</sup>

“Commercial sexual activity” is defined as prostitution, participation in the production of obscene material, or engaging in a sexually explicit performance.<sup>23</sup> Those convicted of state human trafficking charges face 5 to 10 years in prison for a Class C felony, unless (a) there is serious physical injury involved or (b) there is a minor victim. In both cases, prosecutors can seek terms of up to 20 years.<sup>24</sup>

Under KRS 531.330, a victim who appears to be under age 18 is presumed to be under age 18 and the alleged perpetrator will be subject to all laws meant to protect minor victims. Previously a defendant was permitted to present the defense that he or she reasonably believed the victim was 18 or older. But as of June 2015, KRS 529.180 disallows that defense, the idea being that buyers of commercial sex should face a “buyer beware” scenario that would lessen future demand and victimization.<sup>25</sup>

The Commonwealth also criminalizes “promotion” of human trafficking if a person

“intentionally benefits financially or receives anything of value from knowing participation in human trafficking; or recruits, entices, harbors, transports, provides, or obtains by any other means, or attempts to recruit, entice, harbor, transport, provide, or obtain...another person knowing that the person will be subject to human trafficking.”<sup>26</sup>

Promoting human trafficking is a Class D felony, netting an offender 1-5 years in prison. A victim who is a minor raises this crime to a class C felony.<sup>27</sup>

The passage of the Human Trafficking Victims Rights Act (herein “HTVRA” or “the Act”) in 2013 heralded a more rigorous approach to identifying and helping victims and penalizing perpetrators. The HTVRA mandates human trafficking education and training for law enforcement and prosecutors; establishes victim-centered remedies and promotes trauma-informed care; and creates financial disincentives for traffickers through fines and restitution.<sup>28</sup>

The HTVRA also provides a “safe harbor” for minors, prohibiting the prosecution of anyone under age 18 for prostitution or loitering for prostitution, and requiring law enforcement to report those cases to the Cabinet for Health and Family Services (hereafter, the Cabinet) as possible victims of human trafficking.<sup>29</sup> It prohibits charging minors for or finding guilt for status offenses related to conduct arising out of human trafficking of the minor, unless it is later determined that the child was not a victim of human trafficking.<sup>30</sup>

Under the HTVRA, the Cabinet must be notified if there is reasonable cause to believe a child is a victim of human trafficking.<sup>31</sup> The Cabinet is required to treat the report as a dependent, neglected, or abused (DNA) case regardless of whether the perpetrator is a parent, guardian, or someone exercising custodial control or supervision.<sup>32</sup> This aspect of the law goes beyond what other states have done, by allowing the Commonwealth to intervene even when the child is allegedly being victimized by a non-familial individual who exercises significant control over the minor, as often happens with an older boyfriend or with an extended family member.

Other key provisions for child victims include human trafficking screening by court designated workers (CDWs)<sup>33</sup> and the requirement of a new response by the Department of Juvenile Justice to suspected victims of human trafficking who are in its custody.<sup>34</sup> More information about the requirements of state agencies with respect to child victims can be found in Section Four of this Guide.

Victims of human trafficking often are forced by traffickers to show law enforcement or other agency regulators false documents in the furtherance of the crime. For example, a farmer may make agricultural workers use false paperwork to evade immigration enforcement or a pimp may make a minor child use a false identification in order to keep her working in a strip club. To address this problem, the HTVRA amended Kentucky's crime of forgery in the second degree to include coercing another person to falsely make, complete, or alter a written instrument in the commission of a human trafficking offense.<sup>35</sup>

Other sections of the Act include:

- Requiring the Labor Cabinet to report all suspected incidents of labor trafficking to law enforcement and local prosecutor's office.<sup>36</sup> Anyone from the Labor Cabinet making such a report in good faith is granted immunity from liability;<sup>37</sup>
- Training on human trafficking for law enforcement, prosecutors, and victims' advocates;<sup>38</sup>
- Creation of the Kentucky State Police Human Trafficking Unit to investigate trafficking complaints;<sup>39</sup>
- Adding human trafficking victim advocates to those professionals on specialized multi-disciplinary teams (MDTs) investigating child sexual abuse;<sup>40</sup>
- Establishment of a human trafficking victims fund, to be funded in part by fines levied against individuals convicted of a state human trafficking offense<sup>41</sup> and the partial proceeds of assets seized in connection with the trafficking offense.<sup>42</sup>

Based on its wide ranging and victim-centered legislation, Kentucky was deemed a Tier 1 state (highest designation) by Polaris Project in its last annual survey of anti-trafficking laws.<sup>43</sup>

The text of Kentucky's Human Trafficking Statutes can be found in Appendix A at the end of this Guide.

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<sup>1</sup>U.S. Department of State, 2011 Trafficking in Persons Report; The 3Ps: Prevention, Protection, and Prosecution Fact Sheet, June 27, 2011 found at [www.state.gov/j/tip/rls/fs/2011/167228.htm](http://www.state.gov/j/tip/rls/fs/2011/167228.htm). Later the U.S. Department of State added a fourth "P" for partnerships.

<sup>2</sup>22 U.S.C. §7102(9).

<sup>3</sup>Polaris Project, TVPA Fact Sheet (2008), found at [http://www.rescue.org/sites/default/files/resource-file/trafficking%20victims%20protection%20act%20fact%20sheet\\_0.pdf](http://www.rescue.org/sites/default/files/resource-file/trafficking%20victims%20protection%20act%20fact%20sheet_0.pdf)

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

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

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

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

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

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

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

<sup>11</sup>18 U.S.C. §§2421-2424.

<sup>12</sup>Pamela Chen and Monica Ryan, Federal Prosecution of Human Traffickers, found in the Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims, Ed. By Jill Laurie Goodman & Dorchen A. Leidholdt (2013). Accessed at <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>.

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

<sup>14</sup>29 U.S.C. 201, et seq.

<sup>15</sup>Telephone call with McKenzie Cantrell on September 24, 2015 (notes on file with authors). See also Freedom For All (supra Section 2, note 3) at 107 and John D. Pickle Company, Chellen et al. and Equal Employment Opportunity Comm. v. John Pickle Company, Inc. (02-CV-0085-CVE-FHM [base file] and 02-CV-0979-CVE-FHM [Consolidated], Northern OK).

<sup>16</sup>Public Law 114-22 (May 29, 2015).

<sup>17</sup>Freedom For All at 40-41.

<sup>18</sup>Ky Const. §25.

<sup>19</sup>See TK Logan, Human Trafficking in Kentucky (2007), available at [rescueandrestoreky.org](http://rescueandrestoreky.org).

<sup>20</sup>KRS 529.100; KRS 529.110.

<sup>21</sup>KRS 431.063, KRS 422.295.

<sup>22</sup>KRS 529.010(5).

<sup>23</sup>KRS 529.010(2), KRS 529.010(12).

<sup>24</sup>KRS 532.060.

<sup>25</sup>Kentucky House Bill HB 427 (2015 Regular Session), effective June 24, 2015.

<sup>26</sup>KRS 529.110(a) and (b).

<sup>27</sup>KRS Ch. 529

<sup>28</sup>Human Trafficking Victims Rights Act, 2013, Acts 25; Katie Smith, Note, 103 Ky. L. J. Online 5, Apr. 24, 2015.

<sup>29</sup>KRS 620.029.

<sup>30</sup>KRS 630.125

<sup>31</sup>KRS 620.040, Kentucky Human Trafficking Victims Rights Act (2013).

<sup>32</sup>KRS 620.030(3).

<sup>33</sup>KRS 605.030 (2013).

<sup>34</sup>KRS 15A.068 (2013).

<sup>35</sup>KRS 516.030 (I).

<sup>36</sup>KRS 336.075(1).

<sup>37</sup>KRS 336.075(2). Many human trafficking complaints originate when victims complain to a government agency that traffickers refused to pay them for labor/services.

<sup>38</sup>KRS 15.334; KRS 15.718; KRS 421.570 (2013)

<sup>39</sup>KRS 15.334, KRS 16.173

<sup>40</sup>KRS 431.600 (amended 2013)

<sup>41</sup>The Fund was created in KRS 529.140 (2013). The \$10,000 fine is a “fee” designated for the fund. KRS 529.130 (2013).

<sup>42</sup>KRS 529.150. (2013).

<sup>43</sup>Polaris Project, 2014 State Ratings on Human Trafficking Laws, at [polarisproject.org/2014stateratings](http://polarisproject.org/2014stateratings).

### Key Ideas in this Chapter:

- ◇ To prove sex trafficking of a child under 18, there is no need to prove force, fraud or coercion. There is no such thing as a “teen prostitute” under Kentucky law or federal law.
- ◇ However, to prove labor trafficking of a child, you must still prove force, fraud or coercion was used.
- ◇ Children at greatest risk of trafficking come from vulnerable groups, but victims can come from any socio-economic class and region of the Commonwealth. Red flags can help identify victims and at-risk children.
- ◇ The Human Trafficking Victim Rights Act gives several state agencies serving Kentucky’s youth the responsibility of screening for trafficking and providing appropriate treatment and placement for victims.
- ◇ In Kentucky, child victims may no longer be charged with prostitution or status offenses related to their trafficking, but are still at risk of being charged with proxy offenses.
- ◇ Local capacity continues to grow to meet the needs of child victims.

## SECTION 4: WORKING WITH CHILD VICTIMS IN KENTUCKY

Under state and federal law, a child is a victim of sex trafficking when the child under the age of 18 is induced to engage in commercial sex acts.<sup>1</sup> The child does not need to demonstrate inducement by fraud, force or coercion. By contrast, a child must have been subject to fraud, force or coercion to be considered a victim of labor trafficking.<sup>2</sup> A few of the ways children are trafficked include commercial sexual exploitation, forced labor in sweatshops or farms, domestic servitude, and forced child marriage.<sup>3</sup>

The Human Trafficking Victims Rights Act (HTVRA) requires the Cabinet to issue an annual report to the Kentucky Legislative Research Commission (LRC) on the incidence of child trafficking reported to its Department of Community Based Services (DCBS).<sup>4</sup> The Cabinet’s latest report, dated November 2015, reveals that since 2013, it has received 193 reports of child trafficking involving 235 alleged victims in Kentucky.<sup>5</sup> The median age range of referrals was for children aged 14-17 and most of the referrals were for sex trafficking allegations.<sup>6</sup> While most of the allegations could not be substantiated based on DCBS criteria, 26% of cases were positively confirmed as victims of human trafficking, resulting in numerous criminal charges, including human trafficking, sodomy, sexual abuse, kidnapping, and rape.<sup>7</sup>

The DCBS annual report provides some sense of the scope of child trafficking within the Commonwealth, but many child victims still go unreported due to lack of awareness and misidentification.

## Who is At Risk?

Victims of child trafficking can come from any background, race, ethnicity, or socio-economic group and include both boys and girls across the age spectrum. As with adults, child victims include those born and raised in the United States as well as foreign nationals. Traffickers bring children into the U.S. from other countries by legal or illegal means. They may even buy children from families abroad who believe the children are to receive educational and work opportunities in the U.S.<sup>8</sup> U.S.-born children are susceptible to trafficking across racial and socio-economic divides, but most often come from vulnerable or marginalized groups.

A recent study authored by a University of Kentucky professor on the extent of sex trafficking of minors in Kentucky indicated that over 96% of surveyed professionals working with trafficked minors had worked with female victims and over half of respondents (55.9%) had provided services to at least one male victim of sex trafficking.<sup>9</sup> The majority of professionals had worked with at least one victim of sex trafficking who was first recruited in Kentucky and nearly all indicated they had worked with minors who reported living in Kentucky while they were trafficked.<sup>10</sup> Seventy percent of respondents reported that at least one of their victims lived in a non-metropolitan area when trafficked.<sup>11</sup>

Children at greatest risk of being trafficked often experience:

- Unstable family life,
- History of physical abuse, sexual abuse, or severe neglect,
- History of, or current, substance abuse by a parent/caretaker, the youth,<sup>12</sup> or both,
- Being a runaway or homeless,
- A parent/caretaker with significant mental illness,
- History of contact with the juvenile justice system and/or child welfare system, including foster care,<sup>13</sup> and
- Physical or learning disabilities.<sup>14</sup>

Other factors include psychogenic factors, such as low self-esteem and chronic depression, peer pressure and community norms, and being a sexual or gender minority.<sup>15</sup> In the United States, youth who run away from home may exchange sex for food, shelter, drugs, or other things of value, often described as “survival sex.”<sup>16</sup> While some have described survival sex as a “rational choice among limited economic choices”<sup>17</sup> made by desperate and alienated youth to procure basic necessities like food and shelter, youth may find themselves involved with much more organized and violent trafficking schemes the longer they engage in those transactions.<sup>18</sup>

## Indicators of Child Trafficking

Children who are being sex trafficked may present with the following:<sup>19</sup>

- Tattoos of a pimp, boyfriend, nickname, gang symbol (anywhere on the body);
- Branding (similar to above, often on neck, wrist, or chest);
- Only ID is a fake adult ID;
- Multiple cell phones;
- Lack of concern about where to stay;
- Recent movement to several cities or states;
- Homeless, but has nice jewelry and clothes;
- In possession of hotel keys;
- Refers to boyfriend as “Daddy,” talks about “being in the life.”

Children being labor trafficked may present with the following:<sup>20</sup>

- Family relationships between child and adults unclear;
- Excluded from family events (church, vacation, parties);
- Physically exhausted from working long hours;
- Appear to be fearful of the family;
- Have many chores – including childcare, elder care, and household cleaning.

It is critical that child victims of trafficking be identified and provided with services as quickly as possible. Young victims of exploitation can suffer from long-term physical and psychological damage from their experiences. Physical symptoms can include malnutrition (resulting in stunted growth), sleeping and eating disorders, chronic pain, genital and rectal trauma, poor dentition, and hearing, cardiovascular, and respiratory diseases resulting from substandard living and working conditions.<sup>21</sup> Mental and emotional symptoms include depression, anxiety, phobias, panic attacks, guilt or shame, post-traumatic stress disorder, and traumatic bonding with the trafficker.<sup>22</sup> Trafficked children need extensive medical, mental health, and other support services to heal their wounds.

### **Kentucky’s “Safe Harbor” for Trafficking and its Multi-Agency Approach under the Human Trafficking Victims Rights Act**

As described in Section Three, the HTVRA was written to improve the identification of suspected victims, reduce their trauma, and connect them with the appropriate agencies and organizations that could meet their needs and promote their recovery. With a special emphasis on the identification and protection of children, the Act codified the principles of “safe harbor” for children already vulnerable and at risk of exploitation because of their intersection with law enforcement, child welfare, and/or juvenile justice systems.

Kentucky is one of thirty-four states to have safe harbor laws.<sup>23</sup> Prior to passage of the HTVRA, youth found engaging in commercial sex were often taken into custody and charged with prostitution and status offenses related to their exploitation in the commercial sex trade, leading to citations, convictions, and detention.<sup>24</sup> The purpose of Kentucky’s safe harbor is two-fold: 1) minors induced to engage in commercial sex should be not be treated as criminals, but as victims, and 2) those children, as victims, should be quickly and appropriately connected with services that would promote their safety and ultimately aid in their recovery.

Under this Act, an individual picked up by police on suspicion of prostitution or loitering for prostitution and who is determined to be a minor (under age 18) will be subject to the following treatment under the law:

- The minor will not be prosecuted for prostitution or loitering for prostitution.<sup>25</sup>
- The law enforcement officer who took the minor into custody must immediately make a report to the Cabinet for investigation of possible human trafficking.<sup>26</sup> The minor may be taken into protective custody, as happens in sexual abuse cases.<sup>27</sup>
- The Cabinet shall commence an investigation into dependency, neglect or abuse pursuant to KRS 620.029, Duties of the Cabinet relating to children who are victims of human trafficking.<sup>28</sup>
- The same process shall apply to children who are suspected victims of labor trafficking.



### Duties of the Cabinet under HTVRA

If the Cabinet receives a report from law enforcement, another state agency, the child abuse hotline, or other source that a child may be a victim of human trafficking,<sup>29</sup> the Cabinet must do the following:<sup>30</sup>

- investigate the report;
- provide or ensure the child is provided with the appropriate treatment, housing, and services consistent with the child's status as a victim of human trafficking, and;
- handle the case like any other dependency, neglect, or abuse case, regardless of whether the trafficker of the child is a parent, guardian, or person exercising custodial control or supervision.

Human trafficking, like sexual abuse of a child, is considered a high-risk report and the Cabinet must participate in all investigations, initiating the investigation within one hour of receipt.<sup>31-32</sup> If the Cabinet receives a report of human trafficking of a child, it must notify local law enforcement, Kentucky State Police, or Commonwealth's or county attorney if the report was not generated by one of those agencies.<sup>33</sup> The report is to be jointly investigated with law enforcement and both agencies are to share information throughout the investigation.<sup>34</sup>

As the investigation proceeds, the Cabinet social services worker conducts a safety assessment, family risk assessment, and an assessment of the alleged trafficker among other duties.<sup>35</sup> The social services worker may also file a petition in family or district court and ask the judge to make findings to promote the child's safety or safety of other children in the home due to factors including abuse, neglect, or dependency, significant risk of injury or harm, or sexual abuse.<sup>36</sup> If the reported victim is a status offender, the Cabinet must notify the child's attorney at the time the Cabinet begins to investigate the human trafficking report.<sup>37</sup>

### Use of Multidisciplinary Teams

Child sexual abuse may be investigated at the local or regional level through the use of multidisciplinary teams (MDTs) that review investigations, assess service delivery and facilitate efficient and appropriate disposition of cases through the criminal justice system.<sup>38</sup> Team members must include social service workers from the Cabinet and law enforcement and may include the Commonwealth or county attorney, child advocacy center (CAC) staff, victim advocates, medical and mental health professionals, and school personnel.<sup>39</sup> HTVRA adds child sex trafficking cases to MDT dockets and allows human trafficking advocates to participate in MDT meetings.<sup>40</sup> Local or regional MDTs are required to issue an annual report on the child sexual abuse and child sex trafficking cases (using non-identifying information) that the team has reviewed throughout the year.

### Duties of Court Designated Workers under HTVRA

Court Designated Workers (CDWs) process juvenile complaints - public offenses and status offenses - for youth under age 18. CDWs are responsible for assisting in custody, conducting preliminary investigations into complaints, and developing and supervising youth diversion agreements.<sup>41</sup> For calendar year 2013, CDWs processed almost 24,000 complaints.<sup>42</sup>

Under the safe harbor provisions of HTVRA, children who are reasonably suspected of being victims of human trafficking shall no longer be charged with or adjudicated guilty of status offenses if those offenses arose from the circumstances of the trafficking.<sup>43</sup> Many youth who are confirmed victims of human trafficking - as well as at-risk youth - are frequent runaways, present with substance abuse problems, and may miss many days of school. Charging youth with status offenses without examining the context of their lives may lead to them being detained without getting necessary services, re-traumatizing them in the process.

The HTVRA amended the statutory duties of CDWs to include performing an initial screening for human trafficking on incoming youth.<sup>44</sup> CDWs must make a referral to the Cabinet if the screening results indicate a child may be a victim.<sup>45</sup> If the Cabinet validates the suspicion of trafficking, the child is turned over to the Cabinet’s custody and the CDW contacts the county or Commonwealth’s attorney by the next business day to discuss how to proceed.<sup>46</sup> If the Cabinet does not validate the youth’s status as a victim of human trafficking, the CDW continues processing the complaint but makes a note of the referral for future reference.<sup>47</sup>

*Masking Offenses:* Children may no longer be charged prostitution or status offenses under the safe harbor provisions of the HTVRA, but at-risk youth, especially those who may be homeless, living in shelters or temporary housing as runaways, and engaging in survival sex, may be picked up by police for what are known as “proxy” or “masking” crimes: so-called quality of life crimes like shoplifting, criminal nuisance, or minor drug offenses.<sup>48</sup> It is important for law enforcement, the courts, medical and behavioral health professionals, victim advocates, and social service agencies to work together to try to minimize the penalties for youth who are attempting to meet their basic needs on the streets, and instead provide them with options to meet those needs, thereby limiting their contact with the criminal justice system.<sup>49</sup>

### Duties of Department of Juvenile Justice under HTVRA

Despite Kentucky’s CDW program, it is possible for child victims to be placed in the custody of the Department of Juvenile Justice for a variety of offenses. Victims may be reluctant to self-identify; children who have suffered the trauma of trafficking may lack the confidence and trust in adults or “the system” to reveal the horrible nature of the crimes against them.

If there is reasonable cause to believe that a child in the custody of the Department of Juvenile Justice (DJJ) is a victim of human trafficking,<sup>50</sup> DJJ is required to:

- File a report with the Cabinet;
- Notify the child’s attorney about the suspicion; and
- Petition the court to transfer custody of the child to the Cabinet if the child does not pose a risk to public safety.<sup>51</sup>

A youth’s attorney will be notified of a positive screening at admission or per self-report at any time by no later than the next business day by fax or email.<sup>52</sup> If the youth is a foreign national, DJJ will contact Catholic Charities of Louisville to request assistance in getting an eligibility letter and coordinate supportive services.<sup>53</sup> The National Human Trafficking Hotline will also be notified. DJJ implemented its trafficking screening protocol on May 1, 2015 and by the end of 2015, all DJJ staff was trained on trauma informed care and on the screening tool.

DJJ has been given the authority to promulgate regulations to provide the appropriate placement, treatment and services for those children who cannot be placed with the Cabinet.<sup>54</sup> Department policy states that youth committed to the Department “shall receive appropriate treatment services.”<sup>55</sup> To that end, treatment plans for youth victims in DJJ custody would be developed by the Department’s treatment directors and staff in consultation with Catholic Charities and those plans will be included in case planning.<sup>56</sup>

### Out of State Youth and Interstate Compacts

Youth whose primary residence is not Kentucky but who have run away from parental or state custody or who have been brought into Kentucky by traffickers require special handling by the state. The

care and return of children to their home states fall under the agreements known as the Interstate Compact on Children (administered by the Cabinet’s DCBS) and the Interstate Compact on Juveniles (administered by DJJ).<sup>57</sup>

A youth found in Kentucky “AWOL” may not be transported back to his or her home state under voluntary extradition without a court hearing, during which time the youth may be held in secure detention.<sup>58</sup> DJJ policy states that if a DJJ detention screening indicates possible human trafficking, the Juvenile Services Worker will notify the Compact Administrator of the DJJ, who shall then notify the home state compact office of the screening results.<sup>59</sup> The child’s attorney of record will also be notified and a report would be made to the National Human Trafficking Resource Center Hotline.<sup>60</sup>

Child welfare experts have noted that sometimes identifying a youth as a victim of human trafficking can be difficult, especially when the youth will not self-identify, and that receiving authorization for appropriate interventions can be challenging, especially when there is a concern about the youth running away once returned.<sup>61</sup> These concerns apply to both youth residents of Kentucky found in another state as well as those out of state youth found in Kentucky. Juvenile justice and child welfare workers must work with youth and their caregivers on a case-by-case basis to ensure that these young people are properly evaluated and directed to the appropriate victim-centered interventions once back in the home state.

### *The Issue of Youth Detention*

Holding individuals suspected of being victims of trafficking in secured detention is not ideal, as some victims find locked facilities re-traumatizing after having been subjected to the captivity and control of their trafficker.<sup>62</sup> Best practices call for avoiding locked custody for victims whenever possible.

In order to promote a victim-centered approach, KRS 431.063 mandates that a victim of human trafficking (adult or child) shall not be held in a detention center, jail, or other secure facility pending trial for an offense arising from the human trafficking situation, except where the incarceration is found to be the least restrictive alternative to securing the appearance of that person before the court or the release of the person under any other reasonable condition would be a clear threat to public safety.

## Child Labor Laws

Child labor is an understudied issue in human trafficking.<sup>63</sup> Children engaged in agricultural labor may have familial and economic ties to traffickers while children in domestic servitude are often isolated; both situations make it a challenge to identify victims. Furthermore, the burden of proof for child labor trafficking is higher than that for child sex trafficking.<sup>64</sup>

The Federal Fair Labor Standards Act (FLSA) and the youth employment regulations at 29 CFR, Part 570, govern employment of children in nonagricultural occupations.<sup>65</sup> Children employed in farm jobs outside of school hours are exempted from many of the requirements of the FLSA. The requirements for child laborers in agriculture, including what types of farm work is considered legally too hazardous for younger children, are found in the U.S. Department’s Child Labor Bulletin 102.<sup>66</sup>

The FLSA contains no private right of action under its child labor provisions. However, employers who violate the FLSA’s child labor provisions may be fined up to \$11,000 for each employee who is the subject of a child labor violation.<sup>67</sup> In addition, the Secretary of Labor may seek injunctive relief in federal court to compel compliance with the law and to halt interstate shipment of goods tainted by “oppressive child labor” as defined by FLSA.<sup>68</sup>

Kentucky child labor laws govern working hours and occupations from age 14 through 17 under KRS Chapter 339. Minors are prohibited from being employed at a “gainful occupation” under age

14,<sup>69</sup> however, gainful occupation does not include farm work, domestic service in private homes or household labor.<sup>70</sup> Minors are not permitted to work more than five hours continuously without at least a thirty-minute break for lunch.

Kentucky employers who hire minors must keep a separate register of those employees, including their names, ages, and beginning and ending work time and must keep state child labor laws posted in a conspicuous location.<sup>71</sup> Those records must be made available to school personnel, probation officers, the Labor Cabinet and Department of Education at all times.<sup>72</sup> The Department of Workplace Standards in the Labor Cabinet enforces child labor laws.<sup>73</sup> Suspected violations may be reported to the Department of Employment Standards at 502-564-3534.<sup>74</sup>

### Non-U.S. Citizen Children

If a child is a foreign national, it is important to ensure the child is connected with the appropriate agencies to obtain help. Under the TVPA, federal, state, and local officials are required to notify the U.S. Department of Health and Human Services within 24 hours of discovering a foreign national child who may be a victim of human trafficking.<sup>75</sup> The child is provided with an eligibility letter that facilitates access to benefits and services for a 90-day period without regard to the child's immigration status.<sup>76</sup> Children are not required to participate with a law enforcement investigation or prosecution of a trafficker to receive the interim assistance.<sup>77</sup> The child should also be referred to an immigration lawyer to assist the child with available immigration relief. Additional information can be found on immigration assistance and federally available benefits in Sections Six and Eleven, respectively.

### Immigration Protections for Minor Victims of Trafficking

Under certain circumstances minor victims of sex trafficking may be able to obtain lawful immigration status. The most common provisions are Special Immigrant Juvenile, Continued Presence, the T Visa and the U Visa. However, it is important to note that this list is not comprehensive and an immigration attorney should be consulted for more detailed information.

A child's immigration status is irrelevant to the applicability of dependency law; in other words, an undocumented child in Kentucky has the same right to protection from abuse or neglect as does an American citizen. However, whether the child and/or parent is legally present in the United States can have a significant impact on that individual's access to public services and therefore can have an ancillary effect on the ability to comply with the requirements of a reunification case plan or with a family's ability to provide a healthy, safe, and stable home environment. Additionally, persons who are undocumented live with the continuing possibility of deportation.

#### **Practice Tips:**

Immigration law is very complex and subject to frequent statutory and procedural changes. This fact sheet is intended as a general guideline only. The practitioner should contact an expert in immigration law for detailed assistance.

Counsel should also make sure to be aware of any custody and other prior judicial determinations made in countries or states outside Kentucky that may affect the dependency court's jurisdiction.

### Practice Tips:

The court should inform noncitizen parents and children that they can seek the assistance of their consulate. In many cases, the consulate can be a tremendous resource—for example, by assisting with access to services, locating and evaluating relatives for potential placement, or providing document translation. Counsel should inquire into whether the client’s country has a memorandum of understanding (MOU) outlining the relationship between the court, the country, and the consulate on issues relating to immigrant families.

### Special Immigrant Juvenile

Special Immigrant Juvenile Status (SIJS) (8 C.F.R. § 204.11) provides a mechanism for a dependent child to obtain permanent resident status (i.e., a “green card”) under certain circumstances. In order to be eligible, the child must:

- Be younger than 21 years old and unmarried;
- Have been declared a dependent by the juvenile court (which can include delinquency court and probate court);
- Have been the subject of a finding by the juvenile court that “reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law”;
- Have been the subject of a finding by the juvenile court that it is not in the child’s best interest to be returned to the country of origin; and
- Continue to be under the jurisdiction of the juvenile court.

A petition for classification under SIJS may be filed by the child or anyone acting on the child’s behalf (e.g., the social worker). Documentation of the child’s dependency status and the court’s relevant findings must be submitted in support of the petition.

### Practice Tips:

It is critical that the case remain open until the child receives his or her green card, as eligibility will terminate when dependency jurisdiction does, even if a valid petition is still pending. The process can take a long time to complete, so it is very important that counsel pursue this option as soon as the potential need arises and requisite findings have been made. Expediting the SIJS application may even require strategic attempts to negotiate the parent’s waiver of reunification services at disposition in appropriate cases, such as when there seems little hope of return for an older teen.

### **Practice Tips:**

The appropriate documents for filing for SIJS are available at the [www.uscis.gov](http://www.uscis.gov) website. Numerous documents must be submitted for a child who qualifies for SIJS, including, but not limited to, the I-360 (*Petition for Amerasian, Widow(er), or Special Immigrant*), I-485 (*Application to Register Permanent Residence or Adjust Status*), and supporting documents. Practitioners should seek help whenever possible, especially in cases where the child has a criminal history, when dependency is terminating soon, or if the child is about to turn 21.

### Continued Presence

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking whose presence is necessary for a possible investigation or prosecution. It provides a temporary defense to deportation and temporary work authorization. It is initially granted for one year and may be renewed in one year increments. Only federal law enforcement officials such as ICE, FBI, and the U.S. Attorney's Office can submit applications for CP status.

### **Practice Tips:**

CP applications can be approved on the basis of a victim's credible statement alone, approval is not dependent upon the case being prosecuted, and CP is available even if human trafficking charges are never brought.

### T Visa

T Visa (nonimmigrant) status is granted to victims of "severe trafficking" to allow them to remain in the United States to assist in the investigation or prosecution of human trafficking violators. It permits a person to live and work in the United States for four years. Unlike Continued Presence status, the T Visa creates an option for victims to apply for lawful permanent residency after three years. It also provides victims with a certification letter to establish eligibility to receive federal and state public benefits, although this is not required for minors. In addition, victims under the age of twenty-one can apply for derivative status for their spouse, child, parents, and unmarried siblings under the age of 18. A victim or his or her representative may petition for T nonimmigrant status by filing an application with United States Citizenship and Immigration Services.

### U Visa

The U Visa was created with the intent of increasing cooperation with law enforcement and protecting immigrants from certain types of serious crimes such as domestic violence, sexual assault, and trafficking. This status permits people to live and work in the United States for four years and allows them to apply for lawful permanent residence after three years if it is justified on humanitarian grounds. In addition, derivative status may be sought for qualified family members.

In order to be eligible for a U Visa, victims must show they are a victim of a qualifying crime, they have cooperated with law enforcement in investigating or prosecuting that crime, and they have suffered substantial physical or mental harm as a result of the crime.

### Some Kentucky Best Practices for Identified Victims and At-Risk Youth

- » Use of Child Advocacy Centers – Kentucky statute encourages the use of a Child Advocacy Center (CAC) when a child who has been sexually exploited is to be questioned for investigative purposes.<sup>78</sup> KRS 620.040(7)(i) also requires that when practicable, MDTs reviewing child sexual abuse and sex trafficking cases should be staffed by members of the local/regional CAC. The 15 CACs in Kentucky serve over 6,000 child victims of abuse every year.<sup>79</sup> A victim of sexual abuse or exploitation can be brought to their local CAC for a coordinated response: the CAC aims to provide child-focused and victim-friendly medical examinations, forensic interviewing, evidence collection, witness interviews, and trauma-focused mental health services all under one roof.<sup>80</sup> Child protection workers, law enforcement, and the county or Commonwealth’s attorney can listen to interviews all at one time, rather than forcing the youth to endure repetitive and possibly traumatic interviewing. CACs also provide family advocacy, support groups for victims and their family members, and outreach and training within their communities.<sup>81</sup>
- » Partnership with University of Kentucky Adolescent Medicine Department – The Lexington Human Trafficking Task Force approached The University of Kentucky (UK) Adolescent Medicine Department in late 2015 to determine if it could be a local resource when the Cabinet could not secure appropriate transportation and temporary placement for youth suspected of being victims of human trafficking in need of behavioral health/crisis stabilization services during non-business hours. The UK Adolescent Medicine Department quickly developed the “Behavioral Health Response to Child Trafficking,” under the guidance of Dr. Marlene Huff, to respond to local law enforcement or the Cabinet’s request for help. Through this partnership, the child will be transported via private ambulance to UK Hospital (or its partner facility) where specially trained nurses, physicians, and related staff will assess the child’s medical and psychological needs and work with the child’s family and the Cabinet if additional needs are indicated. The program is expected to be fully operational in early 2016.<sup>82</sup>
- » My Life My Choice groups – My Life My Choice (MLMC) is a nationally recognized and award-winning 10-week curriculum designed to prevent at-risk adolescent girls from becoming victims of the commercial sex industry and to help those already “in the life” to find a way out of exploitation.<sup>83</sup> In 2015, Kentucky’s Catholic Charities of Louisville received small grant to host the MLMC program at three sites, including one at a DJJ facility. Based on the qualitative success of those groups (outcomes forthcoming), Catholic Charities of Louisville sought and received a Victims of Crime Act (VOCA) grant to hire a statewide MLMC Coordinator and initiate MLMC groups around the Commonwealth. Catholic Charities of Louisville anticipates that over 10 programs will start around the state in 2016, empowering and educating vulnerable girls around Kentucky about the realities of the commercial sex industry and helping them advocate for themselves.<sup>84</sup>

For additional information about interviewing and working with victims, please see Appendix B at the end of this Guide.

<sup>1</sup> See the Human Trafficking Laws in Section 3, *supra*.

<sup>2</sup> Eva Klain & Amanda Kloer, Meeting the Legal Needs of Child Trafficking Victims: An Introduction for Children's Attorneys and Advocates (April 2009).

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

<sup>4</sup> KRS 620.029(2)(b)

<sup>5</sup> Human Trafficking Report to the Legislative Research Commission, Cabinet for Health and Family Services (November 1, 2015), accessed at [chfs.ky.gov](http://chfs.ky.gov). Reports were generated from every DCBS service region, the most numerous in 2015 being from the Jefferson region (Louisville area), The Lakes region (Paducah and surrounding area), and the Cumberland region (Somerset-London and surrounding counties).

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

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

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

<sup>9</sup> Jennifer Cole & Elizabeth Anderson, Sex Trafficking of Minors in Kentucky, University of Kentucky, Center on Drug and Alcohol Research, Center on Trauma and Children (2013), accessed at <http://www.cdar.uky.edu/CoerciveControl/docs/Sex%20Trafficking%20of%20Minors%20in%20KY.pdf>.

<sup>10</sup> *Id.* The survey was conducted between July 2012 and April 2013 across all 120 counties of Kentucky. Respondents included those working at the Department of Juvenile Justice, Administrative Office of the Courts, victim service agencies, and community based organizations serving at-risk youth. According to the authors, data collection took place prior to implementation of KY's HTVRA, which mandates certain state agencies (including AOC and DJJ) implement screenings and better identify victims of sex trafficking among the children they serve.

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

<sup>12</sup> In this guide, we use the terms "youth" and "child" or "children" as synonyms to mean individuals under the age of 18. We recognize that "youth" may be used and has been used by others to include persons between the ages of 18 and 21-24.

<sup>13</sup> Institute of Medicine (IOM) and National Research Council, Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States: A Guide for Providers of Victim and Support Services, accessed at <http://nationalacademies.org/hmd/reports/2013/confronting-commercial-sexual-exploitation-and-sex-trafficking-of-minors-in-the-united-states.asp>.

<sup>14</sup> Klain & Kloer, *supra* note 2.

<sup>15</sup> IOM report, *supra* note 13 at 12.

<sup>16</sup> *Id.*

<sup>17</sup> Brendan M. Conner, In Loco Aequitatis: The Dangers of "Safe Harbor" Laws for Youth in the Sex Trades, 12 Stan. J. C.R. & C.L. (February 2016). At <https://journals.law.stanford.edu/stanford-journal-civil-rights-and-civil-liberties-sjcrcl/print/volume-xii-2016/issue-1/loco-aequitatis-dangers-safe-harbor-laws-youth-sex-trades>.

<sup>18</sup> Jayne Bigelsen & Stefanie Vuotto, Covenant House report: Homelessness, Survival Sex and Human Trafficking (May 2013), accessed at [endhomelessness.org](http://endhomelessness.org).

<sup>19</sup> Gretchen Hunt, et al., Look Beneath the Surface: Human Trafficking in Kentucky Powerpoint presentation, on file with authors.

<sup>20</sup> *Id.*, citing Kaufka Walts, French, Moore, & Ashai, Building A Child Welfare Response to Child Trafficking (2011).

<sup>21</sup> U.S. Department of Health and Human Services, Rescue and Restore "Child Victims of Human Trafficking" Fact Sheet, accessed at <http://www.acf.hhs.gov/programs/endtrafficking/resource/child-trafficking>.

<sup>22</sup> *Id.*



- <sup>23</sup> Human Trafficking Issue Brief: Safe Harbor (Fall 2015), found at [polarisproject.org](http://polarisproject.org).
- <sup>24</sup> The crimes of prostitution (KRS 529.020) and Loitering for prostitution purposes (KRS 529.080) were amended as part of HTVRA to include an exception for those under age 18 under KRS 529.120). Prostitution is a Class B misdemeanor.
- <sup>25</sup> KRS 529.120(1).
- <sup>26</sup> KRS 529.120 (2), KRS 620.030(3).
- <sup>27</sup> KRS 529.120(2).
- <sup>28</sup> KRS 529.120 (3).
- <sup>29</sup> The HTVRA adds human trafficking to the mandatory reporting statute for child abuse. KRS 620.030.
- <sup>30</sup> KRS 620.029(1).
- <sup>31</sup> KRS 620.040(3).
- <sup>32</sup> Section 2.15.9 Investigation of Human Trafficking, Standards of Practice Online Manual, Cabinet for Health and Family Services, Department for Community Based Services, Division of Protection and Permanency, found at [manuals.sp.chfs.ky.gov](http://manuals.sp.chfs.ky.gov).
- <sup>33</sup> KRS 620.040(2)(c).
- <sup>34</sup> Section 2.15.9 Investigation of Human Trafficking, Standards of Practice Online Manual, Cabinet for Health and Family Services, Department for Community Based Services, Division of Protection and Permanency, found at [manuals.sp.chfs.ky.gov](http://manuals.sp.chfs.ky.gov).
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.* See also Section SOP Section 11.13 and 11.14 on why and how to file a petition.
- <sup>37</sup> *Id.*
- <sup>38</sup> KRS 620.040(7)(c).
- <sup>39</sup> KRS 620.040(7)(b).
- <sup>40</sup> *Id.* See also KRS 431.600(1).
- <sup>41</sup> 2013 CDW Annual Report, found at [courts.ky.gov](http://courts.ky.gov). This annual report is a requirement under Senate Bill 200 (2014).
- <sup>42</sup> *Id.*
- <sup>43</sup> KRS 630.125 (2013). Kentucky's status offenses include Habitual Truancy, Habitual Runaway, Beyond the Control of Parent, Beyond the Control of School, Tobacco Offense, and Alcohol Offense.
- <sup>44</sup> KRS 605.030(1)(d).
- <sup>45</sup> *Id.*
- <sup>46</sup> Presentation by J.R. Hopson, Juvenile Services Manager, KY Administrative Office of the Courts, September 1, 2015.
- <sup>47</sup> *Id.*
- <sup>48</sup> See Human Trafficking of Minors – A Guide for CPS Workers, Section 2.15.9 of the SOP Manual, found at [manuals.sp.chfs.ky.gov](http://manuals.sp.chfs.ky.gov); see also Brendan Conner, *supra*, note 17.
- <sup>49</sup> Brendan Conner, *supra*, note 17.
- <sup>50</sup> Youth will be screened within 30 days of admission. DJJ will also respond to self-report at any time. DJJ Policy Number: DJJ 301, 3(a)-(b), effective July 31, 2015. Youth will also be screened within 5 business days of disposition resulting in probation, commitment, or sentence to DJJ per DJJ Policy 601.2(G).
- <sup>51</sup> KRS 15A.068(1)(a)-(c).
- <sup>52</sup> DJJ Policy Number: DJJ 301, 3(b); DJJ 601.2, G(2), effective July 31, 2015.
- <sup>53</sup> *Id.*
- <sup>54</sup> KRS 15A.069(2).

- <sup>55</sup> DJJ Policy Number: DJJ 301, Section 3(d), effective July 31, 2015.
- <sup>56</sup> Email exchange with Karen King-Jones, Department of Juvenile Justice, on December 15, 2015, on file with authors.
- <sup>57</sup> KRS Ch. 615, DCBS Standard of Practice 10.13; 505 KAR 1:100 under Authority of KRS 15A.069.
- <sup>58</sup> DJJ Policy Number 211, Effective July 1, 2015.
- <sup>59</sup> *Id.*
- <sup>60</sup> Telephone call with Karen King-Jones, Kentucky Department of Juvenile Justice, 12/9/15, notes on file with authors.
- <sup>61</sup> Traffic Stop report, Shared hope International, at <http://sharedhope.org/what-we-do/bring-justice/just-response/traffic-stop/>
- <sup>62</sup> Clawson et al, *supra*, Section 2, note 35.
- <sup>63</sup> Outcomes Document of National Conference on Child Trafficking and Exploitation in the United States, convened at Loyola University Chicago School of Law (November 2010).
- <sup>64</sup> *Id.*
- <sup>65</sup> 29 U.S.C. §212; U.S. Department of Labor Wage and Hour Division Fact Sheet #43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations, July 2010, found at [www.dol.gov/whd/regs/compliance/whdfs43.pdf](http://www.dol.gov/whd/regs/compliance/whdfs43.pdf).
- <sup>66</sup> Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act (Child Labor Bulletin 102), WH-1295, Revised June 2007, found at [www.dol.gov/whd/regs/compliance/childlabor102.pdf](http://www.dol.gov/whd/regs/compliance/childlabor102.pdf).
- <sup>67</sup> *Id.* at 8, 29 CFR Part 579.
- <sup>68</sup> *Id.*; also 29 U.S.C. §212(a).
- <sup>69</sup> KRS 339.220
- <sup>70</sup> KRS 339.210
- <sup>71</sup> KRS 339.400.
- <sup>72</sup> *Id.*
- <sup>73</sup> KRS 339.450.
- <sup>74</sup> Please see [labor.ky.gov/dows/Pages/Department-of-Workplace-Standards.aspx](http://labor.ky.gov/dows/Pages/Department-of-Workplace-Standards.aspx) for more information.
- <sup>75</sup> TVPA at National Human Trafficking Resource Center, Working with Foreign National Child Victims of Trafficking, November 2012, found at [traffickingresourcecenter.org](http://traffickingresourcecenter.org).
- <sup>76</sup> 22 U.S.C. §7105(b)(1)(F). The form to request assistance for potential child victims can be downloaded at [www.acf.hhs.gov/sites/default/files/orr/request\\_for\\_assistance\\_form\\_feb\\_2015.pdf](http://www.acf.hhs.gov/sites/default/files/orr/request_for_assistance_form_feb_2015.pdf).
- <sup>77</sup> *Id.* Adults are required to cooperate with investigation and prosecution in order to receive their Certification (unless they are unable to cooperate due to physical or psychological trauma).
- <sup>78</sup> KRS. 620.040(6).
- <sup>79</sup> Kentucky Association of Child Advocacy Centers 2013 National Children’s Alliance Policy Brief, found at [kacac.org/images/2013Nationalchildrensalliancepolicybrief.pdf](http://kacac.org/images/2013Nationalchildrensalliancepolicybrief.pdf);
- <sup>80</sup> Website of Kentucky Association of Child Advocacy Centers, found at [kacac.org](http://kacac.org); Website of Child Advocacy Center of the Bluegrass, found at [kykids.org](http://kykids.org).
- <sup>81</sup> Website of the Child Advocacy Center of the Bluegrass, found at [kykids.org](http://kykids.org).
- <sup>82</sup> For more information about the UK Adolescent Medicine Department, please contact 859-257-1000.
- <sup>83</sup> Website of My Life My Choice, found at [fightingexploitation.org](http://fightingexploitation.org).
- <sup>84</sup> Catholic Charities of Louisville, Human Trafficking Program.

### Key Ideas in this Chapter:

- ◇ Victims of human trafficking may intersect with the criminal justice system as victim-witnesses and/or as criminal defendants. Whatever their contact, victims should be advised of their rights and counseled such that effects of trauma and discomfort are minimized.
- ◇ Restitution to victims of human trafficking may aid in making victims whole, however it is not sought as often or as aggressively as it should be.
- ◇ Being a victim of human trafficking may be asserted as an affirmative defense to non-violent crimes under Kentucky law.
- ◇ Victims of human trafficking in Kentucky have the right to have non-violent charges and convictions expunged from their record if participation in the offense is determined to be a direct result of the trafficking.

## SECTION 5: HUMAN TRAFFICKING AND THE CRIMINAL JUSTICE SYSTEM

Victims of human trafficking may appear in the criminal justice system either as victim-witnesses or as defendants, having been charged with “masking offenses” such as shoplifting and prostitution. Special care should be taken to screen all vulnerable populations, including individuals arrested for crimes, as possible victims of trafficking.

### Victims of Human Trafficking as Victim-Witnesses

Victims of human trafficking may be unfamiliar with the criminal justice system, or may be intimidated and face retaliation from their traffickers as a result of coming forward to report to the authorities. Informing victims of their rights may help build trust, improve safety and ensure that they remain engaged throughout the criminal case.

### Kentucky Crime Victim’s Bill of Rights

Kentucky’s Crime Victim’s Bill of Rights guarantees the following to victims of human trafficking:

Prosecutors shall insure that victims/witnesses receive available information regarding:

- Protective, emergency, social and medical services,
- Obtaining assistance from a victim advocate,
- Community-based treatment programs,
- Where applicable, restitution and crime victim compensation,
- Registration and notification of when a person has been released from a prison, jail, juvenile detention facility, psychiatric facility or under limited circumstances, a forensic psychiatric facility,
- How to be protected from intimidation, harassment, or retaliation,
- The Victim, Witness and Family Protection Program.

Victims/Witnesses Shall Receive Notification regarding:

- Defendant's release on bond and any special conditions of release,
- Charges filed against the Defendant,
- The Defendant's pleading to the charges,
- Trial date (including any changes)
- Trial verdict,
- A scheduled hearing for shock probation or bail pending appeal and any resulting orders,
- Changes in custody of the Defendant,
- Sentencing date, and any parole board hearings held for the Defendant.

Prosecutors shall:

- Make reasonable efforts to insure that victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduled changes that affect their appearances,
- Notify the victim that upon conviction of the Defendant that he/she has the right to submit a written impact statement,
- Make reasonable efforts to insure that victims receive prompt notification that the Attorney General will notify the victim if an appeal of the convictions is pursued by the Defendant,
- Promptly return victim's property held for evidentiary purposes unless there is a compelling reason for retaining it,
- Provide information on obtaining protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts,
- Upon request by a victim or witness, assist in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absences from work.

Prosecutors shall consult with Victims on the case disposition including:

- Case dismissal,
- Release of the Defendant, pending Judicial proceedings,
- Any conditions of release,
- A negotiated plea, or
- Defendant's entry into a Pre-trial Diversion Program.

***In addition, the following information may be useful for victims of trafficking:***

**Protection from Intimidation**

Any victim or witness who is subjected to intimidation, harassment, or retaliation should promptly notify the Prosecutor handling the case for information on potential remedies for protection. Victims are advised to call 911 or a local law enforcement agency if they are in immediate danger.

**Crime Victim Compensation**

An application for Crime Victim Compensation is available from the Kentucky Crime Victims Compensation Board. To obtain a form or for additional information the Board may be contacted at (502) 573-2290 or (800) 469-2120. Applications, answers to questions or any other information can be found at [www.cvcb.ky.gov](http://www.cvcb.ky.gov).

**VINE (Victim Information and Notification Everyday)**

For information and notifications regarding currently incarcerated offenders or notifications regarding upcoming court events you may register by calling the Office of Victims services at (800) 511-1670 or visit [www.vinelink.com](http://www.vinelink.com) or [www.corrections.ky.gov](http://www.corrections.ky.gov). VINE is also available for download as a mobile app at VINEmobile.

## **SEX OFFENDER REGISTRY & ALERT LINE**

Victims can get up-to-date information regarding the release of registered sex offenders into local communities by calling (866) 564-5652 or by visiting [www.kspor.state.ky.us](http://www.kspor.state.ky.us).

## **PAROLE VICTIM SERVICES**

Parole Victim Services staff members are responsible for notifying victims of upcoming parole hearings, processing victim impact statements, scheduling hearings and assisting victims in general ways. Further information (800) 221-5991 or (502) 564-3620 or found at: [www.justice.ky.gov/parolebd](http://www.justice.ky.gov/parolebd).

Victims who need more information about their rights may contact:

**Office of Victims Advocacy  
Office of the Attorney General  
(502) 696-5312 or (800) 372-2551  
[www.ag.ky.gov/victims](http://www.ag.ky.gov/victims)**

## **Mandatory Restitution for Victims of Human Trafficking**

Restitution through the criminal justice system is intended to make victims whole, restoring their dignity, depriving traffickers of ill-gotten gains and ensuring victims' access to justice.<sup>1</sup> Congress crafted the Trafficking Victims Protection Act of 2000 (TVPA) to include provisions for "full restitution" to victims of human trafficking with those goals in mind. 18 U.S.C. § 1593 requires the defendant to pay the victim the full amount of the victim's actual losses (as defined in section 2259(b)(3)) and also expressly includes,

"the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (FLSA)..."<sup>2</sup>

The courts have previously determined Section 2259(b)(3) losses can include medical expenses for bodily injury, trauma counseling, testing for sexually transmitted diseases, educational expenses, attorney fees, vocational retraining, transportation expenses, and other losses.<sup>3</sup> The amounts awarded for mandatory restitution to victims of human trafficking under 18 U.S.C. §1593 are excluded from gross income under IRS notice 2012-12.<sup>4</sup>

Criminal restitution may even be available when traffickers who initially are charged under trafficking statutes eventually plead to lesser charges. In *United States v. Edwards*, prosecutors successfully argued for restitution under 18 U.S.C. §1593 despite the defendants' plea to non-trafficking crimes for forcing the victim into domestic servitude in their home for a decade.<sup>5</sup>

A recent study by the Human Trafficking Pro Bono Legal Center and Wilmer Hale found that prosecutors often failed to request restitution orders, particularly for victims of sex trafficking.<sup>6</sup> Defense

### **Practice Tips:**

Fulbright & Jaworski LLP and the Polaris Project have produced a guide for federal prosecutors, pro bono attorneys, and GALs on how to pursue restitution. **Maximizing Restitution Awards for Labor and Sex Trafficking Victims (May 2013)** can be found at <http://advocatingopportunity.com/wp-content/uploads/2015/03/Maximizing-Restitution-Awards-A-Guide-for-Federal-Prosecutors-and-Pro-Bono-Attorneys.pdf>

attorneys frequently argue that victims should not be “rewarded for prostitution” or gain a windfall from “illegal conduct,” however, the language of 18 U.S.C. § 1593 expressly mandates restitution for all victims of trafficking and several Circuit Courts of Appeals have held that the TVPA is clear on this matter, regardless of the illegal acts performed by the victims while trafficked.<sup>7</sup>

Under Kentucky law, all victims of crime are entitled to restitution, although there is no specific statute relating to restitution for victims of trafficking. Attorneys for victims of trafficking should assert these rights as early on in the process as possible to ensure that victims receive the restitution they deserve.

## Victims of Human Trafficking as Defendants

### Affirmative Defenses

Victims of human trafficking may be charged with crimes during the course of their trafficking, including drug offenses, using false documents, shoplifting or assault. Many times, these crimes have been committed under the direct influence and control of the trafficker, who is forcing the victim to engage in criminal activity to further the human trafficking enterprise. Under Kentucky law, victims of human trafficking may assert being a victim of human trafficking as an affirmative defense to non-violent crimes.<sup>8</sup>

### Expungement

A victim of human trafficking also has the right to have non-violent charges and convictions expunged from their record when the “participation in the offense is determined to be the direct result of being a victim of human trafficking.”<sup>9</sup> This statute provides relief for victims as they heal and reintegrate into our community as criminal records affect employment, housing, and even voting rights. Ideally, with a team of trained law enforcement, prosecutors, and defense attorneys, the determination that the defendant is a victim of human trafficking will be made before conviction or plea. Nonetheless, if at a later date it is found that the defendant’s participation was due to being a victim of human trafficking, defense attorneys should make the appropriate motion for expungement. Primary evidence of being a victim of human trafficking, including any documentation from a federal, state, local, or tribal governmental agency indicating that the defendant was a victim at the time of the offense shall create a presumption that the defendant’s participation in the offense was a direct result of being a victim.<sup>10</sup> Even in the absence of such a record, victims may raise a defense based on other evidence, such as affidavits from victim advocates and records of receiving treatment as a victim.

Defense attorneys should also review a client’s criminal record for other charges, dismissals, and convictions that may be eligible for expungement or to be vacated, even those unrelated to the trafficking. Refer to KRS 431.076, 431.078, and 431.079 for more information. (Note: KRS Chapter 431 was amended in 2016 to include certain felony offenses and added a procedure to vacate. The amendments will go into effect July 2016.)

#### Practice Tips:

Attorneys representing defendants should ask basic screening questions for human trafficking to uncover force, fraud or coercion. If there is a history of human trafficking, attorneys should gather any documentation related to the human trafficking situation, including but not limited to: police and court records, hospital records, counseling and victim advocate records, and affidavits of witnesses.

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<sup>1</sup> U.S. v. Sabhbani, 599 F.3d 215, 259-260 (2d Cir. 2010).

<sup>2</sup> 18 U.S.C. §1593.

<sup>3</sup> See “Ensuring Full Restitution for Trafficking Victims: An Overview of Mandatory Restitution Awards Under the Trafficking Victim Protection Act.” National Crime Victim Law Institute (NCVLI) Victim Law Bulletin, November 2013, for a list of the cases. This law bulletin also includes a restitution “formula” with a four step process to determine the amount of restitution to be ordered.

<sup>4</sup> Notice 2012-12, IRS 2012-6, p. 265 (2/6/12). See also Christine Haynes et al., Taxation of Mandatory Restitution Received by Victims of Human Trafficking, Journal of Business and Economics Research, Vol. 12, No. 1 (First Quarter, 2014).

<sup>5</sup> U.S. v. Edwards, No. 8:11-CR-00316 (D. Md. 2011).

<sup>6</sup> See “When Mandatory Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking Cases in the United States.” By the Human Trafficking Pro Bono Legal Center & Wilmer Hale (2013).

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

<sup>8</sup> KRS 529.170.

<sup>9</sup> KRS 529.160.

<sup>10</sup> KRS 529.160(3)(c).

### Key Ideas in this Chapter:

- ◇ Civil causes of action are available through federal and state law.
- ◇ Kentucky's Human Trafficking Victims Rights Act allows victims of labor trafficking to seek punitive damages at least THREE times the amount of wages and overtime due as well as attorney's fees and costs.
- ◇ Kentucky wage and hour claims are another avenue by which to pursue traffickers.
- ◇ Civil suits are challenging for many reasons but there are several highly regarded resources available to attorneys willing to take these cases.

## SECTION 6: CIVIL CAUSES OF ACTION AND REMEDIES FOR VICTIMS OF TRAFFICKING

*This section provides an overview of possible civil causes of action against traffickers and potential civil remedies for victims of human trafficking under Kentucky and federal law. It is not an exhaustive or comprehensive list; for more information about the complexities and challenges in civil litigation on behalf of victims of trafficking, please see Civil Litigation on Behalf of Victims of Trafficking by Daniel Werner and Kathleen Kim (3d edition, Oct. 13, 2008). It is available online through the website of the Southern Poverty Law Center.<sup>1</sup>*

Civil suits against traffickers allow victims to hold traffickers accountable, gain restitution, and reclaim their lives.<sup>2</sup> Many victims of human trafficking do not realize they may have civil causes of action against their traffickers. Beyond that, victims may have difficulty connecting with a lawyer because of language barriers, concerns about their immigration status, or lack of knowledge about where to find attorneys who can help them. While case law on human trafficking claims is limited, a number of successful verdicts have been returned for victims of labor trafficking, with compensatory and punitive awards in the millions of dollars.<sup>3</sup> Attorneys can connect with victims through anti-trafficking victim services organizations, worker rights organizations, or immigrant rights organizations in their communities.<sup>4</sup>

### Federal Civil Causes of Action & Remedies

#### Trafficking Victims Protection Act (TVPA)

Victims of human trafficking have a private right of action against perpetrators under the TVPA.<sup>5</sup> Under the Act, a victim may bring suit,

“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 a violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.”<sup>6</sup>

Courts have held that the statute allows for recovery of punitive damages.<sup>7</sup> There is a ten year statute of limitations on civil claims under the TVPA,<sup>8</sup> but new legislation amends that provision for child victims. The SAVE ACT of 2015, which is part of the Justice for Victims of Trafficking Act signed into law in mid-2015, allows minor victims to bring civil claims against their traffickers for 10 years after they turn 18 years old.<sup>9</sup>



## [The Federal Labor Standards Act \(FLSA\)](#)

The Fair Labor Standards Act is the federal law regulating minimum wage, overtime pay, recordkeeping, and youth employment.<sup>10</sup> The statute of limitations for wage and hour claims under the FLSA is two years; “willful” violations would extend it to three years.<sup>11</sup> Employees with valid claims of economic harm under the FLSA can be awarded compensatory and liquidated damages.

In some forced labor situations, employers may attempt to use an employee’s immigration status to threaten, harass, or retaliate against the employee bringing an action against them.<sup>12</sup> FLSA claims can be brought against an employer for back pay regardless of the employee’s immigration status.<sup>13</sup> Several cases have upheld the concept that employers should not be able to discover an employee’s immigration status in cases seeking unpaid wages under the FLSA and that allowing such inquiries might inhibit or endanger plaintiffs’ pursuit of their rights (See *Flores v. Albertons’s Inc.*, 2002 WL 1163623 (C.D. Cal. 2002) and *Liu v. Donna Karan International, Inc.*, 2002 WL 1300260 (S.D.N.Y. 2002) for more on this). Furthermore, the Department of Labor and Kentucky Labor Cabinet each have a Memorandum of Understanding (MOU) with U.S. Immigration and Customs Enforcement (ICE) in the Department of Homeland Security agreeing that immigration status is not to be shared between the agencies during investigations of wage and hour complaints.<sup>14</sup>

Agricultural workers do not receive the full protections of the FLSA (or the Kentucky Wage and Hour Act). Agricultural employers must uphold the minimum wage and recordkeeping provisions of the FLSA, but its overtime provisions are not applicable to farmworkers.<sup>15</sup> A smaller farm may not have to comply with the minimum wage standards.<sup>16</sup> Farmworkers have some federal protections under the Migrant and Seasonal Agricultural Workers Protection Act.

## [Migrant and Seasonal Agricultural Workers Protection Act \(AWPA\)](#)

The Migrant and Seasonal Agricultural Workers Protection Act (also known as AWPA) is a federal employment law specifically for farmworkers.<sup>17</sup> It governs the terms of employment between an agricultural employer and workers; requires “crewleaders” who recruit, supervise and transport workers to register with the U.S. Department of Labor; and oversees employer-provided housing and transportation of workers. Farmworkers have a private right of action under this Act.<sup>18</sup> Workers can sue for money damages up to \$500 per worker per violation; egregious safety violations (for example, those that result in death or serious injury) are capped at \$10,000 per violation.<sup>19</sup> Criminal sanctions for anyone “willfully and knowingly” violating the AWPA include fines of up to \$10,000, three years in prison, or both.<sup>20</sup> The Secretary of Labor may also petition any appropriate district court for injunctive relief for AWPA violations.

## [Title VII of the Federal Civil Rights Act of 1964](#)

Title VII prohibits employers with 15 or more employees from unlawfully discriminating in their employment practices (relating to hiring, firing, and the terms, conditions, and privileges of employment) based on race, color, religion, sex, and national origin.<sup>21</sup> In recent years the Equal Employment Opportunity Commission (EEOC) has made a concerted effort to use Title VII claims to fight human trafficking by arguing that victims who were exploited were targeted based on their race, sex, and national origin. In one of the most well-known cases brought by the EEOC, the judge ordered the defendant, John Pickle Co., to pay \$1.2 million to 52 workers from India, finding that the employer abused and mistreated those workers based on their national origin.<sup>22</sup> The EEOC lawsuit was joined with civil claims filed by the workers against John Pickle Co. for wage and hour violations under the FLSA, false imprisonment, deceit, and intentional infliction of emotional distress.<sup>23</sup>

## The Racketeer Influenced and Corrupt Organizations Act (RICO)

The Racketeer Influenced and Corrupt Organizations Act provides a private right of action to anyone “injured in his business or property” by violations of the Act.<sup>24</sup> The Statute includes human trafficking under its definition of “racketeering activity.” Under RICO, the plaintiff may recover treble damages, costs, and attorney’s fees.

## State Causes of Action and Remedies

### HTVRA-based claims

Kentucky permits victims of human trafficking to pursue perpetrators through the following statutes that were amended under the Kentucky Human Trafficking Victims Rights Act (HTVRA):

- KRS 431.082 – Provides a civil right of action by a victim of human trafficking against a defendant in the event of a conviction, allowing for recovery of the costs of bringing the action, attorney’s fees, compensatory, and punitive damages if the victim prevails.<sup>25</sup>
- KRS 413.249 – Permits civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or sexual assault, which now includes commercial sexual activity.<sup>26</sup>
- KRS 337.385 - The HTVRA also gives victims of labor trafficking a powerful means of recovery. If the court finds that an employer has subjected the employee to “forced labor or services” as defined under the state human trafficking statute and has failed to pay the employee the full amount due in wages and overtime owed to the employee, the employee may seek punitive damages at least three times [emphasis added] the amount of wages and overtime due as well as costs and reasonable attorney’s fees.<sup>27</sup>

### Kentucky Wage and Hours Claims

Kentucky’s wage and hour laws under KRS Chapter 337 closely follow the FLSA though there are some differences in the state’s minimum wage requirement, rest/meal break rules, and overtime calculations.<sup>28</sup> The statute of limitations period for violations is five years and there is no prerequisite that an employee file a complaint with the Department of Labor prior to filing a lawsuit under KRS Chapter 337.<sup>29</sup>

#### **Practice Tips:**

Victims of forced labor may be misled by employers who promise them a “salaried” position that sounds more stable than that of an “hourly” worker, appealing to victims’ cultural norms. Based on the type of work they perform, those employees should be properly classified as hourly workers, subjecting employers to the overtime pay and other rules that govern such workers. Interviews with clients should attempt to determine if such a misclassification occurred for determining what types of damages could be sought.

*(Source: McKenzie Cantrell, Kentucky Equal Justice Center Labor & Employment Attorney, Louisville).*

## Breach of Contract

A breach of contract suit may be appropriate where the trafficker (often a “recruiter” or the employer) made a false promise to a victim about the amount of payment to be received for work completed or has not paid them according to the schedule agreed upon in the contract.<sup>30</sup> While many persons who are trafficked are lured with an oral contract, the terms of which may be difficult to prove in the future, a great number of foreign national victims have written contracts from their employers as a condition of the employer obtaining a visa for the worker.<sup>31</sup> In Kentucky, the statute of limitations for breach of contract is 5 years for a contract not in writing.<sup>32</sup> For written contracts executed after July 15, 2014, the statute of limitations is 10 years.<sup>33</sup> The statute begins to run on the date the contract is breached, regardless of the aggrieved party’s lack of knowledge of the breach.<sup>34</sup>

## Tortious Claims

Although these tort claims have not been tested in court, experts suggest attorneys could pursue claims for assault, battery, false imprisonment, intentional infliction of emotional distress, and fraud, in addition to trafficking-specific claims.<sup>35</sup> The statutes of limitations on these claims in Kentucky vary, from one to five years depending on the claim.<sup>36</sup>

## Barriers to Civil Suits

A leading attorney with the Kentucky Equal Justice Center in Louisville, who represents victims of labor trafficking in civil suits, outlines a number of barriers to representation, including:<sup>37</sup>

- » Language: Communication with a client can be difficult because it may be challenging to find local interpreters of languages other than Spanish and the language line translation service is expensive.
- » Client interview: The interview can be lengthy because the client seems uncertain, fearful or is generally not forthcoming with details. It can be difficult to get the entire story in one interview.
- » Client participation: Clients, especially those from other cultures, may not be as familiar with the purpose of civil lawsuits. For them, “justice” through criminal prosecution may be more meaningful. For others, fear of the trafficker makes them reluctant to pursue monetary damages.
- » Length of time: Trafficking perpetrators and victims may move around or return to their home countries. In such cases, tracking down new addresses, taking depositions, going through discovery, sending documents through the mail, and getting documents translated all takes time.
- » Immigration status: Traffickers often use victims’ lack of work authorization to compel victims to continue working. Victims who have filed civil suits against their traffickers may be intimidated by traffickers’ threats to call U.S. Immigration Enforcement officials.
- » Pending criminal charges: A victim may be subject to criminal charges, sometimes related to the trafficking, e.g., when a victim allegedly assaults an employer/trafficker. A criminal conviction could negatively affect a victim’s T or U Visa application unless the charges can be tied to the victimization. Pending criminal charges against the trafficker may also lengthen the timeline of a civil suit.

## Human Trafficking Civil Litigation Practice Considerations

Those wishing to pursue civil litigation on behalf of victims of trafficking should also be aware of the following general practice considerations:<sup>38</sup>

- » It may take time for clients to develop trust and confidence. Balance what limited information is in hand against the need to file a complaint before the statute of limitations deadline. Consider filing an amended complaint later when clients may have shared more information as their comfort level and healing process evolves.

- » Consider making a safety plan, reducing the chances that a trafficker can find a victim and minimizing the information that a trafficker can use to locate a victim. Utilize court safety protocols when necessary and engage with law enforcement and other victim advocates to manage safety planning for the client.
- » Coordinate with federal, state, and local prosecutors, who may be pursuing criminal charges against the trafficker. A motion to stay a civil case has pros and cons: the civil case can benefit from the use of evidence introduced during a preceding criminal trial, but a stay also delays a victim from receiving necessary and deserved damages and could allow the perpetrator to destroy evidence. Note that TVPA reauthorization of 2013 automatically stays a civil case until the federal criminal case has concluded.<sup>39</sup>
- » Move quickly to get the client an immigration attorney to file for the appropriate immigration relief (e.g. U or T Visa or VAWA petition<sup>40</sup>) if the client is not already working with one.
- » Assess what a damage award could mean to the client's eligibility for government programs and services with income limits (housing, food stamps, etc.) and what the extent of tax liability may be.

For attorneys seeking technical assistance with civil claims on behalf of victims of human trafficking or for training on how to include human trafficking in a law firm's pro bono program, the [Human Trafficking Pro Bono Legal Center](http://hprobono.org) at [hprobono.org](http://hprobono.org) is an excellent resource. The Center provides pro bono attorneys with access to a database with the up-to-date information on federal human trafficking civil lawsuits, sample complaints, appellate decisions, sample briefs, and key orders.

If pursuing a civil lawsuit is not feasible, civil attorneys should consider advocating for victim restitution as part of any plea deal brought by federal prosecutors to perpetrator-defendants in criminal proceedings.<sup>41</sup>

### Civil Protection Orders

Victims of human trafficking may be eligible to seek protection from the courts through the protective order statutes. Although human trafficking is not an enumerated grounds for seeking a civil protective order, victims of trafficking may, based on the facts of their case, qualify for orders based on domestic violence, dating violence, sexual assault or stalking.

There are two types of protective orders: temporary and long-term protective orders. Emergency protective orders (EPOs) are temporary orders issued in domestic violence cases and temporary interpersonal protective orders (TIPOs) are issued in dating violence, stalking and sexual assault cases. Domestic Violence Orders (DVOs) are long-term orders issued in domestic violence cases and Interpersonal Protective Orders (IPOs) are long-term orders issued in dating violence, sexual assault and stalking cases.

To be eligible for a protective order, the victim of trafficking must show that he/she was either:

- Physically injured or assaulted
- Sexually abused or sexually assaulted
- Threatened with physical abuse or assault
- Stalked by the respondent
- Placed in fear of imminent physical injury or serious physical injury, sexual abuse or assault

To qualify for a protective order, the victim must also show that he or she is:

- A family member of the alleged perpetrator. This includes a spouse, former spouse, a parent, a child, a stepchild, a grandparent, a grandchild, or any other person living in the same household as a child if the child is the alleged victim.
- A member of an unmarried couple. This includes members of an unmarried couple who allegedly have a child in common, any children of that couple, or members of an unmarried couple who are living together or have formerly lived together.
- In a dating relationship with the alleged perpetrator, meaning that the two have or have had a relationship of a romantic or intimate nature.
- A victim of sexual assault or stalking, regardless of the relationship to the perpetrator.

The victim can file on behalf of himself or herself, or on behalf of a child.

If the judge issues an EPO, TIPO or summons, a hearing will be scheduled within 14 days to determine whether long-term protection is needed. During the hearing, the judge hears testimony from the victim, the trafficker-respondent and any witnesses. The court may dismiss the case or issue a DVO or IPO including the following terms:

1. Order the respondent to have no contact with the victim or other persons
2. Order the respondent not to go near a specified residence, school or place of employment of the victim
3. Order the respondent not to abuse or threaten the victim
4. Order the respondent to surrender and not possess or purchase firearms (DVO only)
5. Order the respondent not to damage or dispose of the victim's property
6. Order the respondent to leave the victim's residence
7. Grant temporary custody of children
8. Grant child support
9. Order counseling
10. Anything else needed to eliminate future acts of violence

More information about the process of filing for a protective order is available from the Administrative Office of the Courts at <http://courts.ky.gov/resources/publicationsresources/Publications/P123ProtectiveOrderBooklet.pdf>. See also KRS 403.715-403.785 and KRS 456.

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<sup>1</sup> [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/splc\\_human\\_trafficking.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/splc_human_trafficking.pdf). 4th edition excerpts can be found at <http://www.nycourts.gov/ip/human-trafficking/content/1.Civil%20Litigation%20on%20Behalf%20of%20Victims%20of%20Human%20Trafficking.PDF>

<sup>2</sup> Quote taken from Human Trafficking Pro Bono Legal Center website, accessed at [www.htprobono.org](http://www.htprobono.org) on November 30, 2015.

<sup>3</sup> See the summary chart outlining selected cases in which compensatory and punitive damages were awarded to victims of trafficking on pages 109-111 of *Representing Human Trafficking Victims in Massachusetts* (2013) found at [representingmatraffickingvictims.org](http://representingmatraffickingvictims.org).

<sup>4</sup> *Id.* at 103.

<sup>5</sup> See 18 U.S.C. § 1595. This was not part of the original statute but added in the 2003 reauthorization of the Act.

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

<sup>7</sup> See *Ditullio v. Boehm*, 662 F.3d 1091 (9th Cir. 2011), *Carazani v. Zagarra*, Civil Action No. 2012-0107 (D.C. 2013).

<sup>8</sup> *Id.* at §1595 (c).

<sup>9</sup> Section 118, P.L. 114-22 (May 29, 2015).

<sup>10</sup> 29 U.S.C. §201-219.

<sup>11</sup> 29 U.S.C. §255(a).

<sup>12</sup> Telephone call with McKenzie Cantrell on Sept. 24, 2015, notes on file with authors.

<sup>13</sup> Wage and Hour Fact Sheets #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Decision on laws enforced by the Wage and Hour Decision, Revised July 2008, found at [www.dol.gov/whd/regs/compliant/whdfs48.htm](http://www.dol.gov/whd/regs/compliant/whdfs48.htm).

<sup>14</sup> Telephone call with McKenzie Cantrell, and MOUs, *supra* note 12.

<sup>15</sup> [Farmworkerjustice.org/advocacy-and-programs/us-labor-law-farm](http://Farmworkerjustice.org/advocacy-and-programs/us-labor-law-farm).

<sup>16</sup> *Id.*

<sup>17</sup> 29 U.S.C. §1801-1872, PL 97-470 (1983)

<sup>18</sup> Section 504 of the Act.

<sup>19</sup> The Agricultural Worker Protection Act at 30, produced by Farmworker Justice (2013), found at [www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeUnfinishedHarvest.pdf](http://www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeUnfinishedHarvest.pdf).

<sup>20</sup> Section 501 of the Act.

<sup>21</sup> 42 U.S.C. §2000e-2

<sup>22</sup> *Chellen v. John Pickle Co., Inc.*, 424 F. Supp.2d 1069 (2006), Nos. 02-CV-0085-CVE-FHM, 02-CV-0979-FHM, where only the Indian-born employees were forced to live in cramped dormitories behind the gates of the company and were paid substantially less than minimum wage as compared to the company's non-Indian employees hired to do the same work.

<sup>23</sup> Press Release, May 26, 2006, EEOC, found at [www.eeoc.gov/eeoc/newsroom/release/5-26-06.cfm](http://www.eeoc.gov/eeoc/newsroom/release/5-26-06.cfm)

<sup>24</sup> 18 U.S.C. §§1961-1968.

<sup>25</sup> KRS 431.082(1)-(4).

<sup>26</sup> KRS 413.249.

<sup>27</sup> KRS 337.385(3)

<sup>28</sup> KRS Chapter 337; Lynda Hils Mathews & Julie Hein, Wage and Hour Law Update at 4-3, presented at the 2015 Kentucky Legal Update in Lexington, KY on 12/4/15.

<sup>29</sup> *Id.* at 4-4.

<sup>30</sup> Call with Cantrell, *supra*, note 12.

<sup>31</sup> Freedom For All, *supra* Section 2 note 3, at 112.

<sup>32</sup> Ky. Rev. Stat. Ann 413.120(1).

<sup>33</sup> Ky. Rev. Stat. Ann. 413.160. Written contracts executed before this date have SOL of 15 years. (Ky. Rev. Stat. Ann. 413.090(2)).

<sup>34</sup> Colin H. Lindsay & Ryan Morrison, Practical Law Guide - Statute of Limitations: Kentucky, Thompson-Reuters, accessed at <http://us.practicallaw.com/w-000-1784>, citing *Sandy V. & E.R. Co. v. Hughes*, 205 S.W. 607, 608 (Ky. 1918) and Ky. Rev. Stat. Ann. 355.2-725 (UCC).

<sup>35</sup> Freedom For All, *supra* note 31.

<sup>36</sup> Lindsay & Morrison, Statute of Limitations: Kentucky.

<sup>37</sup> Call with Cantrell, *supra*, note 12.

<sup>38</sup> Please see Freedom For All, *supra* note 31, p. 113-117, for a more in-depth discussion of each of these considerations.

<sup>39</sup> Trafficking Victims Protection Reauthorization Act of 2013 (part of Violence Against Women Act of 2013, PL 113-4).

<sup>40</sup> See Appendix D for information on VAWA petitions.

<sup>41</sup> Call with Cantrell, *supra*, note 12.

### Key Ideas in this Chapter:

- ◇ Victims of human trafficking lacking lawful immigration status may pursue various forms of immigration relief under federal law.
- ◇ Please consult an immigration attorney familiar with working with victims of human trafficking as applications for appropriate immigration relief programs may be complex.

## SECTION 7: IMMIGRATION RELIEF FOR VICTIMS OF HUMAN TRAFFICKING

Immigration topics are also covered in the following sections: Section 4 contains an expansive overview of immigration relief options for minors. Appendix D is a high level summary of immigration protections for which victims of trafficking may qualify.

### Immigration Protections for Victims of Trafficking

Under certain circumstances victims of labor and sex trafficking may be able to obtain lawful immigration status. The most common provisions are Continued Presence, the T Visa and the U Visa. However, it is important to note that this list is not comprehensive and an immigration attorney should be consulted for more detailed information.

#### Continued Presence

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking whose presence is necessary for a possible investigation or prosecution. It provides a temporary defense to deportation and temporary work authorization. It is initially granted for one year and may be renewed in one year increments. Only federal law enforcement officials such as ICE, FBI, and the U.S. Attorney's Office can submit applications for CP status.

*TIP:* CP applications can be approved on the basis of a victim's credible statement alone, approval is not dependent upon the case being prosecuted, and CP is available even if human trafficking charges are never brought.

#### T Visa

T Visa (nonimmigrant) status is granted to victims of "severe trafficking" to allow them to remain in the United States to assist in the investigation or prosecution of human trafficking violators. It permits a person to live and work in the United States for four years. Unlike Continued Presence status, the T Visa creates an option for victims to apply for lawful permanent residency after three years. It also provides victims with a certification letter to establish eligibility to receive federal and state public benefits, although this is not required for minors. In addition, victims under the age of twenty-one can apply for derivative status for their spouse, child, parents, and unmarried siblings under the age of 18. A victim or his or her representative may petition for T nonimmigrant status by filing an application with United States Citizenship and Immigration Services.

## U Visa

The U Visa was created with the intent of increasing cooperation with law enforcement and protecting immigrants from certain types of serious crimes such as domestic violence, sexual assault, and trafficking. This status permits people to live and work in the United States for four years and allows them to apply for lawful permanent residence after three years if it is justified on humanitarian grounds. In addition, derivative status may be sought for qualified family members.

In order to be eligible for a U Visa, victims must show they are victims of a qualifying crime, they have cooperated with law enforcement in investigating or prosecuting that crime, and they have suffered substantial physical or mental harm as a result of the crime.



### Key Ideas in this Chapter:

- ◇ Kentucky has a statute protecting communications between a victim and a human trafficking counselor or advocate.
- ◇ Community based organizations that work with victims of trafficking may also have confidentiality requirements under the federal grant programs that fund them.
- ◇ Pro bono attorneys in every community can help their local victims' services groups quash subpoenas requesting the confidential information of victims.

## SECTION 8: PROTECTING THE PRIVILEGE – HOW ATTORNEYS CAN HELP VICTIMS MAINTAIN CONFIDENTIALITY

Community based organizations (CBOs) that assist survivors of human trafficking work hard to demonstrate that staff are not there to judge victims, but to provide assistance that meets their physical, emotional, and other needs, and to explain what options are available for them to move forward. CBOs, whether providing trauma-informed care or victim-centered advocacy, focus on rebuilding survivors' lives and giving them back control.<sup>1</sup>

To receive help from a CBO trafficking caseworker or counselor, victims must disclose personal information. This can often be difficult because victims might feel fear, rejection, or embarrassment in the course of such revelations. Victims may even worry that information shared with their counselor or advocate will lead to criminal liability for crimes they committed while they were being trafficked.<sup>2</sup>

It is vitally important for victims to feel assured that the caseworker or counselor will keep their information confidential. That privacy enhances survivor safety, lessens the feeling of social humiliation and rejection, thereby improving access to services, and strengthens the trust element in the advocate-survivor relationship.<sup>3</sup> Caseworker confidentiality also provides victims with an informed response to law enforcement and makes them more willing to participate in prosecution and seek civil remedies.<sup>4</sup>

Kentucky is one of very few states in the country that expressly legislates that information shared between a victim of human trafficking and a trafficking counselor is privileged.<sup>5</sup> According to KRS 422.295(2),

“a human trafficking victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a trafficking victim counselor for the purpose of receiving counseling, therapy, services, information, or treatment related to human trafficking.”

“Confidential communication” is defined as “information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted and includes all information regarding the facts and circumstances involving the trafficking.”<sup>6</sup> When the victim has a guardian or conservator, the holder of the privilege is not the victim, but the guardian or conservator.<sup>7</sup>

The “trafficking victim counselor” is a counselor, psychotherapist, or a person employed by an organization to render services to victims of human trafficking.<sup>8</sup> There is no regulation on who can be a trafficking victim counselor, but the law states that the individual must have 40 hours of human trafficking-specific training.<sup>9</sup> Note that if a counselor or caseworker is a mandatory reporter, this privilege does not negate the duty to make a specific report of abuse to the appropriate authority or agency.

Victims who seek services through domestic violence or rape crisis centers also have protections under the counselor-client privilege detailed in KRE Rule 506 but that privilege comes with exceptions that grant the judge some discretion to allow discovery of “relevant” confidential communication.<sup>10</sup>

Beyond Kentucky’s statutory privilege, human trafficking caseworkers, counselors, and advocates in Kentucky working for CBOs that are grantees or sub grantees of federal government programs may also have confidentiality requirements. Although the TVPA and Runaway and Homeless Youth Act do not have specific privacy language,<sup>11</sup> other sources of federal funding do require grantees to avoid disclosures about people seeking their services, including VAWA (Violence Against Women Act), FVPSA (Family Violence Prevention and Services Act), and VOCA (Victims of Crime Act).<sup>12</sup> Penalties for violating privacy include fines or loss of funding.<sup>13</sup> Disclosures may be permitted under certain circumstances; for example, VAWA permits disclosure with the informed, written, and time-limited consent of the person, if a statute mandates disclosure, or under court mandate.<sup>14,15</sup>

Local nonprofits serving victims of human trafficking may receive subpoenas for information from prosecutors looking to strengthen a criminal case or from defense attorneys attempting to rattle a victim. CBOs intimidated by receipt of a subpoena may seek an attorney’s counsel to help them respond. A pro bono attorney assisting a CBO in receipt of a subpoena for victim information should consider the following:<sup>16</sup>

- Determine what the victim wants. It is the survivor’s information at question, so it is his or her choice if disclosure is desired. The human trafficking advocate/caseworker at the CBO must communicate with the survivor and the legal decision maker (if different) to help the victim decide whether the information should be shared.<sup>17</sup>
- Ascertain in which forum was the subpoena issued and who issued it. The issuer may not be aware of the statutory privilege. A quick phone call could get the subpoena withdrawn.
- Gauge the timeline on filing a response or motion to quash. Seek a continuance if you need more time to investigate or the CBO needs additional time to get instructions from the survivor about the privileged information.
- Establish what exactly is being requested. A sloppy or overreaching request may be easier to overcome.
- Determine what is the strongest law or argument available to quash or restrict the subpoena. Consider procedural arguments as well.

The Confidentiality Institute is able to provide technical assistance to CBOs on VAWA/privilege issues. If you are an attorney working with a CBO that has received a subpoena for privileged information, the CBO may contact Alicia Aiken at [alicia@confidentialityinstitute.org](mailto:alicia@confidentialityinstitute.org) to learn more about how to receive technical assistance.<sup>18</sup>

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<sup>1</sup> Alicia Aiken, Confidentiality Institute, Inc., Protecting Privacy to Enhance Safety Pro Bono Attorney Manual, 2014, (basis for “Emerging Issues in Human Trafficking and Confidentiality” Webinar offered through the American Bar Association, originally broadcast on January 30, 2015 and available for download at [americanbar.org](http://americanbar.org).)

<sup>2</sup> Polaris Project, 2013 Analysis of State Human Trafficking Laws, Victim Assistance report, August 2013.

<sup>3</sup> Debra Dority and Robin Selig, Confidentiality Fundamentals and Challenges for Non-Profit Victim Services Providers, July 2013, Oregon Law Center.

<sup>4</sup> Aiken, *supra*, note 1.

<sup>5</sup> KRS 422.295.

<sup>6</sup> KRS 422.295(1)(a).

<sup>7</sup> KRS 422.295(1)(b)

<sup>8</sup> KRS 422.295(1)(c)(1)-(3)

<sup>9</sup> KRS 422.295(1)(c)(3).

<sup>10</sup> KRE Rule 506 (2013).

<sup>11</sup> Aiken, *supra*, note 1.

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

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

<sup>14</sup> Dority & Selig, *supra*, note 3; Violence Against Women Act. 42 USC §13925(b)(2).

<sup>15</sup> Ms. Aiken cautions that the court mandate should be a proper court order; a subpoena without judicial review should not be taken as a court mandate.

<sup>16</sup> Aiken, *supra*, note 1.

<sup>17</sup> Ms. Aiken stresses that CBOs should understand that victim consent is not just a formality; requiring victims to sign consent forms undermines the point of informed consent.

<sup>18</sup> The Confidentiality Institute has produced pro bono attorney training manuals and recorded webinars on how attorneys can help defend nonprofits from such subpoenas. For more information on how to obtain one of these manuals, please contact Ms. Aiken directly at [Alicia@confidentialityinstitute.org](mailto:Alicia@confidentialityinstitute.org).

**Key Ideas in this Chapter:**

- ◇ Corporate attorneys play an important role in reducing the possibility companies are involved in some way with human trafficking.
- ◇ Regulatory bodies increasingly are requiring companies to scrutinize their supply chains for links to or risk of human trafficking.

**SECTION 9: HUMAN TRAFFICKING AND KENTUCKY CORPORATIONS**

Many businesses are embracing the concepts of “fair trade” and “corporate social responsibility” but the role of a business lawyer goes well beyond buzzwords. Kentucky businesses range from small family-owned storefronts to regional service providers with multi-county operations to Fortune 1000 companies with a strong national and international presence. In-house and outside business attorneys for clients of all sizes should consider how human trafficking could impact a business in Kentucky: is forced labor being used somewhere in the supply chain of the organization’s product? Does the business have a contract with a landscaping company that utilizes victims of labor trafficking to maintain its grounds?<sup>1</sup>

Corporate attorneys have the means and access to review an organization’s policies and procedures across service and product lines and to bolster its contracts with employees and external entities to reduce the risk the business is associated with human trafficking. To demonstrate a commitment to anti-trafficking efforts, attorneys should view human trafficking as another element in developing risk mitigation and compliance assessments and plans.<sup>2</sup> Kelly Hyland and Kavitha Sreeharsha, human rights attorneys and founders of the Global Freedom Center, suggest that business attorneys can do many things including:

- Performing risk assessments to determine how and where forced labor may be taking place in the supply chain;
- Increasing transparency with the public on the organization’s policies regarding labor practices;
- Ensuring the company complies with federal regulations on human trafficking and human rights as a federal contractor;
- Developing new vetting procedures for the contractors the company uses;
- Creating policies that clearly define how the company will respond to trafficking allegations by an employee or a supplier;
- Training employees on how to mitigate risk and how policies and procedures impact the company’s anti-trafficking efforts; and
- Assisting the company with public and media relations (good or bad) on trafficking-related matters.<sup>3</sup>

**Supply Chain Legislation**

Some states are already using legislative means to force businesses to act. In 2010, California passed the “Transparency in Supply Chains Act.”<sup>4</sup> This law requires that any retailer or manufacturer earning more than \$100 million in sales worldwide and doing business in California must publicly disclose their efforts to combat slavery and human trafficking in their supply chain.

The disclosure, which must be posted on the company's website, must include information about how the organization complies at minimum in these five areas:

1. Verifying product supply chains to evaluate and address risks of human trafficking and slavery and specifying if the verification was not conducted by a third party.
2. Conducting audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains and specifying if the verification was not an independent, unannounced audit.
3. Requiring direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
4. Maintaining internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
5. Providing company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.<sup>5</sup>

The exclusive remedy for a violation of California's law shall be an action brought by the Attorney General for injunctive relief.<sup>6</sup> A comparable bill has been introduced in Congress (H.R. 4842) and other states are considering taking a similar approach.

### Use of Overseas Recruiters & Labor Trafficking – A Risky Business

Civil lawsuits for trafficking against corporations doing business overseas are becoming increasingly common.<sup>7</sup> Civil RICO claims have been brought in conjunction with civil claims based on the TVPA in recent years to address wrongs based on labor trafficking and exploitation. Companies using third party recruiters and staffing companies to hire or manage workers internationally should be aware of the risk.<sup>8</sup>

In February 2015, a jury awarded \$14 million in compensatory and punitive damages to five workers who came to the U.S. from India on H-2B visas to work in a Mississippi shipyard following Hurricane Katrina. The suit, *David v Signal Int'l, LLC*, No. 08-CV-1220 (E.D. La. Mar. 20, 2015), was litigated for seven years with the jury ultimately finding that Signal International, a U.S.-based marine services company, its lawyer, and an India-based labor recruiter had engaged in labor trafficking, racketeering, fraud, and discrimination. The plaintiffs each had paid between \$10,000 and \$20,000 in recruitment fees to work as welders and pipefitters in the shipyards and were promised good jobs, green cards, and permanent U.S. residency for themselves and their families. Instead, they were denied those immigration benefits, forced to live in guarded labor camps in cramped, squalid conditions, threatened with deportation, and paid below-market wages. The victims were represented by attorneys from the ACLU, Southern Poverty Law Center, Asian American Legal Defense and Education Fund, the Louisiana Justice Institute, and Crowell & Moring in New York among others.<sup>9</sup>

### Human Trafficking Resources for Corporate Attorneys

- The American Bar Association Center for Human Rights Anti-Trafficking Project webpage<sup>10</sup>
- U.S. Department of Labor, Bureau of International Labor Affairs, Reducing Child Labor and Forced Labor Toolkit<sup>11</sup>
- Slaveryfootprint.org
- Gbcats.org – network of Fortune 100 companies committed to eradicating slavery in their supply chains
- Corporate Liability and Human Trafficking Brief (December 2015)<sup>12</sup>

<sup>1</sup> Freedom For all, supra Section 2, note 3, at 77.

<sup>2</sup> *Id.* at 75.

<sup>3</sup> *Id.* at 75-79.

<sup>4</sup> CA Civil Code 1714.43, also known as CA S.B. 657 (2102).

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

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

<sup>7</sup> Corporate Liability and Human Trafficking, Human Rights First, December 2015, found at <http://www.humanrightsfirst.org/topics/human-trafficking>.

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

<sup>9</sup> Description of David v. Signal Int'l taken from press release dated Thursday, February 19, 2015, on the Asian American Legal Defense and Education fund website, at [aaldef.org](http://aaldef.org).

<sup>10</sup> Found at [www.americanbar.org/groups/human\\_rights/projects/task\\_force\\_human\\_trafficking.html](http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking.html).

<sup>11</sup> Found at [www.dol.gov/ilab/child-forced-labor/](http://www.dol.gov/ilab/child-forced-labor/)

<sup>12</sup> Found at [www.humanrightsfirst.org](http://www.humanrightsfirst.org).

### Key Ideas in this Chapter:

- ◇ Victims of human trafficking can come from any segment of society, however, certain populations have special needs and concerns that should be addressed in both identification and treatment programs.
- ◇ Attorneys and judges should acknowledge and respect LGBTQ client preferences on how they would like to be addressed, maintain their confidentiality with respect to status, and strive to improve LGBTQ-friendly intervention options within their communities.
- ◇ The Commonwealth should continue to expand treatment options, including housing and supportive resources for boys who have been trafficked. Nothing should be assumed about people's sexual orientation based on what they were forced to do in the context of trafficking or exploitation.

## SECTION 10: HUMAN TRAFFICKING CONSIDERATIONS FOR SPECIFIC POPULATIONS – LGBTQ, MALE VICTIMS, AND THOSE WITH DISABILITIES

### Lesbian, Gay, Bisexual, Transgender, or Queer Victims

Individuals identifying as Lesbian, Gay, Bisexual, Transgender, or Queer (LGBTQ)<sup>1</sup> are particularly vulnerable to traffickers, especially youth who may face rejection from family and community and subsequently run away from home. It is estimated that 20-40% of homeless youth in the United States identify as LGBTQ; many of those children are forced to turn to survival sex and other forms of sexual exploitation to survive.<sup>2</sup> LGBTQ youth are more likely to have contact with the juvenile justice and child welfare systems due to family conflicts, school exclusion, and a lack of strong safety nets.<sup>3</sup>

LGBTQ youth and adults may shy away from self-identifying as a victim of human trafficking when coming in contact with law enforcement, juvenile justice staff, court designated workers, child welfare workers, and school personnel due to fear and a lack of trust common to most victims and to avoid further stigma and harassment.

LGBTQ victims often face unnecessary or increased detention when compared to non-LGBTQ peers. LGBTQ youth are more likely to be detained for minor offenses.<sup>4</sup> Parents may refuse to take custody of a LGBTQ child held on “masking” offenses and courts may see detention as a justified response to a flight or safety risk. Transgender victims may be held in isolation, seemingly for their own protection, however, that isolation can exacerbate the trauma a victim of trafficking has experienced, deprive victims of necessary trauma-informed services and counseling, and deprive youth of social interactions needed for adolescent development.<sup>5</sup>

Organizations serving at-risk youth are starting to address the lack of inclusive elements for the LGBTQ population. The U.S. Administration for Children and Families (ACF) now requires Runaway and Homeless Youth program grantees to train staff in how to serve the unique needs of LGBTQ youth.<sup>6</sup> Other organizations, including Polaris Project, have developed guides on how anti-trafficking service providers and criminal justice workers can improve services for adult and youth LGBTQ victims of trafficking.<sup>7</sup>

Treating victims with respect and dignity is essential to relationship building. Attorneys and judges working with victims of human trafficking must take care not to make their own assumptions about an individual's sexual orientation, sexual expression, or gender identity, but instead, should obtain that information directly from the individual.<sup>8</sup> Other things legal professionals can do to help ensure their practices are LGBTQ-friendly include:

- Adjusting intake questions, by first inquiring about, and then using, the preferred name, gender, and pronouns of clients, deferring to clients on how they would like to be addressed;<sup>9</sup>
- Ensuring that one's own biases about sexual orientation or gender identity do not overshadow the desires of the client;<sup>10</sup>
- Protecting the privacy of victims by refraining from disclosing sexual orientation and gender identity to others without client consent;<sup>11</sup> and
- Being aware of client safety planning in the context of representation.<sup>12</sup>

Attorneys can work to reduce or eliminate detention for victims when appropriate by:

- Determining whether the client is being detained on charges which occurred as a result of being trafficked;
- Educating the courts and other professionals about the harms of detention and isolation for victims of human trafficking;
- Working to ensure a victim-client's detainment occurs in an inclusive environment that condemns harmful harassment and stereotyping, promotes client safety, and includes trauma-informed care and services; and
- Advocating for expanded LGBTQ-friendly shelters, housing, and other interventions within their communities so that individuals have a safe place to go to seek help.

## Male Victims of Human Trafficking

Boys are often the forgotten victims of commercial sexual exploitation as there have been very few empirical studies on the scope of the problem. The current landscape of victim services may focus solely or primarily on female victims.

This does not square well with a 2008 study in New York that estimated that as high as 50 percent of commercially sexually exploited youth in the United States are boys.<sup>13</sup>

"And Boys Too," a recent discussion paper by EPCAT-USA, attempts to address why boys go unidentified or under-identified. Contributing factors reportedly include unwillingness for boys to self-identify as victims of sexual exploitation due to shame and stigma about being gay or being perceived as gay by family and friends; limited outreach by anti-trafficking organizations to areas known for male prostitution; and lack of screening by law enforcement and social service agencies in the belief that boys are not victims.<sup>14</sup>

Studies and surveys indicate boys enter the life in the early teens (like girls) and their exploiters/buyers are usually men, who are typically white, middle or upper class, professional, and married.<sup>15</sup> Commercially sexually exploited boys are often subject to violence and suffer substance abuse, STDs, and mental health problems just as female victims do.<sup>16</sup>

While the number of male youth victims of sex trafficking formally identified and given state or community-based human trafficking-related services in Kentucky has been very small to date, anecdotal reports based on observations of youth in some of our larger Metropolitan areas by runaway/homeless youth shelters and other street outreach organizations indicate that this is an issue the Commonwealth cannot ignore.<sup>17</sup>



What legal professionals can do:

- Educate themselves and others in their communities on how sexual exploitation detrimentally affects boys as well as girls;
- Advocate locally for additional resources that will address boys' needs in supportive and therapeutic setting through new or existing local community organizations with programs designed for them;
- Improve the chances for identification and intervention by working with law enforcement, prosecutors, and the courts to reduce the number of male victims who are picked up on or with "masking offenses" and work to get them referred to appropriate agencies for services.

## Victims with Disabilities

**Human trafficking, or modern day slavery, affects all communities, including people with disabilities.**

Since persons with disabilities comprise 10% of the world's population and the world's largest minority, they deserve special attention in addressing the crime of human trafficking.

**A disability may be a risk factor for being trafficked.**

- According to World Vision, "the very factors that challenge people living with disabilities to take an active role in their communities are the same ones that make them attractive to traffickers."<sup>18</sup>
- Traffickers may target victims to exploit their disability for profit, e.g. deaf individuals who are begging.<sup>19</sup>
- The stigma and marginalization of a person with disabilities creates a particular vulnerability. For example, parents who see no hope of jobs or marriage for their children with disabilities may place those children in exploitative situations with the intent of shedding a "burden" or seeking income.<sup>20</sup>
- The commonly held view that persons with disabilities are not sexually active increases the risk of sex trafficking for persons with disabilities, especially women and girls. For example, a Global HIV/AIDS survey conducted by the World Bank and Yale University showed that women and girls with disabilities were assumed to be virgins and thus targeted for forced sex, including by HIV-positive individuals who believed that having sex with a virgin would cure them.<sup>21</sup>

**Lack of equal treatment by government agencies may make persons with disabilities more vulnerable to being trafficked.**

- Societal barriers limit the access of persons with disabilities to systems of justice. Lack of training of police, prosecutors, and judges on how to accommodate persons with disabilities (through, for example, sign language interpreters, plain language, and physical access) can leave victims with disabilities unable to provide effective statements and report the abuse they have endured.
- Where schools fail to accommodate students with disabilities, high drop-out rates leave them on the streets and at much higher risk of being trafficked in forced begging or other criminal activities.

**Victims with disabilities may not seek services due to barriers.**

- The physical and attitudinal barriers that confront people with disabilities may further hamper the ability of victims with disabilities to receive the assistance they require and are entitled to.<sup>22</sup>

**Human trafficking and resulting trauma may be a cause of disability.**

- Even in instances in which victims of trafficking do not have disabilities, the experience of being trafficked substantially increases the risk of victims acquiring disabilities as a result of physical and psychological trauma.<sup>23</sup>

**Cases of human trafficking involving victims with disabilities have been prosecuted across the United States, including the following:**

- **US v. Paoletti:** The Paoletti trafficking operation forced an estimated 1,000 deaf Mexican victims to beg on various streets in New York and Chicago in a course of 8 years. Victims were coerced with violent threats, debt, and shame. The captive workers were finally found in 1997 when the police found some 70 deaf and mute Mexicans during a raid on a work house following a tip from a concerned citizen. Adriana Lemus, the ringleader, received 14 years in prison. This case led to the implementation of the Trafficking Victims Protection Act in 2000.
- **US v. Kaufman:** For over 24 years, Arlan Kaufman, a social worker, and his wife, Linda, a registered nurse, operated “The Kaufman House,” which purported to be a residential treatment group home for patients with mental illnesses in Newton, Kansas, a small community northeast of Wichita. During that period, Arlan routinely forced and coerced his patients to engage in nude “therapy” sessions for his and his wife’s entertainment and benefit. Kaufman documented the sessions on videotapes that he stored in his bedroom. The videotapes depicted Arlan Kaufman directing the victims to perform sexually explicit acts in front of other patients. In addition to the nude “therapy” sessions, Arlan Kaufman forced the residents to perform manual labor in the nude at a farm owned by the Kaufmans in Butler County, Kansas. The Kaufmans kept their victims compliant by creating a “climate of fear” at Kaufman House through threats, force, manipulation, and constant abuse. On January 24, 2006, Arlan Kaufman was sentenced to 30 years in prison and Linda Kaufman was sentenced to 7 years in prison.
- **US v. Evans:** Operating in Florida and North Carolina, Ron Evans recruited homeless U.S. citizens with substance abuse addictions from shelters across the Southeast, including New Orleans, Tampa, and Miami, with promises of good jobs and housing. At Palatka, FL and Newton Grove, NC area labor camps, the Evans’ deducted rent, food, crack cocaine and alcohol from workers’ pay, holding them “perpetually indebted” in what the DOJ called “a form of servitude morally and legally reprehensible.” The Palatka labor camp was surrounded by a chain link fence topped with barbed wire and a ‘No Trespassing’ sign. The CIW and a Miami-based homeless outreach organization (Touching Miami with Love) began the investigation and reported the case to federal authorities in 2003. In 2007, Florida employer Ron Evans was sentenced to 30 years in federal prison on drug conspiracy, financial re-structuring, and witness tampering charges, among others. Jequita Evans was also sentenced to 20 years, and Ron Evans Jr. to 10 years.
- **US v. Laguna-Guerrero:** Mario Laguna-Guerrero first trafficked his girlfriend for sex when she was 16. When law enforcement found the girl, who had an IQ of 58, she told them clearly, “I don’t want to do this.” The young woman had been forced to have sex with at least 80 workers in the area while her boyfriend collected \$25 per customer. He also tried to convince her to recruit some of her high school classmates into prostitution. In July 2012, Laguna-Guerrero pled guilty to conspiracy to engage in the sex trafficking of a minor and faces a maximum penalty of life in federal prison. He was deported.
- **US v. Bagley:** Five men were indicted in Missouri for sexually torturing a young woman with cognitive disabilities on live Internet webcast, forcing her to dance at strip clubs, and other heinous abuses. The victim, who is referred to as FV only, met Edward Bagley, the alleged primary abuser, when she was just 16. She had lived in foster care her whole life and had cognitive disabilities, so he easily convinced her that he could help her become a model and a dancer. Instead, he forced her into a life of sexual slavery, rape, torture, humiliation, and abuse. Two of the defendants were sentenced to 20-year terms in federal prison without possibility of parole then supervised release for life. One received a ten-year sentence. The defendants were ordered to pay restitution of over \$700,000.

***Making services accessible to victims with disabilities should be a vital part of combating human trafficking. Some practice tips for any intervention with a victim with disabilities include:***

- Do not make assumptions about a person’s abilities based on his/her appearance. Ask the person what support they need from you.<sup>24</sup>
- Be patient and respectful. Address the guilt and shame that the individual may have. Try to give the person back control and choices. Give information about safety and who to call for assistance in the future.
- Be concrete when communicating with people with cognitive disabilities. Ask “who” “what” and “when” questions rather than “how” and “why” questions. Break instructions into small steps. Use pictures, drawings or dolls to demonstrate what you are trying to communicate. Ask for understanding before moving on.
- Use a competent, independent interpreter. Be aware that a caregiver or guardian could be connected to traffickers and is not competent to give unbiased interpretation.
- Involve disability rights advocates in task forces and other anti-trafficking efforts, including outreach, training and awareness raising events.

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<sup>1</sup> Definitions can be found in Polaris Project’s “Breaking Barriers: Improving Services for LGBTQ Human Trafficking Victims” (herein “Breaking Barriers”) Terms & Definitions Section, June 2015.

<sup>2</sup> U.S. Department of State, Trafficking in Persons Report 2014, p.10

<sup>3</sup> Breaking Barriers, supra note 1.

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

<sup>5</sup> Jerome Hunt & Alisha Moodie-Mills, as cited in Breaking Barriers, supra note 1.

<sup>6</sup> LGBTQ Youth at High Risk of Becoming Human Trafficking Victims by Lonnie Bean, 6/23/13, found at [acf.hhs.gov](http://acf.hhs.gov)

<sup>7</sup> Breaking Barriers, supra note 1.

<sup>8</sup> Shannon Wilber, Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System Practice Guide, Juvenile Detention Alternatives Initiative, A Project of the Annie E. Casey Foundation at 7-8 (2015).

<sup>9</sup> *Id.* at 16.

<sup>10</sup> Majd, pp. 4-10.

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

<sup>12</sup> Breaking Barriers, supra note 1.

<sup>13</sup> Curtis, et al, The Commercial Sexual Exploitation of Children in New York City, Vol. One (Dec. 2008), found at <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>.

<sup>14</sup> Sara Ann Friedman, And Boys Too, Discussion Paper of EPCAT-USA (2013), found at <http://www.ecpatusa.org/reports-guides>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Email exchange with Marissa Castellanos, Human Trafficking Program Manager, Catholic Charities of Louisville, December 16, 2015, on file with the authors.

<sup>18</sup> World Vision, 10 Things You Need to Know about Human Trafficking (2009), p. 40

<sup>19</sup> UN High Commission on Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking: The Commentary (2010), found at [www.ohchr.org/.../Commentary\\_Human\\_Trafficking\\_en.pdf](http://www.ohchr.org/.../Commentary_Human_Trafficking_en.pdf)

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Tips for Working with Sexual Abuse Survivors Who Have Disabilities (2000), Safe Place, found at [www.safeplace.org](http://www.safeplace.org)

## SECTION 11: LEGAL RESOURCES FOR PRACTITIONERS AND BENEFITS FOR VICTIMS OF HUMAN TRAFFICKING

An increasing number of organizations offer position papers, written guides, technical advice, and other resources for attorneys who need help with properly representing clients who have been trafficked. A number of those resources have been listed in the Practice Tip Boxes throughout this Guide as well as referenced in the Section endnotes, but additional resources are listed below.

### Resources and Technical Assistance on Human Trafficking Cases

Catholic Charities of Louisville Immigration Legal Svcs	2911 S. 4th St. Louisville, KY 40208; www.cclou.org; charities@archlou.org; 502-637-9786	BIA-recognized office providing legal assistance and counseling to low and moderate-income immigrants and refugees as part of the largest private human services agency operated by the Archdiocese.
Kentucky Equal Justice Center	Kyequaljustice.org; Maxwell Street Legal Clinic: 859-233-3840 (Guion Johnstone, Program Director); KY Equal Justice Center: 502-333-6019 (McKenzie Cantrell, employment law atty); 859-233-3057 (Richard Seckel, Director)	Immigration law; Workers' rights - wage and hour /labor trafficking
Kentucky Refugee Ministries	Kyrm.org; Louisville office: 502-479-9180, Lexington office: 859-226-5661	Immigration attorneys provide assistance to refugees. Emily Jones (Lex); Becca O'Neill and Sarah Mills (Lou). Not trafficking-specific.
Coalition to Abolish Slavery and Trafficking (CAST)	Legal guides and reports at www.castla.org/legal-resources	For individual TA Call 888-507-0193 (9 AM to 5 PM PST) or email TechnicalAssistance@CASTLA.org (24 hour turn around time) Weekly Working Group call: Wednesdays 12 PM-1 PM PST
Human Trafficking Pro Bono Legal Center	www.htprobono.org	Offers technical advice for complex civil, criminal and immigration cases; compiles a database of federal trafficking cases
Assista	www.assistahelp.org	Provides help to attorneys with complex immigration cases. Can provide attorneys with best practices, samples, and technical assistance & training
AEquitas	www.aequitasresource.org	Prosecution-focused site offering technical assistance, training, and resources on violence against women (including human trafficking). TA requests can be made online 24/7.
Freedom Network	www.freedomnetworkusa.org	Links to policy papers, books, and a variety of reports on human trafficking
National Crime Victim Law Institute	www.ncvli.org	Technical assistance on general crime victim witness advocacy. Produces informative crime victim bulletins that include human trafficking topics.
National Human Trafficking Resources Center	http://www.nhtrc.org	Statistics and other reports based on signals received to the national hotline and textline.

### Additional Resources:

- Lawyer’s Manual on Human Trafficking (2013), Prepared by the NY State Courts, found at <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>
- American Bar Association Human Trafficking Project at [http://www.americanbar.org/groups/human\\_rights/projects/task\\_force\\_human\\_trafficking/resources.html](http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/resources.html)
- Human Trafficking Database kept by University of Michigan Law School at <https://www.law.umich.edu/clinical/HuTrafficCases/Pages/allcases.aspx>
- A Guide for Legal Advocates Providing Services to Victims of Human Trafficking (November 2004), Prepared by U.S. Conference of Catholic Bishops Migration and Refugee Services, Legal Aid Foundation of Los Angeles, and Catholic Legal Immigration Network (CLINIC), found at <http://www.rescueandrestoreky.org/wp-content/uploads/2010/03/Guide-for-Legal-Advocates-Providing-Services-to-Victims-of-Human-Trafficking-CLINIC1.pdf>
- Identification and Legal Advocacy for Trafficking Survivors (3rd Edition, January 2009), Prepared by the NY Anti-trafficking Network Legal Subcommittee found at [http://aaldef.org/docs/T-visa-manual-3rd-ed\(1208\).pdf](http://aaldef.org/docs/T-visa-manual-3rd-ed(1208).pdf)
- Kentucky HOPE Campaign HT videos – 7 videos found at <http://www.rescueandrestoreky.org/trafficking-in-kentucky/hope-campaign-helping-our-prostituted-and-exploited-children/>
- Webinars by the Office of Victims of Crime (OVC) – on restitution, pimp controlled trafficking, etc.) found at [www.ovcttac.gov/views/TrainingMaterials/dspWebinars.cfm](http://www.ovcttac.gov/views/TrainingMaterials/dspWebinars.cfm)
- U.S. Department of Health and Human Services, Administration for Children and Families, Resources for Human Trafficking found at [www.acf.hhs.org](http://www.acf.hhs.org). ACF Office on Trafficking in Persons Contact List found at <http://www.acf.hhs.gov/programs/endtrafficking/acf-anti-trafficking-initiatives-points-of-contact>.
- Federal Child Welfare Gateway, found at <https://www.childwelfare.gov/topics/systemwide/trafficking/>

## Victim Benefits and Programs

Victims of human trafficking may have multiple needs when first identified, and while getting good legal counsel is vital for many victims, obtaining basic necessities like cash assistance, housing, medical care, and food may be the first priority. Many attorneys find that when their clients’ basic needs are met, victims can focus and participate more fully in their representation.

## Federal Benefits and Programs

Federally funded benefits and services administered by a number of federal agencies and programs are also available to eligible victims. These agencies include the U.S. Department of Health and Human Services (HHS), U.S. Department of Agriculture, U.S. Department of Justice, U.S. Department of Housing and Urban Development, U.S. Department of Labor, U.S. Department of Education, and the Social Service Administration.<sup>1</sup> The full list of federal benefits and services is available through the HHS publication “Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers,” available online at [https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf).<sup>2</sup>

The Trafficking Victims Protection Act (TVPA) allows HHS to certify foreign adult victims of severe forms of trafficking, making them “eligible for [these] federally funded benefits and services to the same extent as refugees.”<sup>3</sup> HHS is also authorized to provide eligibility letters for foreign child victims of trafficking, which allows them to access federal benefits and services to the same extent as refugees.<sup>4</sup> Victims who are U.S. citizens and Lawful Permanent Residents do not need certification or eligibility letters to be eligible for similar benefits and services.<sup>5</sup>

## Kentucky-Based Benefits and Programs

Kentucky mandates that child/youth victims receive “appropriate treatment, housing and services” through the Cabinet.<sup>6</sup> Youth in the custody of DJJ also must get appropriate treatment per the HTVRA and to that end, DJJ’s current Standard of Practice (SOP) calls for staff to consult with Catholic Charities of Louisville on how to care for victims.<sup>7</sup> Children who have been sexually exploited can receive medical assessment and mental health care through a local CAC. Local organizations and nonprofits that are not trafficking-specific but are well versed in providing social services to their communities can help child and adult victims meet basic needs in the areas of food, medical assistance, job training, education services, transportation assistance, temporary shelter, and clothing.<sup>8</sup> A call to the National Human Trafficking Resource Center (1-888-373-7888) will connect a victim to a local social service agency like Catholic Charities of Louisville’s Human Trafficking Program that can coordinate the provisions of services to help victims after they leave the trafficking situation.

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<sup>1</sup> Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers (2012), found at [https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf) . This document herein will be referred to as “HHS Victim Resource Guide.”

<sup>2</sup> “Representing Victims of Human Trafficking in Massachusetts: A Guide for Attorneys,” by Dara Goodman, Stephanie Neely, and Michaela Sewall (Dec. 1, 2013) also has a helpful summary chart of the federal benefits available to victims in Section 10 of the publication. The entire document is available at [www.representingmatraffickingvictims.org](http://www.representingmatraffickingvictims.org).

<sup>3</sup> HHS Victim Resource Guide, at 1; 22 U.S.C. §7105(b)(1)(A).

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

<sup>5</sup> *Id.* Legal Permanent Residents have a 5 year waiting period to be eligible to apply for certain benefits and services.

<sup>6</sup> KRS 620.029(1)(b).

<sup>7</sup> See Section 6 *supra*, Note 52.

<sup>8</sup> See suggestions listed in the HHS Victim Resource Guide.

## Kentucky Trafficking-Specific Services, Resources, & Investigative Bodies

Name	Contact Information	Website	Description
Catholic Charities of Louisville Human Trafficking Program	1-888-373-7888 (National Human Trafficking Hotline); see contact and service list at the end of this section.	Rescueandrestoreky.org	Case Management/Social services for victims, including financial assistance, and connection to housing, legal services, education services, counseling and medical care; HOPE Campaign materials (Training and outreach directed at at-risk children); Kentucky training videos on human trafficking.
Kentucky Association of Sexual Assault Programs (KASAP)	Eileen Recktenwald, MSW, Executive Director 502-226-2704 1-866-375-2727	Kasap.org	Public awareness and prevention, training and technical assistance, and interdisciplinary collaboration in the area of human trafficking laws and public policy.
Office of the Attorney General	Main: 502-696-5300	Ag.ky.gov  <a href="http://ag.ky.gov/family/victims/Pages/humantrafficking.aspx">http://ag.ky.gov/family/victims/Pages/humantrafficking.aspx</a>	Office of Victim Advocacy & Child Abuse and Exploitation Prevention Unit provide trafficking-related information and resources, including training modules and outreach materials. Dept of Criminal Investigations provides support on human trafficking investigations. Local Prosecutor information available through Criminal Branch. Administers the Child Victim Trust Fund.
Cabinet for Health and Family Services	Main: 502-564-3106 Department of Community Based Services Division of Protection and Permanency: 502-564-6852 Department of Behavioral Health: 502-564-4257	Chfs.ky.gov/dcbs/dpp/  dbhdid.ky.gov	Coordinates state child welfare efforts – conducts investigations into allegations of child human trafficking and must connect victims to appropriate services and placement under state law. Provides LRC with annual report on child human trafficking.
KY Child Abuse Hotline	1-877-KYSAFE1 (597-2331)		
Labor Cabinet	502-564-3219	Labor.ky.gov	Department of Workplace Standards houses Division of Employment Standards responsible for administration and enforcement of minimum wage and overtime laws, child labor laws, wage payment and wage discrimination.
Department of Juvenile Justice	Main: 502-573-2738	Djj.ky.gov	KY statute requires DJJ to screen incoming children for human trafficking; Policy manual online outlining when screening occurs during DJJ custody
Administrative Office of the Courts	Family and Juvenile Services: 800-928-2350 (Rachel Bingham, Executive Director)	Courts.ky.gov/aoc	Court Designated Workers screen juveniles for human trafficking per statute.

Name	Contact Information	Website	Description
Kentucky Human Trafficking Task Forces	See list in Appendix B		Multidisciplinary groups that meet to discuss local protocols, cases, resources, & identify gaps in identification and service.
United States Attorney's Office, Eastern District of Kentucky	Lexington: 859-233-2661 London: 859-655-3200 Ft. Mitchell: 606-864-5523	<a href="http://www.justice.gov/usao-edky">www.justice.gov/usao-edky</a>	Federal human trafficking prosecutions
United States Attorney's Office, Western District of Kentucky	Louisville: 502-582-5911 Paducah: 270-442-7104	<a href="http://www.justice.gov/usao-wdky">www.justice.gov/usao-wdky</a>	Federal human trafficking prosecutions
U.S. Department of Labor District Office (Louisville)	Wage and Hour Division: 502-582-5226 1-866-4-USWAGE	<a href="http://www.dol.gov/whd">www.dol.gov/whd</a>	
Federal Bureau of Investigation (FBI Louisville)	12401 Sycamore Station Pl. Louisville KY; 502-263-6000	<a href="http://Louisville.fbi.gov">Louisville.fbi.gov</a>	HT investigations; Victim Witness Coordinator
U.S. Dept. of Homeland Security	Chicago Field Office: 312-347-2400	<a href="mailto:Chicago.Outreach@ice.dhs.gov">Chicago.Outreach@ice.dhs.gov</a> Asst. Field Office Director: Sylvia Bonaccorsi-Manno	HT Investigations Area of Responsibility: Illinois, Indiana, Wisconsin, Missouri, Kentucky, Kansas
Kentucky State Police (KSP)	919 Versailles Rd. Frankfort, 502-782-1800	<a href="http://www.kentuckystatepolice.org">www.kentuckystatepolice.org</a>	HT Investigations



# HUMAN TRAFFICKING VICTIM SERVICES



## Catholic Charities of Louisville • Human Trafficking Program

AGE	SERVICE	LOCATION
Under 18	Specialized Therapy Services	Louisville Metro/surrounding counties
	Assistance with Screening	Statewide
	Basic needs (clothing, food, etc)	Statewide
	Support Group (MLMC)	Currently: Louisville Metro and Shelby Counties <i>*Spring 2016: will begin offering statewide</i>
	Transportation (bus ticket, flight, etc)	Statewide
	Medical Costs	Statewide
	Immigration Legal Services	Statewide
	Specialized Services for Foreign National Children	Statewide
Older Adolescents (18 and up)	Housing Services (emergency and transitional)	Louisville Metro/ surrounding counties
	Case Management	Louisville Metro/ surrounding counties
	Assistance with Screening	Statewide
	Legal Advocacy	Louisville Metro/ surrounding counties
	Specialized Therapy Services	Louisville Metro/ surrounding counties
	Basic needs (clothing, food, furniture, etc)	Louisville Metro/ surrounding counties
	Parenting Support	Louisville Metro/ surrounding counties
	Adoption Services	Louisville Metro/ surrounding counties
	Interpreter/Translation Services	Louisville Metro/ surrounding counties
	***we work closely with community partners to provide referrals to/pay the cost of these additional services: civil legal services, job development, GED/higher education assistance, family legal services, criminal legal services, medical care, and dental care.	Louisville Metro/ surrounding counties

### Catholic Charities of Louisville Human Trafficking Program - Staff Contact Information:

Name	Position	Location	Phone	E-mail
Marissa Castellanos	Program Manager	Based in Lexington/Louisville and statewide support	502-974-4947	<a href="mailto:mcastellanos@archlou.org">mcastellanos@archlou.org</a>
Amy Nace-DeGonda	Case Manager	Louisville / surrounding counties	502-715-1504	<a href="mailto:anacedegonda@archlou.org">anacedegonda@archlou.org</a>
Jami Wilson	Case Manager	Louisville / surrounding counties	502-333-4041	<a href="mailto:jwilson@archlou.org">jwilson@archlou.org</a>
Robyn Diez d'Aux	HT Advocate	Lexington / surrounding counties	502-938-4587	<a href="mailto:rdiezdaux@archlou.org">rdiezdaux@archlou.org</a>
Lisa Ramstetter	HT Advocate	Covington / surrounding counties	502-432-5223	<a href="mailto:lrastetter@archlou.org">lrastetter@archlou.org</a>
Julie Horen-Easley	My Life My Choice Coordinator	Based in Louisville / serve statewide	502-341-5901	<a href="mailto:jhoren@archlou.org">jhoren@archlou.org</a>



Catholic Charities of Louisville • Human Trafficking Program • 2222 W. Market Street, Louisville, KY • [www.rescueandrestoreky.org](http://www.rescueandrestoreky.org)

# APPENDICES

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## **A. DEFINITIONS**

### **KRS 17.500- Definitions for 17.500 to 17.580**

(1) “Approved provider” means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;

(2) “Cabinet” means the Justice and Public Safety Cabinet;

(3) (a) Except as provided in paragraph (b) of this subsection, “criminal offense against a victim who is a minor” means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:

1. Kidnapping, as set forth in KRS 509.040, except by a parent;
2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
3. Sex crime;
4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100;
6. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
7. Use of a minor in a sexual performance, as set forth in KRS 531.310;
8. Sexual abuse, as set forth in KRS 510.120 and 510.130;
9. Unlawful transaction with a minor in the first degree, as set forth in KRS 530.064(1)(a);
10. Any offense involving a minor or depictions of a minor, as set forth in KRS Chapter 531;
11. Any attempt to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph; and
12. Solicitation to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph.

(b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;

(4) “Law enforcement agency” means any lawfully organized investigative agency, sheriff’s office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;

(5) “Registrant” means:

(a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:

1. A sex crime; or
2. A criminal offense against a victim who is a minor; or

(b) Any person required to register under KRS 17.510; or

(c) Any sexually violent predator; or

(d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;

- (6) “Registrant information” means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, DNA sample, a photograph, aliases used, residence, electronic mail address and any instant messaging, chat, or other Internet communication name identities, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) “Residence” means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) “Sex crime” means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, or 531.320;
  - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
  - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) “Sexual offender” means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) “Sexually violent predator” means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) “The board” means the Sex Offender Risk Assessment Advisory Board created under KRS 17.544;
- (12) “Victim” has the same meaning as in KRS 421.500;
- (13) “DNA sample” or “deoxyribonucleic acid sample” means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (14) “Authorized personnel” means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

### **KRS 529.010- Definitions**

The following definitions apply in this chapter unless the context otherwise requires:

- (1) “Advancing prostitution” – A person “advances prostitution” when acting other than as a prostitute or as a patron thereof, he or she knowingly causes or aids a person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution;
- (2) “Commercial sexual activity” means prostitution, regardless of whether the trafficked person can be charged with prostitution, participation in the production of obscene material as set out in KRS Chapter 531, or engaging in a sexually explicit performance;
- (3) “Forced labor or services” means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion;
- (4) “Force, fraud, or coercion” may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010;
- (5) “Human trafficking” refers to criminal activity whereby one (1) or more persons are subjected to engaging in:

- (a) Forced labor or services; or
  - (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion;
- (6) “Human trafficking victims fund” is the fund created in Section 9 of this Act
- (7) “Labor: means work of economic or financial value;
- (8) “Minor” means a person under the age of eighteen (18) years;
- (9) “Profiting from prostitution”—A person “profits from prostitution” when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in proceeds of prostitution activity;
- (10) “Services” means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor;
- (11) “Sexual conduct” means sexual intercourse or any act of sexual gratification involving the sex organs;
- (12) “Sexually explicit performance” means a performance of sexual conduct involving:
- (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
  - (b) Physical contact with, or willful or intentional exhibition of, the genitals;
  - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
  - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph, or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family; and
- (13) “Victim of human trafficking” is a person who has been subjected to human trafficking.

## **B. HUMAN TRAFFICKING VICTIMS RIGHTS ACT**

### **KRS 620.030-Duty to report dependency, neglect, or abuse; husband-wife and professional-client/patient privileges not grounds for refusal to report; exceptions; penalties**

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; the cabinet or its designated representative; the Commonwealth’s attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth’s attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

(2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed

to have caused the dependency, neglect, or abuse is a parent, guardian, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties shall, if requested, in addition to the report required in subsection (1) or (3) of this section, file with the local law enforcement agency or the Department of Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:

- (a) The names and addresses of the child and his or her parents or other persons exercising custodial control or supervision;
- (b) The child's age;
- (c) The nature and extent of the child's alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or his or her siblings;
- (d) The name and address of the person allegedly responsible for the abuse or neglect; and
- (e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

(3) Any person who knows or has reasonable cause to believe that a child is a victim of human trafficking as defined in Section 7 of this Act shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; or the cabinet or its designated representative; or the Commonwealth's attorney or the county attorney; by telephone or otherwise. This subsection shall apply regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.

(4) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(5) The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.

(6) Any person who intentionally violates the provisions of this section shall be guilty of a:

- (a) Class B misdemeanor for the first offense;
- (b) Class A misdemeanor for the second offense; and
- (c) Class D felony for each subsequent offense

### **620.020 Duties of cabinet relating to children who are victims of human trafficking.**

(1) In order to provide the most effective treatment for children who are victims of human trafficking, as defined in KRS 529.010, the cabinet shall:

- (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3);
- (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and
- (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.

(2) In order to effectuate the requirements of this section, the cabinet shall:

(a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement; and

(b) By November 1 of each year, beginning in 2013, submit to the Legislative Research Commission a comprehensive report detailing the number of reports the cabinet has received regarding child victims of human trafficking, the number of reports in which the cabinet has investigated and determined that a child is the victim of human trafficking, and the number of cases in which services were provided.

**KRS 15A.068- Actions to be taken if child in custody is a victim of human trafficking**

(1) If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in Section 7 of this Act, the department shall:

(a) File a report with the Cabinet for Health and Family Services pursuant to Section 2 of this Act;

(b) Notify the child's attorney that the child may be a victim of human trafficking; and

(c) If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services.

(2) After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under paragraph (c) of subsection (1) of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.

**KRS 605.030- Duties of court-designated workers**

(1) A court-designated worker may:

(a) Receive complaints;

(b) Review complaints taken by peace officers;

(c) Investigate complaints except neglect, abuse, and dependency;

(d) Perform an initial screening for human trafficking as defined in Section 7 of this Act for referral to the cabinet for investigation as a case of dependency, neglect, or abuse;

(e) Dispose of complaints limited to a total of three (3) status or nonfelony complaints per child;

(f) Administer oaths;

(g) Issue summonses;

(h) Issue subpoenas;

(i) Make advisory dispositional recommendations and provide, within forty-eight (48) hours, exclusive of weekends and holidays, information concerning a child who has chosen to waive the investigation pursuant to KRS 610.100 for the use of the cabinet in placing the child;

(j) Perform such duties as required by KRS Chapter 645; and



(k) Perform such other functions related to activities of children as may be authorized or directed by the court.

(2) Upon the filing of a petition which initiates a formal court action in the interest of the child, the court-designated worker's involvement, with the exception of the activities defined in subsection (1) (i) of this section, shall cease.

(3) When a child is to be tried as an adult, the court-designated worker need not make dispositional recommendations.

#### **KRS 529.120- Procedure for a minor who is taken into custody for investigative purposes**

(1) Notwithstanding Section 12 or 13 of this Act, if it is determined after a reasonable period of custody for investigative purposes, then that person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under Section 12 or 13 of this Act.

(2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet of Health and Family Services pursuant to Section 2 of this Act. Pursuant to Section 3 of this Act, the officer may take the minor into protective custody.

(3) The Cabinet for Health and Family Services shall commence an investigation into dependency, neglect, or abuse pursuant to Section 1 of this Act.

#### **KRS 630.125- Child victims of human trafficking shall not be charged with a status offense**

If reasonable cause exists to believe the child is a victim of human trafficking, as defined in Section 7 of this Act, the child shall not be charged with or adjudicated guilty of a status offense related to the conduct arising from human trafficking of the child unless it is determined at a later time the child was not a victim of human trafficking at the time of the offense.

#### **KRS 431.600- Investigation of sexual abuse by specialized multidisciplinary team**

(1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Health and Family Services. Cabinet for Health and Family Services social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020, is the alleged or suspected perpetrator of the abuse. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates, including those for victims of human trafficking, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.

(2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

(3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.

(4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in

interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.

(5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.

(6) Commonwealth's attorneys and county attorneys and the Cabinet for Health and Family Services and other team members shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.

(7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.

(8) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with a child shall be conducted at a children's advocacy center.

### **KRS 620.040- Duties of prosecutor, police, and cabinet; prohibition as to school personnel; multidisciplinary teams**

(1)

(a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), or a report alleging a child is a victim of human trafficking pursuant to subsection (3) of Section 2 of this Act, the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or the Department of Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or the Department of Kentucky State Police concerning the action that has been taken on the investigation.

(d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, or the human trafficking of a child, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or the Department of Kentucky State Police.

(2)

(a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to

provide family support. A report of sexual abuse or the human trafficking of a child shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet need not notify the local law enforcement agency or the Department of Kentucky State Police or county attorney or Commonwealth's attorney of reports made under this subsection unless the report involves the human trafficking of a child, in which case the notification shall be required.

(3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or the Department of Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents, and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Department of Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse or human trafficking of a child.

(4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5)

(a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant, a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he or she is returned to the persons having custody of him or her, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury, is being sexually abused, or is a victim of human trafficking and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.

(7)

(a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include but shall not be limited to social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates including advocates for victims of human trafficking, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team shall review child sexual abuse cases and child human trafficking cases involving commercial sexual activity referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse or child human trafficking cases involving commercial sexual activity are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases and child human trafficking cases involving commercial sexual activity.

(f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

(i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

### **KRS 15.706- Prosecutors Advisory Council to collect data on sexual offenses involving minors**

(1) The Prosecutors Advisory Council shall collect statistical data regarding the investigation, prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense defined by KRS Chapter 510 involving a minor, human trafficking offenses involving a minor engaged in commercial sexual activity, incest involving a minor, use of a minor in a sexual performance, or unlawful transaction with a minor.

(2) Each Commonwealth's attorney, each county attorney, the secretary of the Cabinet for Health and Family Services, the commissioner of the Department of Kentucky State Police, each Circuit Court clerk, and the Administrative Office of the Courts shall provide any data requested by the council for this purpose, on a form prescribed by the council, at intervals as the council may direct.

(3) The council may contract with any other public agency to collect the data in lieu of collecting the data itself.

(4) The Prosecutors Advisory Council may promulgate administrative regulations to specify information to be reported.

(5) The information required to be reported by this section shall be provided by each Commonwealth's attorney and county attorney at the end of each quarter of the calendar year or as otherwise directed by the Prosecutors Advisory Council.

(6) The Prosecutors Advisory Council and the Office of the Attorney General shall compile the information by county and issue a public report at least annually.

(7) The public report shall not contain the name or identifying information of a victim or person not formally charged with the commission of child sexual abuse or human trafficking of a child. Information collected by the

Commonwealth's attorney or county attorney or by the Prosecutors Advisory Council containing data which cannot be published shall be excluded from inspection, unless by court order, from the Open Records Law.

(8) Any Commonwealth's attorney or any county attorney who fails to report information as defined by this section or administrative regulation shall be subject to salary reduction as authorized by KRS 61.120.

### **KRS 16.173- Kentucky State Police human trafficking unit**

The Department of Kentucky State Police shall designate a unit within the department to receive and investigate complaints of human trafficking. The unit shall cooperate with and assist prosecutorial agencies and local and federal law enforcement, as well as law enforcement from other states, in the receipt and investigation of complaints of human trafficking.

## **C. TRAINING of LAW ENFORCEMENT, PROSECUTORS AND ADVOCATES**

### **KRS 15.334- Mandatory training courses for law enforcement students and certified peace officers; administrative regulations; annual report**

(1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:

(a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;

(b) The dynamics of domestic violence, pediatric abusive head trauma, as defined in KRS 620.020, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, pediatric abusive head trauma, as defined in KRS 620.020, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;

(c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome;

(d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin; and

(e) The characteristics and dynamics of human trafficking, state and federal laws relating to human trafficking, the investigation of cases involving human trafficking, including but no limited to screening for human trafficking, and resources for assistance to the victims of human trafficking.

(2)

(a) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.

(b) Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional

development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

(3) The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.

(4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.

(5) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

### **KRS 15.718- Training and continuing education for Commonwealth's attorneys and county attorneys and their staffs; completion requirements**

(1) The Attorney General shall provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning:

(a) The dynamics of domestic violence, child physical and sexual abuse, rape, effects of crime on adult and child victims, legal remedies for protection, lethality and risk issues, profiles of offenders, model protocols for addressing domestic violence, child abuse, rape, available community resources and victims services, and reporting requirements; and

(b) The appropriate response to victims of human trafficking, including but not limited to screening for victims of human trafficking, federal and state legislation on human trafficking, appropriate services and referrals for victims of human trafficking, working with interpreters, and agency protocol for handling child trafficking cases.

(2) The training shall be developed in consultation with prosecutors, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence, child abuse, human trafficking, and rape.

(3) Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

### **KRS 421.570- Training requirement for victim advocates; prohibition against practicing law**

(1) For the purposes of this section and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500, and includes a victim advocate employed by a Commonwealth's attorney pursuant to KRS 15.760 and a victim advocate employed by a county attorney pursuant to KRS 69.350.

(2) Each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, human trafficking, and rape.

(3) A victim advocate shall not engage in the practice of law as defined in KRS 524.130.

## **D. CRIMES and CRIMINAL PROCEDURE**

### **KRS 529.020- Prostitution**

- (1) Except as provided in Section 11 of this Act, a person is guilty of prostitution when he engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
- (2) Prostitution is a Class B misdemeanor.

### **KRS 529.080- Loitering for prostitution purposes**

- (1) Except as provided in Section 11 of this Act, a person is guilty of loitering for prostitution purposes when he loiters or remains in a public place for the purpose of engaging or agreeing or offering to engage in prostitution.
- (2) Loitering for prostitution purposes is a:
  - (a) Violation for the first offense;
  - (b) Class B misdemeanor for the second offense and for each subsequent offense.

### **KRS 529.100- Human trafficking**

- (1) A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to human trafficking.
- (2)
  - (a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.
  - (b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

### **KRS 529.110- Promoting human trafficking**

- (1) A person is guilty of promoting human trafficking when the person intentionally:
  - (a) Benefits financially or receives anything of value from knowing participation in human trafficking; or
  - (b) 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, knowing that the person will be subject to human trafficking.
- (2) Promoting human trafficking is a Class D felony unless a victim of the trafficking is under eighteen (18), in which case it is a Class C felony.

### **KRS 531.330- Presumption as to minority**

- (1) For purposes of KRS 529.040 or 529.100 where the offense involves commercial sexual activity and for the purposes of KRS 530.070, 531.080, and 531.300 to 531.370, any person who appears to be under the age of eighteen (18), or under the age of sixteen (16), shall be presumed to be under the age of eighteen (18), or under the age of sixteen (16), as the case may be.
- (2) In any prosecution under KRS 529.040 or 529.100 where the offense involves commercial sexual activity by a minor and in any prosecution under KRS 530.070, 531.300 to 531.370, defendant may prove in exculpation that he in good faith reasonably believed that the person involved in the performance was not a minor.
- (3) The presumption raised in subsection (1) of this section may be rebutted by any competent evidence.

**KRS 529.180 Ignorance of human trafficking minor victim’s actual age not a defense.**

In any prosecution under KRS 529.100 or 529.110 involving commercial sexual activity with a minor, it shall not be a defense that the defendant was unaware of the minor’s actual age.

**KRS 530.064- Unlawful transaction with a minor in the first degree**

(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

- (a) Illegal sexual activity; or
- (b) Illegal controlled substances activity other than activity involving marijuana, synthetic drugs, or salvia, as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

(2) Unlawful transaction with a minor in the first degree is a:

- (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
- (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
- (c) Class A felony if the minor so used incurs physical injury thereby.

**KRS 510.155- Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities; prohibition of multiple convictions arising from single course of conduct; solicitation as evidence of intent**

(1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531.

(2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.

(3) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person’s intent to commit the offense even if the meeting did not occur.

(4) This section shall apply to electronic communications originating within or received within the Commonwealth.

(5) A violation of this section is punishable as a Class D felony.

**KRS 516.030- Forgery in the second degree**

(1) A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or in the commission of a human trafficking offense as described in KRS 529.100 or 529.110, coerces another person to falsely make, complete, or alter a written



instrument, which is or purports to be or which is calculated to become or to represent when completed:

- (a) A deed, will, codicil, contract, assignment, commercial instrument, credit card or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or
- (b) A public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employee; or
- (c) A written instrument officially issued or created by a public office, public employee or governmental agency.

(2) Forgery in the second degree is a Class D felony.

### **KRS 532.043- Requirement of post-incarceration supervision for certain felonies**

(1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 529.100 involving commercial sexual activity, 530.020, 530.064(1)(a), 531.310, or 531.320 shall be subject to a period of post-incarceration supervision following release from:

- (a) Incarceration upon expiration of sentence; or
- (b) Completion of parole.

(2) The period of post-incarceration supervision shall be five (5) years.

(3) During the period of post-incarceration supervision, the defendant shall:

- (a) Be subject to all orders specified by the Department of Corrections; and
- (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.

(4) Persons under post-incarceration supervision pursuant to this section shall be subject to the supervision of the Division of Probation and Parole and under the authority of the Parole Board.

(5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists to revoke the defendant's post-incarceration supervision and re-incarcerate the defendant as set forth in KRS 532.060.

(6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

### **KRS 532.045- Persons prohibited from probation or post-incarceration supervision; procedure when probation or post-incarceration supervision not prohibited**

(1) As used in this section:

- (a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;
- (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) “Substantial sexual conduct” means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.050, 510.080, 529.040, 529.070, 529.100 where the offense involves commercial sexual activity, 530.020, 531.310, 531.320, or 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

(a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years’ post-incarceration supervision required by KRS 532.043.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender’s ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

**KRS 439.3401- Parole for violent offenders; applicability of section to victim of domestic violence or abuse; time of offense; prohibition against award of credit**

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:

- (a) A capital offense;
- (b) A Class A felony;
- (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
- (d) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
- (e) Use of a minor in a sexual performance as described in KRS 531.310;
- (f) Promoting a sexual performance by a minor as described in KRS 531.320;
- (g) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- (h) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- (i) Criminal abuse in the first degree as described in KRS 508.100;
- (j) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, of 508.060;
- (k) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
- (l) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

(2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on probation or parole until he has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.

(3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.

(4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(6) This section shall apply only to those persons who commit offenses after July 15, 1998.

(7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.

(8) The provisions of subsection (1) of this section extending the definition of “violent offender” to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

## **E. CIVIL CASES**

### **KRS 337.385- Employer’s liability; unpaid wages and liquidated damages**

(1) Except as provided in subsection (3) of this section, any employer who pays any employee less than wages and overtime compensation to which such employee is entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and such reasonable attorney’s fees as may be allowed by the court.

(2) If, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he or she had reasonable grounds for believing that his or her act or omission was not a violation of KRS 337.020 to 337.285, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, herself, or themselves.

(3) If the court finds that the employer has subjected the employee to forced labor or services as defined in Section 7 of this Act, the court shall award the employee punitive damages not less than three (3) times the full amount of wages and overtime compensation due, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney’s fees as may be allowed by the court, including interest thereon.

(4) At the written request of any employee paid less than the amount to which he or she is entitled under the provisions of KRS 337.020 to 337.285, the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney’s fees as may be allowed by the court. The commissioner in case of suit shall have power to join various claimants against the same employer in one (1) action.

### **KRS 431.082- Civil action by victim against defendant; damages; construction**

- (1) In the event of the conviction of a defendant for the violation of any offense proscribed by KRS Chapter 510 or 531 or any human trafficking offense proscribed by KRS Chapter 529, the person who was the victim of the offense may bring an action in damages against the defendant in the criminal case.
- (2) If the plaintiff prevails, he or she shall be entitled to attorney's fees and all other costs incurred in the bringing of the action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act.
- (3) Any award of nominal damages shall support an award of attorney's fees and costs to the prevailing party.
- (4) Punitive damages as well as compensatory damages shall be awardable in cases brought under this section.
- (5) The provisions of this section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or of any statutory or common law right of action but shall be construed as ancillary and supplemental thereto.

### **KRS 413.249- Action relating to childhood sexual abuse or childhood sexual assault**

- (1) As used in this section:
  - (a) "Childhood sexual assault" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a felony in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 530.064, 531.310, or 531.320. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault;
  - (b) "Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;
  - (c) "Child" means a person less than eighteen (18) years old; and
  - (d) "Injury or illness" means either a physical or psychological injury or illness.
- (2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault shall be brought before whichever of the following periods last expires:
  - (a) Within five (5) years of the commission of the act or the last of a series of acts by the same perpetrator;
  - (b) Within five (5) years of the date the victim knew, or should have known, of the act; or
  - (c) Within five (5) years after the victim attains the age of eighteen (18) years.
- (3) If a complaint is filed alleging that an act of childhood sexual assault or childhood sexual abuse occurred more than five (5) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:
  - (a) The court rules upon the motion to seal;
  - (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or
  - (c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the

motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.

## **F. VICTIMS RIGHTS**

### **KRS 431.063- Human trafficking victim not to be incarcerated pending trial; exceptions**

A victim of human trafficking shall not be held in a detention center, jail, or other secure facility pending trial for an offense arising from the human trafficking situation, except where the incarceration is found to be the least restrictive alternative to securing the appearance of that person before the court or the release of the person under any other reasonable condition would be a clear threat to public safety.

### **KRS 421.500- Definitions for KRS 421.500 to 421.575; applicability; required notifications; duties of public officers and agencies**

(1) As used in KRS 421.500 to 421.575, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, human trafficking, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate.

(a) If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:

1. The spouse;
2. An adult child if subparagraph 1. of this paragraph does not apply;
3. A parent if subparagraphs 1. and 2. of this paragraph do not apply;
4. A sibling if subparagraphs 1. to 3. of this paragraph do not apply; and
5. A grandparent if subparagraphs 1. to 4. of this paragraph do not apply.

(b) If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victims" for the purpose of presenting victim impact testimony under KRS 532.055(2)(a)7.:

1. A spouse;
2. An adult child;
3. A parent;
4. A sibling; and
5. A grandparent.

(2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.

- (3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:
- (a) Availability of crime victim compensation where applicable;
  - (b) Community based treatment programs;
  - (c) The criminal justice process as it involves the participation of the victim or witness;
  - (d) The arrest of the accused; and
  - (e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.
- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040 or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:
- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
  - (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including, but not limited to, the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing; and
  - (c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;
  - (d) The victim receives information on available:
    - 1. Protective, emergency, social, and medical services;
    - 2. Crime victim compensation, where applicable;
    - 3. Restitution, where applicable;
    - 4. Assistance from a victim advocate; and
    - 5. Community-based treatment programs; and
  - (e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.

(7) In prosecution for offenses listed in this section for the purpose of defining “victim,” law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim’s property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.

(8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

(9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.

(10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

### **KRS 422.295- Confidentiality of communications between human trafficking victim and caseworker**

(1) As used in this section:

(a) “Confidential communication” means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted and includes all information regarding the facts and circumstances involving the trafficking;

(b) “Holder of the privilege” means the victim when he or she has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator; and

(c) “Trafficking victim counselor” includes any of the following:

1. A counselor, as that term is defined in Rule 506 of the Kentucky Rules of Evidence;
2. A psychotherapist as that term is defined in Rule 507 of the Kentucky Rules of Evidence; and
3. A person employed and supervised by one (1) of the persons specified in this paragraph to render services to human trafficking victims and who has received forty (40) hours of training in the history of human trafficking; civil and criminal law as it relates to human trafficking; societal attitudes towards human trafficking; peer counseling techniques; housing, public assistance, and other financial resources available to meet the financial needs of human trafficking victims; and referral services available to human trafficking victims.

(2) A human trafficking victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a trafficking victim counselor for the purpose of receiving counseling, therapy, services, information, or treatment related to human trafficking.

(3) A human trafficking caseworker shall inform a trafficking victim of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.

### **KRS 421.350- Testimony of child allegedly victim of illegal sexual activity**

(1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.155, 529.030 to 529.050, 529.070, 529.100, 529.110, 530.020, 530.060,



530.064(1)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.

(2) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence the court finds would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

- (a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;
- (b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;
- (c) Each voice on the recording is identified; and
- (d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(4) If the court orders the testimony of a child to be taken under subsection (2) or (3) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken, but shall be subject to being recalled during the course of the trial to give additional testimony under the same circumstances as with any other recalled witness, provided that the additional testimony is given utilizing the provisions of subsection (2) or (3) of this section.

(5) For the purpose of subsections (2) and (3) of this section, "compelling need" is defined as the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant's presence.

## **G. HUMAN TRAFFICKING VICTIMS FUND**

### **KRS 529.140- Human trafficking victims fund**

(1) The "human trafficking victims fund," referred to in this section as the "fund," is created as a separate revolving fund within the Justice and Public Safety Cabinet.

(2) The fund shall consist of proceeds from assets seized and forfeited pursuant to Section 10 of this Act, proceeds from the fee in Section 8 of this Act, grants, contributions, appropriations, and any other moneys that may be made available for purposes of the fund.

(3) Moneys in the fund shall be distributed to agencies serving victims of human trafficking, including but

not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies in accordance with procedures developed by the Justice and Public Safety Cabinet pursuant to administrative regulation. The administrative regulation shall require that the Cabinet for Health and Family Services receive adequate funding allocation under this subsection to meet the responsibilities imposed upon it to serve minor victims of human trafficking under Section 1 of this Act.

(4) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.

(5) Any interest earnings on moneys in the fund shall become a part of the fund and shall not lapse to the general fund.

(6) Moneys in the fund are hereby appropriated for the purposes set forth in this section.

### **KRS 529.130- Fine to be paid upon conviction of a human trafficking offense**

Any person convicted of an offense in KRS 529.100 or 529.110 shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of ten thousand dollars (\$10,000) to be remitted to the fund created in Section 9 of this Act.

### **KRS 529.150 Asset Forfeiture and Seizure**

(1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 or 218A.460, with the exception of the distribution of proceeds, which shall be distributed as required in this section.

(2) Proceeds from the assets seized and forfeited shall be distributed as follows:

(a) Fifty percent (50%) shall be paid to the human trafficking victims fund;

(b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and

(c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of KRS 218A.420. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

## **H. Expungement and Affirmative Defense for Victims of Trafficking**

### **529.170 Being victim of human trafficking is affirmative defense to violation of chapter.**

A person charged under this chapter, or charged with an offense which is not a violent crime as defined in KRS 17.165, may assert being a victim of human trafficking as an affirmative defense to the charge.

**529.160 Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense -- Motion -- Finding -- Presumption.**

(1) When a person is charged or convicted under this chapter, or with an offense which is not a violent crime as defined in KRS 17.165, and the person's participation in the offense is determined to be the direct result of being a victim of human trafficking, the person may make a motion in the court in which the charges were filed to expunge all records of the offense.

(2) The motion shall be filed no sooner than sixty (60) days following the date the final judgment was entered by the court in which the charges were filed.

(3) (a) A motion filed under this section, any hearing conducted on the motion, and any relief granted are governed by KRS 431.076, 431.078, and 431.079 unless otherwise provided in this section.

(b) For the purposes of expungement under KRS 431.076, a finding by the court that the person's participation in the offense was a direct result of being a victim of human trafficking shall deem the charges as dismissed with prejudice.

(c) No official determination or documentation is required to find that the person's participation in the offense was a direct result of being a victim of human trafficking, but documentation from a federal, state, local, or tribal governmental agency indicating that the defendant was a victim at the time of the offense shall create a presumption that the defendant's participation in the offense was a direct result of being a victim.

## APPENDIX B: Additional Kentucky Human Trafficking Resources

### Interview challenges and how to address them.<sup>1</sup>

- Language – Provide a competent interpreter from the initial interview. Be aware, however, that interpreters from small communities or third parties who insist on being present for interviews may have a relationship with the trafficker and should be vetted prior to their participation.
- Culture – Research the culture of the client to develop rapport, trust and effective communication.
- Trust – Victims of human trafficking may not see themselves as victims; they often blame themselves and may be distrustful of law enforcement, social workers, and other system representatives based on negative past experiences. Their traffickers may have coached them to view authority as harmful to their interests. Treat clients with respect and establish that you are there to help them.
- Changing Accounts – Keep questions simple and ask questions again for clarity. Children, however, may be traumatized by multiple rounds of questions – consider using Child Advocacy Center forensic interviewing to reduce the number of interviews a child must endure.
- Complicated Process - Expect to do multiple interviews and keep interviews short. Clients may be too traumatized to leave their traffickers or disclose the trafficking due to trauma bonds established with the trafficker and/or fear of reprisals for escape.
- Victimization and Trauma - Involve other service providers to care for client’s other needs. Interview slowly with breaks and stop as needed by the client.



This wheel was adapted from the Domestic Abuse Intervention Project's Duluth Model Power and Control Wheel, available at [www.theduluthmodel.org](http://www.theduluthmodel.org)

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Image found at [http://www.ncdsv.org/images/DSVintersectionsWithTraffickingANDTraffickingWheel\\_2012.pdf](http://www.ncdsv.org/images/DSVintersectionsWithTraffickingANDTraffickingWheel_2012.pdf)

<sup>1</sup>Modified from "Human Trafficking in Kentucky" PowerPoint presentation by Marissa Castellanos and Gretchen Hunt, 2016, and used with permission.

## Kentucky's Human Trafficking Task Forces

### Statewide Human Trafficking Task Force

Co- Chairs: Gretchen Hunt & Amy Nace DeGonda, [anacedegonda@archlou.org](mailto:anacedegonda@archlou.org)

2016 Meeting dates (at Administrative Office of the Courts):

February 2, 2-4 pm, April 12, 2-4 pm, July 12, 2-4 pm, October 11, 2-4 pm

### Lexington Human Trafficking Task Force

Co-Chairs: Brittney Thomas, [britt\\_ney07@icloud.com](mailto:britt_ney07@icloud.com) and David Mayre (AUSA- Eastern District)

2016 Meeting dates: 10-12, at Cardinal Valley Center, 1306 Versailles Road, #110, Lexington, KY

Wednesday, July 20th, 2016, Wednesday, September 21st, 2016, Wednesday, November 16th, 2016

### Franklin County Human Trafficking Task Force

Chair: Donna Jackson, [franklincountyhttf@yahoo.com](mailto:franklincountyhttf@yahoo.com)

6:30 pm, the 3rd Monday of each month at the Frankfort Police Station Community room.

### Shelbyville Human Trafficking Task Force

Co-Chairs: Jami Wilson, [jwilson@archlou.org](mailto:jwilson@archlou.org)

The Shelby Co Task Force Meetings will be 12-1pm in the North Central District Health Dept bldg. conference room; located at 1020 Henry Clay St. Shelbyville, KY. Meeting dates are below:

June 14, 2016, July 12, 2016, August 9, 2016, September 13, 2016, October 11, 2016. December 13, 2016

### Metro Louisville Human Trafficking Task Force

Co-Chairs: (Open) Amanda Gregory (AUSA- Western District), [Amanda.gregory@usdoj.gov](mailto:Amanda.gregory@usdoj.gov)

Thursday, July 21st, 2016, 12:00-1:30 YMCA Safe Place, 2400 Crittenden Drive 40217

Thursday, September 15th, 2016, 12:00-1:30 Louisville Main Public Library, 301 York Street 40203

Thursday, November 17th, 2016, 12:00-1:30 Louisville Main Public Library, 301 York Street 40203

### Partnership Against Trafficking in Humans (Northern KY)

Co Directors of NKYPATHways: Sharlene Boltz and Reegan Hill, owner of It's Only Fair, located in Covington, Kentucky.

Second Tuesday on a quarterly basis from 12noon-1:00pm. Next meeting on March 14 at the Sisters of Notre Dame, Dixie Highway in Ft. Wright, Kentucky.

NKYPATHways email: [NKYPATHways@gmail.com](mailto:NKYPATHways@gmail.com)

### Nelson County Human Trafficking Task Force

Co-chairs: Soha Saiyed & Amy Nace-Degonda, [anacedegonda@archlou.org](mailto:anacedegonda@archlou.org)

2nd Wednesday of every month from 11:30-12:45pm, SCN Center on the Sisters of Charity of Nazareth campus in Bardstown, KY.

## Kentucky's Rape Crisis Centers

Rape crisis centers are well positioned to help victims of trafficking because many victims also have been survivors of sexual assault and sexual violence. Rape crisis centers have trauma informed staff and programs and can connect victims with other community resources that will help aid them in recovery.

Name	Contact Information	Counties Served
The Center for Women & Families (Louisville)	502-581-7222, 1-844-BE-SAFE1	Jefferson, Bullitt, Spencer, Shelby, Henry, Trimble, Oldham
Bluegrass Rape Crisis Center (Lexington)	859-253-2511/800-656-HOPE	Fayette, Harrison, Nicholas, Bourbon, Clark, Powell, Estill, Madison, Garrard, Jessamine, Woodford, Mercer, Boyle, Lincoln, Anderson, Franklin, Scott
Women's Crisis Center (Covington)	859-491-3335/800-928-3335	Kenton, Carroll, Gallatin, Boone, Campbell, Pendleton, Grant, Owen, Bracken
Women's Crisis Center (Maysville)	606-564-6708/800-928-6708	Mason, Lewis, Fleming, Robertson
Pathways Rape Victims Services Program (Ashland)	800-562-8909	Boyd, Carter, Greenup, Lawrence, Elliott
Pathways Rape Victims Services Program (Morehead)	800-562-8909	Rowan, Morgan, Menifee, Bath, Montgomery
Mountain Comprehensive Care Center's Healing Program for Survivors of Sexual Assault & Domestic Violence (Prestonburg)	800-422-1060	Floyd, Pike, Magoffin, Johnson, Martin
The Rising Center (Hazard)	800-375-7273	Perry, Leslie, Letcher, Knott, Owsley, Breathitt, Lee, Wolfe
Cumberland River Behavioral Health Rape Victim Services (Corbin)	606-523-9386	Whitley, Bell, Knox, Harlan, Laurel, Clay, Jackson, Rockcastle
Hope Harbor, Inc. (Bowling Green)	800-656-4673	Warren, Logan, Simpson, Allen, Monroe, Metcalfe, Hart, Edmonson, Butler, Barren
Adanta Sexual Assault Resource Center (Somerset)	800-656-4673	Pulaski, McCreary, Wayne, Clinton, Cumberland, Russell, Casey, Adair, Green, Taylor
Sanctuary, Inc. (Hopkinsville)	800-766-0000	Christian, Lyon, Caldwell, Crittenden, Hopkins, Muhlenberg, Todd, Livingston, Trigg
Purchase Area Sexual Assault & Child Advocacy Center (Paducah)	800-928-7273	Fulton, Hickman, Graves, Carlisle, Ballard, McCracken, Marshall, Calloway
New Beginnings Sexual Assault Support Services (Owensboro)	800-226-7273	Daviess, Union, Ohio, Henderson, Webster, McLean, Hancock
Silverleaf Sexual Trauma Recovery Services (Elizabethtown)	877-672-2124	Hardin, Larue, Grayson, Meade, Breckinridge, Marion, Washington, Nelson

## Kentucky's Regional Domestic Violence Centers

The domestic violence shelters around Kentucky also have resources, programs, and connections that may be helpful to victims of human trafficking in need of counseling, case management, emergency shelter, safety planning and other supportive services.

Name	Contact Information	Counties Served
Safe Harbor, Inc. (Ashland area)	Crisis Line: 1-800-926-2150 Business: 606-329-9304 www.safeharborky.org	Greenup, Boyd, Carter, Elliott, Lawrence
Barren River Area Safe Space (BRASS) (Bowling Green area)	Crisis Line: 1-800-928-1183 Business: 270-781-9334 www.barrenriverareasafespace.com	Logan, Butler, Warren, Simpson, Allen, Monroe, Metcalfe, Hart, Edmonson
SpringHaven, Inc.	Crisis Line: 1-800-928-1183 Business: 270-781-9334 www.barrenriverareasafespace.com	Breckenridge, Grayson, Hardin, Meade, Larue, Nelson, Washington, Marion
LKLP Safe House (Hazard area)	Crisis Line: 800-928-3131 Business: 606-439-1552 www.lklp.org/Programs/Domestic-Violence-Program	Wolfe, Lee, Owsley, Breathitt, Knott, Letcher, Perry, Leslie
Sanctuary, Inc. (Hopkinsville area)	Crisis Line: 800-766-0000 Business: 270-885-4572 www.sanctuaryinc.net	Christian, Lyon, Caldwell, Crittenden, Hopkins, Muhlenberg, Todd, Livingston, Trigg
GreenHouse17 (Lexington area)	Crisis Line: 800-544-2022 Business: 859-233-0657 www.Greenhouse17.org	Fayette, Harrison, Nicholas, Bourbon, Clark, Powell, Estill, Madison, Garrard, Jessamine, Woodford, Mercer, Boyle, Lincoln, Anderson, Franklin, Scott
The Center for Women and Families	Crisis Line: 1-844-BE-SAFE1 Business: 502-581-7222 www.thecenteronline.org	Trimble, Oldham, Henry, Shelby, Jefferson, Bullitt, Spencer
Women's Crisis Center (Maysville area)	Crisis Line: 800-928-6708 Business: 606-655-2650 www.wccky.org	Bracken, Robertson, Mason, Fleming, Lewis
Women's Crisis Center (Northern KY area)	Crisis Line: 800-928-3335 or 859-491-3335 Business: 859-655-2650 www.wccky.org	Carroll, Gallatin, Owen, Grant, Pendleton, Boone, Kenton, Campbell
DOVES of Gateway (Morehead area)	Crisis Line: 800-221-4361 Business: 606-784-6880	Montgomery, Bath, Menifee, Rowan, Morgan
Cumberland Valley Domestic Violence Services (London)	Crisis Line: 1-800-755-5348 Business: 606-843-2202	Rockcastle, Jackson, Laurel, Clay, Knox, Whitley, Bell, Harlan
Owensboro Area Shelter & Information Center (OASIS) (Owensboro area)	Crisis Line: 1-800-882-2873 Business: 270-685-0260 www.oasisshelter.org	Union, Webster, Henderson, Daviess, McLean, Ohio, Hancock
Merryman House (Paducah area)	Crisis Line: 1-800-585-2686 Business: 270-433-6282 Merrymanhouse.org	Ballard, Calloway, Carlisle, Fulton, McCracken, Graves, Marshall, Hickman
Turning Point Domestic Violence Services (Prestonsburg area)	Crisis Line: 1-800-649-6605 Business: 606-886-6025 Turningpointky.org	Magoffin, Johnson, Floyd, Martin, Pike
Bethany House Abuse Shelter, Inc.	Crisis Line: 800-755-2017 Business: 606-679-1553	Green, Taylor, Adair, Cumberland, Clinton, Russell, Casey, Pulaski, Wayne, McCreary



## Kentucky's Child Advocacy Centers

Name	Contact Information	Counties Served
KACAC (Kentucky Association of Child Advocacy Centers)	Catherine Ruschell, Executive Director, <a href="http://kacac.org">kacac.org</a>	State-wide agency
Purchase Area Sexual Assault and Child Advocacy Center	Paducah: 270-534-4422 Murray: 270-753-5777 <a href="http://hopehealgrow.org">hopehealgrow.org</a>	Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, McCracken
Pennyrile Children's Advocacy Center	1102 E. 21st St. Hopkinsville KY 42240 Ph: 270-881-1111 <a href="http://Pennyrilecac.org">Pennyrilecac.org</a>	Christian, Lyon, Caldwell, Crittenden, Hopkins, Muhlenberg, Todd, Livingston, Trigg
Children's Advocacy Center of Green River District	537 S. Green St. Henderson, KY 42420 Ph: 270-830-8400 1-888-989-8400 <a href="http://cacgrd.org">cacgrd.org</a>	Daviess, Union, Ohio, Henderson, Webster, McLean, Hancock
Barren River Area Children's Advocacy Center	103 E. 12th St. Bowling Green, KY 42101 Ph: 270-783-4357 <a href="http://bracac.org">bracac.org</a>	Warren, Logan, Simpson, Allen, Monroe, Metcalfe, Hart, Edmonson, Butler, Barren
Silverleaf Sexual Trauma Recovery Services	751 S. Provident Way Elizabethtown, KY 42701; Ph: 270-234-9236 1-877-672-2124 <a href="http://silverleafky.org">silverleafky.org</a>	Hardin, Larue, Grayson, Meade, Breckinridge, Marion, Washington, Nelson
Kosair Charities Child Advocacy Center	1000 S. 5th St. Louisville, KY 40203 Ph: 502-983-3900 <a href="http://familyandchildrensplace.org">familyandchildrensplace.org</a>	Jefferson, Bullitt, Spencer, Shelby, Henry, Trimble, Oldham
Northern Kentucky Children's Advocacy Center	4890 Houston Rd. Florence, KY Ph: 859-525-1128 <a href="http://cfnky.org">cfnky.org</a>	Kenton, Carroll, Gallatin, Boone, Campbell, Pendleton, Grant, Owen,
Buffalo Trace Children's Advocacy Center	224 Limestone St. Maysville, KY 41056 Ph: 606-563-0572 1-877-563-0572 <a href="http://btcac.org">btcac.org</a>	Mason, Lewis, Fleming, Robertson, Bracken
Hope's Place	1100 Greenup Ave. Ashland, KY 41101 Ph: 606-325-4737 <a href="http://hopesplace.org">hopesplace.org</a>	Boyd, Carter, Greenup, Lawrence, Elliott
Gateway Children's Advocacy Center	310 East Main St. Morehead, KY 40351 Ph: 606-780-7848	Rowan, Morgan, Menifee, Bath, Montgomery
Judi's Place for Kids	128 S. College St., Pikeville, KY 41501 Ph: 606-437-7447 <a href="http://judisplace.org">judisplace.org</a>	Floyd, Pike, Magoffin, Johnson, Martin
Kentucky River Children's Advocacy Center (the Care Cottage)	465 Cedar St. Hazard, KY 41701 Ph: 606-487-9173 <a href="http://carecottage.org">carecottage.org</a>	Perry, Leslie, Letcher, Knott, Owsley, Breathitt, Lee, Wolfe
Cumberland Valley Children's Advocacy Center	1130 East Fourth St. London, KY 40741 Ph: 606-878-9116 <a href="http://tlchouse.org">tlchouse.org</a>	Whitley, Bell, Knox, Harlan, Laurel, Clay, Jackson, Rockcastle
Lake Cumberland Children's Advocacy Center	427 South Main St. Jamestown, KY 42629 Ph: 270-343-6922	Pulaski, McCreary, Wayne, Clinton, Cumberland, Russell, Casey, Adair, Green, Taylor
Children's Advocacy Center of the Bluegrass	162 N. Ashland Ave. Lexington, KY 40502 Ph: 859-225-5437 <a href="http://kykids.org">kykids.org</a>	Fayette, Harrison, Nicholas, Bourbon, Clark, Powell, Estill, Madison, Garrard, Jessamine, Woodford, Mercer, Boyle, Lincoln, Anderson, Franklin, Scott

## National Contact Information on Human Trafficking

Name	Contact Information	Counties Served
Polaris Project	202-745-1001 National Hotline: 1-888-373-7888 (24/7) Text Helpline: BeFree 233733	Polaris: <a href="http://Polarisproject.org">Polarisproject.org</a> ; National Human Trafficking Resource Center: <a href="http://traffickingresourcecenter.org">traffickingresourcecenter.org</a> . Has online tip submission form, training and resource materials, national hotline statistics
U.S. Department of Justice Trafficking in Persons Hotline	1-888-373-7888	<a href="http://www.justice.gov/actioncenter/crime.html">www.justice.gov/actioncenter/crime.html</a>
U.S. Department of Justice Human Trafficking Prosecution Unit	Tel: 202-514-3204	<a href="https://www.justice.gov/crt/human-trafficking-prosecution-unit-htpu">https://www.justice.gov/crt/human-trafficking-prosecution-unit-htpu</a>
U.S. Department of Homeland Security	202-282-8000	<a href="http://www.dhs.gov">www.dhs.gov</a>
U.S. Department of Labor	OIG Hotline: 1-800-347-3756 Wage and Hour: 866-487-9243	<a href="https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking">https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking</a>
U.S. State Department Office to Monitor and Combat Trafficking in Persons	202-312-9639 <a href="mailto:TIPReport@state.gov">TIPReport@state.gov</a>	<a href="http://www.state.gov/g/tip">www.state.gov/g/tip</a>
U.S. Citizenship and Immigration Services	Main Number & Trafficking in Persons and Worker Exploitation Task Force Complaint Line: 1-800-375-5283	<a href="http://www.uscis.gov">www.uscis.gov</a>
U.S. Department of State	Human Smuggling and Trafficking Center <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>
U.S. Equal Employment Opportunity Commission	1-800-669-4000	<a href="http://www.eeoc.gov/eeoc/interagency/trafficking.cfm">www.eeoc.gov/eeoc/interagency/trafficking.cfm</a>

## APPENDIX C: Bench Guide #1: Dealing with Victims of Human Trafficking in a Juvenile Case<sup>1</sup>

<sup>1</sup>This information card is included in this Guide with the written permission of Dr. David A. Price of Human Trafficking and the State Courts Collaborative (HTC). The original is found at [htcourts.org](http://htcourts.org). Permission is on file with the authors.

Under KRS 529.010, human trafficking is “criminal activity whereby one (1) or more persons are subjected to engaging in:

- (a) Forced labor or services; or
- (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.”

Trafficked juveniles may be involved in sex activities such as pimp controlled prostitution, escort services, residential and underground brothels, pornography production, cyber-pornography, massage parlors, and work in a cantina, karaoke, strip clubs, and other types of bars or clubs. They may also be found as domestic servants such as nannies, and in peddling rings such as magazine, flower, and candy sales crews. In addition, they may engage in criminal activities for their trafficker, such as drug sales, theft, or recruiting other victims.

### **What types of juvenile cases may involve human trafficking situations?**

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

- Theft – a trafficker may coerce a victim into stealing in order to provide extra income for the trafficker;
- Drug sales – drug sales may be forced on a victim by a trafficker;
- Drug use – drugs may be used to control a victim of trafficking;
- Gang activity – gangs often supplement income through sex or labor trafficking;
- Illegal peddling – peddling may be forced on a victim by a trafficker;
- Human trafficking – the victim may be required to recruit other victims for the trafficker or be rewarded for doing so;
- Delinquency – victims of trafficking who are placed in a juvenile detention center may be forced by the trafficker to recruit other victims in the detention center;
- Juvenile status offenses – runaways and truants are especially vulnerable to becoming trafficked;
- Child abuse and neglect – abused children are vulnerable to trafficking, and some parents may be trafficking their children, either for sex or labor; and
- Guardianship – there have been cases in which a trafficker has applied for guardianship over their victims.

### **What are the indicators that a person in court (charged offender, crime victim, witness) may be a victim of human trafficking or at risk for becoming a victim?**

Identifying juvenile victims of trafficking victims can be difficult. Juveniles may be easy prey for human traffickers who deal in prostitution, and traffickers may also 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 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.

Further, victims of trafficking may not view themselves as victims, but rather believe that, despite repeated abuse, the trafficker is a loving boyfriend, protector, or parent. They also often have a history of anti-social behavior and may be uncooperative and distrustful of people in authority, so they may not meet our expectations of what a victim should look or act like. As a result, they may make unsympathetic witnesses, complicating the difficulties in identifying them as victims.

Identifying juveniles who may be at risk for becoming victims of trafficking is equally important. Juveniles who commit status offenses, such as runaway or truancy, may be victims of trafficking or highly vulnerable to victimization and thus at risk for becoming victims. In addition, juveniles in dependency cases may be vulnerable to victimization for a variety of reasons that may come to light in the court proceedings.

Indicators of human trafficking that might assist court personnel and other justice partners include a variety of behaviors that reveal a mindset of fear, distrust, denial, and conflicting loyalties. For example, victims of trafficking may (1) develop general feelings of helplessness, shame, guilt, self-blame, and humiliation; (2) suffer from shock and denial, or display symptoms of post-traumatic stress disorder, phobias, panic attacks, anxiety, and depression; (3) suffer from sleep or eating disorders; (4) become addicted to drugs and alcohol as a way to cope with or “escape” their situation, or as a method of control used by their traffickers; (5) become emotionally numb, detached, and disassociated from the physical and psychological trauma and display “flat affect;” or (6) experience “trauma bonding” with the trafficker, positively identifying with the trafficker and believing that, despite repeated abuse, the trafficker is a loving boyfriend, spouse, or parent.

Evidence that someone associated with a juvenile has used one of the following ways of exerting control over the juvenile may signal that a juvenile is a victim of trafficking:

- Threatened or actual physical or non-physical harm which compels the victim to perform services to avoid harm;
- Use or threatened use of law to exert pressure on another person to perform services;
- Demeaning or demoralizing the victim (e.g. through verbal abuse or humiliation);
- Disorienting and depriving the victim of alternatives (e.g. isolation, restricted communication, debts, monitoring);
- Diminishing resistance and debilitating the victim (e.g. by denial of food, water, or medical care or by use of drugs or alcohol);
- Deceiving about consequences (e.g. overstating risks of leaving or rewards of staying, feigning ties to authorities or hit men/gangs); or
- Dominating, intimidating, and controlling (e.g. by abuse, an atmosphere of violence, display of weapons, rules, and punishments).

Many victims of trafficking suffer serious health issues, including (1) signs of physical abuse, such as bruises, broken bones, burns, and scarring; (2) chronic back, visual, or hearing problems from work in agriculture, construction, or manufacturing; (3) skin or respiratory problems caused by exposure to agricultural or other chemicals; (4) infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation; (5) untreated chronic illnesses, such as diabetes or cardiovascular disease; or (6) reproductive health problems, including sexually transmitted diseases, urinary tract infections, pelvic pain and injuries from sexual assault, or forced abortions.

If any of the following personal, work, or living conditions regarding a defendant, victim, or witness is evidenced during a trial, that may indicate that the individual is a victim of human trafficking:

- Is not allowed to speak to anyone alone;
- Cannot come and go freely;
- Lives with many others in a confined area;
- Has to ask permission to eat/sleep/go to the bathroom;
- Has locks on doors/windows that he or she cannot unlock;
- Does not have access to identification or travel documents.

The following are some of the elements that may arise in a delinquency or dependency case that may place a juvenile at risk of being trafficked. The indicators all involve a disruptive home or school environment that leaves the juvenile vulnerable with no safe or stable place to go.

- Absence of supervision at home;

- A history of involvement with child welfare;
- Multiple foster care placements or schools attended;
- A family history of domestic violence;
- Frequent runaway or truancy;
- A history of alcohol or drug abuse;
- Behavioral problems at school; and
- Behind in grade level.

### **What can a judge do if a case before him or her involves possible human trafficking activity?**

Judges need to be aware of some issues relating to the safety and protection of victims of trafficking, particularly those who are charged with crimes committed on behalf of or at the direction of a trafficker, and may want to take steps to protect someone who shows signs of possibly being a victim of trafficking. Here are some safety issues that may arise.

Judges need to be aware of indicators of trafficking and conversant with the screening tools used by service providers, probation officers, and others. If the trafficker is a family member or other caretaker, he or she may be in the courtroom, so a victim may be reluctant to answer certain questions.

- A guilty plea by a juvenile victim of trafficking charged with a crime, coupled with a placement with a family member, may give the trafficker more control over the victim.
- There may be a need for a protocol with prosecutors, defense attorneys, and guardians ad litem to identify a potential victim of trafficking before the victim has to testify in court.
- The judge may want to recess or continue a trial if a trafficking situation appears to be present, to determine what steps, if any, need to be taken to protect a possible victim of trafficking.
- Judges need to be aware of local resources to assist victims.

Juvenile detention or residential juvenile facilities can be a prime recruiting ground for new victims, and victims of trafficking may be pressured into recruiting others. This may affect where to place a juvenile trafficking victim, for the protection of both the victim and others who may be vulnerable to recruitment. It may also affect where to place at-risk juveniles who may not be trafficking victims yet but are vulnerable to victimization due to their family, economic, social, health, or educational situation, to avoid exposing them to potential recruitment efforts.

Getting trafficked juveniles into services can be difficult. For juvenile delinquency cases, the case is adjudicated in the county where the crime was committed but the disposition is determined in the county where the juvenile lives. As a result, there is a need for cross-jurisdictional coordination to ensure that human trafficking victims are identified and provided appropriate services. State services may be available for juveniles prosecuted in one county and sent to another for supervision and services.

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

There are special dangers facing juvenile trafficking victims in delinquency proceedings who are immigrants. A delinquency conviction may make the immigrant juvenile ineligible for certain immigration benefits. In particular, any of the following can be problematic:

- Known or reasonably believed to have engaged in drug trafficking;
- Being a drug addict;
- Violation of protection order;
- Use of false documents; or
- Having a mental condition that is a threat to others.

Violent offenses, sex offenses, and gang activity are particularly problematic, as they often can lead to denial of any immigration benefit.

## APPENDIX D: Bench Guide #2 - Immigration Rights of Victims of Human Trafficking

### Identifying Trafficking Victims

Human trafficking can involve trafficking both for commercial sex and for labor, either domestic or commercial. The following are ways in which a trafficking victim might come before the courts:

- The circumstance in which a trafficked person is most likely to come before the courts, both adult and juvenile, is in the context of a prosecution for prostitution. Distinguishing between a prostitute and a victim of human trafficking can be difficult, and many judges may not even be aware of the possibility.
- A trafficking victim might be identified in the process of determining conditions for probation, juvenile diversion, or other forms of alternatives to detention if the offender is asked pertinent questions about his or her living conditions or details of employment.
- Labor trafficking victims may appear in a variety of criminal or civil cases, including wage disputes, municipal ordinance enforcement, illegal peddling, and others. They may also be susceptible to victimization, particularly if they are in the country illegally, as criminals will assume that they will not report thefts or other crimes committed against them.

Identifying human trafficking cases in the justice system is difficult. The burden falls on officials from across the entire justice system, including on law enforcement officers, prosecutors, defense attorneys representing possible trafficking victims who are charged as criminals, judges, and probation officers.

One critical issue with regard to understanding and assessing human trafficking cases is that potential human trafficking cases are often prosecuted under lesser charges that are easier to prove and carry similar penalties. Crimes that may be used as surrogates for a human trafficking charge include, among others, promoting prostitution, kidnapping, unlawful imprisonment, assault, and family violence. This may make it difficult to identify the victim of the crime as a human trafficking victim, as nobody in the justice system may be looking for a trafficking victim in those cases.

### Continued Presence

A Federal law enforcement official may request a grant of Continued Presence for an alien by application to the Law Enforcement Parole Branch (PEPB) of ICE stating that the alien is a victim of a severe form of trafficking and may be a potential witness to such trafficking. The application may be filed by a Federal law enforcement official on behalf of a state or local law enforcement official. Continued Presence is initially granted for one year and may be renewed in one-year increments.

### T Visas

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 or has been the victim of severe trafficking, as is defined above;
- Is physically present in the United States or its territories as a result of the trafficking;
- If 18 years of age or above, is complying with any reasonable request for assistance in the investigation or prosecution of traffickers; and
- Would suffer extreme hardship involving unusual and severe harm upon removal.

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 certification from a state court judge that the person is a victim of human trafficking. Such a certification, however, is recommended by USCIS and may serve as primary evidence that the applicant is a victim of trafficking and has complied with reasonable requests from law enforcement, to support a determination that the applicant meets the requirements to be eligible for a T visa. It may be particularly important if the trafficker is being prosecuted under a lesser charge.

To be eligible for a T visa, the applicant must also meet the requirements of admissibility. The requirements for admissibility are discussed later in this chapter. Federal immigration law permits USCIS to waive most of the requirements of admissibility, and in particular requirements based on criminal convictions rendering the person inadmissible that were caused by or related to victimization as a result of the trafficking. See 8 U.S.C. § 1182(d)(13). Some requirements may not be waived, including the security and related grounds, international abduction, and renunciation of citizenship by a former citizen to avoid taxation.

The T Visa also allows certain family members accompanying or following to join the victim to enter as well, including parents if the victim is under the age of 21 years.

Under the Trafficking Victims Protection Act, a person under the age of 18 years who is induced to perform a commercial sex act is considered a victim of severe trafficking.

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 if he or she has been continuously in the U.S. in T visa status for three years, is admissible and of good moral character, has suffered extreme hardship, and is complying with requests for help from law enforcement. See 8 U.S.C. § 1255(l)(1)(B).

## U Visas

A victim of human trafficking may qualify for U non-immigrant status, also referred to as a U visa, in some circumstances, on application to USCIS. The U visa is a non-immigrant visa available to undocumented individuals who meet the following requirements.

- The individual has suffered severe physical or mental abuse as a result of being a victim of certain enumerated criminal activity;
- The individual has information about the criminal activity and has been, is being, or is likely to be of help to a federal, state, or local investigation or prosecution of the criminal activity; and
- The individual has certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in investigating or prosecuting the criminal activity that he or she has been, is being, or is likely to be of help to the investigation or prosecution of the criminal activity. State court judges should be particularly aware that they can provide the certification.

To be eligible for a U visa, the applicant must also meet the requirements of admissibility. Federal immigration law permits USCIS to waive most of the requirements of admissibility in determining eligibility for the U visa, and the waiver is not limited to convictions for crimes related to victimization from human trafficking. See 8 U.S.C. § 1182(d)(14). Some requirements may not be waived, including the security and related grounds, international abduction, and renunciation of citizenship by a former citizen to avoid taxation.

The rights of the U visa holder include the following:

- The maximum length of the U visa is four years unless extended.
- The U visa holder may apply for any other immigration benefit or status for which he or she is eligible.
- The holder of a U visa is eligible to apply for lawful permanent resident status after three years of continuous residence in U visa status. To be eligible for a change in status to lawful permanent resident, a U visa holder must also meet the requirements for admissibility under federal immigration law, not refuse to cooperate with reasonable requests for assistance by law enforcement, and the change must be justifiable on humanitarian grounds. A variety of criminal convictions can make a person inadmissible.
- The U visa holder may apply for certain qualifying family members to obtain U visa status as well.

The U visa applies to the following specified list of crimes, many of which could be involved with human trafficking: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; stalking; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

## VAWA Self-Petitioner And Human Trafficking

Immigration law provides that an immigrant married to an abusive U.S. citizen or lawful permanent resident (LPR), a child of an abusive U.S. citizen or LPR, or the parent of an abusive U.S. citizen son or daughter may self-petition for LPR status without the cooperation of the U.S. citizen or LPR spouse, parent, son or daughter if:

- The spouse has been battered or subjected to extreme cruelty by citizen or lawful permanent resident spouse;
- The child has been battered or subjected to extreme cruelty by citizen or lawful permanent resident parent;
- The child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse; or
- The parent has been battered or subjected to extreme cruelty by a U.S. citizen son or daughter.
- The act or threatened act was one of extreme cruelty, including physical violence, sexual abuse, forced detention, emotional abuse, or psychological abuse against the petitioner;
- The abused family member lived at some point in time with the abuser, in or out of the United States;
- If the petitioner is self-petitioning based on abuse by a spouse, the marriage must have been legal and valid in the location in which it took place;
- For abused children, they must be unmarried and under the age 21, although certain exceptions are available for abused children to self-petition up to age 25; and
- The petitioner is of good moral character.

VAWA protection can apply to an immigrant human trafficking victim if the extreme cruelty is due to being a victim of human trafficking.

## Special Immigrant Juvenile Status (SIJS)

A trafficked juvenile who is also an undocumented immigrant may be eligible for lawful permanent residence through Special Immigrant Juvenile status (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. Any unmarried person under the age of 21 who meets the conditions listed below may apply for SIJS.

For eligibility for SIJS, there must be findings entered and signed by a court in the United States with juvenile jurisdiction that:

- The juvenile is declared dependent on the court or is legally placed in the custody of an agency or department of a state or is legally committed to the care of an individual or entity appointed by the state or a juvenile court located in the United States;
- Reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis found under state law; and
- It would not be in the best interest of the juvenile to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence.

The law defines a juvenile court as a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. This means that a variety of courts can fit this definition including courts that handle dependency, delinquency, guardianship, and adoption proceedings.

A juvenile applying for SIJS must also apply for adjustment to lawful permanent resident status, so most of the grounds for inadmissibility also apply. An immigrant juvenile who engages in any of the following areas of conduct may be ineligible for adjustment of status:

- Known or reasonably believed to have engaged in drug trafficking, unless coerced;
- Being a drug addict or abuser;



- Violation of a protection order;
- False claim to U.S. citizenship; or
- Behavior showing a physical or mental condition that poses a current threat to self or others.

Most of these grounds, however, may be waived. Other conduct such as violent offenses, sex offenses, and gang activity are particularly problematical, as they often can lead to discretionary denial of SIJS and other immigration protections.

Because traffickers may force the victims into committing these and other crimes, including selling drugs for the trafficker, stealing, or even assisting the trafficker in recruiting other victims, it turns 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. If a trafficked girl also engages in other illegal activities for her traffickers, such as selling drugs or recruiting other girls for prostitution, that additional criminal behavior, if admitted to in a delinquency hearing, could also make the victim ineligible for SIJS or discretionary immigration benefits, including naturalization after the juvenile attains the age of eighteen.

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<sup>1</sup>This information card (original found at [htcourts.org/information-cards.htm](http://htcourts.org/information-cards.htm)) is included in this Guide with the written permission of Dr. David A. Price of Human Trafficking and the State Courts Collaborative (HTC). Permission is on file with the authors.

## APPENDIX E: Bench Guide #3 - NCTSN Bench Card for the Trauma Informed Judge

This bench card and supplement are reproduced in their entirety here in this Guide with the written permission of The National Child Traumatic Stress Network (NCTSN). Permission is on file with the authors.



Dear Judge:

We are pleased to share the NCTSN Bench Card for the Trauma Informed Judge—an official product of the National Child Traumatic Stress Network's Justice Consortium in cooperation with the National Council of Juvenile and Family Court Judges. Designed by judges, lawyers, and behavioral health professionals, this card will assist you in your work with youth who struggle with traumatic stress.

Many court-involved youth have been exposed to traumatic events. They present with problems that require professional assistance to modify their behavior and protect the community. Strong connections have been made between early exposure to trauma and “derailed” child development. Traumatic experiences change the brain in ways that cause youth to think, feel and behave differently.

Trauma impacts many important court decisions, among them:

- temporary placement or custody,
- detention or hospitalization,
- residential or community based treatment,
- treatment and referrals to health and behavioral health services,
- transfers to adult criminal court,
- termination of parental rights and adoption,
- restoration and treatment for child victims,
- visitation with maltreating adults or jail/prison visitation.

For many traumatized children, the judge serves as the crucial professional to direct them to proper treatment. The good news is that, when properly treated through trauma-informed, evidence-based treatment, children can recover.

As a judge, we know you must balance your responsibilities to protect the public and restore victims while also trying to change the destructive life course of a struggling child or an offending teen. Judges know that failure to make such changes can lead to youths who become adults involved in the justice system. Judges often see those adults raise new generations who also appear in court—the outcome of the uninterrupted, intergenerational transmission of traumatic stress.

Enclosed are two bench cards. The first offers a series of questions to help you, as a judge, gather information necessary to make good decisions for children at risk of traumatic stress disorders. The second is a sample addendum designed to be copied or scanned and attached to your orders for behavioral health assessments. It will help mental health professionals develop reports that are trauma informed, admissible into evidence, and informative to you.

We hope that you find the bench cards to be helpful in your work with youth. For additional information and other trauma resources for judges and attorneys, please see <http://www.nctsn.org/resources/topics/juvenile-justice-system>

Should you have questions regarding the information contained in the cards, please contact Dr. James Clark at [clark2j9@UCMAIL.UC.EDU](mailto:clark2j9@UCMAIL.UC.EDU) or the NCTSN at [help@nctsn.org](mailto:help@nctsn.org)

Sincerely,  
The NCTSN Justice Consortium

# NCTSN BENCH CARD

## FOR THE TRAUMA-INFORMED JUDGE

Research has conclusively demonstrated that court-involved children and adolescents present with extremely high rates of traumatic stress caused by their adverse life experiences. In the court setting, we may perceive these youth as inherently disrespectful, defiant, or antisocial, when, in fact, their disruptive behavior may be better understood in the context of traumatic stress disorders. These two Bench Cards provide judges with useful questions and guidelines to help them make decisions based on the emerging scientific findings in the traumatic stress field. These cards are part of a larger packet of materials about child and adolescent trauma available and downloadable from the [NCTSN Trauma-Informed Juvenile Justice System Resource Site\\*](#) and are best used with reference to those materials.

- 1. Asking trauma-informed questions can help judges identify children who need or could benefit from trauma-informed services from a mental health professional. A judge can begin by asking, “Have I considered whether or not trauma has played a role in the child’s<sup>1</sup> behavior?” Use the questions listed below to assess whether trauma-informed services are warranted.**

**TRAUMA EXPOSURE:** Has this child experienced a traumatic event? These are events that involve actual or threatened exposure of the child to death, severe injury, or sexual abuse, and may include domestic violence, community violence, assault, severe bullying or harassment, natural or man-made disasters, such as fires, floods, and explosions, severe accidents, serious or terminal illness, or sudden homelessness.

**MULTIPLE OR PROLONGED EXPOSURES:** Has the child been exposed to traumatic events on more than one occasion or for a prolonged period? Repeated or prolonged exposure increases the likelihood that the child will be adversely affected.

**OUTCOMES OF PREVIOUS SANCTIONS OR INTERVENTIONS:** Has a schedule of increasingly restrictive sanctions or higher levels of care proven ineffective in this case? Traumatized children may be operating in “survival mode,” trying to cope by behaving in a defiant or superficially indifferent manner. As a result, they might respond poorly to traditional sanctions, treatments, and placements.

**CAREGIVERS’ ROLES:** How are the child’s caregivers or other significant people helping this child feel safe or preventing (either intentionally or unintentionally) this child from feeling safe? Has the caregiver been a consistent presence in the child’s life? Does the caregiver acknowledge and protect the child? Are caregivers themselves operating in survival mode due to their own history of exposure to trauma?

**SAFETY ISSUES FOR THE CHILD:** Where, when and with whom does this child feel safest? Where, when and with whom does he or she feel unsafe and distrustful? Is the home chaotic or dangerous? Does a caregiver in the household have a restraining order against another person? Is school a safe or unsafe place? Is the child being bullied at school or does the child believe that he or she is being bullied?

**TRAUMA TRIGGERS IN CURRENT PLACEMENT:** Is the child currently in a home, out-of-home placement, school, or institution where the child is being re-exposed to danger or being “triggered” by reminders of traumatic experiences?

**UNUSUAL COURTROOM BEHAVIORS:** Is this child behaving in a highly anxious or hypervigilant manner that suggests an inability to effectively participate in court proceedings? (Such behaviors include inappropriate smiling or laughter, extreme passivity, quickness to anger, and non-responsiveness to simple questions.) Is there anything I, as a judge, can do to lower anxiety, increase trust, and enhance participation?

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This project was funded by the Substance Abuse and Mental Health Services Administration (SAMHSA), US Department of Health and Human Services (HHS). The views, policies, and opinions expressed are those of the authors and do not necessarily reflect those of SAMHSA or HHS.

2. **It is crucial to have complete information from all the systems that are working with the child and family. Asking the questions referenced below can help develop a clearer picture of the child's trauma and assess needs for additional information.**

**COMPLETENESS OF DATA FOR DECISIONS:** Has all the relevant information about this child's history been made available to the court, including child welfare and out-of-jurisdiction or out-of-state juvenile justice information?

**INTER-PROFESSIONAL COOPERATION:** Who are the professionals who work with this child and family? Are they communicating with each other and working as a team?

**UNUSUAL BEHAVIORS IN THE COMMUNITY:** Does this child's behavior make sense in light of currently available information about the child's life? Has the child exhibited extreme or paradoxical reactions to previous assistance or sanctions? Could those reactions be the result of trauma?

**DEVELOPMENT:** Is this child experiencing or suffering from emotional or psychological delays? Does the child need to be assessed developmentally?

**PREVIOUS COURT CONTACTS:** Has this child been the subject of other court proceedings? (Dependency/Neglect/Abuse; Divorce/Custody; Juvenile Court; Criminal; Other)

**OUT-OF-HOME PLACEMENT HISTORY:** How many placements has this child experienced? Have previous placements been disrupted? Were the disruptions caused by reactions related to the child's trauma history? How did child welfare and other relevant professionals manage these disruptions?

**BEHAVIORAL HEALTH HISTORY:** Has this child ever received trauma-informed, evidence-based evaluation and treatment? (Well-intentioned psychiatric, psychological, or substance abuse interventions are sometimes ineffective because they overlook the impact of traumatic stress on youth and families.)

3. **Am I sufficiently considering trauma as I decide where this child is going to live and with whom?**

**PLACEMENT OUTCOMES:** How might the various placement options affect this child? Will they help the child feel safe and secure and to successfully recover from traumatic stress or loss?

**PLACEMENT RISKS:** Is an out-of-home placement or detention truly necessary? Does the benefit outweigh the potential harm of exposing the child to peers who encourage aggression, substance use, and criminal behavior that may possibly lead to further trauma?

**PREVENTION:** If placement, detention or hospitalization is required, what can be done to ensure that the child's traumatic stress responses will not be "triggered?" (For example, if placed in isolation or physical restraints, the child may be reminded of previous traumatic experiences.)

**DISCLOSURE:** Are there reasons for not informing caregivers or staff at the proposed placement about the child's trauma history? (Will this enhance care or create stigma and re-victimization?)

**TRAUMA-INFORMED APPROACHES:** How does the programming at the planned placement employ trauma-informed approaches to monitoring, rehabilitation and treatment? Are staff knowledgeable about recognizing and managing traumatic stress reactions? Are they trained to help children cope with their traumatic reactions?

**POSITIVE RELATIONSHIPS:** How does the planned placement enable the child to maintain continuous relationships with supportive adults, siblings or peers?

4. **If you do not have enough information, it may be useful to have a trauma assessment done by a trauma-informed professional. Utilizing the NCTSN BENCH CARD FOR COURT-ORDERED TRAUMA-INFORMED MENTAL HEALTH EVALUATION OF CHILD, you can request information that will assist you in making trauma-informed decisions.**

<sup>1</sup>The use of "child" on this bench card refers to any youth who comes under jurisdiction of the juvenile court.

\*<http://learn.nctsn.org/course/view.php?id=74>

# NCTSN BENCH CARD

## FOR COURT-ORDERED TRAUMA-INFORMED MENTAL HEALTH EVALUATION OF CHILD: SAMPLE ADDENDUM

This Court has referred this child<sup>1</sup> for mental health assessment. Your report will assist the judge in making important decisions. Please be sure the Court is aware of your professional training and credentials. In addition to your standard psychosocial report, we are seeking trauma-specific information. Please include your opinion regarding the child's current level of danger and risk of harm. The Court is also interested in information about the child's history of prescribed psychiatric medications. We realize that you may be unable to address every issue raised below, but the domains listed below are provided as an evidence-based approach to trauma-informed assessment.

### 1. SCREENING AND ASSESSMENT OF THE CHILD AND CAREGIVERS

Please describe the interview approaches (structured as well as unstructured) used for the evaluation. Describe the evidence supporting the validity, reliability, and accuracy of these methods for children or adolescents. For screens or tests, please report their validity and reliability, and if they were designed for the population to which this child belongs. If feasible, please report standardized norms.

Discuss any other data that contributed to your picture of this child. Please describe how the perspectives of key adults have been obtained. Are the child's caregivers or other significant adults intentionally or unintentionally preventing this child from feeling safe, worthy of respect, and effective? Are caregivers capable of protecting and fostering the healthy development of the child? Are caregivers operating in "survival mode" (such as interacting with the child in a generally anxious, indifferent, hopeless, or angry way) due to their own history of exposure to trauma? What additional support/resources might help these adults help this child?

### 2. STRENGTHS, COPING APPROACHES, AND RESILIENCE FACTORS

Please discuss the child's existing strengths and coping approaches that can be reinforced to assist in the recovery or rehabilitation process. Strengths might include perseverance, patience, assertiveness, organization, creativity, and empathy, but coping might take distorted forms. Consider how the child's inherent strengths might have been converted into "survival strategies" that present as non-cooperative or even antisocial behaviors that have brought this child to the attention of the Court.

Please report perspectives voiced by the child, as well as by caregivers and other significant adults, that highlight areas of hope and recovery.

### 3. DIAGNOSIS (POST TRAUMATIC STRESS DISORDER [PTSD])

Acknowledging that child and adolescent presentations of PTSD symptoms will differ from adult presentations, please "rule-in" or "rule-out" specific DSM-V criteria for PTSD for adolescents and children older than six years, which include the following criteria:

- Exposure to actual or threatened death, serious injury, or sexual violence, either experienced directly, witnessed, or learning that the event occurred to a close family member or friend (Criteria A)
- Presence of intrusion symptoms such as intrusive memories, distressing dreams, flashbacks, physical reactions, trauma-specific re-enactment through play, psychological distress at exposure to cues (Criteria B)
- Avoidance of stimuli or reminders associated with the traumatic event, including avoidance of internal thoughts and feelings related to the event, as well as external activities, places, people, or situations that arouse recollections of the event (Criteria C)

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- Negative changes in cognition, mood, and expectations; diminished interest in, detachment, and estrangement from others; guilt and shame; socially withdrawn behavior; reduction in positive emotions (Criteria D)
- Alterations in arousal and reactivity, including irritable or aggressive behavior, angry outbursts, reckless or self-destructive behavior, hypervigilance, exaggerated startle response, concentration problems, and sleep disturbance (Criteria E)
- Exhibiting these disturbances in behavior, thoughts and mood for over a month (Criteria F)
- Significant distress or impairment in relationships with parents, siblings, peers, or other caregivers or with school behavior (Criteria G)
- The disturbed behavior and mood cannot be attributed to the effects of a medication, street drug, or other medical condition (Criteria H)

PTSD can also be present for children ages six and younger. Criteria include exposure; intrusive symptoms, including distressing memories or play re-enactment and physiological reactions to reminders; avoidance of people, conversations or situations; negative emotional states such as fear, sadness, or confusion, sometimes resulting in constriction of play; irritable behavior and hypervigilance; and impairment in relationships with parents, siblings, peers or other caregivers.

Even if an official DSM-V diagnosis of PTSD is not warranted, traumatic stress reactions can definitely or potentially contribute to the child's behavioral, emotional, interpersonal, or attitudinal problems. Traumatic stress reactions may contribute to problems with aggression, defiance, avoidance, impulsivity, rule-breaking, school failure or truancy, running away, substance abuse, and an inability to trust or maintain cooperative and respectful relationships with peers or adults.

#### 4. TRAUMA-INFORMED SERVICES

Has this child ever received Trauma-Focused, Evidence-Based Treatment?\*\*\* Sometimes well-intentioned psychiatric, psychological, social work, or substance abuse evaluations and treatment are incomplete and of limited effectiveness because they do not systematically address the impact of children's traumatic stress reactions.

The Court is interested in potential sources of trauma-informed services in your area and your thoughts about the likelihood that the child can receive those services.

In the meantime, what can be done immediately for and with the family, school, and community to enhance safety, build on the child's strengths, and to provide support and guidance? How can this child best develop alternative coping skills that will help with emotional and behavioral self-regulation?

#### 5. SUGGESTIONS FOR STRUCTURING PROBATION, COMMUNITY SUPERVISION AND/OR PLACEMENT OPTIONS.

Structured case plans for probation, community supervision, and/or placement should consider the ability of the setting and the people involved to assist the child in feeling safe, valued, and respected. This is especially important for traumatized children. Similarly, the plan for returning home, for continuing school and education, and for additional court or probationary monitoring should also clearly address each child's unique concerns about safety, personal effectiveness, self-worth, and respect. Please consider where, when, and with whom this child feels most safe, effective, valued and respected. Where, when, and with whom does the child feel unsafe, ineffective, or not respected? What out-of-home placements are available that can better provide for this child's health and safety, as well as for the community's safety? What placements might encourage success in school, relationships, and personal development?

<sup>1</sup> The use of "child" on this bench card refers to any youth who comes under jurisdiction of the juvenile court.

\*\*\* Trauma-Focused, Evidence-Based (TF-EB) Treatment is science-based, often requires training in a specific protocol with careful clinical supervision, and emphasizes the treatment relationship, personal/psychological safety, emotional and behavioral self-regulation, development of coping skills, specific treatment of child traumatic experiences, and development of self-enhancing/pro-social thinking, feeling, decision-making, and behaving. TF-EB treatments include: Trauma-Focused Cognitive Behavioral Therapy, Parent-Child Interaction Therapy, Trauma Affect Regulation: Guidelines for Education and Therapy, Child Parent Psychotherapy and more. See website: <http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices>

## APPENDIX F: Selected Human Trafficking Prosecutions in Kentucky

Kenton Co. – Defendants Perry and Perry	2009	Convicted child molester sold 11 year old boy to another pedophile; victim also sexually abused by defendants. Human trafficking charges amended down.
Hodgenville – Defendants Curtsinger and Brown	2010	Brown, a foster parent, sold her 15 year old foster child to Curtsinger in exchange for money and home furnishings. Two human trafficking indictments ultimately were amended down.
Louisville – Defendants Ritter and Goodwin	2011	First successful HT prosecution by the state: Defendants were initially investigated for heroin, but ultimately charged with trafficking – perpetrators offered a minor to an undercover officer for commercial sex, minor had been coerced and controlled via drug habit. Ritter pleaded guilty and was convicted in 2014, sentenced to 10 years. Goodwin pleaded guilty to facilitation of human trafficking.
Lexington & Louisville – Defendant Flores-Benitez (Federal prosecution)	2012	First conviction on human trafficking federal charges in KY. Spanish-speaking women from surrounding states were recruited or forced to work in a prostitution-delivery service for customers in Woodford, Fayette, Oldham and Jefferson counties. Defendant Flores-Benitez pleaded guilty to 1 count to commit sex trafficking by force, fraud and coercion and received 180 month prison sentence.
Elizabethtown - Defendants Arce & Arce (Federal prosecution)	2012	Physician and his former wife held a Bolivian woman for 12 years for domestic work, paying her only \$20,000 during that time. Mrs. Arce took victim’s passport and told her she’d be arrested and deported if she left the house. She pleaded guilty to harboring an illegal alien for financial gain and he pled guilty to failing to report knowledge of a felony. They were sentenced to 2 years probation and to pay \$100,000 restitution to the victim.
Taylor Co. - Defendant De Aquino-Cancino (Federal prosecution)	2012	Defendant recruited girls and adult women for commercial sexual encounters and transported and financially benefited from commercial sexual transactions involving two minors and several adults in Green, Taylor, Adair and Barren Counties. Sentenced to 84 months in prison and lifetime of supervised release.
Lexington – Defendant Perez-Gumeta	2013	Pregnant Victim forced to work on tobacco farm and in domestic service. Brought to U.S. with false promises of work and prenatal care; repeatedly beaten, never paid, not allowed access to medical care. Defendant pleaded guilty to illegal re-entry, harboring immigrants for financial gain, and payment of minimum wage and was ordered to pay \$1311 in victim restitution and sentenced to 18 months.
Lexington – Defendants Patel and Patel (Federal Prosecution)	2013	Subway restaurant owner were accused of hiding undocumented victims from India to work at their restaurants. Defendants paid workers less than minimum wage, did not pay overtime, made them work when sick. Ultimately served 6 months each in detention, ordered to pay \$10,000 in restitution to victims, \$64,000 to U.S. Govt.
Madison Co – Defendants Hart and Hart	2014	Parents sold their two daughters, ages 13 and 14, to men for sex. Grand Jury brought HT charges but couple eventually each pleaded guilty to one count of second degree unlawful transaction with a minor.
Henderson, KY/ Evansville, IN – Defendant Williams	2014	Williams picked up two minors in Indiana and drove them to Kentucky where he arranged for men to come and engage in commercial sex acts with the minors. He pleaded guilty to human trafficking and was sentenced to 10 years.
Frankfort – Defendant Jonathan Diaz	2015	Perpetrator met minors from Fayette and Franklin counties on social media, then met them in person and arranged to sell them for sex. He was arrested after an undercover sting operation at a motel found him with a 15 year old girl. He was sentenced to 10 years following an Alford Plea for human trafficking.

