



Texas Young Lawyers Association

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SLAVERY OUT OF THE SHADOWS:

SPOTLIGHT ON HUMAN
TRAFFICKING

LEGAL ISSUES AND
RESOURCES RELATED TO
HUMAN TRAFFICKING



WHAT IS THE CRIME OF HUMAN TRAFFICKING?

Both the State of Texas and the federal government have taken a proactive role to identify and outlaw human trafficking crimes.

Under Texas law, trafficking of persons is transporting, enticing, recruiting, harboring, providing, or otherwise obtaining another person by any means with the intent that the trafficked person engage in forced labor or services.¹ Crimes associated with the trafficking of persons have continued to expand and develop.²

Likewise, federal law defines human trafficking as recruiting, providing, harboring, transporting, or obtaining by any means, any person for labor or services in violation of laws prohibiting, among other things, forced labor, involuntary servitude, peonage, and slavery.³ In addition, any person who knowingly receives a benefit (financial or otherwise) from the trafficking activity is subject to prosecution for human trafficking under both state and federal law.⁴

WHAT ARE THE TYPES OF HUMAN TRAFFICKING?

Under state and federal law, human trafficking is divided into two categories—labor trafficking and sex trafficking.

LABOR TRAFFICKING

Labor trafficking is the most prolific form of human trafficking. Under Texas law, “forced labor or services” is defined as labor or services (other than labor or services that constitute sexual conduct) that are performed or provided by another person and obtained through an actor’s use of force, fraud, or coercion.⁵ There are more than 234,000 victims of adult labor trafficking in Texas at any given time.⁶

Similarly, under federal law, “forced labor” is defined as providing or obtaining the labor or services of a person by any one of (or a combination of) the following:

- (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- (2) by means of serious harm or threats of serious harm to that person or another person;
- (3) by means of the abuse or threatened abuse of law or legal process; or

1. Tex. Penal Code § 20A.02.(a)(1).

2. See generally Tex. Penal Code §20A.02.

3. 22 U.S.C. § 7102.

4. Tex. Penal Code §§ 20A.02(a)(2), (4), (6), and (8); 18 U.S.C. §§ 1589(b), and 1593A.

5. Tex. Penal Code § 20A.01(2).

6. Busch-Armendariz, N.B., Nale, N.L., Kammer-Kerwick, M., Kellison, B., M.I.M., Cook Heffon, L., Nehme, J. *Human Trafficking by the Numbers: The Initial Benchmark of Prevalence and Economic Impact for Texas*, Institute on Domestic Violence and Sexual Assault, the University of Texas at Austin (2016).

- (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.⁷

Under both Texas and federal law, labor trafficking is generally punishable by up to 20 years in prison.⁸

SEX TRAFFICKING

Sex trafficking is the other type of human trafficking, and while it has some overlap with labor trafficking, the criminal statutes governing sex trafficking are distinctive under state and federal law.

Specifically, sex trafficking in Texas includes the inducement of a trafficked person through force, fraud, or coercion⁹ to engage in prostitution, the promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution, and is punishable by up to 20 years in prison.¹⁰ Under federal law, if the human trafficking includes aggravated sexual abuse or an attempt to commit aggravated sexual abuse, then the maximum punishment is increased by up to life in prison.¹¹

In Texas, there are more than 79,000 youth and minor victims of sex trafficking in Texas at any given time.¹² Both Texas and federal law recognize enhanced penalties when human trafficking offenses involve children.¹³ A “child” is any person younger than 18 years of age.¹⁴

RESTITUTION

Federal and state laws require some form of restitution to be paid to victims of human trafficking. Under state law, any victim of human trafficking who is younger than 18 years of age is entitled to restitution equal to the cost of necessary rehabilitation, which includes medical, psychiatric, and psychological care and treatment.¹⁵ Under federal law, a court shall order restitution for any person who is a victim of human trafficking.¹⁶ The order of restitution shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses, as determined by the court and may include the forfeiture of property.¹⁷

7. 18 U.S.C. § 1589.

8. Tex. Penal Code §§ 20A.02(b) & 12.33; 18 U.S.C. § 1589(d).

9. Force, fraud, or coercion do not have to be proved under Federal or Texas law when the victim is under the age of 18. *See generally* 18 U.S.C. § 1591(a); Tex. Penal Code § 20A.02(a)(7).

10. Tex. Penal Code §§ 20A.02(b) & 12.33;

11. 18 U.S.C. §§ 1590 & 2241 (“Aggravated sexual abuse” is knowingly causing another person to engage in a sexual act by use of force or threats against that person.)

12. Busch-Armendariz, *supra* note 6.

13. *See generally* Tex. Penal Code §§ 12.33 & 20A.02(a) & 18 U.S.C. § 1591 (If the child is under the age of 14 then the offense carries a minimum sentence of 15 years to life. If the child has not reached the age of 18, then the offense carries a minimum sentence of 10 years to life.).

14. Tex. Penal Code § 20A.01(1); 18 U.S.C. § 1591(a).

15. Tex. Code Crim. P. § 42.0372.

16. 18 U.S.C. § 1593.

17. *Id.*

PROTECTION FOR VICTIMS

Texas Law – Protective Orders

Under Texas law, a protective order may be sought by trafficking victims; their parents (if the victim is younger than 18); or by the prosecuting attorney.¹⁸

In a protective order, the court may order the alleged offender to take any action that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or the applicant's family or household.

The protective order for victims of human trafficking, continuous sexual abuse, indecency, sexual assault, or aggravated sexual assault can last as long as the duration of the lives of the offender and victim OR for any shorter period stated in the order; however, if a time period is not stated in the order, then the order is effective until the second anniversary of the date the order was issued.

Texas Law – Temporary Ex Parte Protective Orders

If the court finds that there is a clear and present danger of sexual assault, stalking, or that the alleged offender will traffic the applicant or cause other harm to the applicant, the court may enter a temporary ex parte order to protect the applicant or any other member of the applicant's family or household.¹⁹

If a temporary protective order is ordered by the court, it will be effective until the date the alleged offender is convicted or acquitted, or until the date on which the case involving the trafficking of persons offense is finally disposed.

Federal Law – Witness Protection

Federal human trafficking crimes are considered an “organized criminal activity,” which thereby makes victims of human trafficking crimes eligible for federal witness protection.²⁰

CIVIL REMEDIES FOR VICTIMS

An individual who is a victim may bring a civil action against the perpetrator or whoever knowingly benefits financially or who receives anything of value in an appropriate district court of the United States and may recover damages and reasonable attorneys' fees.²¹ Under the Texas civil liability provisions, victims can sue their traffickers for actual damages (including mental anguish), exemplary damages, court costs, and attorneys' fees.²²

18. Tex. Code Crim. P. §§ 7A.01, 7B.01.

19. Tex. Code Crim. P. §§ 7A.02, 7B.02, 7B.03.

20. 18 U.S.C. § 1594(f).

21. 18 U.S.C. § 1595.

22. TEX. CIV. PRAC. & REM. CODE §§ 98.002 & 98.003.

FEDERAL IMMIGRATION VISAS FOR VICTIMS

There are three forms of immigration relief available to victims of human trafficking—Continued Presence, T visas, and U visas.²³

Continued Presence (CP) – CP provides temporary immigration relief to individuals who are identified by law enforcement as victims of human trafficking. This allows victims of human trafficking to remain in the United States temporarily during the ongoing human trafficking investigation and prosecution. This can lead to more successful prosecutions and the potential to identify and rescue more victims. CP is initially granted for one year and may be renewed in one-year increments. CP can be revoked at any time if law enforcement determines in the course of their investigation that the individual is not a victim of human trafficking.

T Visas²⁴ – The T nonimmigrant status (also known as the T visa) provides immigration protection to victims of severe forms of trafficking who assist law enforcement in the investigation or prosecution of human trafficking cases. Congress has limited the number of T visas granted each year to 5,000. Family members may seek derivative visas, and the cap does not apply for family derivative visas. Once a T visa is granted, a victim can apply for permanent residence after three years.

U Visas²⁵ – The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. The legislation helps law enforcement agencies to better serve victims of crimes. Congress has limited the number of U visas granted each year to 10,000. Family members may seek derivative visas, and the cap does not apply for family derivative visas. Once a U visa is granted, a victim can apply for permanent residence after three years.



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23. Human Trafficking Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking (2020), available at dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf.
24. USCIS, Questions and Answers Victims of Human Trafficking T Nonimmigrant Status (2020), available at uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-of-human-trafficking-t-nonimmigrant-status.
25. USCIS, Victims of Criminal Activity U Nonimmigrant Status, (2018), available at uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status.

REPORT HUMAN TRAFFICKING

Call the National Human Trafficking Hotline
toll free at

888-3737-888
or text **“Help”** or **“Info”**
to **BeFree (233733)**.

The hotline is staffed 24/7 with people trained in recognizing and identifying trafficking. They can help you make sense of the information you have and recommend next steps.

LEARN MORE ABOUT HUMAN TRAFFICKING

U.S. Department of State
Office to Monitor and Combat Trafficking in Persons
state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-to-monitor-and-combat-trafficking-in-persons

U.S. Department of Health and Human Services
Office on Trafficking in Persons
acf.hhs.gov/otip

The Attorney General of Texas - Human Trafficking Initiative
texasattorneygeneral.gov/human-trafficking

The Polaris Project
polarisproject.org

Catholic Charities
catholiccharitiesusa.org

Shared Hope International
sharedhope.org

Mosaic Family Services
mosaicsservices.org

Children at Risk
childrenatrisk.org

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