



Looking Beneath the Surface: The Nexus between Status Offenders & Human Trafficking

Gretchen M. Hunt, JD and Marylee P. Underwood, JD

The human trafficking of children is an issue that is closely related to the issue of status offenders and reform of the juvenile justice system. It is estimated that there are between 100,000-300,000 children who are at risk for commercial sexual exploitation in the United States, among them U.S. Citizens and foreign nationals.ⁱ The average age of first exploitation is between 12 and 14 years of age.ⁱⁱ The National Center for Missing and Exploited Children estimates that within the first 72 hours of being on the streets, children will be approached for commercial sex.ⁱⁱⁱ At least 75% of the minors exploited are controlled by pimps, who target runaway and homeless youth or children who have been abused or neglected.^{iv} In Kentucky, programs serving victims of trafficking have found that 53% of the victims they served were trafficked as children.^v

Under both federal and Kentucky law, these exploited children are considered to be victims of sex trafficking, regardless of whether or not the trafficker used force, fraud or coercion.^{vi} Unfortunately, many of these children fall through the gaps of the legal and child protective services system. Those who exploit them may force them to lie about their age or use false identification so that they may remain undetected by authorities. The traffickers coerce victims into compliance through threats, forced drug abuse, rapes, physical abuse and emotional blackmail. If victims are found by law enforcement, they are often arrested and detained instead of being identified as victims of sex trafficking. In fact, child victims of trafficking are more likely to be arrested than are the child sex traffickers or client sex offenders. A 2005 study commissioned for Congress showed that in Boston, 11 female prostitutes (adult and child) were arrested for each male client; in Chicago, the rate was 9:1; and in New York City, the ratio was 6:1.^{vii} If exploited children are identified as minors, they may be charged with status offenses rather than seen as victims of abuse.

Adolescent girls face a double blow from the current system. Girls have extremely high rates of emotional, physical and sexual abuse and trauma which are all predictors for delinquency.^{viii} This makes them easy prey for traffickers. At the same time girls are detained at a higher rate for status offenses, particularly for runaway cases.^{ix} Being detained compounds their trauma and PTSD, especially practices such as forced disrobing, physical exams, body searches, being strapped to beds and/or restrained by male staff.^x

Concerns regarding Kentucky Law

Kentucky law provides that victims of human trafficking have the right “not to be held in a detention center, jail or other secure facility pending trial for an offense arising from the human trafficking situation.”^{xi} The only exceptions are “where the incarceration is found to be the least restrictive alternative to securing the appearance of the person before the court or the release of the person under any other reasonable condition would be a clear threat to public safety.”^{xii} However, Kentucky ranks in the top three states for detention of status offenders.^{xiii} This suggests that we may be inadvertently placing victims of child trafficking in detention rather than providing them with services appropriate to their status as trauma victims.

Furthermore, under current law, only children trafficked by a parent, guardian or caregiver are offered services and protection by the Cabinet for Health and Family Services (CHFS).^{xiv} Of the thirteen human trafficking indictments under Kentucky law, most have involved children between the ages of 6-17 exploited by a caregiver.^{xv} Therefore, most of the children in those cases could have received services through CHFS. Unfortunately, it appears that CHFS may not yet have the infrastructure to appropriately respond to these cases.

Children exploited by a pimp/boyfriend currently receive no protection from child protective services, unless they are independently referred to a human trafficking victim service agency. Although only a handful of Kentucky human trafficking indictments fit this pattern, advocates fear that pimp-controlled exploitation is far more prevalent than reported. Other states bordering Kentucky have adopted Safe Harbor statutes (including Illinois, Ohio and Tennessee) to ensure that these children are not arrested for prostitution and are given protection and services (IL, OH) through the child protective services system. Polaris Project offers a fact sheet outlining key aspects of Safe Harbor legislation.^{xvi} We are hopeful that Kentucky will take action soon to ensure that these highly vulnerable minors receive the services they so badly need.

Other Efforts in Kentucky

The University of Kentucky, through Dr. Jennifer Cole, is in the process of conducting research on the prevalence of child sex trafficking in rural and urban areas of Kentucky. Results are expected in summer 2013. Resources on human trafficking have been distributed to all court designated workers in Kentucky, and over 16,500 individuals, including public defenders representing juveniles and representatives of the Cabinet for Health and Family Services, have been trained on human trafficking. There is currently no system wide training for the Cabinet for Health and Family Services or the Department of Juvenile Justice, which are the primary agencies to encounter child victims of sex trafficking. Kentucky Rescue and Restore partners are able to provide this training as well as offer services to victims of human trafficking. More information is available at www.rescueandrestoreky.org.

More information regarding human trafficking in Kentucky is available from the Kentucky Association of Sexual Assault Programs by contacting: 502-226-2704, www.kasap.org, or ghunt@kasap.org.

ⁱ U.S. Cong. Trafficking Victims Protection Reauthorization Act of 2005. PUBLIC LAW 109-164 – January 5, 2005 < <http://www.state.gov/tip/rls/61106.htm> >

ⁱⁱ The National Center for Missing and Exploited Children, www.missingkids.com

ⁱⁱⁱ Id.

^{iv} U.S. Department of Justice—Child Exploitation and Obscenity Section. < <http://www.usdoj.gov/criminal/ceos/prostitution.html> >

^v KY Rescue and Restore Victims of Human Trafficking July 2012 Fact Sheet, available upon request from Marissa Castellanos, mcastellanos@archlou.org

^{vi} Trafficking Victims Protection Act of 2000, 18 U.S.C. §§1589-1594, KRS 529.010 (5)

^{vii} The National Strategy for Child Exploitation Prevention and Interdiction, Department of Justice, p. 34, available at <http://www.justice.gov/psc/docs/natstrategyreport.pdf>

^{viii} Understanding Trauma through a Gender Lens, NCCD Center for Girls and Young Women, www.justiceforallgirls.org

^{ix} Safety, Opportunity and Success: Standards of Care for Non-Delinquent Youth (SOS) Facts and Resources (May 2011), Coalition for Juvenile Justice, available at www.juvjustice.org

^x Understanding Trauma through a Gender Lens, NCCD Center for Girls and Young Women, www.justiceforallgirls.org

^{xi} KRS 431.063

^{xii} Id.

^{xiii} Safety, Opportunity and Success: Standards of Care for Non-Delinquent Youth (SOS) Facts and Resources (May 2011), Coalition for Juvenile Justice, available at www.juvjustice.org

^{xiv} KRS 600.020 (1)(a)(5), (6)

^{xv} Kentucky Rescue and Restore Victims of Human Trafficking, Prosecutions Factsheet, www.rescueandrestore.ky.org

^{xvi} Available at http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/issue%20brief%20-%20safe%20harbor%20-%20april%202012.pdf

KY Rescue & Restore Victims of Human Trafficking

JULY 2012 FACT SHEET



The KY Rescue & Restore Coalition was created in 2008 to:

- ◆ Develop a statewide anti-human trafficking coalition in Kentucky
- ◆ Increase identification of human trafficking victims through awareness and training
- ◆ Provide direct services to survivors of human trafficking throughout Kentucky

For more information or to donate to victims services, visit our website: www.rescueandrestoreky.org

:: Human Trafficking in Kentucky- THE NUMBERS :: Indictments & Prosecutions

- 91 cases of human trafficking have been identified in Kentucky.
- 138 victims (some from other states) received services (housing, advocacy, medical care, interpretation services, family reunification, etc) through the KY Rescue & Restore Coalition
- 580 human trafficking trainings/workshops provided
- More than 16,500 individuals educated about human trafficking

There have been **15 State** and **2 Federal** indictments/charges in Kentucky on human trafficking. There has been **1** successful federal prosecution on a sex trafficking charge. Several state and federal prosecutions are ongoing. At least **6** additional human trafficking cases have been charged, but the prosecution is on charges other than human trafficking.

Human Trafficking Task Forces

- ◆ Lexington
- ◆ Louisville Metro
- ◆ Bardstown
- ◆ PATH (Northern KY)
- ◆ Morehead
- ◆ Lake Cumberland

CASE DEMOGRAPHIC INFO

Sex Trafficking	60%
Labor Trafficking	34%
Both Labor and Sex	6%
Child Victims	53%
Adult Victims	47%
Foreign Nationals	52%
Domestic Victims	48%
Male Victims	15%
Female Victims	85%



National Human Trafficking Hotline and Resource Center: 1-888-3737-888

Catholic Charities (Louisville)

KY Association of Sexual Assault Programs (Frankfort)

Bluegrass Rape Crisis Center (Lexington)

Women's Crisis Center (Covington)

Adanta Sexual Assault Resource Center (Somerset)

KY RESCUE & RESTORE COALITION
PARTNER AGENCIES

KENTUCKY HUMAN TRAFFICKING CASES

Charges/Indictments Utilizing Human Trafficking Statutes

(As of June 2012)



#	Date	Location	Charge Level	Alleged Trafficker (Name/Age)	Charges	Victim(s)	L.E. Agency	Type of Human Trafficking Case	Bond	Current Status / Final Disposition
1	Dec 2007	Lexington, KY	State	Calvin "Slim" Walker (45)	HT- 2 Counts	2 adult females	Lexington PD	Sex Trafficking	Unknown	Dismissed without prejudice
2	Nov 2009	Barlow, KY	State		HT		Ballard Co. Sheriff's office	Domestic Minor Sex Trafficking		
3	Dec 2009	Kenton Co (Elsmere, KY)	State	Ernestine Perry (57)	HT, Rape	11 yr old boy	Kenton County Sheriff	Domestic Minor Sex Trafficking	Unknown	Diversion Hearing date: 11/4/15
4	Dec 2009	Kenton Co (Elsmere, KY)	State	Bobby Jo Perry (39)	HT, Sodomy	11 yr old boy	Kenton County Sheriff	Domestic Minor Sex Trafficking	Unknown	Guilty 1 st degree Sodomy; HT charges ongoing
5	Dec 2009	Burlington, KY	State	Trisha Amara (30)	HT, Intimidating a witness, 1 st degree complicity to sodomy, 1 st degree sexual abuse	6 yr old girl	Boone County Sheriff	Domestic Minor Sex Trafficking	Held in lieu of \$100,000 bond	Unlawful transaction with a minor under 14
6	June 2010	Ohio Co (Hartford, KY)	State	Christel Small (32)	HT, promoting sexual perf. by minor, promoting prostitution, unlawful transaction with a minor (3 counts)	3 girls (ages 16-17)	Ohio County Sheriff	Domestic Minor Sex Trafficking	\$50,000	Diversion Hearing dates: 1/20/12, 6/9/16
7	Dec 2010	Bowling Green, KY	State				Bowling Green Police Dept.			
8	Dec 2010	Hodgenville, KY	State	James M. Curtsinger (63)	Promotion of HT, 3 rd degree rape, sodomy, 1 st degree sexual abuse	15 yr old girl	KSP Post 4-Elizabethtown	Domestic Minor Sex Trafficking	\$100,000	Plea deal: 2 nd degree unlawful transaction w/ minor; 2 counts 3 rd degree unlawful transaction w/minor
9	Dec 2010	Hodgenville, KY	State	Rhonda J. Brown (54)	HT, complicity to rape, complicity to rape/sodomy	15 yr old girl	KSP Post 4-Elizabethtown	Domestic Minor Sex Trafficking	\$200,000	Ongoing
10	Dec 2010	Madison Co (Richmond, KY)	State	Anthony Hart (47)	HT /minor under 18	13 yr old girl; 14 yr old girl	Richmond PD / Berea	Domestic Minor Sex	\$25,000	Jury trial date: 8/20/12

KY)				PD			Trafficking			
#	Date	Location	Charge Level	Alleged Trafficker (Name/Age)	Charges	Victim(s)	L.E. Agency	Type of Human Trafficking Case	Bond	Current Status / Final Disposition
11	Dec 2010	Madison Co (Richmond, KY)	State	Kathy Hart (43)	HT / minor under 18	13 yr old girl; 14 yr old girl	Richmond PD / Berea PD	Domestic Minor Sex Trafficking	\$25,000	Jury trial date: 8/20/12 (pending outcome of competency ruling)
12	Aug 2011	Louisville, KY	State	Justin Ritter (22)	HT, unlawful transaction with a minor, promoting prostitution, possession of drug par., possession of marijuana	17 yr old girl	Louisville Metro Police	Domestic Minor Sex Trafficking	Unknown	Jury Trial Pending
13	Aug 2011	Louisville, KY	State	Rebecca Goodwin (36)	HT, unlawful transaction with a minor, promoting prostitution, possession of drug par., possession of marijuana	17 yr old girl	Louisville Metro Police	Domestic Minor Sex Trafficking	Unknown	Guilty plea- Facilitation to Human Trafficking and Unlawful Transaction with a Minor- 10 year sentence
14	Nov 2011	Russell Springs, KY	State		HT		KSP Post 15- Russell Co.	Domestic Minor Sex Trafficking		
15	Dec 2011	Harrodsburg, KY	State		HT	16 year old girl	KSP Post 7- Mercer Co.	Domestic Minor Sex Trafficking		Charge Only; No Indictment to date
16	Jan 2012	Columbia, KY	Federal	Adulfo DeAquino Cancino (27)	HT (vic u/18yoa), unlawful transaction 1 st illegal sex act (vic u/18yoa)	15 yr old girl; other girl under 18	KSP Post 15- Columbia/ DHS-ICE	Domestic Minor Sex Trafficking	No Bond	Jury Trial- 8/13/12
17	Feb 2012	Lexington, KY	Federal	Marco Antonio Flores-Benitez (38)	Conspiracy, MANN Act, sex trafficking, Conspiracy to commit sex trafficking	Multiple adult females- all Latina	Lexington Police, FBI, US Attorney (E.District KY)	Prostitution/ Sex Trafficking Ring	No Bond	Guilty plea- Conspiracy to commit sex trafficking- 15 year sentence, followed by removal

* The cases listed on this document all federal and state level charges/indictments pursued in Kentucky. The only conviction on HT charges to date has been the federal case USA v. Benitez et al.

☐ Indicates multiple alleged traffickers involved in the same case

Kentucky Criminal or Civil Cases Involving Human Trafficking

(these cases may not have been prosecuted criminally, or were prosecuted for offenses other than HT)

#	Date	Location	Charge Level	Alleged Trafficker (Name/Age)	Charges/ Claims (if civil case)	Victim(s)	L.E. Agency /Attorney (if civil case)	Type of Human Trafficking Case	Bond	Current Status / Final Disposition / Damages Awarded (if civil case)
18	2006	Paducah, KY	Civil Case	Elmer Toliver, Genevieve Toliver	Fair Labor Standards Act Violations, Conversion of Passport, Breach of Contract and Fraud, Forced Labor, Trafficking with Respect to Forced Labor, Intentional Infliction of Emotional Distress	Adult female from Phillipines	Colin Lindsay of Dinsmore & Shohl LLP (Louisville)	Domestic Servitude	n/a	Total award to victim: \$68,318
19	June 2011	Elizabethtown, KY	Federal	Javier Julio Arce (58)	Bringing in and Harboring an illegal alien for financial gain	Adult female from Bolivia	FBI / US Attorney (W District KY)	Domestic Servitude	Released on Bond	Awaiting trial
20	June 2011	Elizabethtown, KY	Federal	Cristina Mier Arce	Bringing in and Harboring an illegal alien for financial gain	Adult female from Bolivia	FBI / US Attorney (W District KY)	Domestic Servitude	Released on Bond	Awaiting trial
21	May 2011	Louisville, KY	Federal	Obdulio Morales Camacho	Conspiracy to induce and transport in interstate commerce for prostitution, conspiracy to operate illegal brothels, , conspiracy to transport and harbor illegal aliens, coercion or enticement of female, conspiracy to defraud US, failure to file factual statements about alien female	Multiple Adult Females- all Latina (30-40 women)	FBI / DHS- HSI / US Attorney (ED Tennessee)	Prostitution / Sex Trafficking Ring		Guilty Plea: 8/30/11 Sentencing: 6/7/12 Guilty of 2 counts of coercion or enticement of a female 50 months imprisonment per count, 3 years supervised release, remaining counts dismissed
22	May 2011	Louisville, KY	Federal	Esthela Silva Vasquez	Conspiracy to induce and transport in	Multiple Adult	FBI / DHS- HIS / US	Prostitution / Sex		Guilty Plea: 9/29/11 Sentencing: 4/5/12

					interstate commerce for prostitution, conspiracy to operate illegal brothels, , conspiracy to transport and harbor illegal aliens, coercion or enticement of female, conspiracy to defraud US, failure to file factual statements about alien female	Females- all Latina (30-40 women)	Attorney (ED Tennessee)	Trafficking Ring		Guilty of 2 counts of coercion or enticement of a female 50 months imprisonment per count, 3 years supervised release, remaining counts dismissed
vv 23	Feb 2012	Lexington, KY	Federal	Roxana Olea Serna	Coercion or enticement of female (multiple counts), illegal entry / concealment of facts	Multiple adult females- all Latina	Lexington Police, FBI, US Attorney (E.District KY)	Prostitution/ Sex Trafficking Ring		Guilty Plea: 5/25/12 Sentencing: 7/26/12 Guilty of 1 count of coercion or enticement of a female
24	Feb 2012	Lexington, KY	Federal	Roberto Salinas-Rivera	Coercion or enticement of a female (multiple counts); reentry	Multiple adult females- all Latina	Lexington Police, FBI, US Attorney (E.District KY)	Prostitution/ Sex Trafficking Ring		Guilty Plea: 4/27/12 Sentencing: 7/27/12
25	Feb 2012	Lexington, KY	Federal	Adrian Lezama-Ruiz	Coercion or enticement of a female (multiple counts)	Multiple adult females- all Latina	Lexington Police, FBI, US Attorney (E.District KY)	Prostitution/ Sex Trafficking Ring		Guilty Plea: 5/11/12 Sentencing: 7/27/12
26	June 2012	Louisville, KY (Cleveland, OH)	Federal	Darien Lakeith McKinley (30)	Kidnapping (possible HT charges pending)	16 year old girl ,17 year old girl	FBI	Domestic Minor Sex Trafficking?	\$85,000 (still detained)	Preliminary Hearing: 6/18/12

SUMMARY TABLE
Charges/Indictments in Human Trafficking Cases in Kentucky

	STATE	FEDERAL	CIVIL	
Human Trafficking Charges / Indictments	15	2		
Charges other than Human Trafficking (although case IDed as HT)	0	5	1	
				TOTALS
Total Number of identified Human Trafficking Cases (criminal or civil)				16
Total Number of (Known) Human Trafficking Victims (criminal or civil cases)				28
Total Number of (Known) Convictions	0	1		1

Fact Sheet: Human Trafficking of Minors

A Guide for Kentucky Professionals Working with Children

WHAT IS HUMAN TRAFFICKING?

Kentucky and Federal law both define human trafficking. Trafficking of children is generally understood to be:

The recruitment, enticement, harboring, transportation, provision or obtaining of a child for labor or services (including attempts) through the use of force, fraud, or coercion. Under federal and state laws, sex trafficking (such as prostitution, pornography, exotic dancing, or other commercial sex acts) does not require there to be force, fraud, or coercion if the victim is under 18.

Trafficking victims may be smuggled into and within the U.S, arrive with a legitimate visa, or be a U.S. citizen.

Trafficking occurs in many different situations including domestic servitude, construction, landscaping, factories, migrant farm work, restaurants, magazine sales, begging, and various areas of the sex industry (truck stop prostitution, Craig's List "Adult Services", strip clubs, escort services, familial prostitution, etc.).

[Federal Statutes (2000): 18 U.S.C. §§1591, 2421, 2422, 2423; Kentucky Statutes (2007): KRS 529.010, KRS 529.100, KRS 529.110]

Some rights given to Domestic Minor Sex Trafficking victims include:

1. They are not culpable for crimes committed as a direct result of their victimization
2. They should not be detained in facilities inappropriate to their status as crime victims
3. They must receive necessary medical care and other assistance
4. They will be provided protection if their safety is at risk or if there is danger of recapture by the trafficker

HOW DO I IDENTIFY A VICTIM OF HUMAN TRAFFICKING?

- Shows signs of being controlled or reports being controlled
- Shows signs of physical, mental or sexual abuse
- Cannot/will not speak on own behalf and/or is non-English speaking (someone else insists on translating)
- Cannot or will not speak to you alone
- Works unusually long hours and is unpaid or paid very little
- Will not cooperate (gives wrong information about identity and/or living situation)
- Lives at workplace or with employer and/or lives with many people in a small area
- Has unexplained absences from school for a period of time (truant) or is not in school
- Multiple reports of runaway incidents with no explanation as to whereabouts
- Makes references to frequent travel to other cities
- Exhibits withdrawn behavior, depression, fear, distrust of authorities, or other sudden change in behavior
- Lacks control over his or her schedule or identification/travel documents
- Is hungry/malnourished or inappropriately dressed (based on weather conditions or surroundings)
- Shows signs of drug addiction or reports being given drugs by a male peer/older male
- Has engaged in prostitution or other commercial sex acts (money/ something of value was exchanged)
- Tattoos/branding that may indicate ownership (pimps may tattoo "star", "love", or other words on wrist)
- Appears to have a well-rehearsed story/ Talks in a way that doesn't sound like the child when questioned

ADDITIONAL SIGNS THAT MAY INDICATE SEX-RELATED TRAFFICKING INCLUDE:

- Demonstrates a sudden change in attire, behavior, or material possessions (has expensive items)
- Makes references to sexual situations that are beyond age-specific norms
- Has a "boyfriend" who is noticeably older (10+ years) and/or receiving phone calls from older males
- Makes references to terminology of the commercial sex industry that are beyond age-specific norms, engages in promiscuous behavior and may be labeled "fast" or "easy" by peers.
- History of sexually transmitted diseases/pregnancy/abortions
- Police reports of a child documenting exploitative activity
- Internet activity with computer a constant (important to check website)
- In possession of items such as: hotel keys, multiple phones, condoms, cards with phone numbers/names, ledgers, false IDs, poker chips/tokens



- Approximately 600,000 — 800,000 people are trafficked across international borders annually.
- More than half of these victims worldwide are children.¹
- 14,500 — 17,000 people are estimated to be trafficked into the United States every year.²
- 100,000 — 300,000 children in the United States are at risk for commercial sexual exploitation.³
- At least 75% of minors exploited through prostitution are controlled by a pimp.⁴
- 1 of every 100 advertisements posted on www.craigslist.com under [adult services] involves a juvenile.⁵
- 30% of shelter youth and 70% of street youth are victims of commercial sexual exploitation.⁶
- Familial prostitution— the selling of one’s family member for sex in exchange for drugs, shelter, or money— is a large and overlooked problem in the United States.

INTERVIEW CONSIDERATIONS:

1. Use an interpreter if the victim does not speak fluent English
 - o If you need an interpreter, contact an independent and trusted source for help with interpretation
 - o Do not use children, adults, neighbors, or friends who are present at the scene to interpret
 - o Make sure the interpreter is not allied with the trafficker. Also screen the interpreter to ensure they don’t know the victim.
 - o Make sure the interpreter understands trafficking
 - o With female sex trafficking victims, it may be best to have a female interpreter
 - o Understand how to work with interpreters and that it can be a slow process that requires word for word interpretation (not summaries)
2. It is rare for child victims of human trafficking to identify themselves as being trafficked. Typically, victims will present due to another form of abuse, neglect, or abandonment.
3. If you suspect a child is a victim of human trafficking, it is important that the child be gently interviewed (preferably by a child forensic interviewer), and that the suspected trafficker(s) not be present, because during the interview process the trafficker (s) may try to intimidate the child or not allow the child to speak for themselves. Question the minor from an unbiased and non-judgemental point of view. Doing otherwise could discourage them from being truthful or seeking help.
 - The child may be frightened of threats or retribution by the trafficker when the authorities get involved
 - The child could be embarrassed and ashamed by work/services they were forced to perform and the abuse they’ve endured
 - The child’s cultural norms may make talking about these experiences very difficult.
4. Know that it may take several interviews to establish trust and even longer to determine if a child has been trafficked
5. Be sensitive to cultural and religious differences and seek help to understand them prior to the interview
6. Be aware that the child’s parent or caregiver may also be the child’s trafficker and that the trafficker may lie and say she/he is the child’s parent or caregiver. Checking the adult’s ID and having the child and adult separately fill out family trees may help to establish the truth of their relationship initially.
7. Remember that every human trafficking case is different, and while there certainly are trends in the types of trafficking cases, traffickers are frequently creating new and more hidden methods of exploiting children in different ways.
8. Do not ask about immigration status at the beginning of the interview; this can be intimidating, and may keep the minor from telling you important information about their situation for fear of deportation of themselves and/or family members.

WHAT TO DO IF YOU SUSPECT OR DISCOVER THAT A CHILD IS BEING TRAFFICKED:

1. Call 911 if there is immediate danger or a medical emergency, then contact Catholic Charities of Louisville or the National Human Trafficking Hotline to connect with victim services.
2. If you suspect human trafficking, contact law enforcement. You may call the Center for Missing and Exploited Children (1-800-843-5678), the National Human Trafficking Hotline (1-888-3737-888), or Catholic Charities of Louisville (502-974-4947) to connect with law enforcement locally or to gain access to services for trafficking victims. Catholic Charities of Louisville may provide technical assistance and/or screening for suspected cases in Kentucky.
3. If you need more information concerning human trafficking, contact Catholic Charities of Louisville (502-974-4947).

This Fact Sheet does not represent all instances of human trafficking,
due to the varying and often changing nature of human trafficking of minors.



¹ U.S. State Department—Human Trafficking Section <www.state.gov> Cited on Office of Rescue and Restore Victims of Human Trafficking “Child Victims of Human Trafficking”

² U.S. State Department—Human Trafficking Section <www.state.gov> Cited on Office of Rescue and Restore Victims of Human Trafficking Training DVD.

³ U.S. Cong. Trafficking Victims Protection Reauthorization Act of 2005. PUBLIC LAW 109-164– January 5, 2005 <<http://www.state.gov/tip/rls/61106.htm>>

⁴ U.S. Department of Justice— Child Exploitation and Obscenity Section. <<http://www.usdoj.gov/criminal/ceos/prostitution.html>> Accessed on March 11, 2008

⁵ “Rapid Assessment of Domestic Minor Sex Trafficking and Facilitation of Services in Salt Lake City, Utah”, Shared Hope International, August 2008. <www.sharedhope.org>. Accessed on September 10, 2008 [the category used to be “erotic services”, but has since changed to “adult services”]

⁶ Estes, R. & Weiner, N. “Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico”, University of Pennsylvania, 2001.

**HUMAN TRAFFICKING
LEGISLATIVE ISSUE BRIEF:
SEX TRAFFICKING OF MINORS AND “SAFE HARBOR”**



POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

Sex trafficking of children is a brutal form of human trafficking and child sexual abuse. Experts estimate that up to as many as 300,000 children are at risk of exploitation in prostitution every year. Pimps target the vulnerable, such as runaway and homeless youth or children who have been abused or neglected. And while the prostitution of a child is a form of human trafficking under U.S. federal law, many states still do not offer legal protections for minor victims, appropriate penalties to curb demand, or services to care for these severely victimized children. In many cases, these victims are treated as criminals or delinquents, which results in further harm to the child. The law should protect child victims of prostitution and punish the abusers.

Three elements are required for a complete safe harbor law. The state law should:

- 1. Prevent minor victims of sex trafficking from being prosecuted for prostitution.** Criminal prostitution statutes must remove the burden of criminal responsibility from children and ensure that legal mechanisms are in place for the state to take temporary protective custody. A practical prerequisite for such legislation is to:
 - Define trafficked and prostituted children as victims of abuse and neglect, triggering a child protective response.
 - Grant immunity from prosecution for prostitution if the arrested person is under 18; and
 - Divert arrested children from juvenile delinquency proceedings to child protection proceedings.
- 2. Ensure that coercion is not required to prosecute sex trafficking of children.** Criminal laws should recognize the basic fact that children do not have the legal, psychological, or emotional capacity to consent to engage in commercial sex acts. Therefore, the law should:
 - Severely penalize child predators without requiring evidence that they used force or coercion to induce the child victim to engage in commercial sex acts.
 - View purchasers of commercial sex acts with children as child sexual predators and their acts punished as severely as other forms of child sexual abuse.
- 3. Protect child victims of sex trafficking by providing them with specialized services.** Child victims of sex trafficking and some child victims of labor trafficking who have been sexually abused have needs that may include: safe housing, long-term housing, mental health care, access to GED or other remedial education, and life skills learning. Experienced practitioners have found that mainstream programs of the child abuse and neglect system **routinely fail these children**. The law should require protection and recovery programs for child victims such as:
 - Placement in programs that treat such children with respect and dignity and do not stigmatize these victims because of their involvement in commercial sex;
 - Mentorship by survivors of the same crime or, when that is not possible, by other caring professionals who are familiar with the special trauma associated with commercial and non-commercial sexual abuse.
 - Protocols that ensure immediate placement of these victims in appropriate, pre-identified locations, without undue questioning from untrained law enforcement officers or other officials.

Current Policy on the Sex Trafficking of Minors

New York (2008) enacted the Safe Harbor for Exploited Children Act, which recognized that children in prostitution are not criminals or delinquents but victims of a brutal form of child sex trafficking and child sexual abuse who need specialized services. This watershed law catalyzed passage of similar “Safe Harbor” bills in other states including laws in Illinois, Minnesota, Tennessee, Vermont, Massachusetts, Connecticut and Washington. California has pilot safe harbor programs in place in Alameda and Los Angeles Counties. Michigan has passed a partial safe harbor law. Other states, including Hawaii and Ohio, are considering Safe Harbor bills. In addition, the Texas Supreme Court recently ruled that children involved in prostitution are victims, not criminals (see below).

For additional information or assistance please contact Polaris Project at policy@polarisproject.org.

Landmark Decision: Texas Supreme Court Rules In Matter of B.W. (2010) Children in Prostitution are Victims, Not Criminals

Facts

- Thirteen-year-old B.W. flagged down the car of an undercover officer and offered to engage in oral sex for twenty dollars. She was arrested for prostitution.
- The trial court (Family Court) found her guilty of Class B misdemeanor of prostitution; she admitted that she had "knowingly agreed to engage in sex . . . for a fee," and received a sentence of 18-months' probation.
- The Court of Appeals affirmed the judgment, and the case was appealed, the Texas Supreme Court agreed to review her case.
- The Supreme Court of Texas reversed the Court of Appeals by a 6-3 decision.

The Supreme Court of Texas argued in its decision:

1. "Because a 13 year old child cannot consent to sex as a matter of law . . . B.W. cannot be prosecuted as a prostitute."
 - The Supreme Court argued that children below the age of 14 cannot understand the significance of agreeing to sex and, therefore, could not satisfy the "knowing" requirement of the statute. The Court cited longstanding common law, Texas statutes, and numerous cases. "The notion that an underage child cannot legally consent to sex is of longstanding origin and derives from common law."
2. Children cannot be considered guilty of an act that involves their own sexual exploitation.
 - "Transforming a child victim of adult sexual exploitation into a juvenile offender was not the legislature's intent when it enacted the laws on prostitution and delinquent conduct of a child. . . It is far more likely that the legislature intended to punish those who sexually exploit children rather than subject child victims below 14 years to prosecution."
 - The court also cited legislation that "compelling a child under 18 to commit prostitution was a second degree felony" and harsher penalties for "inducing a child under fourteen to engage in sexual conduct or performance."
 - "In passing these statutes, the Legislature has expressed both the extreme importance of protecting children from sexual exploitation, and the awareness that children are more vulnerable to exploitation by others."
3. Prohibiting underage victims of prostitution from being prosecuted will not encourage more exploitation.
 - "Pimps and sexual exploiters of children may still be prosecuted for compelling prostitution and other crimes of sexual exploitation even though [the] child may not be prosecuted for prostitution."
 - Treating child prostitutes as victims rather than criminals will also undermine the ability of pimps to play on the child's fear of police, removing a powerful tool pimps use to assert control.
4. Child victims of prostitution should be provided counseling, rehabilitation, and services instead of being placed in a detention system, ill-suited to the child's needs.
 - The Court argued a child such as B.W. would qualify for State child protective services, which would be better equipped to provide her with proper care and treatment.

All quotes from Supreme Court of Texas, [In Matter of B.W.](#), June 18, 2010, No. 08-1044

Please support and sponsor legislation to help child victims of commercial sexual exploitation!

For additional information or assistance please contact Polaris Project at policy@polarisproject.org.



POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

Kentucky State Report State Ratings 2011

The Polaris Project annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris Project believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Orange

Total Points: 4

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 7 Lower Burden of Proof for Sex Trafficking of Minors; and 8 Victim Assistance.

Categories Still Needed: 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 Posting of the National Hotline; 6 Safe Harbor; Protecting Sex Trafficked Minors; 9 Access to Civil Damages; and 10 Vacating Convictions for Sex Trafficking Victims.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

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 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, 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) "Labor" means work of economic or financial value;
- (7) "Profiting from prostitution" -- A person "profits from prostitution" when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he 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 participates or is to participate in proceeds of prostitution activity;
- (8) "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;
- (9) "Sexual conduct" means sexual intercourse or any act of sexual gratification involving the sex organs; and
- (10) "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.

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.

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.

Category 2: Labor Trafficking Statute

Yes. See Section 529.010(5)(a).

Category 3(a): Asset Forfeiture

None.

Category 3(b): Investigative Tools

None.

Category 4(a): Training for Law Enforcement

None.

Category 4(b): Human Trafficking Task Force

None.

Category 5: Posting of a Human Trafficking Hotline

None.

Category 6: Safe Harbor; Protecting Sex Trafficked Minors

None.

Category 7: Lower Burden of Proof for Sex Trafficking of Minors

Yes. See 529.010(5)(b).

Category 8: Victim Assistance

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.

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:

August 24, 2011

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.

Category 9: Access to Civil Damages

None.

Category 10: Vacating Convictions for Sex Trafficking Victims

None.

For guidelines and examples of bill language, please consult [Polaris Project's Model Provisions of Comprehensive State Legislation to Combat Human Trafficking and Commentary](#) available on our website (www.polarisproject.org). If you need technical assistance in enacting laws to fill in the gaps, please contact the Polaris Project Policy Program at policy@polarisproject.org.

Human Trafficking: A Primer for Kentucky Lawyers

By Gretchen M. Hunt

Consider the following scenario: a client comes to you for a consultation about her work situation. She is hesitant and timid and the neighbor who has accompanied her does most of the talking. The client explains that she is working for a couple that she met in her home country, the Philippines. They promised her good work and pay as a domestic in their home in the United States and she signed a contract for work. When she arrived in the U.S., however, everything was different. She was working almost a hundred hours a week and wasn't being paid what she was promised. When she complained, they threatened to send her back home. She paid a recruiter in the Philippines to find her an employer, and still owes this debt, so going home is not an option. The couple berates her, does not allow her a day off, and monitors her phone calls. The one place she is allowed to go, church, is where she met a friend. When he began calling her, the couple blocked his number. She feels afraid, hopeless and depressed. When the woman asked her employers for a raise, they tried to force her on a plane back home, pulling her by her hair and shoving her into their car on the way to the airport.¹

Is this slavery? How do our laws define this crime and what can you, as her lawyer, do about it?

Modern Day Slavery

Human trafficking has captured the attention of international and national advocates, yet only recently has it been a topic of concern for Kentucky. At its core, human trafficking refers to the exploitation of an individual for labor or commercial sex, through the use of force, fraud or coercion. Lawyers are



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most likely to encounter victims either as criminal defendants charged with prostitution or document fraud, as minors, or as victims of other crimes, including domestic violence or rape. Imprisoned in massage parlors, factories, agricultural work, domestic servitude and servile marriages, victims may be held captive through threats, confiscation of their documents and even forced drug addiction. Victims may be men, women, or children, foreign born or United States citizens. Their traffickers may be members of organized crime, small business owners, or private citizens who lack a criminal history.² Signs of trafficking may include being monitored and accompanied, having limited freedom of movement, physical abuse, health problems, fear of speaking to outsiders, and lack of possession of identity documents. Victims may initially deny being trafficked, due to having been coached by the traffickers or out of fear that reporting to the authorities will result in retribution by the traffickers. This article lays out some of the basic

concepts of the law and offers considerations for practice for those who may encounter victims in the future.

Prevalence of Human Trafficking in Kentucky

An accurate number of trafficking victims in the United States does not exist, although the U.S. government estimates that between 14,000 and 17,000 men, women, and children are trafficked into the United States. Precise numbers are often elusive since victims often do not self-identify and agencies do not always accurately identify cases.³ At the same time, the severity and destructive nature of the crime cannot be adequately measured by numbers. Trafficking victims suffer repeated violations over weeks, months, and even years. Cases require complex and long investigation and prosecution, involving multiple agencies and are challenging due to the multiple needs and severe trauma of the victims. While the federal government has prosecuted primarily sex trafficking, many advocates suggest that labor trafficking, and not sex trafficking, comprises the bulk of the cases.⁴

A 2007 Kentucky study by the University of Kentucky showed 69 cases across the state, including sex trafficking and various types of forced labor in agriculture, domestic servitude, and other sectors.⁵ Catholic Charities of Louisville, awarded one of five federal grants to increase outreach to victims of trafficking, has documented 17 cases in Kentucky between June 2008 and January 2009.

Federal Law on Human Trafficking

Since the abolition of slavery in the United States, our laws have criminalized the treatment of human beings as property. The thirteenth amendment proved inadequate for addressing all

types of slavery, so Congress passed statutes on involuntary servitude.⁶ These statutes were interpreted in ways that did not address more subtle forms of psychological coercion. The Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) was passed to include an expanded definition of the control that traffickers use to ensnare and imprison their victims.⁷ More recently, Congress passed The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to expand protections for, among others, U.S. citizen victims of trafficking, domestic workers and immigrant children.⁸

Trafficking is defined as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age”; or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁹ Coercion is further defined as:

- (a) threats of serious harm to or physical restraint against any person;
- (b) 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
- (c) the abuse or threatened abuse of the legal process.¹⁰

Examples of coercion may include taking documents, threatening deportation, holding up a photo of a loved one as an implicit threat of harm to that individual, and holding a lock of the victim’s hair to exploit a religious superstition. Violations are punished with up to 20 years or a fine with an enhancement of a life sentence if the victim is killed, kidnapped, sexually assaulted or attempted to be killed during the trafficking.¹¹ If the victim is under 14 years old in the commission of sex trafficking, or force, fraud or coercion is used, the sentence can be up to life.¹² If the victim is between 14-18 years of age, the sentence can be up to 40 years.¹³ It is an additional offense if documents are

seized to force others to work.¹⁴ Federal law allows asset forfeiture in trafficking, mandates restitution to victims, and creates a civil cause of action for trafficking victims.¹⁵

Human Trafficking vs. Human Smuggling

It is important to distinguish the crime of trafficking from the crime of smuggling, though the terms are often used interchangeably in the media and even by law enforcement. To add to the confusion, many traffickers have been charged with smuggling, in part because it may be a more straightforward violation to prove. Human smuggling refers to the crime of violating the integrity of our nation’s borders.¹⁶ In smuggling, the individual pays a fee, willingly, and is transported illegally across the border. At the end of the transaction, the individual

Since the abolition of slavery in the United States, our laws have criminalized the treatment of human beings as property.

is free to go. Many immigrants do report threats, violence, and rape by smugglers, but these crimes are also separate from the crime of trafficking. In human trafficking, the individual has often not consented to the situation in which they find themselves. Their journey may have begun with being smuggled across a border, but does not end when they enter the United States. Rather than being free to go, they are held captive and forced to work or provide services to the trafficker. Unlike smuggling, trafficking does not require that the individual cross a border, or even that movement take place. For victims, the difference between trafficking and smuggling is more than just legal semantics. There are no “victims” of smuggling, while the crime of human trafficking always involves a victim, and as such, allows the individual to access key protections, including the right to be free from detention, whereas those who violate the smuggling statute can be prosecuted and removed from the United States.

Investigation and Prosecution

Federal agencies have primary responsibility for investigating and prosecuting trafficking violations. For cases that involve non-citizens, Immigration and Customs Enforcement is the primary agency, whereas cases that involve domestic victims fall under the purview of the Federal Bureau of Investigations. Department of Labor and other agencies may also be actively involved in investigations. Offices of the U.S. Attorney have jurisdiction to prosecute trafficking crimes, even when state lines are not crossed. In practice, however, most cases involve a combination of efforts of many federal, state, and local agencies. Since 2000, only a small number of convictions have been secured on trafficking charges nationwide. Kentucky has yet to see a federal prosecution under the trafficking statutes. Federal agencies may lack the resources and - in some instances - the will to bring trafficking charges. Lawyers should be prepared to advocate for their clients who wish for a criminal investigation of the trafficking to occur.

Kentucky Legislation to Combat Human Trafficking

To increase the chance of finding victims and bringing prosecutions, advocates pushed for state legislation on trafficking. As of the date of this article, thirty-nine states had passed laws to criminalize human trafficking in some form. Kentucky passed its state legislation to combat human trafficking in 2007. “Human trafficking” is defined as “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.”¹⁷

A person is guilty of the crime of “human trafficking” when he “intentionally subjects one (1) or more individuals to human trafficking.”¹⁸ The second crime, “promotion of human trafficking” captures one who:

- (a) intentionally benefits 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.¹⁹

Human trafficking is a Class C felony, unless there is serious physical injury to the victim, in which case it is a Class B felony.²⁰ If the victim is under 18, the penalty will be one level higher.²¹ Promotion of human trafficking is a Class D felony, unless the victim is under 18, in which it is charged as a Class C felony.²²

Trafficking has also been incorporated into the following aspects of the Kentucky criminal code:

- The crime of engaging in organized crime, in which five (5) or more individuals collaborating to promote or engage in human trafficking or promoting human trafficking on an ongoing basis.²³
- Human trafficking involving commercial sexual activity with a minor has been added to the violent offender statute.²⁴
- The definition of “criminal offense against a victim who is a minor” for purposes of sex offender registration now includes human trafficking involving commercial sexual activity.²⁵
- Civil actions for redress of childhood sexual assault include the offense of human trafficking where the offense involves commercial sexual activity.²⁶
- Closed circuit or recorded testimony may be utilized in the prosecution of cases involving human trafficking, promoting human trafficking or promoting prostitution.²⁷
- The crime of unlawful use of electronic means to induce a minor to engage in sexual or other prohibited activities includes trafficking involving commercial sexual activity.²⁸
- Unlawful transaction with a minor in the first degree includes human trafficking cases except those involving commercial sexual activity.²⁹

- The presumption of minority includes the offenses of human trafficking and promoting prostitution where the offense involves commercial sexual activity and permits the defendant in these cases where the victim is a minor to prove in exculpation that he in good faith reasonably believed that the person involved was not a minor.³⁰
- The requirements for conditional discharge for certain felonies include the offense of human trafficking involving commercial sexual activity.³¹
- Persons convicted of human trafficking when the offense involves commercial sexual activity and those convicted of promoting prostitution are prohibited from probation or conditional discharge.³²

Victims of trafficking under Kentucky law have the right “not to be held in a detention center, jail or other secure facility pending trial for an offense arising from the human trafficking situation.”³³ The only exceptions are “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.”³⁴ Communications between a victim and her “trafficking victim counselor,” are also privileged.³⁵ A trafficking victim counselor is defined by statute as an individual who has undergone training in human trafficking and works for an agency serving victims of trafficking.³⁶

State Prosecutions Lacking

State prosecutions remain nearly as elusive as federal prosecutions. States with prosecutions, some resulting in convictions, include Texas, California, Kansas, Iowa, New York, and Georgia. In Kentucky, the statute has been tested only once since its enactment, in a Fayette county prosecution in the fall of 2007. In that case, two women had been enticed to travel from their home in another state to work in Lexington.³⁷ When they arrived in Lexington, they were forced to strip and hand over their money. The alleged trafficker held them captive in a hotel room and was threat-

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ening to make them engage in prostitution. The two women escaped with the help of police. A grand jury indicted the suspect on human trafficking charges, but the case was eventually dismissed when one victim recanted and the other was not able to be located.

Rights of Trafficking Victims

Victims of trafficking are accorded certain rights under federal law to enable law enforcement to treat them as victim-witnesses rather than as criminals. If the trafficker has always threatened that the police will arrest the victim (for prostitution, false documents, etc.) rather than the trafficker, victims will be extremely hesitant to cooperate with law enforcement. Language barriers, fear of retribution, fear of deportation, and experience with corrupt police all weigh heavily against victims being willing to cooperate. Trying to discern whether trafficking has taken place may take multiple interviews over weeks or even months, and during that time, victims need assurances that they will not be criminalized or deported.

Language access and working with interpreters

One of the most important rights to safeguard for victims of trafficking is the right to services in their own language. Prosecutions and effective representation are impossible without competent interpretation. Foreign born trafficking victims have often been told by the traffickers that no one will understand them, and unfortunately this is often the case when victims seek help from health care, law enforcement and social services. Traffickers also try to sabotage attempts to communicate with victims by posing as interpreters, when in fact they are changing or intimidating the victim's own voice.

Not only is good interpretation essential for outreach, investigation and prosecution, it is often legally mandated. Agencies that receive federal funding are required to provide "meaningful access" to individual with limited English proficiency.³⁸ This means that courts, police, prosecutors' offices, domestic violence and rape crisis programs, hospitals and state protective services must have a plan

in place to provide free interpretation and equal access to those individuals. Services may not be delayed or lesser in kind. Children and other family members are not to be used as interpreters. Kentucky law also provides that interpreters must be provided in all civil and criminal proceedings.³⁹ Perhaps most important to attorneys is the ethical duty to communicate effectively with clients, which can be compromised without the use of a skilled interpreter.⁴⁰ Using an interpreter and ensuring that all documents signed by the trafficking victim helps build trust, particularly with those clients whose victimization involved being tricked into trafficking through a bogus employment contract.

Immigration Protections for Victims of Trafficking

To help law enforcement and provide safety to victims, there are certain immigration protections.⁴¹ Continued presence, T visas and U visas are vital to ensure that non-citizen victims are able to remain in the United States after coming forward to report the crime.⁴²

Continued Presence

Continued presence is an immigration remedy sought by federal agents on behalf of a victim of trafficking whose presence is necessary for a possible investigation or prosecution.⁴³ With continued presence comes a defense from being deported and temporary work authorization. This is a benefit that may be sought more quickly than a T visa, although it is temporary (up to one year) and does not lead to more permanent status. Only federal agencies, and not attorneys, can request this benefit. Under the most recent federal anti-trafficking legislation, federal agents are instructed to assist local law enforcement in requests for continued presence if the investigation has begun on a local level.⁴⁴

T Visa

Attorneys representing victims of trafficking should, after seeking continued presence, evaluate the client's eligibility for a T visa and begin preparing the application. This will secure the client's immigration status and facilitate

her access to key federal public benefits. Processing times for the visa may be up to one year. To obtain a T visa, the applicant must meet the following criteria:

- The person must be the victim of "severe trafficking" in persons;
- The person must be physically present in the United States;
- Unless the person is less than 18 years old, the Attorney General and the Secretary of State must agree the person complied with a reasonable request by law enforcement authorities to assist in the investigation or prosecution of such trafficking or in the investigation of crimes where acts of trafficking are at least one central reason for the crime; *and*
- The person would "suffer extreme hardship involving unusual and severe harm" if the person was sent back home.⁴⁵

A critical part of the T visa application is a certification by law enforcement (federal, state or local) that the person is a victim of trafficking and has assisted in the investigation of the trafficking. Family members may be included in the visa application. If the applicant is over 21 years of age, she may apply for her spouse and child. If she is under 21, she may apply for her spouse, child and parent. The visa is limited to three years, unless law enforcement seeks an extension.⁴⁶ Applicants may seek lawful permanent residence after three years of being in T visa status.⁴⁷

U Visa

In addition to the option of a T visa, attorneys should consider the U visa for victims of serious crimes. To obtain a U visa, the applicant must show:

- that she is the victim (or in the case of a child, the parent or next friend) of the crime;
- that the crime is one listed in the statute;
- that the crime occurred in the United States or violated U.S. law;
- that the individual (or in the case of a minor, the parent or next friend) possesses information about the qualifying crime or

criminal activity;

- that the individual has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the crime;
- and that the crime resulted in substantial physical or emotional harm to the individual.⁴⁸

Crimes listed in the statute include domestic violence, sexual assault and human trafficking. The visa is valid for up to four years and family members may be included. Applicants may seek lawful permanent residence after three years of being in status if it is justified on humanitarian grounds, to ensure family unity or is in the public interest.⁴⁹ In order to receive permanent residency, victims must prove that they have not unreasonably refused to provide assistance to law enforcement in connection with the qualifying criminal activity.⁵⁰ Unlike T visa applicants, U visa applicants are not eligible for public benefits such as housing assistance, temporary assistance to needy families, Medicaid, food stamps, etc.

Pre-Certification and Certification

Victims also need basic services in order to become stable, avoid being re-trafficked and present as strong witnesses for the prosecution. A victim of trafficking may seek certification from the Office of Refugee Resettlement if she or he is willing to assist with the investigation and prosecution of a trafficking case and has continued presence or a bona fide T visa application. A certification letter entitles the individual to all services that are available to refugees, including case management (up to four months), ESL, job training and placement, and other public benefits (food stamps, housing assistance, Medicaid, temporary assistance for needy families, etc). Family members may be eligible for benefits if they have a derivative T visa. Children (under 18 years of age) who are victims of trafficking do not need to be certified to receive these benefits; a letter from the Office of Refugee Resettlement stating that the child is a victim of severe form of trafficking

will suffice as proof of their eligibility for benefits. Child victims may also be able to be enrolled in the Unaccompanied Minor Program, which provides linguistically and culturally appropriate foster care and resettlement services.

Prior to certification, victims may seek services and benefits such as housing assistance, counseling, and cash assistance from agencies that have contracts with the U.S. Council of Catholic Bishops.⁵¹

Services for Victims who Decline Prosecution

The downside to the benefits listed above is that victims must be willing and able to cooperate with law enforcement in order to receive them. Not all victims will face the risks that come with investigating and prosecuting the traffickers. Threats to family members in the home country are very real, and deter many from reporting to law enforcement. Shame and traumatic bonding with the traffickers or the chil-



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dren of the trafficker may also be barriers to reporting. On the other hand, victims may report only to find that law enforcement declines to investigate or prosecute. In these instances, it is important for attorneys to be familiar with the services that are available to all individuals, regardless of immigration status.

All individuals present in the United States, including undocumented immigrants, are guaranteed access to services "necessary to life and safety."⁵² Among those services are access to EMS, police, fire, child and adult protective services, domestic violence and rape crisis programs, short term emergency housing, emergency medical care and vaccinations and treatment for communicable diseases. Victims of trafficking who decline to participate in a prosecution and are not eligible for immigration benefits may find that these resources help them achieve some level of safety and security.

Conclusion: Considerations for Practice

Kentucky lawyers should prepare themselves for the possibility that they may encounter trafficking in their legal practice. Firms may consider devoting their *pro bono* hours to assisting a victim in a civil lawsuit.⁵³ Defense attorneys, not always in the position of adopting a "victim's rights" perspective should become familiar with such pro-

tections in order to free victims of trafficking from jail and immigration detention. Even those attorneys who do not represent victims of trafficking have a part to play by advising clients (e.g. factory owners, horse farm owners) on human trafficking laws in order to avoid exploitation of their workers.

Consider the following tips for cases of suspected human trafficking:

- **Look beneath the surface.**⁵⁴ Be aware of who your neighbors are. Ask questions if there is a child who does not attend school. Talk to the person who cleans your hotel room, mows your grass, or replaces the roof on your house.
- **Screen all clients for potential trafficking.** Include a simple question on your intake such as "are you free to leave your work?" and have a more detailed questionnaire ready in the case of a response that indicates possible trafficking. Ask the questions several times, since the client may not feel safe to disclose initially.
- **Use a competent interpreter and make sure that others do so as well.** Make sure that you are able to communicate effectively with your client.
- **Find support.** No one can handle a trafficking case independently. Partner with one of the five human trafficking task forces that exist in the state.⁵⁵ Task forces usually have strong contacts with federal law enforcement, local law enforcement, immigration attorneys and non-governmental agencies that serve victims of trafficking.
- **Ensure that your client's needs are met.** Lawyers are not always in the business of finding clients housing, counseling, job training, English as a second language, and other life skills. Connect with Catholic Charities of Louisville, which administers Kentucky's Rescue and Restore Grant and can provide comprehensive case management to trafficking victims.
- **Do no harm to your client's immigration case.** Immigration law is complex and ever-changing. Consult with an experienced

immigration practitioner if you are advocating on behalf of your client with Immigration and Customs Enforcement or considering filing a U or T visa application.

- **Consider further training.** Human trafficking training is often offered statewide at no or low cost, including for CLE credit.
- **Take care of yourself.** The trauma suffered by trafficking victims is severe, and secondary trauma (e.g. headaches, anxiety, nightmares) among those who assist is real. Lawyers are healers, and we deserve support from the stress of such cases.

Trafficking is a devastating violation of human rights and an exploitation of the very dream that our country represents. Being a part of helping to heal a victim or hold a trafficker accountable may be extremely challenging, but may well be one of the most rewarding experiences of your legal career. ☺

ENDNOTES

1. *Woman Claims She Was Ky. Couple's Slave, Suit Filed Against Couple*, WLKY.com (January 27, 2006), <http://www.wlky.com/news/6493775/detail.html?subid=22100483&q=1;bp=t>.
2. The Associated Press, *Former Sony Pictures Lawyer and Wife Sentenced in Forced Labor of Filipino Maid*, Law.com (January 29, 2008), <http://www.law.com/jsp/article.jsp?id=1201601142939>.
3. T.K. Logan, et al., *Understanding Human Trafficking in the United States*, 10 J. Trauma, Violence, & Abuse, 1, 3-30 (2009).
4. Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives From the Field(s)*, 3 Stan. J. C.R. & C.L. 317 (2007).
5. T.K. Logan, *Human Trafficking in Kentucky* (visited March 1, 2009) <<http://news.uky.edu/news/Reports.html>>.
6. 18 U.S.C. § 1581, 18 U.S.C. § 1584 (2000).
7. Trafficking Victims Protection Act of 2000, 18 U.S.C. §§ 1589-1594,



Gretchen Hunt is the staff attorney for the Division of Violence and Prevention Resources in the Kentucky Cabinet for Health and Family Services. She works under a Violence Against Women Act

Grant to provide training and technical assistance on issues of domestic violence, sexual assault, stalking and human trafficking. Prior to her work with state government, Ms. Hunt practiced immigration law on behalf of victims of domestic violence, rape and human trafficking. She has also served as an adjunct lecturer at the University of Louisville in the Gender and Women's Studies Department and the Louis D. Brandeis School of Law.

- 22 U.S.C. §§ 7101-7110 (2000).
8. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 106-386 (2008).
 9. 18 U.S.C. § 1589 - § 1591 (2000).
 10. *Id.*
 11. 18 U.S.C. § 1589 (2000).
 12. *Id.*
 13. *Id.*
 14. 8 U.S.C. § 1592 (2000).
 15. 8 U.S.C. § 1593-95 (2000).
 16. 8 U.S.C. § 1324 (2000).
 17. KRS 529.010 (5)(a) & (b).
 18. KRS 529.100.
 19. KRS 529.110.
 20. KRS 529.100.
 21. *Id.*
 22. KRS 529.110.
 23. KRS 506.120.
 24. KRS 439.3401 (1)(h).
 25. KRS 17.500 to 17.580.
 26. KRS 413.249.
 27. KRS 421.350.
 28. KRS 510.155.
 29. KRS 530.064.
 30. KRS 531.330.
 31. KRS 532.043.
 32. KRS 532.045.
 33. KRS 431.063.
 34. *Id.*
 35. KRS 422.295.
 36. *Id.*
 37. *Grand Jury Indicts Human Trafficking Suspect*, wkyl.com (May 15, 2008)(<http://www.wkyl.com/news/headlines/18968409.html>).
 38. Exec. Order No. 13166, 65 Fed. Reg 50, 121 (2000).
 39. KRS 30A.410.
 40. Kentucky Supreme Court Rule 3.130; Kentucky Rule of Professional Conduct 1.4, Communication.
 41. Trafficking Victims Protection Act of 2000, 18 U.S.C. §§ 1589-1594, 22 U.S.C. §§ 7101-7110 (2000), as amended by Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003), Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 106-386 (2008).
 42. Although one might believe that the "T visa" is an abbreviation for "trafficking," it is mere coincidence. Immigrant visas, like hurricanes, simply follow in alphabetical order.
 43. 28 C.F.R. § 1100.35 (2008).
 44. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 106-386 (2008).
 45. INA §101(a)(15)(T)(i)(III)(bb); 8 CFR 103, 212, 214, 274a & 299.
 46. 8 CFR 214.11(p)(1).
 47. 8 CFR 245.23.
 48. 8 CFR 103, 212, 214, 274a & 299.
 49. 8 CFR 245.24(b).
 50. *Id.*
 51. Through a contract with the Office of Refugee Resettlement of the U.S. Department of Health and Human Services, the United States Council of Catholic Bishops (USCCB) provides services to foreign national survivors of trafficking in the U.S. and its territories. USCCB/MRS administers the program through partnerships with local social service organizations across the country by subcontracting with them to provide comprehensive case management services to survivors. USCCB/MRS provides coordination, training, per-capita funding, and monitoring to subcontractors, and partners with experts in the field to provide specialized assistance. For more information, see <http://www.usccb.org/mrs/trafficking/services.shtml>.
 52. See A.G. Order No. 2353-2001, Jan. 5, 2001 (published in the Federal Register on January 16 as "Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation", 66 Fed. Reg. 3, 613-16 (Jan. 16, 2001)).
 53. For sample pleadings and technical assistance on civil lawsuits on behalf of trafficking victims, visit the Anti-trafficking Litigation Assistance Support Team at Loyola Law School website at <http://library.lls.edu/atlast/index.html>.
 54. For free outreach materials, posters, screening tools and fact sheets, visit the federal government's Campaign to Rescue and Restore Victims of Trafficking website at <http://www.acf.hhs.gov/trafficking/>.
 55. For information about the human trafficking task force nearest you, contact Marissa Castellanos, Human Trafficking Project Manager, Catholic Charities of Louisville at (502) 636-9263.

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