



Representing Victims of Human Trafficking in Massachusetts

A GUIDE FOR ATTORNEYS

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1. Preface

1.1. Introduction

Attorneys representing victims¹ of human trafficking have faced considerable challenges navigating the multitude of legal issues their clients face. This Guide provides a general overview of federal and state human trafficking law, with a focus on Massachusetts, to help attorneys identify victims of human trafficking and meet their legal and non-legal needs. While it is not an exhaustive guide to the myriad issues practitioners may face, it provides an introduction to the law and refers to more comprehensive resources, where appropriate.

There is little doubt that human trafficking is a substantial global problem: the International Labour Organization estimates that 25 million people are victims of forced labor worldwide.² As of 2012, this same organization estimated that 1.5 million victims were in developed economies (including the United States, Canada, and the European Union).³ Human trafficking is one of the fastest growing criminal enterprises in the world, generating an estimated \$32 billion in profits to perpetrators of trafficking annually.⁴

Massachusetts is far from immune to sex and labor trafficking.⁵ Although difficult to measure, victim service providers report that sex trafficking occurs throughout Massachusetts.⁶ In 2011, the EVA Center,

¹ This practice guide uses the term “victim” to refer to survivors of trafficking under Massachusetts and federal law. The authors recognize that many prefer the term “survivor” to “victim” as “victim” may imply passivity and conjure simplistic interventions of “rescue” and “escape.” See, e.g., Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1703 (2010) (“The logic of this representation suggests that to resolve the problem of trafficking, women should be rescued or deported back home, or prevented from traveling in the first place, and that governments should pass and aggressively enforce laws to punish these deviant elements.”). However, the term “victim” as it is used in this practice guide has specific legal meaning. This practice guide therefore uses the term “victim” as it is defined under MASS. GEN. LAWS ch. 233, § 20M and 22 U.S.C. § 7102. See, e.g., MASS. GEN. LAWS ch. 265, § 50(d) (discussing how “victims” may bring tort actions against perpetrators of human trafficking).

² INT’L LABOUR OFFICE, GLOBAL ESTIMATES OF MODERN SLAVERY 13 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf [<https://perma.cc/C8FG-2EZ7>].

³ INT’L LABOUR OFFICE, GLOBAL ESTIMATES OF FORCED LABOUR 16 (2012), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf [<https://perma.cc/X4CT-6EMP>].

⁴ MASS. INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE, FINDINGS AND RECOMMENDATIONS 7 (2013) [hereinafter TASK FORCE REPORT], www.mass.gov/ago/docs/ihttf/ihttf-findings.pdf [<https://perma.cc/5NEY-FYQ8>].

⁵ *Id.* at 15.

⁶ Although this Guide primarily uses female pronouns to refer to victims of human trafficking, the authors note that victims of human trafficking encompass individuals across the gender identity spectrum. Advocates are encouraged to ask their clients which gender pronoun they prefer and to consult online resources if they have questions about working with gender non-conforming clients. For more information, the authors encourage advocates to visit the websites of the following organizations: GLAD [<https://perma.cc/CDG7-8NE6>], GLAAD [<https://perma.cc/L2HP-5ZRD>], LAMBDA Legal [<https://perma.cc/2JKE-GW9X>], and National Center for Transgender Equality [<https://perma.cc/9GC3-TBXM>]. See TASK FORCE REPORT, *supra* note 4, at n.13; see also Section 4.5.

a Boston-based program that provides services to adult women in the sex trade, reported that the program had served 225 women since it began in 2006.⁷ Of these women, 145 (64 percent) were between the ages of 17 and 25, and 20 (9 percent) were identified as foreign nationals.⁸

The commercial sexual exploitation of children also occurs across Massachusetts. From 2005 through May 2012, at least 480 children from Suffolk County received services related to commercial sexual exploitation.⁹ The median age of these victims was 15 years old; 15 percent were 13 years old or younger, and the youngest of these victims was 11 years old.¹⁰ The vast majority of the victims (98 percent) were girls, and a majority (65 percent) were girls of color.¹¹ Many left home or had a history of child abuse.¹² Ten percent of the girls had been arrested for sex for fee, or related offenses, and over 40 percent had confirmed or suspected involvement in out-of-state trafficking.¹³

Human trafficking also impacts cisgender boys and LGBTQI+ youth.¹⁴ In 2018, there were 4,945 cases of trafficking involving minors reported to the National Human Trafficking Resource Center and Polaris.¹⁵ LGBTQI+ youth may be at particular risk for sex trafficking because they face higher rates of discrimination, violence, and economic instability than their non-LGBTQI+ peers.¹⁶ While the majority of victims reported to have sought services in Massachusetts are female, the Interagency Human Trafficking Policy Task Force recognized the lack of information about the trafficking of cisgender males and LGBTQI+ individuals and the need for further study about its prevalence.¹⁷

Labor trafficking¹⁸ also occurs in Massachusetts and takes many forms, including forced labor, domestic servitude, and debt bondage.¹⁹ It can be found in many industries, including domestic services, food services, nail salons, and factories—many of which employ a large immigrant population.²⁰ Temporary

⁷ SUZANNE PIENING & THEODORE CROSS, FROM ‘THE LIFE’ TO MY LIFE: SEXUALLY EXPLOITED CHILDREN RECLAIMING THEIR FUTURES: SUFFOLK COUNTY MASSACHUSETTS’ RESPONSE TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) 6 (2012), https://www.suffolkcac.org/uploads/pages/docs/From_the_Life_to_My_Life_Suffolk_Countys_Response_to_CSEC_Executive_Summary_2012.pdf [<https://perma.cc/9HK3-3N5R>].

⁸ TASK FORCE REPORT, *supra* note 4, at 15.

⁹ PIENING & CROSS, *supra* note 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ LGBTQI+ stands for lesbian, gay, bisexual, transgender, queer, intersex, and gender nonconforming individuals.

¹⁵ 2018 Statistics from the National Human Trafficking Hotline and BeFree Textline, POLARIS PROJECT (July 2019), https://polarisproject.org/wp-content/uploads/2019/09/Polaris_National_Hotline_2018_Statistics_Fact_Sheet.pdf [<https://perma.cc/6UH9-QF2R>].

¹⁶ Sex Trafficking and LGBTQ Youth, POLARIS PROJECT, <https://polarisproject.org/wp-content/uploads/2019/09/LGBTQ-Sex-Trafficking.pdf> [<https://perma.cc/R3K6-76PF>].

¹⁷ See TASK FORCE REPORT, *supra* note 4, at n.13.

¹⁸ This practice guide uses the term “labor trafficking” to refer to the crime of trafficking in persons for forced services in Massachusetts, MASS. GEN. LAWS ch. 265, § 51, and both forced labor and involuntary servitude under federal law, 18 U.S.C. §§ 1584, 1589.

¹⁹ TASK FORCE REPORT, *supra* note 4 at 16.

²⁰ *Id.*

workers and domestic workers are particularly vulnerable to human trafficking, because they are often immigrants, and their jobs grant them fewer legal protections.²¹

Over the past two decades, both state and federal legislators have passed sweeping measures aimed at protecting victims and combatting all forms of human trafficking. In 2000, Congress passed the Trafficking Victims Protection Act (“TVPA”) to articulate new human trafficking crimes and provide important protections to victims. Since then, Congress has re-authorized the TVPA and passed additional legislation to improve responses to trafficking and ensure that victims can access important protections.

In addition, every state has now passed legislation to combat human trafficking. In 2011, the Massachusetts legislature responded to the problem of human trafficking by enacting An Act Relative to the Commercial Exploitation of People (“Massachusetts Anti-Trafficking Statute”). The Massachusetts Anti-Trafficking Statute, which became effective in 2012, created new human trafficking criminal offenses under Massachusetts law.

It also provides a civil remedy by which victims of human trafficking may independently seek recourse for the crimes committed against them. Additionally, the Massachusetts Anti-Trafficking Statute makes an affirmative defense available to adult victim-defendants charged with prostitution or prostitution-related offenses who can establish that they committed the crimes under duress or coercion. It also provides an avenue to “safe harbor” for children under 18 accused of these offenses. The Massachusetts Legislature has also passed subsequent anti-trafficking legislation to provide protections and relief for victims of human trafficking, including laws relating to vacatur (*see infra* Section 7.2.3.2), safe harbor for minors (*see infra* Section 6.2), and wage and labor protections (*see infra* Section 9.3.1).

Despite these new tools, victims of human trafficking still face tremendous barriers to access legal protection. Lawyers therefore play a critically important role in ensuring that victims receive relief, particularly with respect to immigration relief, civil damages, unpaid wages, public benefits, post-conviction relief, and federal and state welfare benefits, among other areas.

1.2. Acknowledgements

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²¹ *Id.* at 17.

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1.3. Disclaimers

This material is for general informational purposes only and does not represent or communicate legal advice, including but not limited to legal advice relating to any particular set of facts or circumstances; nor does it represent any undertaking to keep recipients advised of legal developments. You should not take or refrain from taking action based on its content. Use of this Guide does not create an attorney-client relationship. The authors make no representations or warranty concerning the accuracy or validity of the contents and disclaim any ongoing responsibility for updating the contents.

This practice guide represents the opinions and legal conclusions of its authors and not necessarily those of the Office of the Attorney General. Opinions of the Attorney General are formal documents rendered pursuant to specific statutory authority.

2. Defining Human Trafficking

2.1. What and Where is Human Trafficking?

The first step to providing services to a victim of human trafficking is to recognize when a client may be a victim, even if she does not self-identify as a victim. This section describes common indicators of human trafficking and provides advice on how to identify victims.

Human trafficking is a human rights violation that deprives individuals of human dignity by exploiting them for sex or labor. Although the term may evoke images of handcuffs and chains, trafficking often involves more nuanced forms of control, coercion, and fear. Therefore, it is essential that attorneys understand the wide spectrum of conduct that may be involved and carefully assess whether the facts rise to the applicable legal standards.

The TVPA defines “severe forms of trafficking in persons” as:

- (A) sex trafficking in which a commercial sex act²² 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
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.²³

Separately, federal law includes distinct human trafficking crimes, including sex trafficking, forced labor, and involuntary servitude. Trafficking crimes under Massachusetts law, especially in the sex trafficking context, are more expansive. Unlike federal law, Massachusetts law does not require a showing of force, fraud, or coercion in the sex trafficking context.²⁴ Similarly, the labor trafficking crime includes a broader array of prohibited means than the federal crimes of forced labor and involuntary servitude.²⁵ Under both statutes, benefiting financially from such conduct can also trigger civil and criminal liability.²⁶

The state and federal definitions do not require that a victim be transported from one location to another, or across state or international borders, for the crime of trafficking to occur.²⁷ Furthermore, while a common image of human trafficking may be of foreign nationals brought into the United States,

²² A “commercial sex act” includes any sexual activity for which “anything of value is given to or received by any person.” 22 U.S.C. § 7102(4). This often involves money, but may also include food, shelter, or other things of value.

²³ 22 U.S.C. § 7102(9).

²⁴ Compare 22 U.S.C. § 7102(9)(A) and 18 U.S.C. § 1591, with MASS. GEN. LAWS ch. 265, §§ 50-51.

²⁵ Compare MASS. GEN. LAWS ch. 265, § 51, with 18 U.S.C. § 1590.

²⁶ See 18 U.S.C. § 1593A; MASS. GEN. LAWS ch. 265, §§ 50-51.

²⁷ See 22 U.S.C. § 7102(9); MASS. GEN. LAWS ch. 265, §§ 50-51.

an individual’s immigration status is immaterial to whether a trafficking crime has been committed.²⁸ Victims can be U.S. citizens or foreign nationals.²⁹

Another common misconception is that human trafficking is synonymous with human smuggling. They, in fact, are distinct crimes. Human trafficking, as described above, focuses on *exploitation*: a person (or persons) exploits another for labor or sexual services. Human smuggling, on the other hand, focuses on *transportation*: a person (or persons) transports another into the United States in violation of immigration laws.³⁰ The two may be related or even co-occur: human trafficking victims are sometimes (though not always) smuggled into the United States, and individuals smuggled into the United States are sometimes (though not always) victims of human trafficking when they arrive. Nevertheless, smuggling and trafficking constitute two different crimes, and attorneys should be careful to distinguish them.

COMMON MISCONCEPTIONS ABOUT HUMAN TRAFFICKING

MYTH	REALITY
Most victims are foreign nationals.	In fact, many victims in Massachusetts are U.S. citizens.
Human trafficking involves smuggling victims across state or international borders.	Human smuggling is a crime that is distinct from human trafficking. Trafficking is a crime of exploitation of a person, whereas smuggling is a crime against the border or against the United States. ³¹
Most victims of human trafficking are kept against their will through the use of physical restraints.	Trafficking often involves more nuanced forms of control, coercion, and fear, rather than handcuffs and chains.
Men and boys are not victims of human trafficking—particularly commercial sexual exploitation.	The trafficking of cisgender men and boys is also prevalent. Attorneys should be attentive to signs that male victims have been exploited. In addition, LGBTQI+ individuals may be vulnerable to trafficking. ³²
There is a clear line separating prostitution from human trafficking.	Prostitution and human trafficking are often not distinct and are difficult to distinguish. Individuals may not self-identify as victims, and it may not be easily apparent whether their circumstances constitute trafficking.
If a person is able to leave, then it is not human trafficking.	A victim’s ability to leave is not a requirement of the human trafficking definition. In fact, victims may be able to come and go but still may feel pressured to remain in a coercive relationship or labor situation.
Most victims are children.	There is no age limit on victims of human trafficking, and many victims are adults.

²⁸ Trafficking Victims Protection Act, Pub. L. No. 106-386, § 103, 114 Stat. 1466 (defining “victim of trafficking” with no reference to immigration status); MASS. GEN. LAWS ch. 265, § 51 (defining “Trafficking of persons for forced services” with no reference to immigration status).

²⁹ TASK FORCE REPORT, *supra* note 4, at 15 (noting that, of the 225 adult women served by the EVA center from 2006 to 2011, only 20 were foreign nationals).

³⁰ 8 U.S.C. § 1324 (defining the crime of “bringing in and harboring certain alien”).

³¹ *Id.*

³² See *supra* notes 16-17 and accompanying text.

Trafficking cases can involve a single perpetrator or large networks. Trafficking networks can include transnational criminal organizations, small criminal networks, local gangs, corrupt government actors, and individuals.³³ Given that every case is unique and may involve different actors and schemes, it is difficult to generalize. However, one common characteristic is that perpetrators of trafficking tend to target those who are vulnerable, whether due to youth, poverty, substance abuse, a history of domestic violence or abuse, lack of immigration status, limited English proficiency, or similar factors.³⁴ According to the U.S. Department of State:

Using their first-hand knowledge of local systems, behaviors, social structures, and individual interactions, traffickers exploit vulnerabilities, often betraying the trust of their communities. Traffickers may, for example, prey on the hopes and dreams of parents searching for a way to give their children access to a good education; recognize a vulnerable community's fear of engaging law enforcement officials with a reputation for corruption; or rely on bias and discrimination to keep victims hidden in plain sight.³⁵

The manner of recruitment varies. Perpetrators may recruit victims through fraud and manipulation, and control their victims with violence, threats, lies, manipulation of addictions, or other mechanisms of coercion. Perpetrators may restrict victims' movement, for example by confiscating passports, visas, or other identification documents. They may seclude victims from their communities, friends, and family or require victims to work and live in the same location. Victims may be forced to work under dangerous conditions with limited access to food or medical care or to work unusually long hours for little or irregular pay and few or no days off.³⁶

Also, perpetrators of sex trafficking may use subtle forms of recruitment by promising protection, love, marriage, or even just a better lifestyle. Victims may be enticed by these promises and instead be forced into the commercial sex industry through physical and psychological coercion. Sex trafficking is commonly found in online escort services, residential brothels, and brothels disguised as massage

³³ U.S. DEP'T OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING & EVALUATION, HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 3 (2009), available at <https://aspe.hhs.gov/system/files/pdf/75891/index.pdf> [<https://perma.cc/9JER-Z93G>].

³⁴ See Dorchen A. Leidholdt & Katherine P. Scully, *Defining and Identifying Human Trafficking*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 31-40, (Jill L. Goodman & Dorchen A. Leidholdt eds., 2013), http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/LMHT_0.pdf [<https://perma.cc/2LLW-FCWK>].

³⁵ See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 3 (2018), <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf> [<https://perma.cc/GUM2-D9R5>] [hereinafter TRAFFICKING IN PERSONS REPORT].

³⁶ *Id.* at 11.

businesses.³⁷ Many victims are trafficked by individuals whom they consider, and who may appear, to be their significant other.³⁸

Perpetrators of labor trafficking often use fraud to induce victims to work. For example, foreign workers may be induced with false promises of educational and job opportunities with good working conditions and wages, perhaps as a nanny, housemaid, model, dancer, field laborer, cleaner, or nail salon, construction, or factory worker. Instead, upon arrival to the United States, these individuals may have their immigration documents and other belongings confiscated. They may have to work long hours for little or no pay under threats of deportation and arrest or threats to family members. Trafficking may occur in plain sight. For example, labor trafficking is more prevalent in places with a demand for cheap labor and a lack of rigorous monitoring. It is often found in domestic work, small family-run businesses, farms, factories, the hospitality and food industries, and street peddling rings.³⁹

Perpetrators also may engage in debt bondage, demanding labor as a means of repayment for a real or alleged debt. According to the U.S. Department of Health and Human Services, debt bondage often traps an individual “in a cycle of debt that he or she can never pay down.”⁴⁰

Issues related to human trafficking are often localized: what may be prevalent in one area of the country, or even in one city, may not be common in another. Practitioners therefore need to be aware of both local issues and “trends” as well as broader issues apparent on a larger scale. Both are important to help practitioners identify and represent people who have been trafficked.

2.2. Human Trafficking in Massachusetts

2.2.1. Human Trafficking in Massachusetts

As introduced above, human trafficking exists in Massachusetts in every form.

Child sex trafficking, which is one form of commercial sexual exploitation of children (“CSEC”), is a significant problem in Massachusetts.⁴¹ A study focused on the sexual exploitation of girls found that,

³⁷ See *Sex Trafficking*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking/sex-trafficking> [<https://perma.cc/9D62-GBD7>].

³⁸ For more information on the relationship between human trafficking and domestic violence, see *infra* Section 4.9.

³⁹ See *Labor Trafficking*, POLARIS PROJECT, <https://polarisproject.org/labor-trafficking/> [<https://perma.cc/3TLM-X439>] (“[C]ommon types of labor trafficking include people forced to work in homes as domestic servants, farmworkers coerced through violence as they harvest crops, or factory workers held in inhumane conditions with little to no pay.”).

⁴⁰ U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE ON TRAFFICKING IN PERSONS, OTIP-FS-18-01, FACT SHEET: HUMAN TRAFFICKING (Nov. 21, 2017), https://www.acf.hhs.gov/sites/default/files/otip/fact_sheet_human_trafficking_fy18.pdf [<https://perma.cc/243P-EDHC>].

⁴¹ Commercial sexual exploitation of children (CSEC) refers to “a range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person.” *Commercial Sexual*

from 2005 through May 2012, at least 480 children from Suffolk County received services related to commercial sexual exploitation.⁴² The median age of these victims was 15 years old; 15 percent were 13 years old or younger, and the youngest of these victims was 11 years old.⁴³ A majority of the victims (about 65 percent) were girls of color.⁴⁴ Most were runaways, or had a history of child abuse, or both.⁴⁵ Ten percent were arrested for prostitution-related offenses, and over 40 percent were confirmed or suspected to be involved in out-of-state trafficking.⁴⁶

Adults are also victims of sex trafficking in Massachusetts. Of the 225 women who received services between 2006 and 2011 from the EVA Center, a Boston-based organization that works with adult women in the sex trade: 145 (64 percent) were 17 to 25 years old; 20 (9 percent) were foreign nationals; and over half were involved in the court system, largely because they had aged out of government systems, such as the Department of Youth Services and the Massachusetts Department of Children and Families.⁴⁷

Cisgender male and LGBTQI+ individuals are also victims.⁴⁸ In fact, a study conducted in New York City indicated that male youth victims of commercial sexual exploitation may make up almost half of the victim population in that city.⁴⁹ Many of these individuals become victims at or before reaching 14 years old. In addition, they are often homeless due to family violence, sexual abuse, sexual orientation, or gender identity issues. Many people assume that male victims of sex trafficking identify as LGBTQI+, but only about 25 to 35 percent are gay or bisexual. Importantly, male victims also face the added challenge of being seen as “perpetrators” instead of victims. They are often arrested and brought to court for oppositional behavior. Attorneys and advocates often fail to screen male victims for sex trafficking, and as a result, male victims are often imprisoned without receiving services designed to assist sex trafficking victims.⁵⁰

Exploitation, U.S. DEP’T OF JUST., OFFICE OF JUV. JUST. & DELINQ. PREVENTION, https://www.ojjdp.gov/programs/csec_program.html [<https://perma.cc/DSK2-YUM3>].

⁴² PIENING & CROSS, *supra* note 7, at 5.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ TASK FORCE REPORT, *supra* note 4, at 15.

⁴⁸ RACHEL SWANER ET AL., YOUTH INVOLVEMENT IN THE SEX TRADE: A NATIONAL STUDY, CTR. CT. INNOVATION, Mar. 2016, at xvi (2016), <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/249952.pdf> [<https://perma.cc/Q24V-AZ6T>] (“The prevailing narrative about young people engaged in the sex trade is that they are young girls controlled by pimps. While a notable percentage of the population fits this description, many do not. Our research suggests that many are male or transgender.”).

⁴⁹ RIC CURTIS, ET AL., *The Commercial Sexual Exploitation of Children in New York City: Executive Summary*, CTR. CT. INNOVATION, Sept. 2008, at 3, https://www.courtinnovation.org/sites/default/files/CSEC_NYC_Executive_Summary.pdf [<https://perma.cc/VJE6-M84Y>].

⁵⁰ See Rebecca Raney, *Unseen Victims of Sex Trafficking*, AM. PSYCHOL. ASS’N (Apr. 2017), <https://www.apa.org/monitor/2017/04/sex-trafficking> [<https://perma.cc/N3KH-PUH4>] (considering the impact of

Practice Tip: Cisgender male and LGBTQI+ individuals should be screened for sex and labor trafficking with the same care and attention as cisgender women and girls.

Finally, labor trafficking exists throughout Massachusetts. Labor trafficking can take many forms, including forced labor, domestic servitude, and debt bondage.⁵¹

2.2.2. Examples of Sex and Labor Trafficking in Massachusetts

Victims of trafficking often do not identify as such, and attorneys must therefore be vigilant in their efforts to identify and assist victims. Heightened awareness is warranted when a client presents with one or more of the following indicators: lack of connection with family and/or community, loss of custody of children, restricted travel and/or communications, and/or is a child runaway.⁵²

In certain cases, labor trafficking can be more difficult to identify than sex trafficking. The market for labor is far larger than the market for commercial sex, and often victims of labor trafficking are hiding in plain sight, doing work that appears legal. In addition, a person may be a victim of labor trafficking even if they are paid for their work. For example, the Massachusetts Attorney General's office and the U.S. Attorney's office often encounter victims of labor trafficking who have been forced to work in dangerous jobs without proper safety protocols; victims who have not been paid overtime or minimum wage; and victims who are paid, but their passports have been taken away or they are otherwise forced to continue working. Practitioners may likewise have difficulty finding examples of these cases because, instead of being charged with violations of trafficking laws, perpetrators of labor trafficking are often charged with tax violations, withholding, or other violations of the tax code or wage and employment laws.

The following are case studies of sex and labor trafficking in Massachusetts. These stories also illustrate the common intersection between sex and labor trafficking.⁵³ Victim names have been changed and identifying details have been altered to protect client confidentiality.

2.2.2.1. Case Studies of Sex Trafficking in Massachusetts

- **Jason**, age 16, came from an intact family in suburban Boston. After his father died unexpectedly, his mother remarried. Jason and his stepfather frequently fought, and their fighting got worse when Jason told his mother and stepfather that he was gay. Finally, Jason's new stepfather threw him out. To survive, Jason began exchanging sex for money. He also started using drugs to cope with his

sex trafficking on male victims); Telephone Interview with Steven Procopio, Project Coordinator, *Surviving Our Struggle* (May 6, 2013).

⁵¹ TASK FORCE REPORT, *supra* note 4, at 16.

⁵² See *supra* Section 4.1 for other common signs of trafficking.

⁵³ For more information about this convergence, see Lori L. Cohen, *Sex Trafficking and Labor Trafficking: Overlap and Convergence*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS*, at 95-104.

daily life. Eventually, he met a man named Tim, who was about thirty years his senior. Tim treated him well at first: he took him to good restaurants, bought him nice gifts, and even offered to let Jason live with him. When Jason moved in, however, Tim said that Jason had to have sex with him if he wanted to stay. To avoid homelessness, Jason agreed, and had sex with Tim out of fear that Tim would kick him out. At times, other men would come to Tim's house for parties, and Tim coerced Jason into having sex with them as well. Despite feeling trapped and degraded, Jason felt like he could not leave. Because Tim had treated him so well at first, Jason felt emotionally dependent upon Tim. Moreover, Jason's only other option was living on the street, where he believed he would face even greater danger and exploitation.

- **Eva** was approached by Joela, a businesswoman in Guatemala, who said that for \$5,000, she would bring Eva to the United States, where she could work as a waitress to pay back Joela the \$5,000. Eva was excited about the opportunity. When Eva entered the United States, Joela provided her with a mattress on the floor of her apartment and took her to a strip club instead of giving her a job as a waitress. Joela told Eva that she must work there to repay her debt. She also told Eva that her debt had increased by twenty thousand dollars because of the extra costs of travel. Joela told Eva that she had connections to the police and immigration and that Eva would be deported if she refused to work at the strip club. Eva was scared and reluctantly started to work at the club. During the course of her work, she noticed that Joela and her friends were aggressive and violent. She saw them threaten and physically abuse other dancers at the club. She was afraid to leave before paying the debt because she feared that Joela would hurt her, too.
- **Amy**, age 23, was a young woman struggling with homelessness and a substance-abuse disorder in Boston. She met Ray, who promised her a life of glamour like the one he displayed on his social media. To make Amy dependent, Ray plied her with heroin, gave her a place to stay, and promised to protect her. After a few months of false security, Ray threatened Amy, withheld heroin, and forced her to provide sex for money in hotels across Boston, Maine, New Jersey, Nevada, and California. Ray beat her repeatedly, but Amy stayed because she felt she had nowhere else to turn. Amy eventually realized she was just one of at least twenty women caught up in an interstate trafficking ring.

2.2.2.2. *Case Studies of Labor Trafficking in Massachusetts*

- **Manuela** fell in love with an American man named Joel. He supported her in her native country of El Salvador for several years before offering to bring her to the United States, where they would be married. He was emotionally abusive. He often drank alcohol and occasionally became angry and yelled at her. When they arrived in the United States, Manuela and Joel planned to start a clothing store together. Joel never married Manuela, however, so her K-1 (fiancé) visa lapsed. He provided her with food and clothing, but she had to work for no pay at the clothing store during the day. He became increasingly aggressive and violent. Joel took her passport and threatened to have her deported if she did not follow his orders.
- **Linh** fled Vietnam to escape an abusive husband. She was smuggled into the United States and worked for a Vietnamese restaurant to pay off her smuggling debt. At the restaurant, she was paid very little and was the victim of repeated sexual assaults by her employer. She was scared to leave because she thought her boss would hurt her or her family in Vietnam. She sought the help of the police, but was returned to her employer because she spoke limited English.
- **Kinaya** was brought to the United States from Kenya to work as a domestic worker for a Kenyan family in the United States. The family paid her only three hundred dollars per month and subjected her to physical and emotional abuse. She could only leave the house to take the children to school. She was rarely allowed to communicate with her family, and when she did, her employers monitored her calls. Kinaya worked long hours every day of the week, and she was denied medical and dental treatment. When she asked for her wages, her employers threatened to send her back to Kenya.

3. Introduction to Human Trafficking Law

This section introduces international, federal, and Massachusetts human trafficking laws, with a primary focus on Massachusetts legislation. It begins with a summary of international efforts to adequately define and combat human trafficking. Next, this section shifts to federal legislation, providing an overview of the Trafficking Victims Protection Act and subsequent anti-trafficking legislation. It concludes by describing the history, objectives, and distinguishing aspects of the Massachusetts Anti-Trafficking Statute, which represented a significant shift in Massachusetts human trafficking law.

3.1. Human Trafficking Under International Law

In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, otherwise known as the Palermo Protocol.⁵⁴ The Palermo Protocol provides a comprehensive definition of “trafficking in persons,” and requires state parties to criminalize trafficking and provide information and assistance to trafficking victims. The Palermo Protocol defines “trafficking in persons” to mean:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵⁵

The United States ratified the Palermo Protocol, with reservations, in November 2005.⁵⁶

⁵⁴ U.N. General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions*, U.N. Doc. A/55/383, annex II at 53 (Nov. 2, 2000), https://treaties.un.org/doc/source/docs/A_55_383-E.pdf [<https://perma.cc/K9ZW-29F7>] [*hereinafter* “Palermo Protocol”].

⁵⁵ Palermo Protocol, *supra*, note 54, at Art. 3.

⁵⁶ *Chapter XVIII: Penal Matters: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en#EndDec [<https://perma.cc/N7N6-WR9Q>]. The United States’ ratification included some reservations, including a refusal to submit to arbitration disputes regarding the protocol with other State Parties. *See id.*

3.2. Federal Legislation: Trafficking Victims Protection Act and Justice for Victims of Trafficking Act

The Trafficking Victims Protection Act (“TVPA”), originally enacted in 2000, was the first comprehensive national human trafficking legislation in the United States. Congress subsequently reauthorized the TVPA in 2003, 2005, 2008, 2013, and 2015, and 2018. The TVPA and reauthorizations accomplish the following things, among others:⁵⁷

- Create federal human trafficking crimes, including forced labor;⁵⁸ trafficking with respect to peonage, slavery, involuntary servitude, or forced labor;⁵⁹ sex trafficking by force, fraud, or coercion;⁶⁰ sex trafficking in children;⁶¹ and associated attempt and conspiracy crimes;⁶²
- Establish the T visa⁶³ and Continued Presence⁶⁴ forms of immigration status for noncitizen trafficking victims;⁶⁵
- Create a federal civil cause of action that allows trafficking victims to sue their perpetrators and those who “knowingly benefit[]” from trafficking;⁶⁶
- Establish public awareness programs regarding human trafficking;⁶⁷
- Give protections and assistance to foreign national victims of human trafficking to the same extent as refugees, including education services, health care, job training, and other social services;⁶⁸

⁵⁷ For a more extended summary of key provisions in the TVPA, see *Polaris Project – Trafficking Victims’ Protection Act (TVPA) – Fact Sheet*, POLARIS PROJECT, <https://humantrafficking.ohio.gov/links/TVPA%20Fact%20Sheet,%20Polaris%20Project.pdf> [<https://perma.cc/4C3R-6LSS>].

⁵⁸ 18 U.S.C. § 1589.

⁵⁹ 18 U.S.C. § 1590.

⁶⁰ 18 U.S.C. § 1591.

⁶¹ *Id.*

⁶² 18 U.S.C. § 1594.

⁶³ 18 U.S.C. § 1101(a)(15)(T).

⁶⁴ 22 U.S.C. § 7105.

⁶⁵ See *infra* Section 5.1 for more details.

⁶⁶ 18 U.S.C. § 1595.

⁶⁷ 22 U.S.C. § 7104.

⁶⁸ 22 U.S.C. § 7105(b)(1)(A) (“Notwithstanding Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101 (a)(15)(T)(ii) of Title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of Title 8.”).

- Create the State Department’s Office to Monitor and Combat Trafficking, which is responsible for ranking and reporting on countries’ efforts to combat trafficking, and authorize the President to impose sanctions on that basis; and⁶⁹
- Expand U.S. jurisdiction for trafficking crimes to certain U.S. citizens abroad.⁷⁰

The TVPA created a new framework for sex trafficking crimes and protections for victims: First, it distinguished between sex trafficking and labor trafficking crimes, providing criminal definitions for each, and second, it established new protections for victims.⁷¹ The TVPA defines the crime of sex trafficking as:

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce ... recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, ... in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act ...⁷²

The TVPA further provided definitions for labor trafficking crimes, including both indentured servitude and forced labor.⁷³

The TVPA also established significant protections and benefits for victims of sex and labor trafficking. These protections are only available to victims of “severe forms of trafficking in persons,” which is defined 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 attained 18 years of age”; or

(B) “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁷⁴

⁶⁹ 22 U.S.C. §§ 7103, 7107

⁷⁰ 18 U.S.C. §§ 1596, 92001 (trafficking crimes committed abroad by U.S. citizens and permanent residents).

⁷¹ Julie Dahlstrom, *The Elastic Meaning(s) of Human Trafficking*, 108 CAL. L. REV. (Dec. 7, 2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3500100 [<https://perma.cc/SH3W-3XAS>]

⁷² 18 U.S.C. § 1591.

⁷³ See 18 U.S.C. §§ 1584, 1589.

⁷⁴ 22 U.S.C. § 7102(9).

Under this definition, a “commercial sex” act means “any sex act on account of which anything of value is given to or received by any person.”⁷⁵

Importantly, a person may be guilty of the crime of sex trafficking, and a victim may be eligible for federal benefits, even if a commercial sex act does not occur. For example, with respect to federal benefits eligibility for children under 18, mere inducement of a commercial sex act is sufficient to constitute a “severe form of trafficking.”⁷⁶

Since the passage of the TVPA, there have been subsequent reauthorizations in 2003, 2005, 2008, 2013, 2015, and 2018. These reauthorizations have attempted to improve efforts to protect victims, prosecute perpetrators, and prevent the crime. Also, Congress in 2015 passed additional legislation to extend criminal liability to certain buyers of sex under the federal sex trafficking statute. The Justice for Victims of Trafficking Act of 2015 (“JVTA”)⁷⁷ amended 18 U.S.C. § 1591 to clarify that buyers of sex with children or human trafficking victims may be prosecuted under federal sex trafficking law.⁷⁸

Additionally, the JVTA broadens protections for domestic human trafficking victims. The Act:

- Establishes federal programs to prevent human trafficking and adjusts federal criminal law to assist victims of human trafficking;⁷⁹
- Modifies the Mann Act, which criminalizes interstate and foreign travel for unlawful sex purposes, to include travel with the purpose of producing child pornography;⁸⁰
- Clarifies that victims of federal sex trafficking crimes have a right to be notified about plea agreements.⁸¹

⁷⁵ 22 U.S.C. § 7102(4). Recently, victims have argued that a “commercial sex act” may include intimate partner violence when sex is exchanged for something of value and no third party is involved. *See, e.g., United States v. Saddler*, No. 5:16-cr-00251 (E.D.N.C. Oct. 5, 2016) (defendant, who dated fifteen year-old victim, was convicted of sex trafficking and related crimes, sentenced to 40 years, and ordered to pay \$131,292.05 in restitution for forcing victim to engage in commercial sex in migrant worker camps, physically abusing her, and threatening her); *United States v. Vianez*, No. 3:09-cr-05065 (W.D. Wash. Jan. 27, 2009) (defendant, who met victim shortly after her seventeenth birthday and forced her to engage in commercial sex over a period of four years, was convicted of sex trafficking and related crimes, sentenced to 20 years in prison, and ordered to pay \$1,354,500). For a more detailed discussion of the relationship between domestic violence and human trafficking, *see Section 4.7* of this practice guide; *see also* HUMAN TRAFFICKING LEGAL CTR., HUMAN TRAFFICKING AND DOMESTIC VIOLENCE FACT SHEET (Oct. 16, 2018), available at <http://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-and-Domestic-Violence-Fact-Sheet.pdf> [<https://perma.cc/366M-V3FJ>].

⁷⁶ 22 U.S.C. § 7102(9); 18 U.S.C. § 1589.

⁷⁷ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227 (2015).

⁷⁸ *Id.*

⁷⁹ *Id.* § 101.

⁸⁰ *Id.* § 111.

⁸¹ *Id.* § 113.

3.3. Massachusetts Anti-Trafficking Statute

The Massachusetts Anti-Trafficking Statute was signed into law on November 21, 2011, and took effect on February 19, 2012. Prior to enactment of the Massachusetts Anti-Trafficking Statute, Massachusetts was one of only three states (along with West Virginia and Wyoming) that had not expressly criminalized human trafficking.⁸² Since then, every state has passed human trafficking legislation. The Polaris Project had praised the Massachusetts Anti-Trafficking Statute, ranking Massachusetts as a “Tier 1” state in 2014 based on its efforts to combat human trafficking.⁸³

During the legislative process, then Attorney General Martha Coakley offered key testimony regarding the importance of and purposes behind the Massachusetts Anti-Trafficking Statute.⁸⁴ Her testimony called attention to the young age at which child victims of sex trafficking are forced into the sex trade and how violence and abuse compel them to stay in exploitative situations.⁸⁵ She also observed that the proposed law would “go after the [trafficking] supply” by creating the crimes of sex trafficking and labor trafficking, “address the demand that feeds this industry” by increasing the penalty for clients of commercial sex, and “support its victims” by creating a task force to study the problem and recommend further solutions.⁸⁶

Among other key provisions, the Massachusetts Anti-Trafficking Statute:

- Establishes the crimes of “trafficking of persons for sexual servitude” to combat sex trafficking,⁸⁷ and “trafficking of persons for forced services” to combat labor trafficking.⁸⁸ Both crimes are punishable by up to 20 years in prison, with a mandatory minimum of 5 years,⁸⁹ and by a fine of up to \$25,000 for individuals⁹⁰ and up to \$1 million for businesses.⁹¹
- Creates a civil tort cause of action for victims of sexual servitude and forced services crimes.⁹²

⁸² See A Look Back: Building a Human Trafficking Legal Framework, POLARIS PROJECT, <https://polarisproject.org/wp-content/uploads/2019/09/2014-Look-Back.pdf> [<https://perma.cc/9HXW-AF2D>].

⁸³ 2014 State Ratings on Human Trafficking Laws, POLARIS PROJECT (2014), <https://polarisproject.org/wp-content/uploads/2019/09/2014-State-Ratings.pdf> [<https://perma.cc/E7FL-7TAF>].

⁸⁴ Attorney General Martha Coakley, Testimony of Attorney General Martha Coakley on S. 827/H. 2850, An Act Relative to the Commercial Exploitation of People (May 18, 2011), <http://www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf> [<https://perma.cc/CP9D-X8AX>] [hereinafter *Coakley Testimony*].

⁸⁵ *Id.* at 1-2.

⁸⁶ *Id.* at 2-3.

⁸⁷ MASS. GEN. LAWS ch. 265, § 50.

⁸⁸ *Id.* § 51.

⁸⁹ *Id.* § 50(a), § 51(a).

⁹⁰ *Id.* § 50(a), § 51(a).

⁹¹ *Id.* § 50(c), § 51(c).

⁹² Mass. Gen Laws ch. 265, § 50(d), § 51(d).

- Establishes an enhanced penalty for trafficking in children (“persons under 18 years of age”), punishable by up to life imprisonment, with a mandatory minimum of 5 years.⁹³
- Criminalizes enticing a child to engage in prostitution via electronic communication, punishable by up to 2½ years imprisonment in a house of correction or up to 5 years in state prison and/or by a fine of up to \$2,500.⁹⁴
- Creates an affirmative defense for adult victims who committed prostitution-related crimes under duress or coercion, and an avenue to “safe harbor” for child victims of sex trafficking accused of certain sex crimes.⁹⁵
- Adds “sexually exploited child” to the definition of a “child requiring assistance,”⁹⁶ and requires the Massachusetts Department of Children and Families (“DCF”) to immediately report any trafficked or sexually exploited child to the district attorney and local law enforcement.⁹⁷
- Creates a trust fund for victims of human trafficking, funded by penalties for trafficking offenses, to be used to provide grants to groups providing services to victims of human trafficking.⁹⁸
- Creates an interagency task force to assess what must be done to further implement the law and its purposes.⁹⁹

Unlike the TVPA, which requires a showing of “force, fraud, or coercion” for adult victims, the Massachusetts Anti-Trafficking Statute more broadly defines the crime of “trafficking of persons for sexual servitude.” The Massachusetts definition includes:

subject[ing], or attempt[ing] to subject, or recruit[ing], entic[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means, or attempt[ing] to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity,¹⁰⁰ a

⁹³ *Id.* § 50(b), § 51(b).

⁹⁴ *Id.* § 26D.

⁹⁵ MASS. GEN. LAWS ch. 119, § 39L.

⁹⁶ *Id.* § 21.

⁹⁷ MASS. GEN. LAWS ch. 265, § 51(B)(a).

⁹⁸ MASS. GEN. LAWS ch. 10, § 66A.

⁹⁹ An Act Relative to the Commercial Exploitation of People. 2011 Mass. Acts. ch. 178 § 31.

¹⁰⁰ “Commercial sexual activity” is defined as “any sexual act on account of which anything of value is given, promised to or received by any person.” MASS. GEN. LAWS ch. 265, § 49. In *Commonwealth v. McGhee*, the Supreme Judicial Court upheld this broad standard, and “construe[d] the term ‘commercial sexual activity’ as referring to any sexual act for value that involves physical contact.” 472 Mass. 405, 419 (2015).

sexually-explicit performance¹⁰¹ or the production of unlawful pornography . . . or caus[ing] a person to engage in [such conduct].

In addition, it is a crime under the Massachusetts Anti-Trafficking Statute to “benefit, financially or by receiving anything of value, as a result of a violation” of the statute.

The Massachusetts Anti-Trafficking Statute also prohibits a broad array of conduct relating to labor trafficking. It defines the crime of “trafficking of persons for forced services” as:

subject[ing], or attempt[ing] to subject, or recruit[ing], entic[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means, or attempt[ing] to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services[.]¹⁰²

It defines “forced services” as:

services performed or provided by a person that are obtained or maintained by another person who: (i) causes or threatens to cause serious harm to any person; (ii) physically restrains or threatens to physically restrain another person; (iii) abuses or threatens to abuse the law or legal process; (iv) knowingly destroys, conceals, removes, confiscates or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) engages in extortion under section 25; or (vi) causes or threatens to cause financial harm to any person.¹⁰³

It defines “financial harm” as:

a detrimental position in relation to wealth, property or other monetary benefits that occurs as a result of another person’s illegal act including, but not limited to, extortion under by section 25, a violation of section 49 of chapter 271 or illegal employment contracts.¹⁰⁴

Similar to the sex trafficking provision, the statute prohibits the receipt of any benefit, financial or otherwise, that results from a labor trafficking violation.

¹⁰¹ “Sexually-explicit performance” is defined as “an unlawful live or public act” or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.” MASS. GEN. LAWS ch. 265, § 49.

¹⁰² MASS. GEN. LAWS ch. 265, § 50.

¹⁰³ MASS. GEN. LAWS ch. 265, § 49.

¹⁰⁴ *Id.*

3.4. Efforts to Combat Human Trafficking in Massachusetts

In addition to the Massachusetts Anti-Trafficking Statute, Massachusetts has undertaken a variety of efforts designed to combat human trafficking through multidisciplinary partnerships between law enforcement and other stakeholders. In December 2004, the Massachusetts Task Force to Combat Human Trafficking was established as one of 18 Department of Justice (“DOJ”) funded task forces around the nation charged with establishing comprehensive and collaborative victim-centered strategies for combating human trafficking. Members worked together in a variety of activities that included trainings, public awareness and outreach campaigns, technical support for victim service delivery and case coordination, and collaborative investigations and prosecutions. The Task Force continued until 2010 when DOJ funding ended, and it is still credited with building some of the early, formative relationships between non-governmental organizations (“NGOs”) and law enforcement.

In June 2010, former Attorney General for the District of Massachusetts Carmen Ortiz created the Civil Rights Enforcement Team to prosecute human trafficking, among other crimes. In the absence of a DOJ-funded task force, the U.S. Attorney’s Office (“USAO”) began to convene regular meetings of federal and local law enforcement to coordinate human trafficking investigations. The USAO continues to convene such meetings and organizes an annual meeting with law enforcement and NGOs to promote partnership and collaboration.

In 2012, the Interagency Human Trafficking Task Force, created by the Massachusetts Anti-Trafficking Statute, convened 19 members from state government and NGOs to make recommendations to the Massachusetts legislature about the implementation of new state human trafficking legislation. The Task Force focused on making specific policy recommendations in areas including data collection and information sharing, reducing demand, education and training, public awareness, and victim services. The Task Force published a report on August 19, 2013, which included recommendations to state lawmakers about what more can be done to combat and prevent trafficking.¹⁰⁵ For further information, please visit the Human Trafficking Division at the Attorney General’s website.¹⁰⁶

Subsequent to the Task Force report, the Massachusetts’ Attorney General’s Office has continued to combat trafficking through various initiatives and implementation teams. The Attorney General’s office has a designated Human Trafficking Division made up of prosecutors, advocates, and Massachusetts State Troopers who focus on bringing high impact, multi-jurisdictional sex and labor trafficking cases. Since the enactment of the Massachusetts Anti-Trafficking statute in 2012, the AG’s office has charged over 50 individuals with human trafficking and over 70 with trafficking related charges. In addition, the AG’s office created a Labor Trafficking Sub-Committee that presented findings and recommendations for

¹⁰⁵ See TASK FORCE REPORT, *supra* note 4, at n.13.

¹⁰⁶ *Fighting Human Trafficking*, MASS.GOV, <https://www.mass.gov/fighting-human-trafficking> [<https://perma.cc/4J2F-NQHP>].

combatting labor trafficking,¹⁰⁷ an Employers Against Sex Trafficking (EAST) initiative to reduce demand for the purchase of illegal sex by encouraging employers to commit to zero-tolerance policies for sex-buying, and a Labor Trafficking Awareness Initiative in cooperation with municipal government leaders.¹⁰⁸ Other initiatives include enhanced training for investigators and Assistant Attorneys General, outreach to local consulate offices on labor trafficking vulnerabilities, the first-ever labor trafficking training for law enforcement at the National Cyber Crime Conference, development of labor trafficking posters and other materials, development of a labor trafficking app in conjunction with Boston University and Boston University School of Law, and presentations and webinars for municipal inspection works on identifying the signs of labor trafficking. The Attorney General's Office was recently awarded nearly \$1.7 million in federal grants, which will be used to create the Commonwealth's Anti-Trafficking Task Force.¹⁰⁹

¹⁰⁷ MASS. INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE, LABOR TRAFFICKING SUB-COMMITTEE, FINDINGS AND RECOMMENDATIONS (2014), <https://www.mass.gov/files/documents/2018/04/30/LTTF%20Recommendations%20October%202014.pdf> [<https://perma.cc/6RUF-YJ3M>].

¹⁰⁸ For more information on labor trafficking, visit *Labor Trafficking*, MASS.GOV, <https://www.mass.gov/service-details/labor-trafficking> [<https://perma.cc/DF7J-676M>].

¹⁰⁹ Office of Attorney General Maura Healey, *AG Healey's Office Awarded \$1.7 Million in Federal Grants to Create Anti-Human Trafficking Task Force* (October 8, 2019), available at <https://www.mass.gov/news/ag-healeys-office-awarded-17-million-in-federal-grants-to-create-anti-human-trafficking-task> [<https://perma.cc/N63R-UGYQ>].

4. Recognizing Human Trafficking and Working with Vulnerable and Diverse Populations

4.1. How to Identify Victims of Human Trafficking

Every individual has a unique story, and an attorney's role is often to try to decipher complex narratives to determine if that individual's experience meets the definition of human trafficking under relevant law. It is important for attorneys to understand that it may take many meetings to build sufficient trust to elicit the basic outlines of a victim's story. At first, victims may distrust attorneys because they had a negative experience with law enforcement or the criminal justice system. Often, survivors may be slow to build trust, and they may deny victimization due to stigma or shame. Thus, it is important for attorneys to devote considerable time to developing trust and eliciting victims' full stories.

When working with a client, attorneys should be on the lookout for the following "red flags." The list below is by no means an exhaustive list, but it includes indicators that an individual is or was a victim of trafficking pursuant to the definition under federal law:¹¹⁰

- **General vulnerability or lack of support:** The individual is disconnected from his or her family, school, work, and/or community; has lost custody of his or her children; lacks education or skills necessary to support himself or herself; is reliant on others in potentially coercive relationships.¹¹¹
- **Homelessness:** The individual has a history of running away from home; living on the street; living with an adult that is not a relative or legal guardian.¹¹²
- **Involvement in commercial sex:** The individual is a minor (under 18 years of age) involved in commercial sex (this individual is by definition a victim of human trafficking).¹¹³

¹¹⁰ *Recognize the Signs*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking/recognize-signs> [<https://perma.cc/EZ9G-YZTD>]; *Human Trafficking Indicators*, UNITED NATIONS, OFFICE ON DRUGS & CRIME, [www.unodc.org/pdf/HT_indicators E_LOWRES.pdf](http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf) [<https://perma.cc/97CD-YZYH>]; JEAN BRUGGEMAN & ELIZABETH KEYES, MEETING THE LEGAL NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 11-15 (2009), available at https://www.americanbar.org/content/dam/aba/migrated/2011_build/domestic_violence/dv_trafficking.authcheckdam.pdf [<https://perma.cc/3RRN-SJE4>]; Telephone Interview with Cherie Jimenez, Founder & Executive Director, EVA Center (Oct. 9, 2013); Telephone Interview with Susan Goldfarb, Executive Director, Children's Advocacy Center (Feb. 22, 2013).

¹¹¹ *Human Trafficking Indicators*, *supra* note 110; Telephone Interview with Cherie Jimenez, *supra* note 110.

¹¹² *Serving Runaway Homeless Youth who are Domestic Victims of Human Trafficking*, U.S. DEP'T OF HEALTH & HUMAN SERVS., July 20, 2019, <https://www.acf.hhs.gov/fysb/success-story/serving-rhy-trafficking> [<https://perma.cc/BYD9-4TK9>]; Telephone Interview with Susan Goldfarb, *supra* note 110.

¹¹³ See 22 U.S.C. § 7102(9)(A); MASS. GEN. LAWS ch. 265, §§ 50-51.

- **Prior illegal conduct:** The individual has prior arrests, charges, convictions, or outstanding warrants for conduct commonly associated with trafficking, such as sex for a fee, drug possession, theft, or robbery.¹¹⁴
- **Common working and living locations:** The individual is not free to leave or come and go as he/she wishes; is unpaid, paid very little, paid only through tips, or works excessively long and/or unusual hours; is not allowed breaks or suffers under unusual restrictions at work; owes a large debt and is unable to pay it off; was recruited through false promises concerning the nature and conditions of his/her work; works and/or lives in a place with high security measures (e.g., opaque windows, boarded up windows, bars on windows, barbed wire, security cameras, etc.).¹¹⁵
- **Evidence of trauma:** The individual shows symptoms of post-traumatic stress disorder or other mechanisms to cope with trauma, including substance abuse or avoidance.¹¹⁶
- **Poor physical health:** The individual lacks access or has inadequate access to health care; appears malnourished or shows signs of abuse.¹¹⁷
- **Lack of control:** The individual has few or no personal possessions; has no bank account or financial records or is not in control of his/her own money; does not have or is not in control of his/her identification documents; is not allowed or able to speak for himself or herself (for example, a third party insists on being present and/or translating); is unfamiliar with the local language.¹¹⁸
- **Limited communication or social contact:** The individual is unable to communicate freely with others; has limited or no social interaction; has limited contact with his or her family or with people outside of his or her immediate environment.¹¹⁹
- **Other indicators specific to children:** The child is disconnected from family or other caregivers; has no friends of his or her own age outside of work; has no access to education or time for playing; travels unaccompanied by adults, or travels in groups with persons who are not relatives; has a history of childhood physical or sexual abuse; has multiple reports of running away with no explanation as to whereabouts or running away out-of-state; has prior involvement with child protective services; has had multiple out-of-home placements (foster homes); has unexplained absences from school for a period of time; is involved with a gang;

¹¹⁴ Telephone Interview with Cherie Jimenez, *supra* note 110. Note that a criminal record presents a significant barrier to a victim trying to exit out of trafficking and obtain gainful employment. *See id.*; *see also infra*, [Section 7](#).

¹¹⁵ *Recognize the Signs*, *supra* note 110.

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ *Id.*

¹¹⁹ *Human Trafficking Indicators*, *supra* note 110.

has brands or scarring indicating ownership (such as tattoos); shows indications of substance abuse; has internet contact or phone calls with adults or has a significant other who is significantly older; has inappropriate posts on personal social media pages; possesses new clothes or electronics that were “gifts” from unspecified individuals.¹²⁰

- **Miscellaneous indicators:** The individual claims he or she was “just visiting” the area and is unable to clarify where he or she is staying or his or her permanent address; lacks knowledge of whereabouts and/or does not know what city he/she is in; lacks a sense of time; has numerous inconsistencies in his or her story.¹²¹

In addition, because many of these “red flags” are also indicators of other types of trauma, their presence does not necessarily mean that an individual is a victim of human trafficking. Therefore, it is important that attorneys understand each individual’s unique history and inquire into a range of topics. For sample intake questions, *see infra* [Section 11.1](#).

4.2. Special Considerations When Working with Sex Trafficking Victims

It is essential to establish rapport and an atmosphere of trust and non-judgment when working with sex trafficking victims. It may take several meetings for the victim to feel comfortable sharing his or her story, and at first he or she may be very hesitant to provide an attorney with all of the information relevant to his or her case. To this end, it is important that attorneys inform their clients about the legal process at the outset and throughout the representation. Explaining all options carefully and making it clear that the client can choose how to proceed will help build trust. It will also reduce the effect of the hierarchy inherent in the attorney-client relationship by allowing the client to feel in control of the process. Many victims were in situations in which they lacked power, and it is helpful to promote trust by demonstrating that the client is able to make important decisions about his or her future.

It is also essential that an attorney only make commitments to an individual client that he or she can fulfill. Trust is an essential component of the attorney-client relationship, but it is often difficult to build with survivors because they may be distrustful of authorities, such as attorneys, law enforcement, and government officials, due to their past experiences. Thus, it is important that attorneys clearly state what they can and cannot do for their clients and follow through on whatever commitments they make. In addition, it may take a long time to develop a relationship with a survivor, so it is important to build adequate time into the representation process. It is also very helpful to coordinate with survivor-led programs to help build trust.

¹²⁰ *See id.*; What is Commercial Sexual Exploitation of Children (CSEC)?, CHILD. ADVOC. CTR., SUFFOLK COUNTY, <https://www.suffolkcac.org/what-we-do/seen/what-is-commercial-sexual-exploitation-of-children-csec> [<https://perma.cc/QL7J-57G8>]; Telephone Interview with Susan Goldfarb, *supra* note 110.

¹²¹ *Recognize the Signs*, *supra* note 110.

4.3. Importance of Survivor-Led Advocacy & Mentorship for Victims of Sex Trafficking

One of the most effective non-legal services available to victims of sex trafficking is survivor-led advocacy programs. In these programs, adult and child survivors of trafficking work directly with other survivors for the purposes of support and finding paths to exit commercial sexual exploitation situations.

These programs encourage victims to build a sense of community by promoting a non-judgmental and collaborative environment. Many victims find it extremely helpful to connect with other sex trafficking victims. Victims also can form strong bonds with peer advocates that can last for years.

From a legal perspective, connecting clients to survivor-led advocacy services often makes an enormous difference in their ability to effectively follow up with attorneys and exit exploitative situations. Also, access to survivor-led services can enable clients to demonstrate their ability to follow up with services and leave exploitative situations.

Survivor-led programs in Massachusetts accepting referrals from attorneys include:

- **The EVA Center**
(accepts women 18 years and older)
989 Commonwealth Avenue
Boston, MA 02215
(617) 779-2133
www.evacenter.org
- **My Life My Choice, A Program of Justice Resource Institute**
(accepts referrals for girls, boys, and transgender youth ages 12-18)
989 Commonwealth Ave
Boston, MA 02215
Lisa Goldblatt Grace, Director
617-779-2179
617-779-2172 (fax)
www.fightingexploitation.org
- **Roxbury Youthworks**
(accepts referrals for girls, boys, and transgender youth ages 12-18)
841 Parker Street, Suites 104-106
Roxbury Crossing, MA 02120
Mia Alvarado, Executive Director
617-427-8095
<http://www.roxburyyouthworks.org/>

Roxbury Youthworks GIFT Program

(provides prevention, intervention, support, stabilization and therapeutic services to young girls who are current, former, or at risk of becoming victims of commercial sexual exploitation)
617-474-2101

Roxbury Youthworks BUILD Program

(provides prevention, intervention, support, stabilization and therapeutic services to cisgender males, transgender, and gender nonconforming youth)
617-514-6090

- **Living in Freedom Together (LIFT)**

(accepts referrals for drop-in center and Jana’s Place, a recovery home for women)
34 Cedar St.
Suite 301
Worcester, MA 01609
774-243-6025

4.4. Development of Rapport and Building Trust

Establishing trust between attorney and client can be challenging in any context, but may be particularly difficult with victims of human trafficking. These clients may have suffered betrayal, threats, and/or abuse from people they previously trusted—especially individuals viewed as authority figures. This can make it difficult for lawyers to establish the trust necessary to understand clients’ stories and ultimately pursue their cases.

You should approach any meeting with a potential victim of human trafficking with an appreciation and understanding of the strength and courage it took the victim to survive the trafficking situation. Focusing on these strengths and the victim as an individual can be empowering. Therefore, the goal of any interview of a trafficking victim should be to create a level playing field that enables a trafficking victim to relate to and converse easily with the lawyer.¹²² Otherwise, a client may be hesitant to open up to someone she perceives as disconnected from her own reality and unable to understand her story.¹²³

One way to develop trust with a client is to begin an honest dialogue about the lawyer’s role and listen to the client’s concerns. Clients may be embarrassed or otherwise reluctant to share their experiences, especially if they involve past criminal conduct or sexual exploitation. Therefore, it may take a series of meetings before you are able to develop the relationship necessary to delve into sensitive topics.

¹²² Indeed, that is precisely why survivor-led mentor programs are so successful. See *supra* Section 4.3.

¹²³ Telephone Interview with Cherie Jimenez, *supra* note 110.

Below are some tips for how to develop rapport and build trust with a potential trafficking victim.¹²⁴

- **Clarify your role as an advocate.** Due to past traumatic experiences, victims may be distrustful of authority figures, such as law enforcement or attorneys. They may also have been coached by their perpetrators on how to respond to questions from attorneys, social workers, or law enforcement.¹²⁵ At the beginning of your representation, inform your client that you work for her and will act as her zealous advocate. Explain that your goal is to hear her story and understand what she hopes to accomplish with your help. Also, explain that you are using a client-centered approach and that she will choose how her case will proceed.
- **Emphasize that you will keep all communications with her confidential.** You may also need to explain any limits of the privilege (including that it does not apply if a mandated reporter or certain other individuals are present during confidential discussions), and any potential conflicts of interest if you are representing more than one victim in a particular trafficking scheme. This applies when working with minor victims as well as adult victims.
- **Ensure your client's safety.** Select a location to meet with your client that is safe and where she feels comfortable. Determine other steps that you can take to keep your client's identity and location secure, such as using pseudonyms in pleadings, or asking the court to impound her address and other personal information.¹²⁶
- **Communicate effectively.** Ensure that you communicate effectively and collaborate with your client as an equal partner. Do not speak in "legal-ese." Use language that is readily accessible given your client's experience and education. Determine whether an interpreter is necessary and, if so, choose an appropriate interpreter. See *infra* Section 4.6.
- **Avoid preconceived notions of what constitutes a trafficking victim.** Trafficking victims may be male or female, citizens or noncitizens, young or old. They may act passively, or they may appear confident, even abrasive. There is no one profile of a trafficking victim, and each person and circumstance is unique. This means that you can make efforts to ensure that

¹²⁴ See Leidholdt & Scully, *supra* note 34; CATHY ZIMMERMAN & CHARLOTTE WATTS, WHO ETHICAL AND SAFETY RECOMMENDATIONS FOR INTERVIEWING TRAFFICKED WOMEN 14-17 (2003) [hereinafter WHO ETHICAL & SAFETY RECOMMENDATIONS], https://www.who.int/mip/2003/other_documents/en/Ethical_Safety-GWH.pdf [<https://perma.cc/KS34-MJZR>].

¹²⁵ FLA. COAL. AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING SERVICE PROVIDER MANUAL FOR CERTIFIED DOMESTIC VIOLENCE CENTERS 17 (2004), www.fcadv.org/sites/default/files/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf [<https://perma.cc/VW8E-2G7P>].

¹²⁶ For a discussion of using pseudonyms in pleadings, see Nat'l Crime Victim Law Inst., *Protecting Victims' Privacy Rights: The Use of Pseudonyms in Civil Law Suits* 1 (2011), <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=375> [<https://perma.cc/S84N-R229>]; DAVID WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING 12 (3d ed. 2008), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/splc_human_trafficking.pdf [<https://perma.cc/K5U8-WPUQ>].

victims, regardless of their gender identity or sexual orientation, feel comfortable accessing your services. This includes asking about a victim's preferred pronoun at the outset.

- ***Be attentive to indicators of vulnerability to perpetrators of trafficking.*** You should remain alert to indicators of vulnerability to perpetrators, such as a client being disconnected from her family, school, work, and/or community; lacking the education and skills necessary to support herself; and relying on others in potentially coercive and abusive relationships. Economic need and a lack of marketable skills in the job market may drive victims into a trafficking situation, keep them in it, and cause them to return to the situation after they have left it. *See supra* [Section 4.1](#).
- ***Be sensitive to symptoms of distress and trauma and signs of discomfort.*** Victims may suffer from post-traumatic stress disorder, anxiety, or depression, or may be in physical pain due to abuse. Be attentive to signs of distress and, if appropriate, refer your client to support hotlines or individuals trained in working with victims of trauma. Try to meet in a professional, private, but friendly environment. Pay attention to what puts your client at ease and what puts her on edge. Consider putting your phone on silent during the meeting, ensure that others will not pass by or interrupt you, and think of ways that you can promote a comfortable environment. If your client is noticeably uncomfortable with a particular line of questioning and becomes overly emotional, angry, or unresponsive, be prepared to change the topic to something less upsetting, or take a break. Also, if your client is deeply impacted by trauma, consider making a referral to specialized mental health services at an early stage in the case to ensure that she is supported throughout the process.
- ***Be non-judgmental and exercise patience with your client.*** A client may take a long time to open up to you, may be indecisive or ambivalent, or may talk endlessly about seemingly irrelevant details or frustrations. Whatever the case, remain patient and focused on what is important to your client. Also, be mindful that behaviors such as inattentiveness, anxiety, or irritability may be symptomatic of post-traumatic stress disorder, and substance abuse is a common coping mechanism.
- ***Inform your client about resources available to meet non-legal needs, including survivor-led programs.*** Even if you are not equipped to assist your client with non-legal or pseudo-legal needs, such as immigration, health, or housing issues, or needs in other legal fields, be ready to refer her to other professionals or local organizations that can assist her. In particular, make referrals to survivor-led or worker-led programs. *See supra* [Section 4.3](#). Clients may feel more comfortable sharing their stories with others who have had similar experiences, and these programs help empower survivors to leave exploitative situations and form bonds with the wider community.

- **Follow through.** Be realistic. Do not give your client false hope. Do not make any promises that you can't guarantee, i.e., safety of family or friends that are threatened by the perpetrator of trafficking. Be consistent, show up, and do what you say you are going to do.
- **Empower your client.** Representation of trafficking victims must be victim-centered where he or she is making the decisions. If this is not the focus, there is the risk of re-victimizing the individual all over again. Make sure that you are empowering your client to make decisions and be careful not to think that as an attorney, you know best.
- **Be attentive to issues specific to child victims.** For particular considerations in building trust and working with minors, *see infra* [Section 6](#).

4.5. Engagement with Distinct Cultural Communities

When asking clients about their history of exploitation, attorneys and advocates should be aware that the client's cultural or religious beliefs may have been exploited by perpetrators of trafficking to maintain control. For example, in some cultures, it may be common for a perpetrator of trafficking to threaten to expose a victim for her involvement in commercial sex in her home community, play upon her sense of obligation to a marriage proposal, play upon her fear of corrupt attorneys or law enforcement, refuse to allow her to practice her religion, or threaten her with deportation.¹²⁷

This sort of coercion may be difficult for attorneys and law enforcement officials to identify or appreciate without a sufficient understanding of a victim's culture and beliefs. Attorneys should therefore try to obtain an understanding of their clients' backgrounds and consider whether and how cultural beliefs may have been leveraged against the client.

4.6. Victims of Human Trafficking who are Cisgender Boys or Men

When working with cisgender boys and men, attorneys and advocates should be mindful of the role of masculinity and how it may cause victims to silence or minimize their trauma. Creating a strong bond with the client is therefore paramount before discussing any sexually traumatic experiences. Attorneys and advocates should also be attentive to potential grooming¹²⁸ modalities that have affected or continue to affect their clients. Possible examples of sources of this grooming include: Grindr; social media; live video games; family or neighbors; or sports leagues.¹²⁹

¹²⁷ See FLA. COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 125 at 10; U.S. CONF. OF CATHOLIC BISHOPS, ET AL., A GUIDE FOR LEGAL ADVOCATES PROVIDING SERVICES TO VICTIMS OF HUMAN TRAFFICKING § 2.2 (2004), available at <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=318> [<https://perma.cc/EQ9W-7PYX>].

¹²⁸ "Grooming" is the process of gaining a person's trust with the intent to exploit him or her, often a child or teenager. See Michelle Peterson, Recognizing the Stages of Grooming, FIGHT TO END EXPLOITATION (March 1, 2019), available at <https://fighttoendexploitation.org/2019/03/01/grooming-in-human-trafficking/> [<https://perma.cc/7NNG-FY84>]. The goal of "grooming" is to make victims dependent on or attached to their perpetrator in order to make victims more cooperative or easily manipulated. *Id.*

¹²⁹ Correspondence with Roxbury Youthworks, Inc. (Sep. 12, 2019).

Attorneys and advocates may find that their client’s response to trauma may be externalized. That is, victims may exhibit: a propensity towards violence against self or others; hypersexuality; school truancy or tardiness; opposition to authority; or lack of willingness to disclose details of their experiences. By recognizing such actions as a trauma response, advocates are better positioned to support the client and build further rapport.¹³⁰

Additional best practices in working with such victims include: using a strength-based approach; validating client emotions without judgment; limiting assumptions and letting the client define the trauma; and remaining patient.¹³¹

At least one study from New York City has shown that male youth victims of sex trafficking may comprise almost half of the victim population in New York City.¹³² Despite this statistic, however, many male victims go undetected. Due to their gender, many male victims are viewed as perpetrators rather than victims and are often imprisoned without receiving the services available to other victims. In addition, male victims are often forced into homelessness due to family violence, sexual abuse, or sexual orientation or gender identity issues.

4.7. Victims Identifying as Transgender or Gender Non-Conforming

When working with transgender or gender non-conforming clients, it is imperative that attorneys and advocates use the correct pronoun upon your first meeting as gender affirmation is a powerful tool, particularly when working with queer and gender non-conforming youth. Best practices include: introducing yourself with your preferred pronouns to every client you work with; understanding that their names or pronouns on legal documents and other papers may not match with how they identify (i.e., clients may have a “dead name,” or their name before transition); ensuring that paperwork and policies are transgender-affirming; and employing carefully crafted language (e.g., “ask to ask” —first ask clients whether they feel comfortable with you asking about their transition or other experiences).¹³³

4.8. Interpretation

Communicating through interpreters presents unique challenges. An attorney should screen any interpreter used to communicate with clients to ensure that he or she is competent, trustworthy, and

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² RIC CURTIS, ET AL., CENTER FOR COURT INNOVATION AND JOHN JAY COLLEGE OF CRIMINAL JUSTICE, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY: EXECUTIVE SUMMARY 3 (2008), *available at* https://www.courtinnovation.org/sites/default/files/CSEC_NYC_Executive_Summary.pdf [<https://perma.cc/VJE6-M84Y>]. Practitioners should also be aware that different cities or areas of the country often have local issues or trends when it comes to trafficking and victims of trafficking. For example, while there are no current statistics on trafficking of cisgender men and boys in Boston or Massachusetts more generally, practitioners anecdotally report fewer cases of trafficking involving cisgender men and boys in the Boston area. Practitioners should try to be aware of both local and national trends so they do not make assumptions about who may be a victim based on local trends.

¹³³ Correspondence with Roxbury Youthworks, Inc. (Sep. 12, 2019).

professional. To facilitate open and honest conversations with the client, it is essential that the interpreter treat the client with sensitivity and respect.¹³⁴

First, consider an interpreter’s gender and ethnic background. For example, assess whether the interpreter has connections to your client’s kinship group or to that of her exploiters. If such connections exist, you should find someone else. While an interpreter from your client’s ethnic community may help to build trust and rapport, it may also have the opposite effect if the victim feels too ashamed to discuss culturally stigmatizing subjects in front of someone from the same background who shares the same cultural norms. It is suggested that you avoid using a friend or associate of the client to interpret—at least at the outset of representation—as it is difficult to determine if such associates have ties to perpetrators.¹³⁵ Moreover, using a client’s friend as a translator may have implications with respect to the attorney-client privilege.

Second, consider an interpreter’s experience with victims of human trafficking. Ideally, an interpreter will be specifically trained to work with human trafficking victims. In that regard, it may be advisable to work with an interpreter or individual involved in a local organization that works with trafficking victims, or other victims of violence. If you choose an interpreter who does not have such experience, prepare him or her to work with your client by emphasizing the duty of confidentiality, explaining the nature of the crime, and providing tips for how to appropriately interact with a victim.¹³⁶

If you have any ability to communicate with your client independently, it is advisable to ask your client after using the interpreter for the first time whether he or she is comfortable working with that individual again.¹³⁷

It may be helpful to meet with an interpreter after meeting with a client to ask if he or she had any insights from the meeting based on his or her cultural background. Interpreters are sometimes able to share culturally relevant details that may help elucidate a client’s story.

For more information and suggested best practices for working with interpreters, please see <https://www.masslegalservices.org/content/working-interpreter-tip-sheets>.

There are many organizations that can assist with locating an interpreter. One resource that may be a good place to start is the Office of Court Interpreter Services (“OCIS”) for the Commonwealth of Massachusetts, which maintains a list of court interpreters available for out-of-court assignments,

¹³⁴ For information on obtaining an interpreter in Massachusetts state court, see THE COMMITTEE FOR THE ADMINISTRATION OF INTERPRETERS FOR THE TRIAL COURT, STANDARDS AND PROCEDURES OF THE OFFICE OF COURT INTERPRETER SERVICES 29-32 (2009), available at <https://www.mass.gov/files/documents/2016/08/sw/ocis-standards-procedures.pdf> [<https://perma.cc/MQ23-3XCR>].

¹³⁵ See Leidholdt & Scully, *supra* note 34, at 176-77; WHO ETHICAL & SAFETY RECOMMENDATIONS, *supra* note 124, at 14-17.

¹³⁶ See Leidholdt & Scully, *supra* note 34, at 176-77; WHO ETHICAL & SAFETY RECOMMENDATIONS, *supra* note 124, at 14-17.

¹³⁷ Leidholdt & Scully, *supra* note 34, at 176.

available at <https://www.mass.gov/about-the-office-of-court-interpreter-services>. Numerous other organizations also provide translation services, including local and not-for-profit organizations.

4.9. Relationship Between Human Trafficking and Domestic Violence

Human trafficking and domestic violence have many elements in common; however, they are not the same. Human trafficking is the exploitation of people for forced labor or commercial sex. Domestic violence is a pattern of behavior used by one partner to maintain power and control over another partner in an intimate relationship.¹³⁸

However, domestic violence often serves as a gateway, or “push factor,” into trafficking: victims of domestic violence may fall prey to perpetrators while attempting to escape abuse in their homes. Conversely, people may become trapped in abusive intimate-partner relationships after or in connection with becoming a victim of sex or labor trafficking. These victims are often isolated and lack the financial support, education, or skills to end the abuse. It is important for attorneys to recognize the relationship between domestic violence and human trafficking, and gently inquire about abuse at the outset.¹³⁹

The relationship between domestic violence and trafficking is amplified when an individual is exploited by a family member or intimate partner. Many believe that trafficking perpetrated by family members or intimate partners is highly underreported, and usually involves complex emotional ties between the victim and perpetrator. A perpetrator of trafficking may establish a victim’s trust with promises of love and protection, make her dependent for shelter and economic support, and then pressure or coerce her into prostitution or other forms of trafficking. This type of bond, forged through manipulation and abuse, is difficult to break and is particularly effective on younger victims. Such victims may not self-identify as victims of trafficking at all, but may instead wish to protect their perpetrators.

Although advocates have long pointed to the overlap between domestic violence and human trafficking, there is now increasing recognition of the *legal* overlap between the two crimes.¹⁴⁰ For example, forced non-commercial sex may qualify as involuntary servitude, even in the context of an intimate partner relationship.¹⁴¹ Accordingly, attorneys should look for signs of forced labor by an intimate partner or family member. Also, attorneys have increasingly argued, with some success, that a “commercial sexual act” for the purposes of the federal sex trafficking crime may include the exchange of intangible items, like reputational benefits. For example, Plaintiffs have sued Harvey Weinstein under the TVPA, arguing

¹³⁸ See What is Domestic Violence?, National Domestic Violence Hotline, *available at* <https://www.thehotline.org/is-this-abuse/abuse-defined/> [<https://perma.cc/7HHK-GXE8>].

¹³⁹ See BRUGGEMAN & KEYES, *supra* note 110 at 7-8, 13-14.

¹⁴⁰ See HUMAN TRAFFICKING LEGAL CTR., *supra* note 75; *Recognizing the Crime*, OFFICE FOR VICTIMS, DEP’T. OF JUSTICE, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/12-recognizing-the-crime/> [<https://perma.cc/AWE8-FB5N>] (listing domestic violence as a crime that may overlap with human trafficking).

¹⁴¹ See, e.g., *Ricchio v. McLean*, 853 F.3d 553, 555-56 (1st Cir. 2017); see generally Dorchen A. Leidholdt, *Human Trafficking and Domestic Violence: A Primer for Judges*, AMERICAN BAR ASSOCIATION (Jan. 1, 2013), *available at* https://www.americanbar.org/groups/judicial/publications/judges_journal/2013/winter/human_trafficking_and_domestic_violence_a_primer_for_judges/ [<https://perma.cc/TK32-K8LC>].

that his sexual assault conduct amounts to “sex trafficking” because it involved a sex act in exchange of promises of job advancement. Other courts have held that intangibles can be “things of value” for the purposes of establishing liability under the TVPA.¹⁴²

In light of these arguments, certain forms of abuse in the context of an intimate relationship or marriage may constitute the crimes of trafficking *and* domestic violence. In fact, domestic violence and trafficking often arise from the same set of circumstances or involve similar forms of physical, sexual, and/or psychological abuse, and other control tactics, such as threats, isolation, intimidation, economic abuse, or manipulation of fears of law enforcement involvement or deportation. Victims of domestic violence and trafficking often suffer similar physical injuries and emotional trauma, such as post-traumatic stress, depression, anxiety, or suicidal ideations. In order to fully understand the remedies and protections available to their clients, attorneys must be cognizant of this overlapping legal landscape.

When representing a victim who has suffered both human trafficking and domestic violence, an attorney should consider the following:

- *First*, victims of domestic violence may have additional protections available to them, including housing and social service options, immigration relief, and public or subsidized housing priorities. With respect to immigration relief, a history of domestic violence may be important to document when establishing hardship or reasons why a client cannot return to his or her country. *See infra* Section 5. With respect to housing, an individual with a criminal history related to sexual exploitation may present a history of domestic violence or human trafficking as a “mitigating circumstance.” In addition, the Violence Against Women Act prohibits public housing authorities from evicting tenants as a result of the tenant’s history as a victim of sexual exploitation.¹⁴³
- *Second*, understanding prior domestic abuse suffered by a human trafficking victim may uncover the type of manipulation and coercion tactics employed by a victim’s perpetrator. In turn, this information can be communicated to the court or the jury. It is therefore important to document both the domestic abuse and trafficking when presenting the client’s case.

¹⁴² *United States v Townsend*, 630 F.3d 1003, 1010 (11th Cir. 2011) (“The four other courts of appeals that have addressed this issue have all held that intangibles can be things of value for this purpose.”); *see also United States v. Marmolejo*, 89 F.3d 1185, 1191–93 (5th Cir. 1996) (holding that the plain meaning of 18 U.S.C. § 666(a)(1)(B) includes transactions involving intangibles within the term ‘anything of value’ and collecting cases construing ‘anything of value’ in other criminal statutes to include intangibles); *United States v. Estrada-Tepal*, 57 F. Supp. 3d 164, 169 (E.D.N.Y. 2014) (noting that “expansiveness was a legislative goal in enacting the statute” and agreeing with prosecutors that it “criminalizes a broad spectrum of conduct”). For further discussion on this, *see generally*, Dahlstrom, *The Elastic Meaning(s) of Human Trafficking*, *supra* note 71; Charles Doyle, CONG. RESEARCH SERV., SEX TRAFFICKING: AN OVERVIEW OF FEDERAL CRIMINAL LAW 7 (2015), available at: <https://fas.org/sgp/crs/misc/R43597.pdf> [<https://perma.cc/3FQU-PT4G>].

¹⁴³ *See* 34 U.S.C. § 12491(b)(1); 24 C.F.R. § 5.2005(b).

- *Third*, it is important to recognize that a client may be vulnerable to domestic violence even after ending the human trafficking relationship. Therefore, if signs of domestic violence emerge, it is essential to recognize them and be prepared to make appropriate emergency and long-term referrals. For more information about domestic violence resources in Massachusetts, please see the [MassLegalHelp](#) website.¹⁴⁴ Also, attorneys or victims can contact SafeLink, a 24-hour hotline for domestic abuse survivors, at (877) 785-2020.
- *Fourth*, victims of domestic violence and human trafficking frequently do not disclose their circumstances and may recant their initial accusations in order to protect themselves or their abusers.
- *Fifth*, victims of domestic violence *may* qualify as victims of labor or sex trafficking. This is an emerging area of human trafficking law, but it is important to explore. For example, if a perpetrator of domestic violence forces a victim to do domestic work in the home, this could rise to the level of forced labor. Additionally, if the perpetrator coerces the victim to have sex in exchange for a place to live, this may rise to the level of a “commercial sex act” and therefore qualify as sex trafficking.

For more information about the connection between domestic violence and human trafficking, see *The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation* by Amy Barasch and Barbara C. Kryszko.¹⁴⁵ The Human Trafficking Legal Center’s Human Trafficking and Domestic Violence Fact Sheet may also be helpful.¹⁴⁶

4.9.1. Examples of the Relationship Between Human Trafficking and Domestic Violence

The following case examples illustrate the connection between domestic violence and human trafficking.

- **Lola** fled her native country of Uganda because her husband was abusive. He beat her almost every week and threatened to kill her. She feared for her life and eventually sought a way to leave Uganda. She talked with a friend who told her about a position working as a nanny in the United States. She was told that she would be paid one thousand dollars per month and would be able to go to school. She also believed that she could send the money home to her

¹⁴⁴ Available at <https://www.masslegalhelp.org/domestic-violence> [<https://perma.cc/4KBD-8TUC>].

¹⁴⁵ Amy Barasch & Barbara C. Kryszko, *The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS*, supra note 34, at 83. (Jill L. Goodman & Dorchen A. Leidholdt eds., 2013), available at http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/LMHT_0.pdf [<https://perma.cc/B7XR-DNMS>].

¹⁴⁶ Human Trafficking Legal Center, *Human Trafficking and Domestic Violence Fact Sheet*, (2018) available at <https://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-and-Domestic-Violence-Fact-Sheet.pdf> [<https://perma.cc/366M-V3FJ>].

young child so that he could have an education. The Ugandan family paid for her air travel to the United States, but when she arrived, she found a very different reality than she expected. She was told to work every day for over fourteen hours per day. She was paid only \$300 per month, and she could not leave the apartment complex. She could only call her family in the presence of her employers. She worked tirelessly to care for two children, cook for the family, and clean the apartment. However, her employers often became angry with her, insulting her and cursing. They threatened to deport her, and she feared that she would be sent back to her husband in Uganda and killed.

- **Dadao** married her husband in China and hoped to start a family. When she became pregnant with a girl, her husband became upset with her and became physically and emotionally abusive. She gave birth and later became pregnant again despite her use of the government-prescribed intra-uterine device. She and her husband faced fines and punishment from the Chinese government for failure to obey the one-child policy. This made her husband increasingly abusive to her. She felt like she had nowhere to turn. Eventually, fearing for her life, Dadao contracted with a “snakehead” to flee to the United States. When she arrived in the United States, she was faced with a debt of \$20,000 for her travel. She wanted to file for asylum, but she could not afford an attorney. She desperately sought employment and found work in a massage parlor out-of-state. When she arrived at the massage parlor, she was told that she could not leave. The owner took her passport and refused to give it back until she finished working. She was pressured to provide sexual services to clients. The owner told her that the police and local judges were customers at the massage parlor, and she had no power because she was not in the country legally. Dadao feared being sent back to China to her abusive husband.

5. Immigration Remedies for Victims of Human Trafficking

Note: *Victims of human trafficking have diverse legal needs that cut across various areas of law. This chapter summarizes potential immigration relief, but attorneys should be attentive to other legal needs that may arise in other areas of law.*

5.1. Overview of Victim-Based Visas

5.1.1. T Visas for Victims of Human Trafficking

The Trafficking Victims Protection Act (“TVPA”) provides a pathway to legal immigration status known as T nonimmigrant status, or more commonly known as the “T visa,” for non-citizen victims of severe forms of human trafficking who meet certain requirements. 5,000 T visas are available annually, a cap that has never been reached.¹⁴⁷ There are no caps on qualifying derivative applications.¹⁴⁸ T nonimmigrants may also qualify for lawful permanent residency if they meet certain requirements.¹⁴⁹

5.1.1.1. Requirements to Obtain a T visa

To qualify for a T visa, an individual must meet the following four requirements:

1. **The individual must be a victim of a “severe form of trafficking.”**¹⁵⁰ A “severe form of 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 subsection to involuntary servitude, peonage, debt bondage, or slavery.”¹⁵¹

This includes those who have experienced trafficking in the United States as well as cases wherein there was attempted trafficking into the United States.¹⁵²

¹⁴⁷ 8 U.S.C. § 1184(o)(2).

¹⁴⁸ 8 U.S.C. § 1184(o)(3).

¹⁴⁹ INA § 245(l); 8 U.S.C § 1255(l).

¹⁵⁰ 8 U.S.C. § 1101(a)(15)(T)(i)(I). A “severe form of trafficking” is defined in 22 U.S.C. § 7102 and Section 103 of the TVPA.

¹⁵¹ 22 U.S.C. § 7102(9)(A)-(B). Many of these terms are further outlined in 8 C.F.R. § 214.11(a).

¹⁵² 8 C.F.R. § 214.11(f)(1).

2. **The victim must be currently present in the United States on account of trafficking.**¹⁵³ A victim must demonstrate that:

- she is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry on account of trafficking. This includes if the individual is permitted to enter the United States in investigative or judicial processes associated with human trafficking;¹⁵⁴ and that
- her presence in the United States is “on account of trafficking.”¹⁵⁵

If a victim left the United States after escaping her trafficking situation, she cannot satisfy this requirement unless her reentry into the United States was either due to human trafficking or was in order to assist in the investigation or prosecution of human trafficking.¹⁵⁶

Note that there is no requirement that a victim *entered* the United States on account of trafficking. Rather, her current presence must be related to the trafficking. Therefore, if a victim became involved in human trafficking after entering the United States, she may still meet this requirement if she can show that her current presence is on account of human trafficking. For example, if she is cooperating with law enforcement and her presence is necessary for a successful prosecution, attorneys should argue that her presence in the United States is on account of trafficking.¹⁵⁷

In addition, in cases of attempted trafficking in the United States, an applicant may argue that “on account of trafficking” includes those “physically present in the United States ... or at a *port of entry* thereto on account of such trafficking” who were “subject[ed] to a severe form of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.”¹⁵⁸

3. **The victim must have complied with a reasonable request for assistance** from federal, state, or local law enforcement in the investigation of trafficking where acts of trafficking are at least one central reason for the commission of that crime; or wherein the victim is under 18 years of age or unable to cooperate with a request due to a physical or psychological trauma.¹⁵⁹

In cases involving applicants who experienced trafficking at the age of 18 or older, certification by a law enforcement agency on [Form I-914, Supplement B](#), is helpful but not required to satisfy this element.¹⁶⁰ Attorneys are encouraged to request Form I-914, Supplement B, when applying for a T visa, but

¹⁵³ 8 U.S.C. § 1101(a)(15)(T)(i)(II).

¹⁵⁴ 8 C.F.R. § 214.11(g).

¹⁵⁵ *Id.*

¹⁵⁶ *See* 8 U.S.C. § 1101(a)(15)(T)(i)(M); 8 C.F.R. § 214.11(g)(3).

¹⁵⁷ *See* 8 C.F.R. § 214.11(g).

¹⁵⁸ 8 C.F.R. § 214.11(g)(1).

¹⁵⁹ 8 U.S.C. § 1101(a)(15)(T)(i)(III).

¹⁶⁰ *See* 8 C.F.R. § 214.11(h)(1).

applicants can meet this requirement with other evidence. This may include a detailed statement by the applicant explaining: (1) all attempts to cooperate with law enforcement, including dates, places, and names and positions of law enforcement contacted; and (2) efforts undertaken by the victim to obtain [Form I-914, Supplement B](#).¹⁶¹ Such evidence may also include a grant of Continued Presence (*see supra* [Section 5.1.2](#)) and any other evidence, including police reports, criminal dockets, and/or other documentation establishing that the applicant responded to a reasonable request for assistance from law enforcement. Attorneys are encouraged to document all attempts to cooperate and to request the Supplement B to satisfy this request. In cases where a Supplement B cannot be obtained and Continued Presence is not granted, USCIS will give equal weight to any other credible evidence of victimization.¹⁶² There is no requirement to wait for the signed Supplement B in order to apply for the T visa.

Note that two categories of individuals are exempt from the cooperation requirement: (1) children under 18 years of age; and (2) victims who are “unable to cooperate . . . due to physical or psychological trauma.”¹⁶³ To demonstrate physical or psychological trauma, a victim should submit evidence to meet this requirement. This can include the applicant’s affidavit as well as letters or affidavits from mental health or medical professionals to show why she would be unable to comply with a reasonable request for assistance.¹⁶⁴

These exceptions to law enforcement cooperation should be used sparingly as relying them may eliminate eligibility for early adjustment of status and may increase scrutiny from USCIS when adjudicating the underlying application for T nonimmigrant status. Additionally, it may increase the difficulty of qualifying for derivatives based on fear of retaliation.¹⁶⁵

There can be risks associated with victims engaging with law enforcement, both in terms of criminal liability and heightened risk of immigration consequences, such as removal. As such, attorneys should complete a criminal and immigration liability assessment before advising the victim to report to law

¹⁶¹ See 8 C.F.R. § 214.11(h)(2); SUZANNE B. SELTZER ET AL., IDENTIFICATION AND LEGAL ADVOCACY FOR TRAFFICKING SURVIVORS, THE SELTZER FIRM LLC at 14 (4th ed. 2018), available at: <http://theseltzerfirm.com/wp-content/uploads/2018/03/T-Visa-Manual.pdf> [<https://perma.cc/4PJP-ZXTL>].

¹⁶² Classification for Victims of Severe Forms of Human Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92,266, 92,272.

¹⁶³ 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb)-(cc).

¹⁶⁴ Seltzer et al., *supra* note 161, at 15-16 (stating that applicants are encouraged to submit any other credible evidence to meet this requirement, including “the applicant’s own statement of trauma, a signed statement from a qualified professional,” such as a medical professional, social worker, or victim advocate, who attests to the victim’s mental state, and medical, psychological, and medical records which are relevant to the trauma); Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 8 C.F.R. §§ 212, 214, 245, 274a.

¹⁶⁵ Individuals wishing to qualify for derivative status on the basis of fear of retaliation must show that there is a present danger of retaliation as a result of their escape from trafficking or cooperation with law enforcement. Therefore, lack of cooperation may undermine the ability to obtain derivative status on this ground. See INA § 101(a)(15)(T)(ii)(III).

enforcement. This is particularly important when the victim has a criminal history or prior removal orders, and/or there are factors that may result in negative immigration consequences for the victim.

4. **The victim is likely to suffer extreme hardship involving unusual and severe harm if removed from the United States.**¹⁶⁶ Attorneys should carefully document why it would be especially challenging for the victim to return to her country of origin. Economic need alone is not sufficient to meet this standard; however, economic hardship that increases the likelihood of re-victimization upon return may be considered.¹⁶⁷ The statutory factors considered in determining whether an applicant satisfies this requirement include, but are not limited to:

1. The age and personal circumstances of the applicant;
2. Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
3. The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
4. The impact of the loss of access to the U.S. courts and criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
5. The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
6. The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
7. The likelihood that the perpetrator of trafficking in persons or others acting on behalf of the perpetrator of trafficking in the foreign country would severely harm the applicant; and
8. The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.¹⁶⁸

¹⁶⁶ 8 U.S.C. § 1101(a)(15)(T)(i).

¹⁶⁷ See 8 C.F.R. § 214.11(i).

¹⁶⁸ See *id.*

For more information about T visa eligibility requirements and the process of applying for a T visa, see Suzanne B. Seltzer et al., NY Anti-Trafficking Network Legal Subcommittee, Identification and Legal Advocacy for Trafficking Survivors (4th ed. 2018), available at <http://theseltzerfirm.com/wp-content/uploads/2018/03/T-Visa-Manual.pdf> [<https://perma.cc/4PJP-ZXTL>].

5.1.1.2. Waiver of Inadmissibility

With few exceptions, a victim must not be “inadmissible” to qualify for a T visa.¹⁶⁹ This requirement is often a challenge for trafficking victims. Section 212 of the Immigration and Nationality Act (“INA”) provide a comprehensive list of grounds of inadmissibility. Grounds for inadmissibility commonly include entry without inspection, certain criminal convictions, prostitution, unlawful presence in the United States,¹⁷⁰ material misrepresentations to obtain an immigration benefit, false claims to U.S. citizenship, and prior removal orders.¹⁷¹

However, an expansive waiver of inadmissibility is available when applying for a T visa.¹⁷² The Attorney General may waive most grounds of inadmissibility for T visa applicants if he determines that the activities rendering the person inadmissible: (1) were caused by, or were incident to, the severe trafficking; or (2) warrants the positive exercise of discretion pursuant to section 212(d)(3) of the INA.¹⁷³ An applicant may obtain a waiver of inadmissibility by submitting a completed [Form 1-192](#) with supporting documentation.¹⁷⁴ While applicants must pay a fee, a fee waiver is available using [Form I-912](#). In 2019, USCIS issued guidance making such waivers more difficult to obtain, and it is expected that the fees associated with the waiver will increase.¹⁷⁵ Therefore, it is important that individuals applying for a fee waiver carefully consider the instructions and consult with practitioners to determine the best practices to qualify.

¹⁶⁹ 8 U.S.C. § 1182(a).

¹⁷⁰ *I.e.*, presence after the expiration of the period of stay authorized by the Attorney General or presence without having been admitted or paroled, triggered after leaving the United States.

¹⁷¹ 8 U.S.C. § 1182(a).

¹⁷² 8 U.S.C. § 1182(d)(13).

¹⁷³ 8 U.S.C. § 1182(d)(13)(B)(ii); 8 U.S.C. § 1182(d)(13)(B)(i) (If a T visa applicant is inadmissible on health-related grounds under 8 U.S.C. § 1182(a)(1), the activities rendering the alien inadmissible do not need to be related to the severe trafficking); *See also* 8 U.S.C. § 1182(d)(i).

¹⁷⁴ 8 C.F.R. § 214.11(j).

¹⁷⁵ *See* USCIS Updates Fee Waiver Requirements (Oct. 25, 2019), available at <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements> [<https://perma.cc/VL8K-UVGB>]; Immigration Impact, USCIS Proposes Increased Fees for All Immigration-Related Application (Nov. 14, 2019), available at <http://immigrationimpact.com/2019/11/14/uscis-increased-fees-for-immigration-applications/#.XewPZZNKjBI> [<https://perma.cc/64CW-YXA3>].

Practice Tip: When determining whether to grant a fee waiver, USCIS considers factors such as whether the applicant’s household income is at or below 150% of the Federal Poverty Guideline when the application is filed, or whether the applicant is subject to extraordinary circumstances or expenses. The standard for these submissions is “any credible evidence,” and this should be cited in the cover letter.¹⁷⁶ As of this writing, USCIS no longer considers evidence of receipt of a means-tested benefit as sufficient evidence to qualify for a fee waiver.¹⁷⁷

5.1.1.3. *Benefits of the T visa*

A T visa provides a number of benefits for recipients. It grants victims permission to remain in the United States for four years, authorizes employment for this duration, and grants eligibility for permanent resident status after three years in T nonimmigrant status or the termination of the trafficking investigation or prosecution (whichever is earlier).¹⁷⁸ A T visa also provides an avenue for certain qualifying relatives to apply for T nonimmigrant status. First, applicants over 21 years of age at the date of application can apply for T nonimmigrant status for their spouses and children, and applicants under 21 can apply for their spouses, children, parents, and unmarried siblings who are under 18 years old.¹⁷⁹ Second, all applicants may apply for “any parent or unmarried sibling under 18 years of age or any adult or minor children of a derivative beneficiary of the [principal applicant], who ... faces a present danger of retaliation as a result of the alien’s [sic] escape from the severe form of trafficking or cooperation with law enforcement.”¹⁸⁰ Eligibility under this second option provides what is called “T-6” status. A person may derive “T-6” nonimmigrant status through his or her relationship *to a derivative beneficiary*, instead of to a principal applicant.¹⁸¹ The T-6 applicant must show that the derivative beneficiary actually received T nonimmigrant status through his or her relationship to the principal beneficiary.¹⁸² For a full explanation of T-6 status, and a chart showing the various relationships that can qualify, see USCIS’s 2014 policy memorandum, available at https://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/Interim_PM-602-0107.pdf.

¹⁷⁶ ASISTA IMMIGRATION ASSISTANCE, PRACTICE ADVISORY: FEE WAIVERS FOR VAWA SELF-PETITIONS, U AND T VISA APPLICATION, at 1, available at <https://asistahelp.org/wp-content/uploads/2019/02/Apendix-Sample-Language-Fee-Waivers.pdf> [<https://perma.cc/T69E-Z9YE>].

¹⁷⁷ See USCIS Updates Fee Waiver Requirements, *supra* note 175.

¹⁷⁸ SELTZER ET AL., *supra* note 161, at A-22 (stating that eligibility for permanent resident status requires Attorney General to certify that the investigation and prosecution of the trafficking case is complete).

¹⁷⁹ 8 U.S.C. § 1101(a)(15)(T)(ii)(I)-(II).

¹⁸⁰ INA § 101(a)(15)(T)(ii)(III).

¹⁸¹ See USCIS Policy Memorandum, “New T Nonimmigrant Derivative Category,” (Oct. 30, 2014) at 5, available at: https://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/Interim_PM-602-0107.pdf [<https://perma.cc/E88G-L4QH>].

¹⁸² *Id.*

Once a victim is approved to receive a T visa, she becomes eligible to receive a “Certification Letter” from the Department of Health and Human Services. This letter entitles a T visa holder to numerous public benefits. For details regarding this certification letter and benefits, *see infra* [Section 10](#).¹⁸³

5.1.1.4. Adjustment to Permanent Resident Status

A T visa recipient’s status may be adjusted to permanent residence and eventual citizenship if he or she meets the following criteria:

1. The victim was physically present in the United States for three years in T nonimmigrant status or was physically present in the United States during the investigation and prosecution of the trafficking case and the Attorney General determines that the investigation or prosecution is complete, whichever time period is shorter;¹⁸⁴
2. The victim has maintained good moral character throughout her status as a T nonimmigrant visa holder; and
3. The victim (i) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; (ii) would suffer extreme hardship involving unusual and severe harm if removed; or (iii) was younger than 18 years of age at the time of victimization.¹⁸⁵

If a victim is otherwise inadmissible to the United States, she may not be adjusted to permanent resident status, unless she has obtained a waiver of inadmissibility in her application for T nonimmigrant status as described in [Section 5.1.1.2](#) above.¹⁸⁶

As long as a victim applies for permanent resident status, those with derivative T nonimmigrant status (i.e., those who obtained a T visa through a relative who was the victim of severe trafficking) may also apply for an adjustment of status as long as they already hold T nonimmigrant status in the United States.¹⁸⁷ The principal and derivative applicants must apply while still in valid T nonimmigrant status. If the victim’s status expires before adjustment, she must apply to extend her status before submitting an application to adjust status.

¹⁸³ Child victims of severe trafficking can instead obtain access to federal benefits and services by applying for an Eligibility letter, which does not require them to have granted a T visa. *See infra* [Section 10.1.1](#).

¹⁸⁴ To request a letter from the Department of Justice, attorneys should email Melissa Milam at T-adjustment.cert@usdoj.gov.

¹⁸⁵ 8 U.S.C. § 1255(l)(1).

¹⁸⁶ 8 U.S.C. § 1255(l)(2).

¹⁸⁷ 8 C.F.R. § 245.23(b) (derivative T visa holders outside of the U.S. are ineligible for adjustment of their status if they have not yet entered the United States).

5.1.1.5. Citizenship

Lawful permanent residents may apply for naturalization to U.S. citizenship after maintaining lawful permanent resident status for five years (three years if married to a U.S. citizen). Children born outside of the United States automatically become U.S. citizens when all of the following conditions are met: (1) the child is a legal permanent resident; (2) the child is under 18 years of age; (3) the child resides in the United States; and (4) the child resides in the physical custody of at least one parent who is a U.S. citizen, either by birth or through naturalization.¹⁸⁸

Practice Tip: It may be to an applicant’s benefit to apply for naturalization as early as possible. Individuals who may face prostitution-related or other criminal charges may risk losing their green card on that basis. Early naturalization helps minimize the chance that this will happen. For more information about representing human trafficking victims who are also defendants or potential defendants in criminal matters, see *infra* Section 7.

5.1.2. Continued Presence: Temporary Relief Before Obtaining a T Visa

A noncitizen victim of severe forms of trafficking may be eligible for Continued Presence status prior to the issuance of the T visa if the victim assists a federal law enforcement agency as a potential witness in a human trafficking investigation.¹⁸⁹ Continued Presence, while helpful documentation to include in a T visa application, is not a formal immigration status but does provide the victim with work authorization for two years and places them at lower priority for removal.

To qualify for Continued Presence, the victim needs only to be a *potential* witness in a trafficking criminal investigation. There is no requirement that there be an active prosecution or active assistance by the victim. The individual may also qualify if she or he has filed a civil action against the perpetrator of trafficking.¹⁹⁰ For an adult victim to acquire Continued Presence status, the federal law enforcement agency must place a request for the Continued Presence through the Immigration and Customs Enforcement (“ICE”) Parole Unit.¹⁹¹ If granted, the victim’s Continued Presence status is valid for two years and is renewable by the federal agency that submitted the original application.¹⁹²

¹⁸⁸ See USCIS Policy Manual, Chapter 4 – Automatic Acquisition of Citizenship after Birth (INA 320), available at: <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-4> [<https://perma.cc/69HF-XACG>].

¹⁸⁹ 28 C.F.R. § 1100.35(a); see also 22 U.S.C. § 7105(b)(1)(E).

¹⁹⁰ 22 U.S.C. § 7105(c)(3)(A)(iii); DEP’T OF HOMELAND SECURITY, *Information for Law Enforcement Officials Immigration Relief for Victims of Human Trafficking and Other Crimes*, available at: <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf> [<https://perma.cc/B47B-BZF3>].

¹⁹¹ 28 C.F.R. § 1100.35(a)

¹⁹² DEP’T. OF HOMELAND SECURITY, *Continued Presence: Temporary Immigration Status for Victims of Human Trafficking*, available at: https://www.dhs.gov/sites/default/files/publications/blue-campaign/19_1028_bc-pamphlet-continued-presence.pdf [<https://perma.cc/FH7K-SL3X>].

As with the T visa, once a victim of severe trafficking is granted Continued Presence, she becomes eligible to receive a “Certification Letter” from the Department of Health and Human Services, which entitles her to numerous federal benefits and services. For details regarding this process, *see infra* [Section 10](#).¹⁹³

One advantage of applying for Continued Presence status is speed: an application for Continued Presence can be processed significantly faster than an application for a T visa and does not preclude the victim from later applying for a T visa or other immigration relief.¹⁹⁴

Obtaining Continued Presence is particularly useful for victims who need work authorization and plan to apply for a T visa in the future. Having been granted Continued Presence is also supporting evidence that the individual is a trafficking victim and responded to a reasonable request for assistance from law enforcement for purposes of a T visa application. Continued Presence may also be attractive to victims who do not wish to remain in the United States indefinitely. However, attorneys should keep in mind that the Continued Presence is tied to the victim’s continued cooperation in the investigation and/or prosecution of the trafficking crime. Therefore, if the victim is not interested in cooperating and/or changes her mind, it may be difficult to retain Continued Presence.

5.1.3. U Visas for Victims of Violent Crime

A U visa may also be an avenue to immigration relief for victims of human trafficking. U visas provide a route to legal immigration for victims of certain qualifying crimes, including domestic violence and human trafficking. It is available to victims who cooperate with a qualifying agency investigation and/or prosecution of the crimes of which they were victims, and meet other requirements. The number of U visas is capped annually by statute at 10,000.¹⁹⁵ Currently processing times are very long—a period of years—due to the cap being reached. Please contact experienced immigration attorneys for information about processing times.

¹⁹³ Child victims of severe trafficking can instead obtain access to federal benefits and services by applying for an Eligibility letter, which does not require them to have been granted Continued Presence status. *See infra* [Section 10.1.1](#).

¹⁹⁴ As of the time of writing, T visas took between approximately nineteen and twenty-six months to process. *See USCIS Processing Time Information for our Vermont Service Center*, <https://egov.uscis.gov/processing-times/> [<https://perma.cc/R9XQ-QYDV>] (Select “I-914 Application for T Nonimmigrant Status” and “Vermont Service Center” from drop down menus).

¹⁹⁵ 8 U.S.C. § 1184(p)(2)(A) (derivatives [i.e., immediate family members planning to join the principal] are not subject to an annual cap); *see id.* § 1184(p)(2)(B).

5.1.3.1. Requirements to Obtain a U visa

To obtain a U visa, an applicant must satisfy four requirements:

1. The individual is a victim of qualifying criminal activity, including but not limited to domestic violence or human trafficking;¹⁹⁶
2. The victim suffered substantial physical or mental abuse due to the criminal activity;
3. The victim possesses information concerning the criminal activity;
4. The victim “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the criminal activity, as certified by a law enforcement agency; and
5. The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military institutions) or the territories and possessions of the United States.¹⁹⁷

To demonstrate cooperation with law enforcement, the victim **must** obtain a “U Nonimmigrant Status Certification,” or [Form I-918, Supplement B](#), from the certifying agency prosecuting the underlying criminal activity or from a judge. The requirement to cooperate continues after the U visa is issued, and requires that, since the initiation of cooperation, the victim “has not refused or failed to provide information and assistance reasonably requested” by law enforcement.¹⁹⁸ In contrast to the T visa context, the Supplement B is required, and the individual is not eligible to apply for a U visa absent certification.

As with the T visa, an applicant must not be “inadmissible” in order to obtain a U visa.¹⁹⁹ U visa applicants are often “inadmissible” for many of the same reasons as T visa applicants,²⁰⁰ and likewise, an expansive waiver of inadmissibility is available for U visa applicants.²⁰¹ There are slightly different grounds that are expressly excluded from the Attorney General’s discretionary waiver in comparison

¹⁹⁶ The enumerated crimes are: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, 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, fraud in foreign labor contracting, or attempt, conspiracy, or solicitation to commit any of the aforementioned crimes. 8 U.S.C. § 1101(a)(15)(U)(iii).

¹⁹⁷ 8 U.S.C. § 1101(a)(15)(U)(i); 8 C.F.R. § 214.14(b).

¹⁹⁸ 8 C.F.R. § 214.14(b)(3).

¹⁹⁹ 8 U.S.C. § 1182(a).

²⁰⁰ See *supra* [Section 5.1.1.2](#).

²⁰¹ 8 U.S.C. § 1182(d)(14).

with the T visa.²⁰² As with T visa applicants, a U visa applicant may obtain a waiver of inadmissibility by submitting a completed [Form I-192](#) with supporting documentation.²⁰³

Please note that victims who do not satisfy the federal definition of human trafficking may be eligible as U visa applicants under the state human trafficking definition.²⁰⁴ Human trafficking, as defined by Massachusetts law, is more expansive than the federal definition, and may include activities that are not captured by federal law. For example, in the sex trafficking context under Massachusetts law, a victim may qualify who did not experience “force, fraud, or coercion” because this is not required under state law. Similarly, the labor trafficking statute in Massachusetts includes a more diverse list of prohibited means.

For more information about U visa eligibility requirements and the process of applying for a U visa, see SUZANNE B. SELTZER ET AL., NY ANTI-TRAFFICKING NETWORK LEGAL SUBCOMMITTEE, IMMIGRATION RELIEF FOR CRIME VICTIMS: THE U VISA MANUAL (2010), available at <https://www.aaldef.org/uploads/pdf/U-Visa-Manual.pdf> [<https://perma.cc/2J7X-B3SV>].

5.1.3.2. Benefits of the U visa

A U visa offers victims a number of benefits including authorization to stay in the United States for four years,²⁰⁵ employment authorization,²⁰⁶ and eligibility for permanent resident status after three years in U visa status.²⁰⁷ U visa applicants can also file for certain derivative family members: all applicants may file for spouses and children, and applicants under 21 may also file for parents and certain siblings.²⁰⁸

5.1.3.3. Adjustment to Permanent Resident Status

A U visa holder’s status may be adjusted to permanent residence if he or she meets the following requirements:

1. The Secretary of the Department of Homeland Security (“DHS”) must not have determined, based on affirmative evidence, that the U visa holder unreasonably refused to provide assistance in a criminal investigation or prosecution;
2. The individual must have been physically present in the United States for a continuous period of three years; and

²⁰² Compare 8 U.S.C. § 1182(d)(14), with 8 U.S.C. § 1182(d)(13).

²⁰³ 8 C.F.R. § 214.14(c)(2)(iv).

²⁰⁴ See MASS. GEN. LAWS ch. 256, § 50.

²⁰⁵ 8 C.F.R. § 214.14(g).

²⁰⁶ *Id.* § 214.14(c)(7).

²⁰⁷ 8 U.S.C. § 1255(m).

²⁰⁸ 8 U.S.C. § 1101(a)(15)(U)(i); 8 C.F.R. § 214.14(f)(1).

3. In the opinion of the DHS Secretary, the holder’s continued presence in the United States must be justified on humanitarian grounds, to ensure family unity, or otherwise be in the public interest.²⁰⁹

Adjustment to permanent resident status is discretionary, and the burden is on the applicant to show that discretion should be exercised in his or her favor. Derivative U visa holders are also eligible to adjust their status to permanent resident. In addition, unlike derivative T visa holders, certain derivative family members may qualify to apply for adjustment of status if they have not yet received U visa status.

A maximum of 10,000 U visas, excluding visas for derivative family members, may be issued annually. When the cap has been reached annually, additional applicants whose applications are conditionally approved may be eligible for deferred action and employment authorization until a U visa is available.²¹⁰

5.1.4. Comparing T Visas and U Visas

Attorneys should carefully consider whether a T visa or U visa is more appropriate for certain victims. T visa recipients may receive greater access to public benefits and may be able to adjust their status to permanent resident earlier than U visa recipients if the trafficking investigation is complete. Moreover, U visas require law enforcement certification, whereas T visas do not. In addition, different grounds of inadmissibility are waivable in the T and U visa context, so this may impact some applicants. Also, the T and U visas have different statutory requirements, so attorneys should review and consider these differences carefully when deciding which types of visa applications to file. For example, a U visa applicant need not independently demonstrate hardship to return to his or her country of origin whereas a T visa applicant must meet this requirement.

Practice Tip: If appropriate, attorneys may submit both a T visa application and a U visa application concurrently on behalf of a victim. If an attorney decides to submit both applications concurrently or consecutively, the attorney should request that one application be decided first while the other application is held in abeyance.

5.2. Other Available Immigration Remedies

5.2.1. Violence Against Women Act Self-Petitions

The Violence Against Women Act (“VAWA”) allows noncitizen spouses, parents, and children of abusive U.S. citizens and lawful permanent residents to petition for lawful permanent residence without relying on their abusers to file for them. In family-based petitions, a U.S. citizen or lawful permanent resident usually files for his spouse, parent, or child. Congress recognized that in such situations an abusive spouse, parent, or child could exercise great power making it very difficult for abused spouses and

²⁰⁹ 8 U.S.C. § 1255(m); 8 C.F.R. § 245.24(b).

²¹⁰ 8 U.S.C. § 1184(p)(2); 8 C.F.R. § 214.14(d).

children to leave the relationship. In recognition of this dynamic, VAWA created an alternative route for abused spouses and children to apply independently for immigration relief.

5.2.1.1. Requirements of VAWA Self-Petitions

To qualify for a VAWA self-petition, an adult applicant must satisfy five requirements:

1. The abuser is a U.S. citizen or lawful permanent resident;
2. The petitioner has or had a good faith (i.e., non-fraudulent) marriage with the abuser (if the application is based on marriage as opposed to a parent-child relationship);²¹¹
3. The petitioner is subject to battery or extreme cruelty;
4. The petitioner resided with the abuser; and
5. The petitioner possesses good moral character.²¹²

5.2.1.2. Benefits of VAWA Self-Petitions

A VAWA self-petition provides applicants work permits while the application is pending, limited eligibility for federally funded public benefits, and eventual eligibility for lawful permanent resident status and citizenship. Children of petitioners may be derivative beneficiaries and receive similar benefits.²¹³

For more information on VAWA self-petitions, see National Immigrant Justice Center, *Pro Bono Attorney Manual on Legal Immigration Protections for Immigrant Survivors of Domestic Violence* (2013), available at

<https://www.immigrantjustice.org/sites/immigrantjustice.org/files/VAWA%20Pro%20Bono%20Manual%202013%2012%2003.pdf> [<https://perma.cc/UDJ6-GFYM>].

5.2.2. Asylum

Seeking asylum is another potential avenue for a trafficking victim to remain in the United States.

5.2.2.1. Requirements for Asylum

Applicants for asylum must satisfy various requirements:

1. The individual is a victim of past persecution or has a well-founded fear of future persecution in her country of origin;²¹⁴

²¹¹ A self-petitioner must apply within two years of divorce from the abuser or two years from termination of his status or death. 8 U.S.C. § 1154(a)(1)(CC).

²¹² 8 U.S.C. §§ 1154(a)(1)(A)(iii)-(iv), 1154(a)(1)(B)(ii)-(iii).

²¹³ *Id.* § 1154(a)(1)(B)(ii).

²¹⁴ *Id.* § 1101(a)(42)(A).

2. The persecution was or will be committed by government actors or by non-governmental actors whom the government is unable or unwilling to control;²¹⁵
3. The victim’s persecution is on account of race, religion, nationality, political opinion, or membership in a particular social group;²¹⁶ and
4. The application is filed within one year of arriving in the United States.²¹⁷

Applications for asylum generally must be filed one year of the victim’s arrival in the United States.²¹⁸ If a victim can demonstrate changed circumstances that “materially affect the applicant’s eligibility for asylum” or “extraordinary circumstances” that explain the delay in filing for an asylum application, the victim’s application for asylum may still be considered even if it is filed more than a year after the victim’s arrival in the United States.²¹⁹

Arguments that “victims of human trafficking” comprise a “particular social group” have generally been difficult, and have become more challenging after then-Attorney General Jeff Sessions’ decision in *Matter of A-B-*, which limited asylum for certain victims of domestic violence and redefined what constitutes a particular social group.²²⁰ Attorneys should consult with experienced asylum attorneys for guidance about how to construct their particular social group. In addition, attorneys should explore other ways to make an argument that the persecution is “on account” of other grounds, such as race, religion, nationality, or political opinion. Often, there are multiple arguments for nexus in trafficking cases. For example, a trafficking victim may have fled her country of origin due to her political organizing and this left her vulnerable to trafficking in the United States. In these cases, attorney should explore all possible grounds for asylum.

Practice Tip: Attorneys should work closely with applicants to document their claims. This may include requesting medical or psychological evaluations and gathering as many supporting statements as possible. These evaluations provide very important evidence in support of the victim’s case and may also help the victim be prepared to offer his or her testimony.

²¹⁵ See *Anacassus v. Holder*, 602 F.3d 14, 20 (1st Cir. 2010) (quoting *Sok v. Mukasey*, 526 F.3d 48, 53 (1st Cir. 2008)) (stating persecution must be “the direct result of government action, government-supported action, or government’s unwillingness or inability to control private conduct”); see also *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (overruling *Matter of A-R-C-G-*, and refusing to extend protection to people fleeing domestic violence and gang violence).

²¹⁶ 8 U.S.C. § 1101(a)(42)(A).

²¹⁷ *Id.* § 1158(a)(2)(B).

²¹⁸ *Id.*

²¹⁹ *Id.* § 1158(a)(2)(D).

²²⁰ *Backgrounder and Briefing on Matter of A-B-*, UC HASTINGS CENTER FOR GENDER & REFUGEE STUDIES (last updated Aug. 2018), available at: <https://cgrs.uchastings.edu/matter-b/backgrounder-and-briefing-matter-b> [<https://perma.cc/9JQ6-ND2L>].

5.2.2.2. Benefits of Asylum

Individuals seeking asylum are eligible for work authorization after 180 days and can apply for work eligibility after 150 days. Additionally, individuals seeking asylum are eligible to receive a social security card once granted work authorization and/or status, and are eligible to apply for derivative status, as well. Once granted asylum, asylees can apply for legal permanent residence after they have been present in the United States for one year after the asylum grant and may apply for citizenship status five years after the grant of permanent residency.

5.2.3. Special Immigrant Juvenile Status

A child who has been abused, abandoned, or neglected by one or both of her parents may petition for Special Immigrant Juvenile status (“SIJS”). Once a child has been granted SIJS, she may be eligible to apply for lawful permanent residence.

5.2.3.1. Requirements of SIJS Petitions

To qualify for SIJS, the individual must satisfy four requirements:

1. The petitioner is a “child” at the time of filing (under 21 for immigration purposes and under Massachusetts law);²²¹
2. The petitioner was abused, abandoned, or neglected by one or both of her parents, under the state’s definitions of “abuse,” “neglect,” and/or “abandonment,” or a similar basis under state law;
3. A state court has declared that reunification of the petitioner with one or both of her parents is not viable due to that abuse, abandonment, and/or neglect; and
4. A state court has determined that it would not be in the child’s best interest to return to her country of origin.

Massachusetts allows the Probate and Family Court to maintain jurisdiction over petitioners between the ages of eighteen and twenty-one, pursuant to its equity powers under Mass. Gen. Laws ch. 119, § 39M.²²² Once the state court makes these findings of fact and rulings of law, the petitioner is eligible to apply for SIJS. If she is not in removal proceedings, she may apply for both SIJS and lawful permanent residence concurrently. However, if she is in removal proceedings, she must take each step in turn, by first submitting the order from the state court, along with an I-360 (SIJS) application and any supporting evidence to USCIS. The petitioner will then attend an interview on the I-360 petition with a USCIS official. If the I-360 petition is granted, the petitioner may then be eligible to apply for lawful permanent

²²¹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d)(6), 122 Stat. 5044, 5080 (2008); *see also Recinos v. Escobar*, 473 Mass. 73 (2016).

²²² *Recinos*, 473 Mass. at 741-42. However, please note that it is important to ensure that the applicant obtains an order from a Massachusetts court before her twenty-first birthday.

residence. Please note that current wait times for priority times to adjust status have been very long. Attorneys should consult with experienced practitioners about current processing times, especially if the victim is in removal proceedings.

For more information about I-360 petition eligibility requirements and the process of applying, see Immigrant Legal Resource Center, “Introduction and Overview to Special Immigrant Juvenile Status” (June 2018), available at https://www.ilrc.org/sites/default/files/resources/sijs-5th-2018-ch_03.pdf [<https://perma.cc/GL8Z-83BT>].

5.2.3.2. *Benefits and Drawbacks of SIJS Petitions*

SIJS provides applicants with a path to lawful permanent resident status and employment authorization. However, the applicant should be made aware that a grant of SIJS will prohibit her from petitioning for immigration status for her parents in the future.²²³

5.2.4. *Additional Immigration Remedies*

Trafficking victims may be eligible for other immigration remedies as well, such as a waiver of the joint filing requirement to petition to remove conditions of residence and/or VAWA Cancellation of Removal.²²⁴ Attorneys should think broadly about possible immigration remedies for the victims, particularly if a victim’s situation does not fit easily into one of the remedies previously described.

²²³ 8 U.S.C. § 1101(a)(27)(J)(iii)(II).

²²⁴ See BRUGGEMAN & KEYES, *supra* note 110, at 22-24.

5.2.5. Comparison of the Requirements of Various Immigration Remedies

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
T visa	1. Victim of a "severe form of trafficking"	<ul style="list-style-type: none"> • Permission to remain in the United States 	<ul style="list-style-type: none"> • Requirements of: "severe form of trafficking;" "in United States due to trafficking," and "likely to suffer extreme hardship involving unusual and severe harm if removed" 	<ul style="list-style-type: none"> • Victims who meet the "severe form of trafficking" and "extreme hardship involving unusual and severe harm if removed" requirements
	2. Currently present in the United States due to trafficking	<ul style="list-style-type: none"> • Employment authorization for up to four years 	<ul style="list-style-type: none"> • Adult victims must cooperate with law enforcement ("respond to a reasonable request from law enforcement") unless they meet the trauma exception. 	
	3. Responded to a reasonable request for assistance from law enforcement investigating the trafficking (no certification required)	<ul style="list-style-type: none"> • Eligibility for permanent resident status after three years or termination of investigation or prosecution (whichever is earlier) 	<ul style="list-style-type: none"> • Inadmissibility grounds must be "caused by" or "incident to" human trafficking or warrants the positive exercise of discretion. 	
	4. Victim is likely to suffer extreme hardship involving unusual and severe harm if removed ²²⁵	<ul style="list-style-type: none"> • If applicant is over 21, ability to apply for T nonimmigrant status for spouses and children • If applicant is under 21, ability to apply for T nonimmigrant status for spouses, children, parents, and certain siblings 		

²²⁵ 8 U.S.C. § 1101(a)(15)(T)(i). Note that there is an exception to the requirement to assist law enforcement for children under age 18, and for those who are "unable to cooperate . . . due to physical or psychological trauma" (in consultation with the Attorney General). *Id.* § 1101(a)(15)(T)(i)(III).

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
Continued Presence	1. Victim is assisting a federal law enforcement agency as a potential witness to that trafficking ²²⁶	<ul style="list-style-type: none"> Application may be faster than the process for the T visa relief 	<ul style="list-style-type: none"> Does not confer immigration status or make victim eligible for permanent immigration status 	<ul style="list-style-type: none"> Victims who are seeking work authorization
	2. Federal law enforcement agency places the request through the Immigration and Customs Enforcement (“ICE”) Parole Unit	<ul style="list-style-type: none"> Victim is also eligible for employment authorization and public benefits to the same extent as a refugee Does not preclude the victim from later applying for a T visa or other relief 		<ul style="list-style-type: none"> Victims who do not wish to remain in the United States but need time to get their affairs in order before returning home
U visa	1. Victim of qualifying criminal activity, including domestic abuse and human trafficking	<ul style="list-style-type: none"> Authorization to stay in the United States for four years²²⁷ Employment authorization²²⁸ Ability to apply for certain derivative family members 	<ul style="list-style-type: none"> A maximum of 10,000 U visas, plus visas for derivative family members, issued annually Long processing times 	<ul style="list-style-type: none"> Victims who were not married to their abusers and thus are ineligible for remedies under the VAWA Victims whose abuse amounts to a qualifying crime but not to severe trafficking as required for a T visa
	2. Suffered substantial physical or mental abuse due to the criminal activity	<ul style="list-style-type: none"> Eligibility for permanent resident status after three years of continuous presence in U status²²⁹ 	<ul style="list-style-type: none"> Note that applicants may receive conditional approval if a U visa is not available and will be placed in deferred action status (eligible for employment authorization) while waiting²³⁰ 	<ul style="list-style-type: none"> Victims not <i>currently</i> in the United States “on account of human trafficking” as required for a T visa (note however that a T visa does not require a victim to have <i>entered</i> the

²²⁶ 28 C.F.R. § 1100.35(a); *see also* 22 U.S.C. § 7105(b)(1)(E).

²²⁷ 8 C.F.R. § 214.14(g).

²²⁸ *Id.* § 214.14(c)(7).

²²⁹ 8 U.S.C. § 1255(m).

²³⁰ *Id.* § 1184(p)(2); 8 C.F.R. § 214.14(d).

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
	3. Possesses information concerning the criminal activity	<ul style="list-style-type: none"> Ability to extend U visa status to certain derivative family members 	<ul style="list-style-type: none"> Fewer public benefits available than in the T visa context 	<ul style="list-style-type: none"> United States on account of human trafficking)²³¹ Victims who would not suffer extreme hardship if removed, as required for a T visa²³²
	4. "Has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the criminal activity (certified by the agency) ²³³	<ul style="list-style-type: none"> Ability to apply for U derivative status for certain siblings and parents if applicant files before age of 21 years²³⁴ 	<ul style="list-style-type: none"> Requirement of U visa certification by certifying government agency 	
	5. The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military institutions) or the territories and possessions of the United States ²³⁵			
VAWA Self-Petition (for spouses)	1. The abuser is a U.S. citizen or lawful permanent resident	<ul style="list-style-type: none"> If abuser is a U.S. citizen, may be eligible for green card If abuser is lawful permanent resident, may be eligible for deferred action and work permit 	<ul style="list-style-type: none"> Victim must be married to, a child of, or the parent of the abuser 	<ul style="list-style-type: none"> Spouses, children, or parents of U.S. citizen or lawful permanent resident abusers
	2. Petitioner is in a good faith marriage with the abuser, or is the son/daughter of the abuser, or is the parent of the abuser	<ul style="list-style-type: none"> Less extensive eligibility for federally funded public benefits, compared to T visa 	<ul style="list-style-type: none"> Abuser must be a U.S. citizen or lawful permanent resident 	
	3. Petitioner was subject to battering or extreme cruelty	<ul style="list-style-type: none"> Eventual eligibility for lawful permanent resident status and citizenship 		

²³¹ See *supra* Section 5.1.1.1.

²³² See *supra* note 204, at 25.

²³³ 8 U.S.C. § 1101(a)(15)(U)(i) (2013); 8 C.F.R. § 214.14(b).

²³⁴ 8 U.S.C. § 1101(a)(15)(U)(i); 8 C.F.R. § 214.14(f).

²³⁵ 8 U.S.C. § 1101(a)(15)(U)(i) (2013); 8 C.F.R. § 214.14(b).

REMEDY	REQUIREMENTS	BENEFITS	DISADVANTAGES	BEST CANDIDATES
	<p>4. Petitioner lived with the abuser</p> <p>5. Petitioner possesses good moral character (a child under 14 years of age is presumed to be a person of good moral character)</p>	<ul style="list-style-type: none"> Children of petitioners may be derivative beneficiaries 		
Asylum	<p>1. Victim of past persecution or well-founded fear of future persecution²³⁶</p> <p>2. Persecution committed by government or by people the government is unable to control²³⁷</p> <p>3. Persecution is on account of race, religion, nationality, political opinion, or membership in a particular social group²³⁸</p> <p>4. Application is filed within one year of arriving in the United States²³⁹</p>	<ul style="list-style-type: none"> Can apply for eligibility to work after 180 days Can apply for legal permanent residence after one year in asylee status 	<ul style="list-style-type: none"> If application fails, referred to immigration court for deportation proceedings May be difficult to establish relevant social group related to human trafficking (check relevant case law) 	<ul style="list-style-type: none"> Members of social groups with well-founded fears of persecution in their home country

²³⁶ 8 U.S.C. § 1101(a)(42)(A).

²³⁷ See *Anacassus v. Holder*, 602 F.3d 14, 20 (1st Cir. 2010) (quoting *Sok v. Mukasey*, 526 F.3d 48, 53 (1st Cir. 2008)) (stating persecution must be “the direct result of government action, government-supported action, or government’s unwillingness or inability to control private conduct”).

²³⁸ 8 U.S.C. § 1101(a)(42)(A).

²³⁹ *Id.* § 1158(a)(2)(B).

6. Issues Specific to Children

Note: Victims of human trafficking often face a constellation of legal issues. While this chapter summarizes special considerations for representing minors who are victims of human trafficking, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.

6.1. Representation of Child Victims of Trafficking

6.1.1. The Experience of Child Victims of Trafficking, Particularly Sex Trafficking

Minor victims of trafficking have often endured particularly traumatic experiences. This is especially true of child victims of sex trafficking or commercial sexual exploitation of children (CSEC).²⁴⁰ From 2005 through May 2012, at least 480 children from Suffolk County alone received services related to CSEC.²⁴¹ The median age of these victims was 15 years old.²⁴² Fifteen percent were age 13 or younger, and the youngest of these victims was age 11.²⁴³ The vast majority of the victims (98 percent) were girls, and a majority (65 percent) were girls of color.²⁴⁴ Most had a history of running from placement, or child abuse, or both.²⁴⁵ Ten percent of these girls had been arrested for prostitution-related offense, and over 40 percent had confirmed or suspected involvement in out-of-state trafficking.²⁴⁶

The lives of child victims of sex trafficking are often marked by severe trauma, instability, and abandonment, rendering them more emotionally and situationally vulnerable to predators.²⁴⁷ Many are victims of sexual or physical abuse, chronic incest, or severe neglect.²⁴⁸ Many have experienced other disruptive family traumas as well, such as witnessing addiction or domestic violence, or separation from or the death of family members.²⁴⁹

²⁴⁰ Lisa Goldblatt Grace et al., *Commercial Sexual Exploitation of Children and the School Nurse*, THE JOURNAL OF SCHOOL NURSING, 1 (2012), available at <https://apha.confex.com/apha/141am/webprogram/Handout/Paper295674/Commercial%20Sexual%20Exploitation%20ofChildren%20and%20the%20School%20Nurse.pdf> [<https://perma.cc/A3R3-U6PZ>].

²⁴¹ PIENING & CROSS, *supra* note 7, at 5.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ PIENING & CROSS, *supra* note 7, at 5.

²⁴⁷ *Id.*

²⁴⁸ Lisa Goldblatt Grace, *Understanding the Commercial Sexual Exploitation of Children*, THE LINK: CONNECTING JUVENILE JUSTICE AND CHILD WELFARE 1, 3 (2009), available at <https://files.eric.ed.gov/fulltext/ED504481.pdf> [<https://perma.cc/PPR9-X82L>]. Of 106 women arrested or incarcerated for prostitution in Boston, 68% reported sexual abuse, and almost half reported being raped before the age of 10. *Id.* at 1.

²⁴⁹ *Id.* at 3.

Prolonged exposure to severe trauma may result in what practitioners refer to as “complex trauma.” Children have varying and different reactions to such trauma. Possible reactions include:

- being easily triggered or “set off” and more likely to react very intensely;
- struggling with self-regulation (i.e., knowing how to calm down) and lacking impulse control or the ability to think through consequences before acting; and
- appearing “spacey,” detached, distant, or out of touch with reality.²⁵⁰

Lawyers should be aware of the link between complex trauma and a child’s behavior and should also be aware that children who have suffered complex trauma are particularly vulnerable to perpetrators of trafficking. Children may be recruited face to face outside child welfare group homes or residential treatment facilities, at public transport hubs, or equally as frequently, on social media sites or other similar platforms.²⁵¹ A perpetrator may initially establish a child’s trust with promises of love, care, and protection, thereby establishing financial or emotional dependence, and later leverage that control to coerce the child into prostitution or other forms of trafficking.

6.1.2. Challenges of Working with Child Victims of Commercial Sexual Exploitation

Attorneys face unique challenges when working with child victims of commercial sexual exploitation. In particular, because child victims are emotionally and economically dependent upon their perpetrators, they may be more reluctant or fearful to leave than adult victims.²⁵² Lisa Goldblatt Grace, Executive Director of My Life My Choice, has summarized the effect on child victims as follows: “This process, and the violence, degradation, and brainwashing that follows, renders adolescent girls similar to battered women; the girl is both terrified of her perpetrator and willing to lay down her life, and her body, for his needs.”²⁵³ Ms. Goldblatt Grace has described this attachment as “trauma bonds”: fear mixed with psychological dependence, which creates an intense and powerful connection between the perpetrator of trafficking and the child victim.²⁵⁴ This unique form of coercion may make a child victim more reluctant to work with an attorney.²⁵⁵

Child victims of commercial sexual exploitation may be highly distrustful of adults, including attorneys, based on traumatic experiences in the past. They may also have been coached by their perpetrators on how to respond to questions from attorneys, social workers, or law enforcement personnel.²⁵⁶ In

²⁵⁰ National Child Traumatic Stress Network, Effects of Complex Trauma, <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma/effects> [<https://perma.cc/6JEJ-3U2X>].

²⁵¹ Grace et al., *supra* note 240, at 4.

²⁵² BRUGGEMAN & KEYES, *supra* note 110 at 13.

²⁵³ Grace et al., *supra* note 240, at 4.

²⁵⁴ *Id.*

²⁵⁵ *Id.*; Telephone Interview with Lisa Goldblatt Grace, Director, My Life My Choice (Feb. 15, 2013).

²⁵⁶ Eva Klain & Amanda Kloer, *Meeting the Legal Needs of Child Trafficking Victims*, NATIONAL HUMAN TRAFFICKING HOTLINE (2009) at 13, available at

addition, as a result of past abuse or to cope with current exploitation, child victims frequently suffer from substance use disorder and may have prior engagement with systems, including Department of Children and Families, juvenile court, and criminal court.²⁵⁷

6.1.3. Advice for Attorneys Representing Child Victims of Commercial Sexual Exploitation

Given the unique challenges presented by child trafficking victims, attorneys must approach the representation of child victims with care.

First, attorneys should be attentive to signs that a child may be a victim of commercial sexual exploitation.²⁵⁸ Child victims may be reluctant to tell adults about their situations due to shame or fear of being prosecuted. Attorneys should be aware of the risk factors, which are discussed in more detail in [Section 4](#). Other children may not self-identify as victims of commercial sexual exploitation, but may instead wish to protect their perpetrators, as described above.

Second, attorneys must be particularly sensitive and patient when representing child victims. A child victim may avoid disclosing important information. A child victim may also not understand the attorney-client privilege and may not believe that an attorney owes her a duty of confidentiality. Attorneys must listen carefully to minor clients and treat them with respect and compassion. Attorneys must also remain mindful that their job is not to “rescue” their clients, but rather to act as legal guides and zealous advocates. This means practicing client-directed representation, even if a child’s wishes conflict with what others feel is in his or her best interest.

Third, attorneys representing child victims of commercial sexual exploitation who have been accused of crimes may consider, with the client’s permission, sharing information necessary to help law enforcement and prosecutors understand the coercion that may have contributed to the crimes.²⁵⁹ Under federal and Massachusetts law, a child who is engaged in a commercial sexual act is by definition a victim of human trafficking.²⁶⁰ However, victims may still have other criminal liability, and this should be considered when deciding whether to cooperate with law enforcement and prosecutors.

Fourth, attorneys must be prepared to connect with other professionals who are able to address the child’s non-legal needs to ensure coordinated provision of services like stable housing, food, medical care, and mental health support.²⁶¹ Connecting a client to such resources may be more urgent than the client’s legal issues. It may be helpful to discuss these issues with the client’s case coordinator and

<https://humantraffickinghotline.org/sites/default/files/Meeting%20the%20Legal%20Needs%20of%20Child%20Trafficking%20Victims%20-%20ABA.pdf> [<https://perma.cc/E953-C555>].

²⁵⁷ See Grace et al., *supra* note 240, at 4.

²⁵⁸ See *supra* [Section 2](#).

²⁵⁹ See *infra* [Section 7](#).

²⁶⁰ 18 U.S.C. § 1591(a); MASS. GEN. LAWS ch. 265, § 50; MASS. GEN. LAWS ch. 119, § 21.

²⁶¹ See *infra* [Section 10](#); *supra* [Section 6.2.1](#).

multidisciplinary team to ensure coordinated care and avoid duplication of referrals or conflicting service plans. For more information on multidisciplinary teams, *see infra* [Section 6.2.3](#).

6.2. Protections for Children in Massachusetts

The Massachusetts Anti-Trafficking Statute contains certain provisions directed at child victims of human trafficking. First, the statute requires the involvement of the Department of Children and Families (DCF) to coordinate support for minors who are victims of human trafficking. This includes, for example, requiring a multidisciplinary team (“MDT”) to respond to reports of abuse or neglect involving a sexually exploited child or victim of labor trafficking. Second, the statute provides a “safe harbor” for sexually exploited children who may be charged with prostitution related offenses. This safe harbor is critical to the overall goals of the trafficking statute.

6.2.1. Role of Department of Children and Families

The Massachusetts Anti-Trafficking Statute requires DCF to provide for a sexually exploited child’s “welfare needs.”²⁶² Specifically, it:

- Defines a “child requiring assistance”²⁶³ to include “a sexually exploited child”;²⁶⁴
- Requires a DCF-provided advocate to accompany a sexually exploited child to all court appearances;²⁶⁵
- Requires DCF to immediately report to the district attorney and local law enforcement authorities any sexually exploited child or child trafficking victim;²⁶⁶
- Permits DCF (subject to appropriation) to contract with certain NGOs to train law enforcement officials likely to encounter sexually exploited children in their duties;²⁶⁷ and
- Allows DCF to apply for grants from the Victims of Human Trafficking Trust Fund, grants from the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention or any other federal agency, or grants from any other private source to fund the law enforcement training and services for sexually exploited children.²⁶⁸

²⁶² MASS. GEN. LAWS ch. 119, § 39K(a).

²⁶³ Technically, the Massachusetts Anti-Trafficking Statute amended the definition of a “child in need of services”—not a “child requiring assistance”—because that was the statutory scheme in place when the Massachusetts Anti-Trafficking Statute was drafted and enacted. In February 2013, a later bill amended the definition of a “child requiring assistance” to include a sexually exploited child. To avoid confusion, this Guide refers to the Massachusetts Anti-Trafficking Statute as if it amended the current statutory scheme.

²⁶⁴ MASS. GEN. LAWS ch. 119, § 21.

²⁶⁵ MASS. GEN. LAWS ch. 119, § 39K(a).

²⁶⁶ MASS. GEN. LAWS ch. 119, § 51B(a).

²⁶⁷ MASS. GEN. LAWS ch. 119, § 39K(d).

²⁶⁸ MASS. GEN. LAWS ch. 119, § 39K(e).

Children who are victims of commercial sexual exploitation may already be involved with DCF or another agency.²⁶⁹ Under the Massachusetts Anti-Trafficking Statute, mandated reporters must now file a 51A upon notification of a commercially sexually exploited child or victim of labor trafficking.²⁷⁰

In 2015, the Department of Children and Families announced a new Intake Policy, which specifies how they will handle reports of children who are victims of human trafficking.²⁷¹ The Intake Policy clarifies protocols for screening and investigation of reports of abuse or neglect of children.²⁷² In part, the Intake Policy:

- Requires non-emergency reports of abuse to be reviewed and screened within one business day—reduced from three days;²⁷³
- Creates a single child protection response to all screened in reports by assigning screened reports to an Investigation Trained Response Worker.²⁷⁴
- Introduces a Supervisor Policy to assist social workers in deciding whether to elevate cases to higher-level review by providing weekly individual supervision.²⁷⁵

Practice Tip: Some children lack accurate information about DCF or have strong opinions about DCF based on past experiences. If a child is not already involved with DCF, she may be wary of informing or involving the agency out of fear that her current guardians will lose custody. Thus, it is important to ensure that your client has accurate information about what DCF involvement may entail and that you are aware of any prior history the client may have with DCF.

6.2.2. Child Requiring Assistance and “Care and Protection” Petitions

The Massachusetts Anti-Trafficking Statute's Safe Harbor provision states that, before a child is arraigned for prostitution-related offenses, a Care and Protection (“C&P”) Petition or a Child Requiring Assistance (“CRA”) Petition will presumptively be filed.²⁷⁶

²⁶⁹ PIENING & CROSS, *supra* note 7, at 5.

²⁷⁰ Telephone Interview with Susan Goldfarb, *supra* note 110.

²⁷¹ Press Release, Governor Charlie Baker, *Governor Baker, DCF, Union Announce New Intake and Supervisor Policies* (Nov. 17, 2015), <http://www.mass.gov/governor/press-office/press-releases/fy2016/new-dcf-intake-and-supervisor-policies-announced.html> [<https://perma.cc/D8YN-M675>]; see also Department of Children and Families, *Protective Intake Policy* (Feb. 28, 2016), <https://www.mass.gov/files/documents/2016/08/sf/protective-intake-policy-2-28-16.pdf> [<https://perma.cc/V9W3-8FNR>].

²⁷² Press Release, Governor Charlie Baker, *Governor Baker, DCF, Union Announce New Intake and Supervisor Policies* (Nov. 17, 2015), <http://www.mass.gov/governor/press-office/press-releases/fy2016/new-dcf-intake-and-supervisor-policies-announced.html> [<https://perma.cc/D8YN-M675>].

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ MASS. GEN. LAWS ch. 119, § 39L(a).

6.2.2.1. Care and Protection Petition

Under a Care and Protection (“C&P”) Petition, the petitioner must swear that the child:

1. Is without necessary and proper physical or educational care and discipline;
2. Is growing up under conditions or circumstances damaging to the child’s sound character development;
3. Lacks proper attention of the parent, guardian with care and custody or custodian; or
4. Has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention.²⁷⁷

If a court grants a C&P Petition, custody of a child will be granted to someone other than the current custodian. The parent(s) or guardian(s) will be notified to appear in court and show cause why custody of the child should not be transferred to DCF or another appropriate agency or individual.²⁷⁸

The court may also issue an emergency order granting temporary custody to DCF if the petitioner can show “reasonable cause” to believe that:

1. The child is suffering from serious abuse or neglect or is in immediate danger of serious abuse or neglect; and that
2. Immediate removal of the child is necessary to protect the child from serious abuse or neglect.²⁷⁹

The parties have a right to a hearing on the issue of temporary custody within 72 hours of an emergency order. A court investigator is appointed to investigate the case. Then, unless the parent or guardian consents to give up custody of the child, there is a hearing on the merits of the C&P Petition under M.G.L. c. 119, § 26.²⁸⁰

6.2.2.2. Child Requiring Assistance Petition

Effective November 5, 2012, the legislature replaced what was formerly known as a Child In Need of Services (“CHINS”) Petition with the Child Requiring Assistance (“CRA”) Petition.²⁸¹ A minor’s parent, legal guardian, or custodian can file a CRA Petition as long as the minor meets any of the following:

²⁷⁷ MASS. GEN. LAWS ch. 119, § 24.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Trial Ct. of Mass., Admin. Office of The Juvenile Ct., HANDBOOK FOR PARENTS, LEGAL GUARDIANS, AND CUSTODIANS IN CHILD REQUIRING ASSISTANCE CASES (DEC. 3, 2012), available at

<https://www.mass.gov/files/documents/2016/08/tv/child-requiring-assistance-parent-handout.pdf>
[\[https://perma.cc/5HDS-8JEH\]](https://perma.cc/5HDS-8JEH).

1. Repeatedly runs away from the home of the child’s parent, legal guardian, or custodian;
2. Repeatedly fails to obey the lawful and reasonable commands of the child’s parent, legal guardian, or custodian, thereby interfering with their ability to adequately care for and protect the child;
3. Repeatedly fails to obey the lawful and reasonable school regulations of the child’s school;
4. Is habitually truant; or
5. Is a sexually exploited child.²⁸²

If the court finds that a minor falls under one of the above categories, it will grant the CRA Petition and require the minor to engage in social services.

A “sexually exploited child” is a child who:²⁸³

1. Is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
2. Engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
3. Is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under section 4A of chapter 272; or
4. Engages in common night walking or common streetwalking under section 53 of chapter 272.

Note that a police officer, not just the minor’s guardian, may file a CRA Petition for a sexually exploited child if the child repeatedly runs away from home or repeatedly fails to obey lawful and reasonable commands of a parent or guardian to the extent that it interferes with the guardian’s ability to adequately care for and protect the child.²⁸⁴ However, any party, including the minor, may file a motion to dismiss the CRA Petition.²⁸⁵

Practice Tip: A court may delay arraignment under the Safe Harbor provision to hear either a C&P Petition or a CRA Petition.²⁸⁶ Thus, these petitions may be helpful in preventing an arraignment under the statute.

²⁸² Families and Children Engaged in Services (“FACES”) Act, MASS. GEN. LAWS ch. 119, §§ 21, 39E.

²⁸³ MASS. GEN. LAWS ch. 119, § 21.

²⁸⁴ See TRIAL COURT OF MASS., JUVENILE CT. DEP’T, *Parent/Legal Guardian/Custodian/Law Enforcement Application for a Child Requiring Assistance for Sexually Exploited Child* [hereinafter “*Application for a Child Requiring Assistance for Sexually Exploited Child*”], available at: <https://www.mass.gov/doc/cra-application-sexually-exploited-child-iv-087/download> [<https://perma.cc/UBB8-CEAU>].

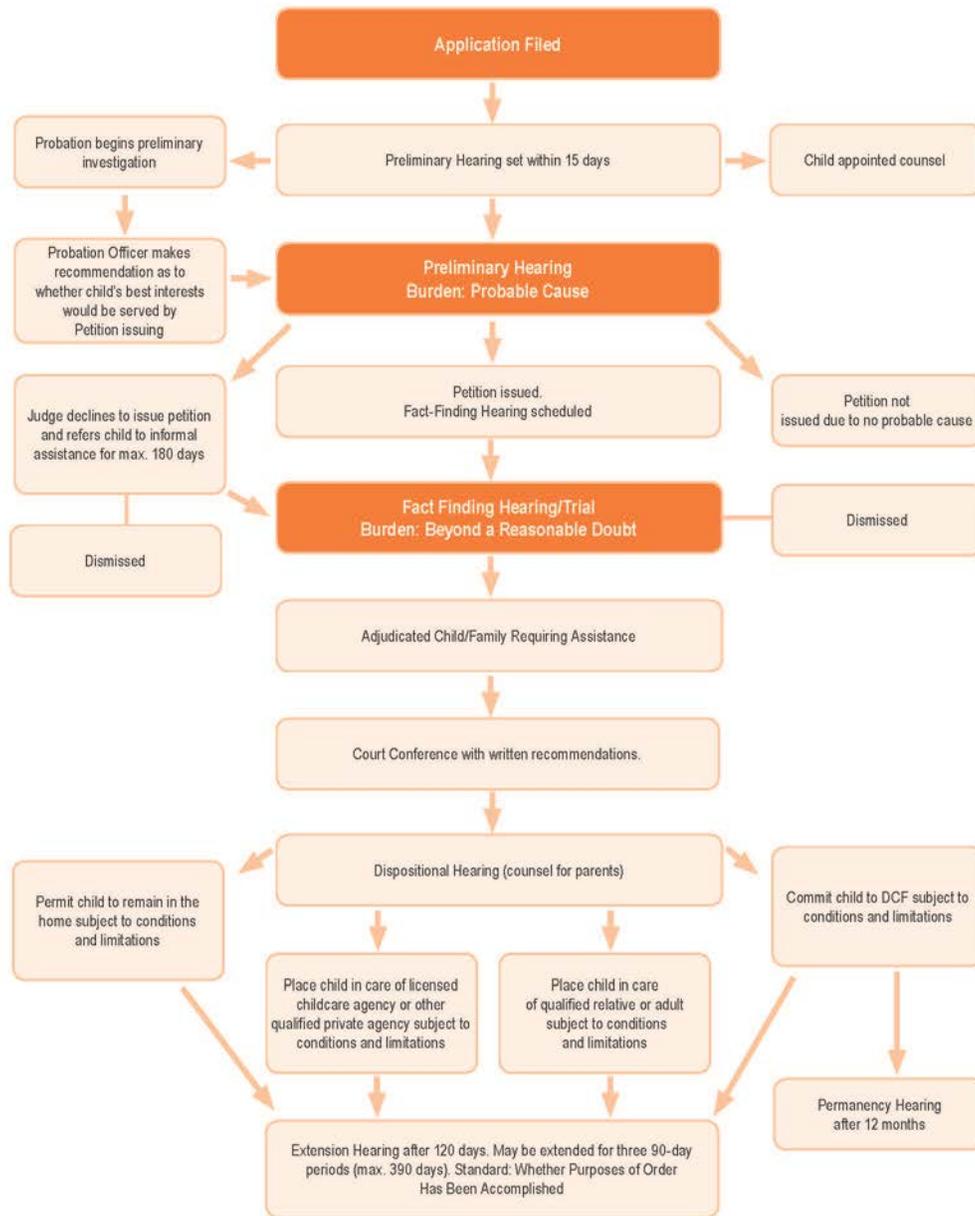
²⁸⁵ MASS. GEN. LAWS ch. 119, § 39G.

²⁸⁶ MASS. GEN. LAWS ch. 119, § 39L(c).

Practice Tip: There may be some strategic value to filing a C&P Petition instead of a CRA Petition, based on the difference in emphasis between the two types of proceedings. With respect to a C&P Petition, the parent’s ability and current fitness is central to the court’s concern, along with the best interests of the child. Often, the child’s behavior is viewed as a result of parental unfitness. In considering a CRA Petition, the court focuses on the child and what he or she—and not the parent—is “doing wrong.” However, keep in mind that a client may not want to become involved with DCF or leave his/her parents. Carefully explain the consequences of each type of proceeding to your client.

For a description of the procedural process surrounding a CRA petition, the Committee for Public Counsel Services has created a flow chart that may be helpful to attorneys.²⁸⁷

²⁸⁷ COMM. FOR PUB. COUNSEL SERVS., *Flow Chart for CRA Cases*, available at <http://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2014/10/Flow-Chart-for-CRA-Cases.doc> [<https://perma.cc/86VP-HQGC>].



COMPARISON OF CHINS PETITION AND CRA PETITION²⁸⁸

CHILD IN NEED OF SERVICES	CHILD REQUIRING ASSISTANCE
Clerk Magistrate is not required to provide applicant with information about the court process, services, resources, or make referrals.	Clerk Magistrate required to provide applicant with information about the court process, services, resources, and make referrals.
No time requirement for when application must be heard by court addressed in statute.	Application must be heard within 15 days of the filing date.
Arrest warrant may be issued for the child who does not respond to the summons to appear in court.	Arrest warrant may not be issued for child who does not respond to summons to appear. Warrant of Protective Custody may be issued.
A police officer may file an application for a runaway or stubborn petition	A police officer may not file an application except for a child who is stated to be sexually exploited.
Child brought to court under arrest may be held in court lock-up until child brought before judge.	Child brought to court under custodial protection or pursuant to Warrant of Protective Custody may not be shackled, restrained, or held in court lock-up.
Child may be released on bail or held in lieu of bail at the Department of Children and Families. If held or bail ordered, right to Superior Court bail review.	Child may be placed in the temporary custody of the Department of Children and Families. Bail not applicable to temporary custody orders.
Court issues the petition.	Court accepts the application.
Court holds hearing on the merits.	Court holds fact-finding hearing.
Maximum period of informal assistance is 1 year: Initial order for 6 months with one 6-month extension).	Maximum period of informal assistance is 180 days: Initial order for 90 days with one 90-day extension
Child has right to jury trial.	Child does not have a right to jury trial.
No maximum period of disposition order: Initial order for 6 months with possible extensions of 6 months per extension until child turns eighteen (16 for school-based case).	Maximum period of disposition is 390 days: Initial order for 120 days with three possible extensions of 90 days per extension until child turns 18 (or 16 for school-based case). Thereafter case must be dismissed with exception of young adult in DCF care requiring permanency hearings.
No requirement to expunge court records if case dismissed.	All court records must be expunged if case dismissed before fact-finding hearing.

²⁸⁸ *Id.*

6.2.3. Multidisciplinary Service Team Response Triggered by 51A Report

The Massachusetts Anti-Trafficking Statute requires mandated reporters²⁸⁹ to file a [Report of Child Alleged to be Suffering from Serious Physical Injury or Emotional Injury by Abuse or Neglect](#) (“51A Report”) with DCF if they suspect that a child is the victim of sexual exploitation or human trafficking.²⁹⁰

Filing a 51A Report triggers a “multidisciplinary service team” response under the Massachusetts Anti-Trafficking Statute.²⁹¹ This team may include a police officer or other person designated by a police chief, an employee of DCF, a representative of the appropriate district attorney, a social service provider, and a medical professional or a mental health professional.²⁹² Massachusetts Department of Youth Services (DYS) may also participate if the youth is committed to DYS’s care or custody.

The team must determine “whether the child has been sexually exploited or is otherwise a human trafficking victim” and “recommend a plan for services to [DCF] that may include, but shall not be limited to, shelter or placement, mental health and medical care needs and other social services.”²⁹³ The multidisciplinary response teams are trained to work collaboratively to provide care and services for affected youth.

The cornerstone of this multi-disciplinary approach is the case conference, which provides a forum for the various professionals involved in the child’s life (e.g., clinicians, DCF, defense attorneys, prosecutors) to work together and share information.²⁹⁴ For most counties in Massachusetts, the case coordinator is employed by the county’s Children’s Advocacy Center (“CAC”), a non-profit organization that works with police, prosecutors, social workers, advocates, medical and mental health professionals and others to

²⁸⁹ Attorneys are not mandated reporters. Mandated reporters include: “any physician; medical intern; hospital personnel engaged in the examination, care or treatment of persons; medical examiner; psychologist; emergency medical technician; dentist; nurse; chiropractor; podiatrist; osteopath; public or private school teacher; educational administrator; guidance or family counselor; day care worker or any person paid to care for or work with a child in any public or private facility, or home or program funded by the Commonwealth or licensed pursuant to the provisions of MASS. GEN. LAWS ch. 28A, which provides day care or residential services to children or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs; probation officer; clerk/magistrate of the district courts; parole officer, social worker; foster parent; firefighter; or police officer, office for children licenser, school attendance officer, allied mental health and human services professional as licensed pursuant to the provisions of MASS. GEN. LAWS ch. 112, § 165, drug and alcoholism counselor, psychiatrist, and clinical social worker.” 110 C.M.R. 2.00; MASS. GEN. LAWS ch. 119, § 51A. Although attorneys are not mandated reporters, the Massachusetts Rules of Professional Conduct permit (but do not require) the disclosure of confidential information “to prevent the commission of a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm, or in substantial injury to the financial interests or property of another.” MASS. R. PROF. C. 1.6(b)(1).

²⁹⁰ MASS. GEN. LAWS ch. 119, § 51A(a).

²⁹¹ *See id.* § 51B.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ CHILDREN’S ADVOCACY CENTER OF SUFFOLK COUNTY, *SEEN MDT Report*, <https://www.suffolkcac.org/what-we-do/seen/responding-to-a-csec-concern> [<https://perma.cc/E8KG-SAQ8>]; Telephone Interview with Susan Goldfarb, *supra* note 110.

provide services for abused children and their families. The contact information of the case coordinator in each county that has adopted this multidisciplinary approach is available on the CAC websites.²⁹⁵

Practice Tip: Since attorneys do not automatically receive notice that a client has been or will be the subject of a case conference, attorneys should contact the case coordinator immediately upon learning that a 51A Report has been filed or that a child is being exploited, in order to be included in the case conference planning. It is critical for the attorney to participate in these conversations in order to have the knowledge necessary to zealously represent a client’s position as well as prevent duplication of services. Note that any information shared during the case conference is not privileged, so it is important not to disclose information that a client does not want to be shared. Attorneys should ask their clients for input on what they would like shared and what they would like kept confidential.²⁹⁶ However, attorneys cannot prevent the formation of a multidisciplinary response team and DCF involvement if a 51A Report has been filed, nor can attorneys prevent the filing of a 51A report by a mandated reporter.

In most counties, the “multidisciplinary” approach also includes a “forensic interview” at the CAC.²⁹⁷ These interviews are optional, and participation is determined by the child. Both Middlesex and Suffolk Counties have the same process in place for conducting forensic interviews. The forensic interview is an investigative tool coordinated by the CAC and the assigned Assistant District Attorney (“ADA”). During the interview, a client will be asked about his or her experiences, which may involve the child discussing other criminal activity not protected by the Safe Harbor.²⁹⁸

Practice Tip: Determine if your client has been asked to participate in a forensic interview and discuss with your client what such an interview would entail. Advise your client that what she or he says to a prosecutor is not privileged and can be used against her. In practice, we have found that it is rare for statements made by a child victim in a forensic interview to be used against the child. However, you should discuss any concerns about potential prosecution of your client with the prosecutor.

²⁹⁵ To locate your county’s CAC, visit: <http://machildrensalliance.org/locate-a-cac/> [<https://perma.cc/5EQW-PUPD>].

²⁹⁶ Telephone Interview with Cecely Reardon, then Attorney-in-Charge, Youth Advocacy Division, Committee for Public Counsel Services (March 3, 2013).

²⁹⁷ See e.g., CHILDREN’S ADVOCACY CENTER OF SUFFOLK COUNTY, *Forensic Interviewing*, <https://www.suffolkcac.org/what-we-do/forensic-interviewing> [<https://perma.cc/WJM6-4GUP>]; CHILDREN’S COVE: CHILD ADVOCACY FOR THE CAPE AND ISLANDS, *Services*, <https://www.childrencove.org/services/forensic-interview/> [<https://perma.cc/U9F8-F65C>].

²⁹⁸ CHILDREN’S ADVOCACY CENTER OF SUFFOLK COUNTY, *supra* note 294.

As of winter 2019, this multidisciplinary approach has been adopted by every county in Massachusetts. You can find each county's program at the following websites:

- Barnstable County/The Cape & Islands: Children's Cove (www.childrenscope.org [<https://perma.cc/SL66-P3PU>])
- Berkshire County: Berkshire County Kid's Place (<https://www.kidsplaceonline.org> [<https://perma.cc/UC3J-ZEY6>])
- Bristol County: Children's Advocacy Center (www.cacofbc.org/the-cac-approach [<https://perma.cc/3TRG-95U6>])
- Essex County: Children's Advocacy Center (www.essexcac.org/services)
- Franklin County and North Quabbin Area: Children's Advocacy Center (www.cacfranklinnq.org [<https://perma.cc/S6HE-RKNQ>])
- Hamden County: Baystate Family Advocacy Center (<https://www.baystatehealth.org/services/pediatrics/family-support-services/family-advocacy-center> [<https://perma.cc/R9TK-LXXK>])
- Hampshire County: Children's Advocacy Center (<https://cachampshire.org> [<https://perma.cc/Z5YW-CAW4>])
- Middlesex County: Middlesex Children's Advocacy Center's "TRACE" program (www.middlesexcac.org/trace [<https://perma.cc/73HZ-2KSP>])
- Norfolk County: Norfolk Advocates for Children (www.norfolkadvocatesforchildren.com [<https://perma.cc/7N78-9P4K>])
- Plymouth County: Children's Advocacy Center (<https://cac.plymouthda.com/>)
- Suffolk County: Children's Advocacy Center (www.suffolkcac.org [<https://perma.cc/NLE9-FR6Y>])
- Worcester County: Children's Advocacy Center (<https://worcesterda.com/childrens-advocacy-center-of-worcester-county> [<https://perma.cc/XG4E-UJWD>])

Attorneys may also find it helpful to contact Support to End Exploitation Now ("SEEN"), which is a program housed by the Children's Advocacy Center of Suffolk County. The contact information for SEEN is:

Children's Advocacy Center of Suffolk County
Support to End Exploitation Now (SEEN)
989 Commonwealth Avenue
Boston, MA 02215

Boston, MA 02215

(617) 779-2145

<https://www.suffolkcac.org/what-we-do/seen> [<https://perma.cc/NLE9-FR6Y>]

6.2.4. Safe Harbor

The Massachusetts Anti-Trafficking Statute created a “safe harbor” for sexually exploited children who may be charged with prostitution related charges in order to ensure that they are treated as victims of child abuse, rather than as criminals.²⁹⁹ Thus, the safe harbor provision is designed to divert children from juvenile courts or district courts to services provided by the state or non-profit organizations.³⁰⁰

Specifically, the safe harbor provides:

Upon a motion by a party to the juvenile delinquency or criminal proceeding or by a guardian ad litem, unless the district attorney or the attorney general objects, and upon a finding that a child alleged to be a juvenile delinquent by reason of violating section 53 of chapter 272 [common night walking or streetwalking] or subsection (a) of section 53A of said chapter 272 [engaging in sexual conduct for a fee] is a child in need of care and protection or a child in need of services, the court shall, if arraignment has not yet occurred, indefinitely stay arraignment and place the proceeding on file.³⁰¹

Under this provision, the default course of action is for a Care and Protection (“C&P”) Petition or a Child Requiring Assistance (“CRA”) Petition to be filed on behalf of a child believed to have been sexually exploited.³⁰² Any person—including the child—can file a C&P Petition.³⁰³ For more on the procedural process underlying these petitions, *see infra* Section 6.2.4.

Upon receipt of a C&P Petition, a court may appoint a *guardian ad litem* for the child and hold a hearing on the merits of the petition.³⁰⁴ Attorneys representing victims should move for the victim’s arraignment to be postponed while that hearing is pending because if the child has not been arraigned

²⁹⁹ TASK FORCE REPORT, *supra* note 4, at 9; Telephone Interview with Susan Goldfarb, *supra* note 110.

³⁰⁰ TASK FORCE REPORT, *supra* note 4, at 9; Telephone Interview with Susan Goldfarb, *supra* note 110.

³⁰¹ MASS. GEN. LAWS ch. 119, § 39L(c).

³⁰² MASS. GEN. LAWS ch. 119, § 39L. A Care and Protection Petition is a statement under oath that a child under the jurisdiction of the court: “(a) is without necessary and proper physical or educational care and discipline; (b) is growing up under conditions or circumstances damaging to the child’s sound character development; (c) lacks proper attention of the parent, guardian with care and custody or custodian; or (d) has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention.” MASS. GEN. LAWS ch. 119, § 24. A copy of the Care and Protection Petition can be found at: <https://www.mass.gov/files/documents/2016/08/vj/jv-13-care-protection-petition.pdf>. If the petition is granted, the court can grant temporary protective custody of the child for up to 72 hours. *Id.*

³⁰³ MASS. GEN. LAWS ch. 119, § 39L(a).

³⁰⁴ MASS. GEN. LAWS ch. 119, § 39L(b).

at the time of the hearing, the attorney can request that the court indefinitely stay arraignment and place the proceedings on file.³⁰⁵ If the court determines the child is a victim of sexual exploitation (and if the prosecutor does not object), the court *must* grant that motion under the Safe Harbor provision.³⁰⁶ However, if the child subsequently fails “to substantially comply with the requirements of services,” the court may restore the proceedings to the docket.³⁰⁷

If, on the other hand, the child was arraigned prior to the hearing, the court will place the child on pretrial probation, even upon a finding that the child was sexually exploited. As with a stay of arraignment, the court may restore the proceedings to the docket if the child fails to “substantially comply” with the conditions of probation.³⁰⁸

In most cases, preventing arraignment is the most advantageous course because it prevents a child’s criminal record from being tarnished, and it provides the child access to services appropriate for youth who have been sexually exploited.³⁰⁹ Nonetheless, attorneys should be aware that, in certain cases, the Safe Harbor process may not be in a client’s best interests. For example, a judge will require that a child participate in certain services as a condition of delaying arraignment, such as complying with obligations imposed by DCF. Clients may not want to involve DCF or may not be willing to comply with services.³¹⁰ In such cases, clients may prefer to proceed with their criminal cases. In such situations, attorneys should consider using the affirmative defense of coercion available under the Massachusetts Anti-Trafficking Statute. *See infra* [Section 7](#), for more information on this affirmative defense.

6.2.4.1. Why Safe Harbor is Important to Child Victims of Trafficking

Providing children with treatment is crucial to begin to reverse the harm caused by sexual exploitation.³¹¹ Treatment is particularly essential because children involved in commercial sexual exploitation face many risks, including:

- Post-traumatic stress disorder (“PTSD”);
- Trauma from physical, emotional, or sexual abuse;
- Substance abuse and addiction; and
- Contracting sexually transmitted diseases, including HIV/AIDS.³¹²

³⁰⁵ *See id.*

³⁰⁶ MASS. GEN. LAWS ch. 119, § 39L(c).

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Telephone Interview with Cecely Reardon, *supra* note 296.

³¹⁰ *Id.*

³¹¹ Telephone Interview with Lisa Goldblatt Grace, *supra* note 255; Telephone Interview with Susan Goldfarb, *supra* note 110.

³¹² *See* Megan Annitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 YALE L. POL’Y REV. 1, 10-11 (2011).

As a result, early intervention and providing supportive services—instead of threatening criminal prosecution—is particularly important.³¹³ Recovery is a lengthy process, but interpersonal support is essential to increasing a victim’s chances of recovery.³¹⁴ It can be particularly powerful for a child to meet a trained survivor advocate at this point. Meeting someone who has survived the commercial sex industry and can therefore offer a concrete representation of hope is particularly powerful. See [Section 4.3](#) for more information about survivor-led programs.

6.2.4.2. Development and Application of Safe Harbor Provisions in Other State Anti-Trafficking Statutes

At the time the legislature enacted the Massachusetts Anti-Trafficking Statute, five other states had enacted similar Safe Harbor provisions.³¹⁵ As of 2017, 32 states provide some form of safe harbor for minors, including, for example, prosecutorial immunity for certain crimes related to trafficking or diversion programs.³¹⁶ As in Massachusetts, there is limited court interpretation of these states’ respective Safe Harbor statutes. Because the case law is limited and rapidly developing, it is important to conduct research before filing any brief with a court. It may be helpful to set Westlaw/Lexis alerts to keep you up to date in case you need to amend a brief/motion if helpful law develops after you file.

6.3. Remedies for Child Victims of Labor Trafficking

Minors who are victims of trafficking may be entitled to additional protections provided by federal and state employment and labor laws.

6.3.1. Federal Fair Labor Standards Act

The Federal Fair Labor Standards Act (“FLSA”) forbids “oppressive child labor,”³¹⁷ defined as: (1) any employment of a child under the age of 16, except as otherwise determined by the Secretary of Labor; and (2) any “particularly hazardous” employment of a child ages 16 or 17.³¹⁸ Accompanying federal regulations list the types of jobs that children ages 14 and 15 may lawfully hold, and limit the employment of children in those jobs to hours outside of normal school hours and within specified

³¹³ Telephone Interview with Lisa Goldblatt Grace, *supra* note 255.

³¹⁴ *Id.*; see also Administration for Children & Families, Resources Specific to Victims of Human Trafficking, ADMINISTRATION FOR CHILDREN & FAMILIES, <https://www.acf.hhs.gov/trauma-toolkit/victims-of-human-trafficking> [<https://perma.cc/VC4T-2765>] (compiling guides and resources for advocates who wish to learn more about trauma-informed response).

³¹⁵ See N.Y. SOC. SERV. LAW §§ 447-a, 447-b (McKinney 2008); N.Y. FAM. CT. ACT § 311.4 (2010); TEX. FAM. CODE ANN. § 51.03(b)(7), § 43.02(d) (2011); CONN. GEN. STAT. §§ 53a-82(c) (2004); FLA. STAT. § 39.001(4), § 39.524 (2004); Mo. REV. STAT. § 556.203 (2004).

³¹⁶ See SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD TRAFFICKING, NATIONAL CONFERENCE OF STATE LEGISLATURES (April 2017), http://www.ncsl.org/Portals/1/Documents/cj/SafeHarbor_v06.pdf [<https://perma.cc/U6QK-SX5D>]. It should be noted, however, that there exists some controversy regarding the extent to which immunity should apply.

³¹⁷ 29 U.S.C. § 212.

³¹⁸ 29 U.S.C. § 203(l).

limitations.³¹⁹ Children employed in farm labor outside of school hours are excepted from many of these requirements;³²⁰ however, certain farm activities are considered so hazardous that they cannot lawfully be performed by children under the age of 16 unless the child is employed on a farm owned by his or her parent or guardian.³²¹ There is no private right of action under the child labor provisions of the FLSA.³²² However, employers who violate the child labor provisions of the FLSA may be fined up to \$11,000 by the Department of Labor, or up to \$50,000 if the violation results in the “death or serious injury” of the child employee.³²³ Businesses that ship or receive goods produced by establishments that violate the child labor provisions of the FLSA may also be subject to these fines.³²⁴ Furthermore, the Secretary of Labor may seek injunctive relief from a federal district court preventing further violations of the child labor provisions of the FLSA.³²⁵ Individuals who are aware of violations of the child labor provisions of the FLSA can file a complaint with the Wage and Hour Division of the Department of Labor by calling 1-866-487-9243 or by visiting www.wagehour.dol.gov.

6.3.2. Massachusetts Laws Regulating Child Labor

Massachusetts law also imposes restrictions on child labor.³²⁶ Employers must have work permits on file for employees 14-17 years old, and generally must provide direct supervision by an adult of any child working after 8 p.m.³²⁷ Children ages 16 and 17 are permitted to engage in most types of work, with certain exceptions for particularly dangerous jobs.³²⁸ Children under the age of 16 are precluded from working “in, about or in connection with any factory, workshop, manufacturing or mechanical establishment at any time.”³²⁹ Generally, children ages 16 and 17 may only work between 6 a.m. and 10 p.m. (or 11:30 p.m. when not preceding a school day).³³⁰ Children ages 14 and 15 are permitted to work outside school hours between 7 a.m. and 7 p.m. (or until 9 p.m. between July 1 and Labor Day) in limited types of non-hazardous jobs.³³¹ Children under the age of 14 may not work, with exceptions for certain

³¹⁹ 29 C.F.R. § 570.119.

³²⁰ 29 U.S.C. § 213(c)(1)-(2).

³²¹ 29 C.F.R. § 570.71.

³²² See, e.g., *Breitwieser v. KMS Indus., Inc.*, 467 F.2d 1391, 1394 (5th Cir. 1972) (declining to create a private right of action based on a violation of the child labor provisions of the Fair Labor Standards Act).

³²³ 29 C.F.R. § 579.1(a)(1)(i). For more detail regarding civil money penalties for child labor violations, see 29 C.F.R. § 579.1-5.

³²⁴ 29 C.F.R. § 579.3(a)(1).

³²⁵ 29 U.S.C. § 217.

³²⁶ MASS. GEN. LAWS ch. 149, §§ 56-105.

³²⁷ MASS. GEN. LAWS ch. 149, §§ 66, 86-89.

³²⁸ See MASS. GEN. LAWS ch. 149, § 62 (listing prohibited positions for minors under 18).

³²⁹ MASS. GEN. LAWS ch. 149, § 60.

³³⁰ MASS. GEN. LAWS ch. 149, § 66.

³³¹ NADINE COHEN ET AL., MASSACHUSETTS WAGE AND HOURS HANDBOOK 277 (2008); see also EXECUTIVE OFFICE OF LABOR & WORKFORCE DEV., *Summary of Massachusetts Laws Regulating Minors’ Work Hours and Occupation Restrictions*, MASS.GOV, https://www.mass.gov/files/documents/2016/08/oq/youth-application_0.pdf [<https://perma.cc/8PV3-YU5S>].

types of jobs, such as children working as news carriers, on farms, and in entertainment (with a special permit).³³²

If there is a conflict between Federal law and Massachusetts law, the more protective law will govern.³³³ For a summary of prohibited jobs and permissible working hours in Massachusetts, visit the website of the Office of the Attorney General's Fair Labor Division at <https://www.mass.gov/working-under-18> [<https://perma.cc/H3AV-DKY2>].

Employers that violate Massachusetts child labor laws are subject to criminal and civil penalties. An employer who violates these laws may be fined \$500-\$5,000, or be imprisoned for up to one month, or both.³³⁴ Moreover, children who are injured while employed in violation of Massachusetts child labor laws are entitled to double compensation under the Workers' Compensation Act.³³⁵ "Any person" may prosecute violations of Massachusetts child labor laws.³³⁶ That said, the Attorney General's Office is primarily responsible for enforcement and reviews and investigates complaints it receives.³³⁷ For more information about filing a complaint under the Massachusetts child labor laws, visit the website of the Attorney General's Office.³³⁸

³³² For a summary of child labor requirements, see MASS. EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT, *Massachusetts Laws Regulating Minors' Work Hours*, <https://www.mass.gov/service-details/massachusetts-laws-regulating-minors-work-hours> [<https://perma.cc/S2A8-5F7T>].

³³³ DEPARTMENT OF LABOR, WAGE & HOUR DIVISION, *Fact Sheet #43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations* (last updated Dec. 2016), www.dol.gov/whd/regs/compliance/whdfs43.htm [<https://perma.cc/U7LE-8GEZ>].

³³⁴ MASS. GEN. LAWS ch. 149, § 78. Importantly, once an employer has been notified in writing by "any authorized inspector or supervisor of attendance," every subsequent day during which the illicit employment of the minor continues counts as a separate offence. *Id.* For additional rules regarding penalties for employers who violate Massachusetts child labor laws, see *id.* §§ 57, 79, 80, 86, 90.

³³⁵ MASS. GEN. LAWS ch. 152, § 28.

³³⁶ MASS. GEN. LAWS ch. 149, § 76.

³³⁷ MASS. GEN. LAWS ch. 149 §§ 76, 92.

³³⁸ See MASS. ATTORNEY GENERAL'S OFFICE, WORKING UNDER 18, www.mass.gov/ago/youthemployment [<https://perma.cc/TK8N-KPPP>].

7. Issues Specific to Criminal Victim-Defendants

Note: *Victims of human trafficking often face a constellation of legal issues at both the state and federal levels. While this chapter summarizes special considerations for representing victims of human trafficking who are defendants in criminal matters, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.*

7.1. Defense of Human Trafficking Survivors

Many human trafficking victims first encounter the criminal justice system when they are arrested for a crime.³³⁹ This section provides resources for attorneys defending human trafficking victims in criminal cases.

For more information on prostitution-related crimes, see the Criminal Penalties for Prostitution-Related Crimes table *infra* in [Section 7.2.3.5](#).

Practice Tip: In many cases, the first step is to identify that your client is a victim of human trafficking, particularly in cases where the criminal charge was for something other than sex for fee, such as drug use. Attorneys should look for indicators of trafficking. See [Section 2.1](#) for common signs of trafficking.

Practice Tip: As noted elsewhere in this Guide, attorneys should also be attentive to the non-legal needs of a trafficking victim. It may be helpful to reach out to other attorneys and social service providers who work with trafficking victims for support and advice.

7.1.1. Affirmative Defense of Duress or Coercion

The Massachusetts Anti-Trafficking Statute establishes an affirmative defense to a charge of “common night walking” or “common streetwalking” if “while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted”³⁴⁰ As of the date of writing, there are no reported Massachusetts cases discussing or applying this defense.

Although four other states have similar statutory affirmative defenses available to victims of human trafficking, there are also no reported cases from those jurisdictions interpreting their respective statutes.³⁴¹

³³⁹ U.S. CONF. OF CATHOLIC BISHOPS, ET AL. *supra*, note 127 at § 2.7.

³⁴⁰ MASS. GEN. LAWS ch. 265, § 57. Notably, however, a recently introduced bill to the Massachusetts’ legislature seeks to remove this defense while altering punishments in other areas of the statute. See H.1480, 191th Gen. Ct. (Mass. 2019), available at <https://malegislature.gov/Bills/191/H1480> [<https://perma.cc/P2B4-XEU6>].

³⁴¹ See, e.g., ALA. CODE § 13A-6-159 (2013); MINN. STAT. ANN. § 609.325 (2012); N.J. STAT. ANN. § 2C:34-1(64)(e) (2013); OKLA. STAT. ANN. tit. 21, § 748(D) (2012); S.C. CODE ANN. § 16-3-2020 (2012); S.D. CODIFIED LAWS § 22-23-1.2

Although there are no reported cases directly on point, Massachusetts courts have found coercion or duress to be a valid defense to other crimes. The Supreme Judicial Court has held that to prove duress or coercion, there must be “a present, immediate, and impending threat of such a nature as to induce a well-founded fear of death or of serious bodily injury if the criminal act is not done; the actor must have been so positioned as to have had no reasonable chance of escape.”³⁴²

7.1.1.1. *Traditional View of Duress or Coercion in Self-Defense Cases*

Massachusetts courts have most frequently considered the defense of duress or coercion in self-defense cases. However, jurisprudence in the self-defense context raises two potential challenges for human trafficking victims:

- First, proving “duress” requires a showing of threat of imminent or immediate harm. It may be challenging to prove imminent or immediate harm in the trafficking context, since some victims form emotional ties with their exploiters, known as “trauma bonds,” that make it difficult for them to leave trafficking situations.³⁴³
- Second, because the defense of coercion has most often been used as a defense for use of force against another, courts also analyze trafficking victims’ “reasonable apprehension” of harm within this same legal context. However, this understanding of “reasonable apprehension of harm” is either irrelevant or difficult to prove in most human trafficking cases because trafficking victims are frequently coerced into doing non-violent crimes, such as prostitution-related or drug crimes.

Massachusetts courts have, however, found that a victim’s inability to escape or involuntary intoxication from drugs or alcohol is evidence of duress or coercion, making these arguments more promising for attorneys representing human trafficking victims.³⁴⁴

The Supreme Judicial Court has assumed, without deciding, that the Commonwealth has the burden of disproving duress beyond a reasonable doubt as a matter of constitutional law.³⁴⁵ However, other states vary in regard to which party bears the burden and the standard of proof.³⁴⁶

(2013); TENN. CODE ANN. § 39-13-513 (2012); VT. STAT. ANN. tit. 13, § 2652(c)(1)(A)(2) (2012); WASH. REV. CODE ANN. § 9A.88.040 (2012).

³⁴² See *Commonwealth v. Robinson*, 382 Mass. 189, 199 (1981).

³⁴³ Trauma bonds refer to the emotional tie that forms between a victim and her abuser resulting from cycles of psychological and/or physical abuse. See *Traumatic Bonding*, ENCYCLOPEDIA.COM (2008), <https://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/traumatic-bonding> [<https://perma.cc/54SH-L636>].

³⁴⁴ *Commonwealth v. Melzer*, 14 Mass. App. Ct. 174, 181 & n.3 (1982).

³⁴⁵ See *Robinson*, 382 Mass. at 206-07. See also *Commonwealth v. Vasquez*, No. 01-11195, 2005 WL 6802084 (Mass. Super. Aug. 19, 2005) (holding that Commonwealth bears burden of negating duress).

³⁴⁶ See, e.g., *Thornburg v. State*, 699 S.W.2d 918, 920 (Tex. Ct. App. 1985) (“Duress is an affirmative defense, which the defendant must establish by a preponderance of the evidence.”).

7.1.1.2. *Analogy to Battered Woman Syndrome Defense*

Battered woman syndrome (“BWS”)³⁴⁷ is a potential defense for victims of human trafficking. The defense, “which is a misnomer” because of its suggestion that a “victim is necessarily suffering from a disease or mental illness,” explains a “common pattern” of cyclical abuse and articulates the reasons victims do not always leave their abusers.³⁴⁸ While a myriad of contextual reasons explain why victims of violence choose to stay with abusive partners,³⁴⁹ BWS is a potential avenue for explaining the psychological context of a trafficking victim to a jury.

Cases involving a claim of BWS as a defense to a criminal act may be more analogous to a duress defense in human trafficking cases, since such cases relax the requirement of showing an imminent threat.³⁵⁰ In cases involving claims of BWS, courts have found beatings, controlling behavior limiting the victims’ social contacts with the outside world, and threats to take away children, persuasive evidence that victims were controlled and coerced by their abusers.³⁵¹ Further, in extreme circumstances of abuse, courts may be willing to find that a criminal defendant is not competent to stand trial.³⁵²

Additionally, Massachusetts law provides that a criminal defendant who raises the defenses of “defense of self or another, defense of duress or coercion, or accidental harm” may enter various types of psychological evidence to support the “reasonableness of the defendant’s apprehension that death or serious bodily injury was imminent, the reasonableness of the defendant’s belief that he had availed himself of all available means to avoid physical combat or the reasonableness of a defendant’s perception of the amount of force necessary to deal with the perceived threat.”³⁵³ Two types of evidence are admissible: “(a) evidence that the defendant is or has been the victim of acts of physical, sexual or psychological harm or abuse”; and (b) evidence related to a “common pattern in abusive relationships” and “how those effects relate to the perception of the imminent nature of the threat of death or serious bodily harm.”³⁵⁴ Courts in Massachusetts have interpreted this statute to be “more permissive than the common-law” and therefore allow greater amounts of information to be entered

³⁴⁷ While “battered person syndrome” is the more inclusive term for the defense, Massachusetts courts use “battered woman syndrome.” *Commonwealth v. Asenjo*, 477 Mass. 599, 605-06 (2017); *but see Commonwealth v. Gordon*, 87 Mass. App. Ct. 322, 333 n.13 (2015) (noting that individuals suffering battered woman syndrome are “usually women”). However, Massachusetts’ evidence statute does not use gender specific language, instead it speaks generally to patterns of abusive behavior. *See* MASS. GEN. LAWS ch. 233, § 23F(b).

³⁴⁸ *Gordon*, 87 Mass. App. Ct. at 333 n.13.

³⁴⁹ *Id.*

³⁵⁰ *See Asenjo*, 477 Mass. at 607-09 (noting that the statute allows the defendant to introduce BWS in order to establish the “reasonableness of his or her apprehension that death or serious bodily harm was imminent.”).

³⁵¹ *See, e.g., Commonwealth v. Adkinson*, 80 Mass. App. Ct. 570, 571-72 (2011).

³⁵² *Id.* at 577 (“Substantial evidence was adduced in this case that the defendant was incapable of rationally assisting in her defense because of a focused and continuing pattern of abuse against her and domination over her by her husband and codefendant.”).

³⁵³ MASS. GEN. LAWS ch. 233, §23F.

³⁵⁴ *Id.*

into the record.³⁵⁵ Likewise, courts in other jurisdictions have held that evidence of an abusive relationship can supplement a duress defense by explaining the reason for the victim’s fear.³⁵⁶

7.1.1.3. *Duress and Coercion Defenses in Practice*

In cases unrelated to human trafficking, courts have been hesitant to recognize duress and coercion as defenses. For example, in *Doe v. Westlake Academy*, a civilly committed mentally ill teenager unsuccessfully attempted to establish that she had been coerced to have sex with an employee at a mental health facility, in violation of the Massachusetts Civil Rights Act.³⁵⁷ Although the court recognized that the intercourse was nonconsensual on account of the plaintiff’s mental illness, it held that the plaintiff failed to prove coercion, i.e., that she had a well-founded fear of death or of serious bodily injury, because the defendant employee did not use either physical or psychological force.³⁵⁸

In *United States v. Sabatino*, the First Circuit reversed a sentencing increase that the district court had imposed because the defendant coerced vulnerable victims into joining a prostitution ring in violation of the Mann Act.³⁵⁹ Even though the victims were single teenage mothers and sent to violent customers by their pimps as punishment, the First Circuit refused to find that the teenagers were coerced into prostitution.³⁶⁰ Rather, the Court found that “economic consequences” of not participating in prostitution could not constitute “coercion,” particularly in light of the fact that many of the participants voluntarily quit.³⁶¹

Even when the duress defense is permitted, issues can arise in its application. In a Texas case, *Thornberg v. State*, a female victim-defendant and her male acquaintance abducted and sexually abused a child.³⁶² The female victim-defendant asserted that she participated only because she feared that her companion would kill her. However, the Texas Court of Appeals upheld the jury’s guilty verdict, holding that the jury could reasonably have determined that the female victim-defendant was not coerced. The court reasoned that the jury could have credited evidence that the victim-defendant was not verbally or physically threatened during the kidnapping, that she never acted afraid, mad or upset, and that she “voluntarily” engaged in and “seemed to enjoy” the sexual activity.³⁶³

³⁵⁵ *Asenjo*, 80 Mass. App. Ct. at 608.

³⁵⁶ See e.g., *United States v. Lopez*, 913 F.3d 807, 821-22 (9th Cir. 2019) (“On balance, we are persuaded that expert testimony on how BWS can cause individuals to become hypervigilant to impending harm does not, as the Fifth Circuit perceives, seek to alter the duress defense’s reasonable-person standard. . . . Moreover, BWS evidence is compatible with assessing whether a defendant had a reasonable opportunity to escape from the coercing party.”). But see *United States v. Willis*, 38 F.3d 170, 175 (5th Cir. 1994) (holding that evidence of BWS was not admissible to support a duress defense).

³⁵⁷ See *Doe v. Westlake Acad.*, No. Civ. A. 97-2187, 2000 WL 1724887, at *3 (Mass. Super. Nov. 21, 2000).

³⁵⁸ *Id.*

³⁵⁹ See *United States v. Sabatino*, 943 F.2d 94, 102 (1st Cir. 1991).

³⁶⁰ See *id.* at 102, 104.

³⁶¹ See *id.*

³⁶² See *Thornburg v. State*, 699 S.W.2d 918, 920 (Tex. Ct. App. 1985).

³⁶³ *Id.* at 921-22.

In an attempt to persuade courts not to apply this line of cases to the human trafficking context, it is useful to note that these cases do not reflect the changing legislative landscape.³⁶⁴ Rather, these cases were decided before human trafficking was specifically outlawed in Massachusetts. The Massachusetts Anti-Trafficking Statute was enacted, in part, to shift focus toward punishing perpetrators of human trafficking instead of their victims.³⁶⁵ Moreover, attorneys may make the statutory construction argument that because the Legislature is presumed to be aware of previous judicial decisions when enacting or amending a statute, it can be inferred that the Legislature implicitly disapproved of these cases by including an affirmative defense of coercion in the Massachusetts Anti-Trafficking Statute.³⁶⁶

7.1.1.4. Cooperation Agreements.

In many cases an individual who may have potential criminal liability may reduce or eliminate her legal exposure by entering into a cooperation agreement with the prosecutor. Many human trafficking operations have hierarchical structures, and individuals who are on the “middle rungs of the ladder” may be charged with trafficking or other related offenses. Sometimes a prosecutor may be persuaded to enter into a cooperation agreement in exchange for assistance in the criminal investigation(s) against other perpetrators.

Cooperation carries serious risks and should not be undertaken without careful consideration. In addition to the legal risks posed by making statements to prosecutors or detectives without specific, enforceable protections memorialized in written agreements, cooperating individuals may incur retribution. This can sometimes be in the form of violence, from others in the community or in correctional facilities. It is thus critical that a client be advised of these risks. They should also be advised that the presence of a cooperation agreement must be kept strictly confidential.

Cooperation can take various forms, including the provision of non-testimonial information, testimony before a grand jury, and testimony at trial. In any circumstance a written agreement with the prosecutor must be executed and must be scrutinized so that it adequately protects a client’s legal interests. If a victim-defendant is asked to testify at a grand jury or trial, counsel should insist on a grant of immunity pursuant to M.G.L. c. 233 §§ 20C-20G. Note that a district or municipal court does not have the power to grant immunity, and that immunity may only be granted by the Superior Court (or by the Appeals Court or Supreme Judicial Court, though these appellate scenarios are extremely rare).

Note also that while a grant of immunity by a Massachusetts court will insulate a victim-defendant against Massachusetts prosecutions, the federal system is its own entity and is not bound by a

³⁶⁴ See *supra* note 340 and accompanying text.

³⁶⁵ *Coakley Testimony*, *supra* note 84, at 2 (“We know the best way to stop human trafficking is by addressing all three fronts of the problem. We need to go after the supply, address the demand that feeds this industry, and support its victims.”).

³⁶⁶ See *McCarty’s Case*, 445 Mass. 361, 366 (2005) (noting that the Legislature is presumed to be aware of previous judicial decisions when amending a statute); *Commonwealth v. Callahan*, 440 Mass. 436, 440-41 (2003) (same); *Waldman v. Am. Honda Motor Co., Inc.*, 413 Mass. 320, 323 (1992) (same).

Massachusetts immunity grant. It is thus important that where a client has federal exposure (e.g., is charged with human trafficking, drug offenses, or various other offenses that have federal cognates), counsel ask that the Massachusetts prosecutor seek to have the U.S. Attorney's Office join the cooperation agreement. This is not always possible, and where such joinder is not effected, a client must be advised of the risk of federal prosecution. Furthermore, where federal immunity is granted along with Massachusetts immunity, it is important to advise a client that a federal immunity grant does not provide the breadth of protection provided by a Massachusetts immunity grant—Massachusetts provides “transactional immunity,” whereas the federal system only provides “use and derivative use immunity.”³⁶⁷

Practice Tip: Because clients may not wish to proceed to trial as a defendant out of a fear of re-experiencing trauma, attorneys should consider other options short of seeking a verdict of not guilty. For example, an attorney may attempt to convince the prosecutor to file a nolle prosequi (declining to prosecute) or recommend pre-trial probation to the court. An attorney may also argue that a trafficking-related crime—at least one involving prostitution—should not be prosecuted if it was a result of force, fraud, or coercion, as may occur in a human trafficking situation. It may be helpful to cite to the affirmative defense in the Massachusetts Anti-Trafficking Statute. The typical disposition of a prostitution-related case is Continuance Without A Finding (“CWOA”). Even if the prosecution does not agree with this recommendation, many judges will accept it. However, attorneys should be aware of the immigration consequences of this disposition, see *infra* Section 7.2.2. Regardless of whether a client chooses to go to trial, clients should specify what attorneys disclose to prosecutors.³⁶⁸

Practice Tip: In cases where a client is charged with sex for fee or related charges, it may be helpful to file a motion in limine to admit background information (e.g., a history of sexual assault, culturally-specific experiences of oppression) to support a client's defense of coercion.

³⁶⁷ See *Matter of Pressman*, 421 Mass. 514, 516-17 (2005). “Transactional immunity protects witnesses from prosecution for the offense or offenses involved.” See Department of Justice Criminal Resource Manual, 717. *Transactional Immunity Distinguished*, available at <https://www.justice.gov/archives/jm/criminal-resource-manual-717-transactional-immunity-distinguished> [<https://perma.cc/Z5GB-E54X>]. “Use and derivative use immunity” only protects the witness “against the government’s use of his or her immunized testimony in a prosecution of the witness.” *Id.* In other words, the government may still prosecute the witness using evidence obtained independently of the witness’s immunized testimony. See 718. *Derivative Use Immunity*, available at <https://www.justice.gov/archives/jm/criminal-resource-manual-718-derivative-use-immunity> [<https://perma.cc/G6MN-8W45>].

³⁶⁸ MASS. R. CRIM. P. 12(f) bars the use of evidence in any criminal proceeding of a withdrawn plea. Additionally, evidence of statements made in connection with and relevant to any of the foregoing withdrawn pleas is not admissible. Thus, an attorney may relay to a client that the information will be used for the limited purpose of resolving his or her criminal case.

7.2. Collateral Consequences of Criminal Convictions

7.2.1. Barriers to Employment, Housing, and Other Benefits

Human trafficking victims should carefully consider the collateral consequences of a criminal conviction before pleading guilty to a trafficking-related crime. All criminal convictions appear on a Criminal Offender Record Information (“CORI”) report, which may be viewed by potential employers or landlords. Although recent legislation has limited the impact somewhat in the employment context, the collateral effects of an arrest or criminal conviction can be devastating to the victim. This section describes some of the consequences of a criminal conviction in the areas of employment, housing, and other public benefits.

7.2.1.1. Effects of Criminal Conviction on Employment

Massachusetts legislation has made it unlawful for most employers to ask applicants about their criminal history on a job application prior to the interview stage of the hiring process.³⁶⁹ Employers are exempt from this requirement if a federal or state law or regulation creates mandatory or presumptive disqualification based on a criminal conviction (e.g., jobs that require working with children or the elderly).³⁷⁰ Employers may ask applicants for permission to obtain a copy of their CORI report at a job interview.³⁷¹ The CORI report that most employers receive shows only Massachusetts convictions and Massachusetts cases that are currently open.³⁷² In later stages of the application process, such as the final job interview, employers may ask applicants about their history of criminal convictions. Employers may not ask about an arrest or prosecution that did not lead to a conviction, nor may they inquire about a juvenile record.³⁷³ Employers may legally ask about only two types of criminal convictions:

1. Felony convictions; and
2. Misdemeanor convictions where the date of the convictions or jail time were within the last five years. However, employers may not ask about first time convictions for public

³⁶⁹ MASS. GEN. LAWS ch. 151B, § 4(9). Employers who employ six or more persons are subject to the provisions of MASS. GEN. LAWS ch. 151B. Public employers are included regardless of the number of people employed. For more information about this law, see MASS. COMM’N AGAINST DISCRIMINATION, *Criminal Offender Record Information Administrative Procedure Reforms Fact Sheet* (2010), available at <https://www.mass.gov/files/documents/2016/08/qs/criminal-records-fact-sheet.pdf> [<https://perma.cc/P5NB-QRGW>].

³⁷⁰ MASS. GEN. LAWS ch. 151B, § 4(9 1/2).

³⁷¹ *Criminal Records and Applying for Jobs*, MASSLEGALHELP.ORG, <https://www.masslegalhelp.org/cori/applying-for-jobs> [<https://perma.cc/GQR7-MQDU>] (last updated July 2019). A CORI details an individual’s criminal history and is maintained by the Massachusetts Department of Criminal Justice Information Services (DCJIS). The DCJIS can help address any inaccuracies in the report.

³⁷² For discussion about sealing and expunging a criminal record, see [Section 7.2.3.4](#).

³⁷³ MASS. GEN. LAWS ch. 151B, § 4.

drunkenness, simple assault, speeding, a minor traffic violation, affray (i.e., fighting in a public place causing fear of others), or disturbing the peace.³⁷⁴

Employers may *not* ask applicants about any of the following:

1. An arrest that did not result in a conviction;
2. A criminal detention or disposition that did not result in a conviction;
4. A conviction for a misdemeanor where the date of the conviction predates the inquiry by more than five years;
5. Sealed records; and
6. Juvenile offenses.³⁷⁵

Attorneys should counsel their clients on the potential impact of having a criminal conviction, as well as the privacy guidelines governing disclosure of a CORI report. Even though employers may not access an applicant's CORI report without his or her permission, failing to grant permission can be a legal basis for refusing to extend a job offer. On the other hand, granting access to a CORI report allows employers to view convictions and open cases—also potentially preventing applicants from obtaining the position.

7.2.1.2. Effects of Criminal Conviction on Housing

A landlord, property manager, housing authority, or real estate agent may request a CORI report for the purpose of evaluating applicants for housing.³⁷⁶ As with most employers, the CORI report that housing authorities and landlords receive includes only convictions and open cases.

Unfortunately, either producing or failing to produce the report may negatively impact an applicant's chance of securing stable housing. Public housing authorities may request a CORI report for all members of an applicant's household with their permission, and they may lawfully disqualify applicants based on the information in the CORI report.³⁷⁷ As with employment, an applicant's refusal to give permission can negatively impact an individual's application for housing. However, applicants have the right to a hearing to contest the accuracy or relevance of the information on a CORI report.³⁷⁸

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ 803 MASS. CODE REGS. §§ 5.04, 5.05 (2017).

³⁷⁷ *Applying for Housing*, MASSLEGALHELP.ORG, www.masslegalhelp.org/cori/housing/apply-for-housing [<https://perma.cc/MLG5-HEJD>] (last updated May 2019).

³⁷⁸ See generally Greater Boston Legal Services, *Know Your CORI Rights* (2018) available at <https://www.gbls.org/sites/default/files/2018-10/know-your-cori-rights-101518ff.pdf> [<https://perma.cc/F35D-PHRZ>].

7.2.1.3. *Effects of Criminal Conviction on Other Benefits*

A criminal conviction may impact a victim’s right to access other benefits. For example:

- A criminal conviction may prevent a victim from becoming a foster or adoptive parent.³⁷⁹
- It may also prevent a victim from working in certain fields or internships that require contact with children, the elderly, or people with disabilities.³⁸⁰
- Applicants for Transitional Aid to Families with Dependent Children (“TAFDC”) benefits from the Department of Transitional Assistance (“DTA”) will be denied benefits if they were convicted of a drug-related felony and released from prison fewer than 12 months ago (and not granted a domestic violence waiver).³⁸¹ This waiting period does not apply if an applicant was not sentenced to prison. Applicants will also be denied if:
 - The applicant has an outstanding default warrant (for example, for not paying a fine or missing a court date);
 - The applicant is an undocumented noncitizen;
 - The applicant violated probation or parole assigned after September 25, 1996; or
 - The applicant is fleeing prosecution or punishment for a felony.

7.2.2. **Immigration Law: Grounds of Removal and Consequences for Eligibility**

A criminal conviction—or even just criminal conduct—may have severe consequences for a victim’s immigration status by either making a victim ineligible for immigration relief or by providing grounds for removal (i.e., deportation), regardless of whether the individual is documented. In order to advise a client of the impact of a possible criminal conviction (or allegation), an attorney must first determine the client’s immigration status, prior criminal history, and whether the pending charges qualify as a “crime involving moral turpitude” or another category that may impact the client’s immigration status.³⁸² This is a complicated area of law, and it is strongly recommended that attorneys speak with an expert on the immigration consequences of criminal convictions to fully assess the impact of any criminal conduct on their client’s immigration status.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ 106 MASS. CODE REGS. § 701.110(B).

³⁸² Comm. for Pub. Counsel Serv., Immigration Impact Unit, Immigration Consequences of Criminal Conduct (2014), available at <https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/2014/07/IIU-Power-Point-Training-September-2014.pdf> [<https://perma.cc/6UAS-Y33T>] (hereinafter CPCS Presentation). All text reproduced with permission.

The following sections explain the consequences of a conviction in more detail. However, this is an area of law that is subject to change, and it is recommended that attorneys consult with an experienced expert in criminal and immigration matters for advice. Attorneys also should note that prostitution-related offenses carry unique risks. Therefore, it is essential that attorneys clearly understand the implications when advising clients on potential dispositions for prostitution-related offenses.

- First, the involvement in commercial sex itself, even if it does not result in a conviction, can make a victim inadmissible to the United States and jeopardize eligibility for certain immigration benefits, such as adjustment of status (i.e., being granted a “green card”) and citizenship.
- Second, convictions for certain prostitution-related offenses may be grounds for deportation, even if a victim legally resides in the United States.

7.2.2.1. Definition of “Conviction”

The term “conviction” in the immigration context is different than in the Massachusetts criminal context. Under the Immigration and Nationality Act, a “conviction” is defined as a finding of guilt or sufficient admission of guilt for which the judge has ordered some form of punishment, penalty, or other restraint on liberty.³⁸³ A “sentence” includes any term of incarceration whether committed or suspended. For example, if a judge imposes a two-year sentence of imprisonment with six months served, and then suspends the balance for one year, the “sentence” in immigration terms is still a two-year sentence of imprisonment.³⁸⁴ Additionally, a Continuance Without a Finding (“CWF”) is considered a conviction under immigration law.

The following chart details which common Massachusetts dispositions qualify as a “conviction” under immigration law.

³⁸³ 8 U.S.C. § 1101(a)(48); CPCS Presentation, *supra* note 383, at slide 9.

³⁸⁴ CPCS Presentation, *supra* note 383, at slide 14.

MASSACHUSETTS DISPOSITIONS UNDER FEDERAL IMMIGRATION LAW³⁸⁵

MASSACHUSETTS DISPOSITION	FEDERAL IMMIGRATION LAW	JUVENILE DISPOSITIONS
Continuation Without a Finding (“CWOFF”)	Conviction	A finding of delinquency is not a conviction for immigration purposes.
Pre-trial Probation (no admission)	Not a conviction	A youthful offender adjudication may be a conviction for immigration purposes.
Guilty File	Might not be a conviction ³⁸⁶	
Accord & Satisfaction	Not a conviction	
Conversion to Civil Infraction (per Mass. Gen. Law ch. 277, § 70C)	Not a conviction	

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Practice Tip: A conviction is not necessary to render an applicant inadmissible or subject to removal. For example, juvenile delinquency dispositions, which are not convictions for immigration purposes, may still impact an individual’s immigration status. Similarly, involvement in commercial sex is sufficient to make an applicant inadmissible based on involvement in “prostitution.” For this reason, it is extremely important for attorneys to get a complete criminal history from their clients, even if the client has never been convicted of a crime.

7.2.2.2. *Inadmissibility versus Removability*

Whether an individual can be physically removed from the United States based on grounds of “inadmissibility” or “removability” is determined by the individual’s status. If an individual was lawfully admitted to the United States, she may be removed based on grounds of removability.³⁸⁷ If the individual was never lawfully admitted to the United States (e.g., she illegally crossed the U.S. border), she can be removed based on grounds of inadmissibility. And as discussed above, grounds of inadmissibility and removability can also bar applicants from obtaining immigration benefits. For example, in order to obtain a T visa or become a lawful permanent resident (i.e., get a “green card”) an applicant must be admissible. An inadmissible applicant will be denied a green card unless eligible for and granted one of the few discretionary waivers of inadmissibility.³⁸⁸ The following chart provides the criminal grounds for inadmissibility and removability for trafficking victims:

³⁸⁵ *Id.* at slides 10-11.

³⁸⁶ A Guilty Filed is considered a conviction if the disposition was in consideration for a term of probation already served or another penalty was attached. See *Griffiths v. Immigration and Naturalization Serv.*, 243 F.3d 45, 54-55 (1st Cir. 2001).

³⁸⁷ 8 U.S.C. § 1227.

³⁸⁸ *Id.* § 1182; CPCS Presentation, *supra* note 383, at slide 18.

CATEGORIES OF CRIMINAL GROUNDS OF INADMISSIBILITY AND REMOVABILITY³⁸⁹

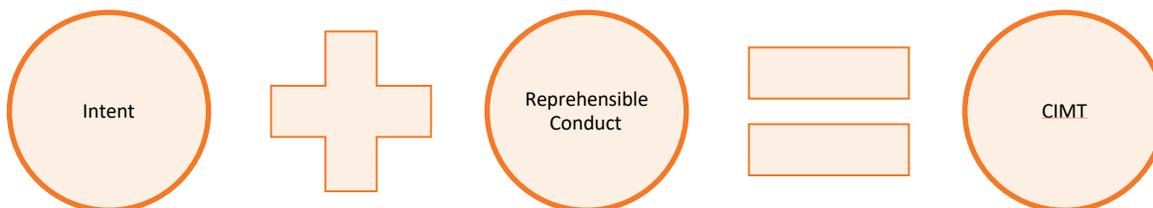
INADMISSIBILITY (8 U.S.C. § 1182(A)(2))	REMOVABILITY (8 U.S.C. § 1227(A)(2))
Crimes involving moral turpitude (8 U.S.C. § 1182(a)(2)(A)(i)(I))	Crimes involving moral turpitude (8 U.S.C. § 1227(a)(2)(A)(i))
Controlled Substance Offense (8 U.S.C. § 1182(a)(2)(A)(i)(II))	Controlled Substance Offense (8 U.S.C. § 1227(a)(2)(B))
Prostitution related offenses (8 U.S.C. § 1182(a)(2)(D))	Firearms offenses (8 U.S.C. § 1227(a)(2)(C))
Conviction of multiple offenses (5 years or more) (8 U.S.C. § 1182(a)(2)(I))	Domestic Violence offenses (8 U.S.C. § 1227(a)(2)(A)(ii))
	Aggravated Felonies (8 U.S.C. § 1227(a)(2)(A)(iii))

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7.2.2.3. Crimes Involving Moral Turpitude

A conviction of a crime involving moral turpitude is grounds for both inadmissibility and removability.³⁹⁰ To determine whether a crime involved “moral turpitude,” a crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness.³⁹¹

In short:



Matter of Silva-Trevino, 24 I&N Dec. 687 (2008)³⁹²

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Note, however, that previous case law defining certain offenses as crimes of moral turpitude still govern and not all such crimes will fit this scheme.

If an applicant was convicted of or admits to committing a crime of moral turpitude, she will be inadmissible unless: (1) the crime was committed before she was 18 years old and was committed at least five years before her admission to the United States; or (2) the maximum penalty is one year or

³⁸⁹ CPCS Presentation, *supra* note 383, at slide 8.

³⁹⁰ *Id.* at slide 20.

³⁹¹ *Id.* at slide 19.

³⁹² *Id.* at slide 13.

less and the sentence of imprisonment is six months or less (either suspended or imposed).³⁹³ An individual is removable based on a conviction of one crime involving moral turpitude committed within five years of admission to the United States (as long as the offense carries a maximum possible penalty of one year or more) or for convictions of two crimes involving moral turpitude occurring at any time not arising out of a single scheme.³⁹⁴

Prostitution-related offenses, such as solicitation or sex for fee, is considered a “crime involving moral turpitude” for purposes of the grounds of deportability. As reflected above, however, there is a separate ground of inadmissibility based on prostitution, even without a conviction. A person is inadmissible if she has “engaged in prostitution” within the past ten years.³⁹⁵ Though this ground does not require a conviction, attorneys may argue that “engaging in” prostitution requires more than a single incident of prostitution.³⁹⁶

For more on the impact of a criminal conviction or criminal conduct on your client’s immigration status, *see supra* [Section 5](#). For more on strategies to alleviate the impact of a criminal conviction, *see supra* [Section 7.2.3](#).

Defense attorneys representing indigent victim-defendants in Massachusetts may contact the Immigration Impact Unit of the Committee for Public Counsel Services for detailed advice regarding the immigration consequences of criminal dispositions.

CPCS Immigration Impact Unit
21 McGrath Highway
Somerville, MA 02143
TEL: 617-623-0591
FAX: 617-623-0936
iiu@publiccounsel.net
<https://www.publiccounsel.net/iiu>

7.2.3. Actions to Alleviate Collateral Consequences of Criminal Allegations

Removing an outstanding warrant, vacating a conviction, and sealing a CORI report may help alleviate the effects of criminal allegations for a victim in certain contexts. This section provides the procedural background for each of these steps.

³⁹³ *Id.* at slides 20, 22.

³⁹⁴ CPCS Presentation, *supra* note 383, at slide 24.

³⁹⁵ 8 U.S.C. § 1182(a)(2)(D)(i).

³⁹⁶ *See Matter of T*, 6 I&N Dec. 474, 477-78 (BIA 1955); *see also Nivoram v. Gonzales*, 192 F. App’x 285, 286-87 (5th Cir. 2006) (finding that “engagement” in prostitution is satisfied when defendant “admitted that she worked as a prostitute over a two-day period”).

7.2.3.1. *Removing an Outstanding Warrant*

If your client has an outstanding warrant for failure to appear or failure to pay court-imposed fees, it may be advisable to go to the court from which the warrant was issued to remove the warrant. An attorney should explain to a client that she could be arrested and held if the outstanding warrant is not removed.³⁹⁷ Additionally, her driver's license will be revoked until the warrant is resolved.³⁹⁸ However, it is also important to inform a client that in some Massachusetts courts, the policy may be to place the individual in custody until she can go before the judge. For this reason, the Committee for Public Counsel Services ("CPCS") recommends not attempting to remove a warrant on a Friday, to avoid the risk of being held in custody through the weekend if the court is too busy to hear the case that day. Additionally, your client should be informed that if the failure to appear is willful and without sufficient excuse, she may be (but often is not) charged with the substantive offense of bail jumping under M.G.L. c. 276, § 82A.³⁹⁹ If there was a reason that your client did not appear (for example, if she was being threatened or could not escape her perpetrators), you should explain that to the judge and provide any documentation you have, as the judge may remove the default on her record for "good cause."⁴⁰⁰ CPCS recommends that a client bring an affidavit of indigency, if applicable, as well as letters of support from employers, treatment providers, social workers, and others who can show that the individual is making an effort to be an upstanding member of the community.⁴⁰¹ If your client has not yet been arraigned, the court may do so when she appears to remove a warrant. If your client is a child and the outstanding warrant relates to a prostitution charge, consider whether the safe harbor will apply. *See supra* Section 6.2. If a client is arraigned, a bail hearing will be held, and it is possible that the client may be held on bail.⁴⁰² If a client was already arraigned and out on bail when she failed to appear, the district attorney may also seek to raise the bail or seek to revoke it and have the client taken into custody.⁴⁰³

7.2.3.2. *Vacating an Adverse Dispositional Judgment*

In 2018, Massachusetts passed a criminal justice reform bill that included provisions allowing victims of human trafficking to vacate certain convictions, adjudications of delinquency, and continuances without findings.⁴⁰⁴ The new law applies to judgments of the following offenses: "resorting to restaurants or

³⁹⁷ See Memorandum from the Committee for Public Counsel Services, *Suggested Procedures for Warrant Removal* (Aug. 29, 2012), available at www.masslegalservices.org/content/instructions-removing-default-warrant [<https://perma.cc/M6LW-RCHW>].

³⁹⁸ *Suspensions & Hearings: Criminal Defaults*, MASSACHUSETTS REGISTRY OF MOTOR VEHICLES, www.massrmv.com/rmv/suspend/criminal.htm [<https://perma.cc/H5CV-W9EP>].

³⁹⁹ BLUMENSON ET AL., MASSACHUSETTS CRIMINAL PRACTICE 163 (3d ed. 2001).

⁴⁰⁰ MASS. GEN. LAWS ch. 276, § 36.

⁴⁰¹ See Memorandum from the Committee for Public Counsel Services, *supra* note 398.

⁴⁰² *Id.*

⁴⁰³ A Massachusetts district court cannot increase or revoke bail simply because a case has been indicted or bound over to the Superior Court after a probable cause hearing. See MASS. GEN. LAWS ch. 276, § 58. However, District Courts can, and often to, revise or amend bail orders for a wide variety of reasons.

⁴⁰⁴ MASS. GEN. LAWS ch. 265, § 59.

taverns for immoral purposes,⁴⁰⁵ “common night walking,”⁴⁰⁶ “engaging in sexual conduct for a fee,”⁴⁰⁷ and simple possession of a Class A controlled substance.⁴⁰⁸

Upon a finding by the court of a “reasonable probability”⁴⁰⁹ that the victim-defendant’s participation in one of the above offenses “was a result of having been a human trafficking victim” as defined under Massachusetts law, or a victim of human trafficking in persons under federal law, the court shall, upon the victim-defendant’s motion, vacate the conviction, adjudication of delinquency, or continuance without a finding.⁴¹⁰ The court shall also allow the defendant to withdraw any guilty plea, plea of nolo contendere, plea of delinquent, or factual admission “tendered in association therewith.”⁴¹¹

In most cases, the victim-defendant has the burden of establishing a reasonable probability that the victim-defendant’s participation in the offense was the result of having been a victim of human trafficking.⁴¹² However, if the victim-defendant was under the age of 18 and adjudicated delinquent under M.G.L. c. 272, §§ 26 (“resorting to restaurants or taverns for immoral purposes”), 53(a) (“common night walking”), or 53A(a) (“engaging in sexual conduct for a fee”), the law creates a rebuttable presumption that the child’s participation was a result of having been a victim of human trafficking.⁴¹³ The law also creates the same rebuttable presumption if an adult victim-defendant has “official documentation from any local, state, or federal government agency of the defendant’s status as a victim of human trafficking or trafficking in persons at the time of the offense.”⁴¹⁴ It should be noted that a finding that the victim-defendant was a victim of human trafficking does not dictate the ultimate disposition of the case. It merely resets the case to arraignment. Attorneys should thus evaluate the risk that the Commonwealth would want to proceed to trial.

⁴⁰⁵ MASS. GEN. LAWS ch. 265, § 59; MASS. GEN. LAWS ch. 272, § 26.

⁴⁰⁶ MASS. GEN. LAWS ch. 265, § 59; MASS. GEN. LAWS ch. 272, § 53(a).

⁴⁰⁷ *Id.*

⁴⁰⁸ MASS. GEN. LAWS ch. 265, § 59; MASS. GEN. LAWS ch. 94C, § 34.

⁴⁰⁹ It is not yet clear what evidence a victim-defendant will have to provide to show a “reasonable probability” that her participation in one of the included offenses was a result of her being a victim of human trafficking. Courts may apply the same “totality of the circumstances” test as is applied in other vacatur situations, such as a motion to withdraw a guilty plea. For example, the Supreme Judicial Court has mentioned that a defendant must show that “but for” a counsel’s ineffective assistance, the defendant would not have pleaded guilty. *Commonwealth v. Scott*, 467 Mass. 336, 361 (2014). The court reasoned that “[a]t a minimum, the defendant must aver to this fact.” *Id.* at 356. However, the Supreme Judicial Court cautioned that “the relevant factors [weighed in a reasonable probability test] and their relevant weight will differ from one case to the next.” *Id.* at 548. Of course, the factors enumerated in this context are not a perfect match. Massachusetts courts have since addressed this rule in a range of contexts, so advocates are encouraged to do additional research to find the most recent case law available. See, e.g., *Bridgeman v. Dist. Att’y for Suffolk Dist.*, 476 Mass. 298, 301-06 (2017).

⁴¹⁰ MASS. GEN. LAWS ch. 265, § 59.

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.* The law clarifies that official documentation is not required in order for a judge to grant a motion to vacate or provide other remedies under this section. *Id.*

This law does not lay out a specific procedure for filing a motion to vacate a conviction. The American Bar Association has a guide detailing what generally is included in motions to vacate, including suggestions for drafting briefs and affidavits and explanations of different forms of official documentation.⁴¹⁵ For example, the guide notes that a “best practice is to include [with a motion to vacate] any sort of documentation from your client’s life that establishes common features of human trafficking, such as medical records that establish injuries sustained, photographs of your client with the perpetrator of trafficking, letters the perpetrator sent your client from jail, and credit reports that show accounts a perpetrator opened in your client’s name.”⁴¹⁶

7.2.3.3. *Appeals and Motions for a New Trial*

If a victim-defendant is charged with a crime that is not eligible for vacatur under the law described above, there are additional options to consider. First, an individual in Massachusetts may appeal a conviction by filing a Notice of Appeal within 30 days of sentencing.⁴¹⁷

In addition, an individual may also move for a new trial under Massachusetts Rule of Criminal Procedure 30(b) if “at any time if it appears that justice may not have been done.”⁴¹⁸ A victim-defendant’s motion may be based on either an error of law or new evidence.⁴¹⁹ The motion must be accompanied by an affidavit supporting any facts asserted, and must be served on the Commonwealth.⁴²⁰ It may be helpful to contact the district attorney’s office to provide notice that a victim-defendant may file a motion for new trial and discuss the case, as it is possible that the Commonwealth may not oppose the motion. The motion “is addressed to the sound discretion of the trial judge, and [. . .] will not be reversed unless it is manifestly unjust, or unless the [proceeding] was infected with prejudicial constitutional error.”⁴²¹

A motion for new trial under Rule 30 may also be used to set aside a guilty plea. Courts “apply the standard set out in Mass. R. Crim. P. 30(b) rigorously, and allow defendants to withdraw their pleas after sentencing only ‘if it appears that justice may not have been done.’”⁴²² The Supreme Judicial Court has held that “[e]vidence of battered woman syndrome may be considered newly discovered evidence

⁴¹⁵ See generally American Bar Association, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys* (Apr. 5, 2018), available at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.pdf [<https://perma.cc/HC4Q-JHKH>].

⁴¹⁶ *Id.* at 24.

⁴¹⁷ MASS. R. APP. P. 3, 4(b).

⁴¹⁸ MASS. R. CRIM. P. 30(b).

⁴¹⁹ See *Commonwealth v. Grace*, 397 Mass. 303, 305 (1986) (“A judge ‘may grant a new trial at any time if it appears that justice may not have been done.’ The judge must make ‘such findings of fact as are necessary to resolve the defendant’s allegations of error of law.’ A defendant seeking a new trial on the ground of newly discovered evidence must establish both that the evidence is newly discovered and that it casts real doubt on the justice of the conviction.”) (quoting MASS. R. CRIM. P. 30 (b)).

⁴²⁰ MASS. R. CRIM. P. 30(c)(1).

⁴²¹ *Commonwealth v. Colon*, 439 Mass. 519, 524 (2003) (quoting *Commonwealth v. Russin*, 420 Mass. 309, 318 (1995)).

⁴²² *Commonwealth v. DeMarco*, 387 Mass. 481, 487 (1982) (citations and internal quotation marks omitted).

warranting a new trial because usually there is delay in coming forward with information on the abuse, even if there were some knowledge of the abuse at trial.”⁴²³ In the case of a guilty plea, evidence of battered woman syndrome can be used to argue that the victim-defendant did not have the “mental competency to assist her attorney in establishing a defense and to plead guilty voluntarily.”⁴²⁴

Before moving for a new trial, it is important for attorneys to document the facts of a client’s abuse in as much detail and with as much corroborating evidence as possible. For example, in one successful case, the victim-defendant filed an affidavit describing her extensive physical and psychological abuse, psychiatric records indicating she had “past tendencies to be lorded over by abusive males,” testimony from her boyfriend’s trial detailing his acts of violence and abuse, and investigative reports from the district attorney, describing her boyfriend as a “violent and abusive person, especially toward women and children.”⁴²⁵

It is important to assess *all* potential grounds for moving for a new trial, as any grounds not raised in the motion for new trial “are waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.”⁴²⁶

If a motion for new trial is granted, the case will be referred back to the district attorney’s office. Attorneys should communicate with the prosecutor at that point to discuss the possibility of dropping the charges.

Practice Tip: Motions to vacate a conviction under M.G.L. c. 265, § 59 are available only for a limited number of crimes. For offenses not included in § 59, a motion for a new trial pursuant to Mass. R. Crim. Pro. 30(b) may be the only way to remove a guilty plea or conviction.

Practice Tip: You should carefully define the scope of your representation at the outset of any work with a client. While this is important for any type of representation, it is especially important when assisting with post-conviction relief, such as moving for a new trial. Before beginning any client work, clearly set out the limits of your representation in writing so that your client knows whether you will be representing her only for post-conviction relief, and if she will need to find alternative representation for any future needs should the relief be granted.

⁴²³ *Commonwealth v. Conaghan*, 433 Mass. 105, 110 (2000) (remanding motion to trial court for expert evaluation of defendant to determine whether she was suffering from battered women’s syndrome and whether it prevented her from making a voluntary plea). For more information on battered woman syndrome, see *supra* [Section 7.1.1.2](#).

⁴²⁴ *Commonwealth v. Conaghan*, 433 Mass. at 110.

⁴²⁵ *Id.* at 107-09.

⁴²⁶ MASS. R. CRIM. P. 30(c)(2).

7.2.3.4. *Sealing and Expunging Criminal Records*

An individual may request that certain convictions and other criminal case dispositions be sealed so they will not appear on a CORI Report. However, such records may still be viewed by certain agencies, including but not limited to select employers, law enforcement, immigration agencies, and housing authorities.⁴²⁷ Whether an individual is able to seal CORI information depends on a variety of factors, including: (1) how much time has elapsed since the conviction or incarceration; (2) which type of crime(s) are involved; and (3) whether the individual is a registered sex offender.⁴²⁸

The first step is for the individual to request a copy of her CORI from the Massachusetts Department of Criminal Justice Information (“DCJIS”) either online, at <https://www.mass.gov/criminal-record-check-services>, or by mail. The CORI request form must be notarized if sent by mail, and is available, along with instructions, from [MassLegalHelp.org](https://www.mass.gov/help/help/mass-legal-help). Each CORI request costs \$25, but the fee can be waived if the individual requesting the report also includes an affidavit of indigency.⁴²⁹ Before requesting that a record be sealed, it is a good idea to obtain certified copies of the complaint and docket for the individual’s records.⁴³⁰

There is a waiting period for criminal convictions to be eligible to be sealed, after which (and assuming no disqualifying condition is present) a petitioner can seal the record of a conviction as a matter of right by means of an application made directly to the Office of the Commissioner of Probation. Dispositions other than convictions can also be sealed as a matter of right after the lapse of the applicable time period. The waiting period to seal a misdemeanor conviction is three years from the time of conviction or release from incarceration, whichever is later; probation and parole are not included in this wait time. For felony convictions, the waiting period is seven years. If an individual is convicted of another crime during the waiting period but before filing a petition to seal, the waiting period clock starts again.⁴³¹ “Not guilty” findings, dismissals, and *nolle prosequi* dispositions can be sealed by a judge as a matter of discretion without any waiting period.⁴³² A judge also has the discretion to seal a first-time drug possession conviction as long as the individual did not violate the terms of her probation or CWO or any other requirements ordered by the court, such as mandatory drug treatment.⁴³³

⁴²⁷ See generally, Greater Boston Legal Services, *Know Your CORI Rights: Sealing and Expungement of Criminal Offender Record Information (CORI)* 11-12 (2018), available at <https://www.gbls.org/sites/default/files/2018-12/know-your-cori-rights-121818f.pdf> [<https://perma.cc/W8AU-6L5G>].

⁴²⁸ *Id.* at 6-8.

⁴²⁹ *Id.* at 5.

⁴³⁰ *Id.* at 9.

⁴³¹ MASS. GEN. LAWS ch. 276, § 100A.

⁴³² MASS. GEN. LAWS ch. 276, § 100C.

⁴³³ *Know Your CORI Rights*, *supra* note 428 at 6-8.

However, some exceptions exist.⁴³⁴ For example, convictions for violating an abuse or harassment prevention order are treated as felonies for purposes of sealing records and have a seven year waiting period. Sex offense convictions have a fifteen year waiting period, including any period of parole, probation, or supervision.⁴³⁵

Although juvenile cases are not considered criminal records and cannot be viewed by employers or landlords, your client may still choose to have juvenile records sealed. Juvenile records may be sealed in Massachusetts three years after release from prison and closing of a case; exceptions exist for sex offenses and offenses in which a juvenile was tried as an adult.⁴³⁶

The sealing of a record will seal only Massachusetts criminal cases, so if your client has a criminal record in other states, an attorney should research those states' procedures for sealing criminal records.

Until late 2018, expungement was for the most part unavailable under Massachusetts law.⁴³⁷ Now, a variety of entries may be eligible for expungement pursuant to Mass. Gen. Laws ch. 276, §§ 100E-100U. Whereas an order to seal simply shields records from inspection by the general public, an order of expungement effects actual destruction of the documents which reflect an entry. Whether expungement is available depends on a variety of factors including the nature of the offense that is the subject of the record, the nature of the disposition, the age of the defendant at the time of the entry, and whether the entry is the defendant's sole entry.

Practice Tip: Sealed criminal records of noncitizens may still be viewed by USCIS as a basis for denying an immigration benefit as well as used as a basis for removability or inadmissibility. In addition, sealing does not allow a noncitizen to say “no criminal record” when applying for immigration benefits—it may in fact be considered fraudulent to do so. Once sealed, noncitizens will not be able to access and make copies of any criminal records, which are required for many immigration benefits. Therefore, it is generally not advisable for noncitizens to seal their criminal records.⁴³⁸

7.2.3.5. *Special Considerations for Noncitizens with Criminal Convictions*

As discussed *supra* in [Section 7.2.2](#), criminal convictions can lead to severe consequences for noncitizens, including deportation. If your client is a noncitizen, the following options might also be considered to directly address the immigration consequences of a criminal conviction.

⁴³⁴ There is currently a bill pending in the Massachusetts Legislature which provides that, if a victim-defendant vacates his or her conviction under MASS. GEN. LAWS ch. 265, § 59, he or she may move to seal “the court appearance and disposition recorded.” S. 2598, 190th Gen. Ct § 13 (Mass. 2018).

⁴³⁵ *Know Your CORI Rights, supra* note 428 at 8.

⁴³⁶ *Id.* at 11.

⁴³⁷ *See, e.g., Commonwealth v. Boe*, 456 Mass. 337 (2010).

⁴³⁸ Volunteer Lawyers Project, “CORI Basics” (Oct. 29, 2018), *available at* https://www.masslegalservices.org/system/files/library/CORI%20PPT-%20Steve%20Russo%20VLP%20Theme_0.pdf [<https://perma.cc/D7M3-LB63>].

First, a judge’s failure to warn a criminal defendant of the immigration consequences of a guilty plea is an alternative ground for a motion to vacate a conviction under Mass. Gen. Laws ch. 278, § 29D.⁴³⁹ In addition, a defense attorney’s failure to advise a client of the immigration consequences of a plea may also form a basis for a motion to vacate a conviction based on ineffective assistance of counsel.⁴⁴⁰

Second, advocates may be able to move under Mass. R. Crim. P. 29 for the court to lessen the severity of a conviction, which could alleviate the immigration consequences caused by a conviction of an aggravated felony⁴⁴¹ or a crime involving moral turpitude.⁴⁴² As discussed above, noncitizens convicted of an aggravated felony or a crime involving moral turpitude may be inadmissible or deportable.⁴⁴³ Mass. R. Crim. P. 29 allows a judge, upon the judge’s or a defendant’s motion, to “revise or revoke” a sentence “if it appears that justice may not have been done.”⁴⁴⁴ For example, Rule 29 may be used to shorten the length of a sentence, which may reduce an aggravated felony to a lesser offense.⁴⁴⁵

⁴³⁹ COMM. FOR PUB. COUNSEL SERV. IMMIGRATION IMPACT UNIT, *Immigration Consequences of Massachusetts Criminal Convictions* 24 (2015), available at <https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/2014/07/IIU-Guide-2015.pdf> [<https://perma.cc/Y6TW-SMYA>].

⁴⁴⁰ *Id.* at 27; see generally *Padilla v. Kentucky*, 559 U.S. 356 (2010).

⁴⁴¹ See 8 U.S.C. § 1101(a)(43) (defining “aggravated felony”).

⁴⁴² See 8 U.S.C. § 1227(a)(2)(A)(i).

⁴⁴³ See *supra* Section 7.2.2.

⁴⁴⁴ MASS. R. CRIM. P. 29 (a)(2).

⁴⁴⁵ COMM. FOR PUB. COUNSEL SERV. IMMIGRATION IMPACT UNIT, *supra* note 439, at 39.

CRIMINAL PENALTIES FOR PROSTITUTION-RELATED CRIMES

STATUTE	RELEVANT LANGUAGE	PENALTY
Engaging in sexual conduct for a fee; engaging in sexual conduct with child under age 18 for a fee; penalties, MASS. GEN. LAWS ch. 272, § 53A	<p>“(a) Whoever engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, shall be punished by imprisonment”</p> <p>“(b)Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct, or to agree to engage in sexual conduct with another person”</p> <p>“(c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18”</p>	<p>(a) Maximum 1 year in the house of correction; maximum \$500 fine</p> <p>(b) Maximum 2 and one-half years in a house of correction; \$1,000-\$5,000 fine</p> <p>(c) Maximum of 10 years imprisonment or incarceration in the house of correction for not more than 2 and one-half years; \$3,000-\$10,000 fine</p>
“Common night walking”, MASS. GEN. LAWS ch. 272, § 53	“Common night walkers, common street walkers, both male and female, persons who with offensive and disorderly acts or language accost or annoy persons of the opposite sex, lewd, wanton and lascivious persons in speech or behavior, keepers of noisy and disorderly houses, and persons guilty of indecent exposure”	Maximum of 6 months in a jail or house of correction; \$200 fine
Inducing a Minor into prostitution, MASS. GEN. LAWS ch. 272, § 4A	“Whoever induces a minor to become a prostitute, or who knowingly aids and assists in such inducement”	3-5 years in a state prison, \$5,000 fine
Living off or sharing earnings of minor prostitute, MASS. GEN. LAWS ch. 272, § 4B	“Whoever lives or derives support or maintenance, in whole or in part, from the earnings or proceeds of prostitution committed by a minor, knowing the same to be earnings or proceeds of prostitution, or shares in such earnings, proceeds or monies”	Minimum of 5 years in a state prison, \$5,000 fine
Owner of place inducing or suffering person to resort in such place for sexual intercourse, MASS. GEN. LAWS ch. 272, § 6	“Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse for money or other financial gain”	5 years in a state prison, \$5,000 fine
Support from, or sharing, earnings of prostitute, MASS. GEN. LAWS ch. 272, § 7	“Whoever, knowing a person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of his prostitution, from moneys loaned, advanced to or charged against him by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall share in such earnings, proceeds or moneys”	5 years in a state prison, \$5000 fine

STATUTE	RELEVANT LANGUAGE	PENALTY
Soliciting for prostitute, MASS. GEN. LAWS ch. 272, § 8	"Whoever solicits or receives compensation for soliciting for a prostitute"	Maximum of 2 and one-half years in a house of correction, or by a fine of not less than \$1,000 and not more than \$5,000 or by both
Keeping house of ill fame, MASS. GEN. LAWS ch. 272, § 24	"Keeping a house of ill fame which is resorted to for prostitution or lewdness"	Maximum of 2 years imprisonment
Resorting to restaurants or taverns for immoral purposes, MASS. GEN. LAWS ch. 272, § 26	"Whoever for the purpose of immoral solicitation or immoral bargaining, shall resort to any café, restaurant, tavern . . . and whoever shall resort to any such place for the purpose of, in any manner, inducing another person to engage in immoral conduct, and whoever, being in or about any such place, shall engage in any such acts, and any person owning, managing or controlling such place for the purpose of immoral solicitation or immoral bargaining"	Maximum 1 year imprisonment, fine of not less than \$25 and not more than \$500, or both

8. Issues Specific to Aiding Prosecution of Perpetrators of Trafficking

8.1. Massachusetts Anti-Trafficking Statute Crimes and Penalties: Overview and Challenges to Prosecution

The Massachusetts Anti-Trafficking Statute created the crime of human trafficking and imposed severe penalties against the perpetrators. This section provides an overview of the criminal enforcement aspects of the Massachusetts Anti-Trafficking Statute and highlights challenges of assisting with the prosecution of perpetrators for attorneys representing trafficking victims.

8.1.1. Examples of Recent Prosecutions of Perpetrators of Human Trafficking

The following are examples of ongoing prosecutions under the Massachusetts Anti-Trafficking Statute. Note that as these examples of human trafficking in Massachusetts courts are current prosecutions, the facts contained in the summaries below are allegations.

- In 2018, The Attorney General's Office indicted two individuals and a business entity for labor trafficking. The case consolidated labor trafficking, conspiracy and criminal wage and hour indictments in Bristol County. This was the first ever labor trafficking indictment brought under a corporate criminal responsibility legal theory against a business entity for its involvement in a forced services scheme.
- In 2018, the Attorney General's Office brought indictments against a perpetrator of multiple counts of sex trafficking of a minor. The minor victims were also exploited by compelled production of unlawful pornography.

The Massachusetts Attorney General's Office also successfully prosecuted several trafficking cases in 2018:

- *Commonwealth v. Henricks Berdet and David Rivera*: Defendant Berdet, a notorious and prolific pimp, pleaded guilty to multiple counts of sex trafficking and deriving support from prostitution for his trafficking of six young drug addicted women. Rivera pleaded to Conspiracy to Traffic for his role in transporting the victims and facilitating commercial sexual activity.
- *Commonwealth v. Marvin Pompilus*: In February 2018, the Attorney General's Office successfully prosecuted a consolidated sex trafficking case in Suffolk County. Defendant, another notorious and very active pimp, was convicted by a jury of multiple counts of sex trafficking and deriving support from prostitution for his trafficking of several drug addicted young woman.

- *Commonwealth v. Wong, Tang & Xu*: In January 2018, Defendant Wong pleaded guilty to trafficking multiple woman out of a high-volume brothel he ran in the Brighton area of Boston. After resolution of this case, the Attorney General’s Office moved to forfeit seized money under the human trafficking forfeiture statute, resulting in over \$100,000 being channeled into the Victims of Human Trafficking Trust Fund.

Recently, the proliferation of massage parlors that provide a front for human trafficking has received national attention. A 2018 Polaris report estimates that over 9,000 “illicit massage businesses” (“IMBs”) were in operation across the country with an annual revenue of about 2.5 billion.⁴⁴⁶ These IMBs are particularly difficult to prevent, identify, and shut down, and the people who run these businesses are therefore rarely prosecuted.⁴⁴⁷ Loose local, state, and federal regulation of massage businesses and cultural acceptance of the industry make it particularly difficult to locate and prosecute people who own and patronize IMBs.⁴⁴⁸ In Massachusetts, the Attorney General’s Office has prosecuted a number of IMBs and continues to fight against them, in addition to training other law enforcement entities on these issues.

Both sex and labor trafficking cases present challenging issues and are often difficult to prosecute. Labor trafficking cases are especially difficult to prosecute because of less clear legal standards and less recognizable fact patterns. The following sections discuss some of the tools and strategies advocates may use to prosecute perpetrators of both sex and labor trafficking and support victims involved in prosecutions.

8.1.2. New Tools Available for Prosecution

The Massachusetts Anti-Trafficking Statute established four new crimes: trafficking of persons for sexual servitude, trafficking of persons for forced labor, organ trafficking, and child enticement by electronic communication. The Act also increased the penalties for some existing crimes related to the solicitation of commercial sex.

⁴⁴⁶ HUMAN TRAFFICKING IN ILLICIT MESSAGE BUSINESSES, POLARIS (Jan. 2019) 10, available at <https://www.mass.gov/files/documents/2018/04/30/Polaris%20HT%20IMB%20Report.pdf> [<https://perma.cc/PV3C-A3BW>].

⁴⁴⁷ Phillip Martin & Jenifer B. McKim, *Illicit Massage Parlors Are Across Massachusetts. Why Is Police Action so Rare?*, WGBH BOSTON (Jan. 16, 2018), available at <https://www.wgbh.org/news/2018/01/16/local-news/illicit-massage-parlors-are-across-massachusetts-why-police-action-so-rare> [<https://perma.cc/67NZ-CRK5>].

⁴⁴⁸ *Id.* In Massachusetts, the legislature is currently considering a bill to close a regulatory loophole which allows IMBs to operate as “bodywork” operations, which are not regulated under state law (unlike massage therapists, who are regulated and must have a license to operate in Massachusetts). Phillip Martin & Jennifer B. McKim, *Responses and Solutions to the Spread of Storefront Massage Parlors*, WGBH BOSTON (Apr. 30, 2018), available at <https://www.wgbh.org/news/local-news/2018/04/30/responses-and-solutions-to-the-spread-of-storefront-massage-parlors> [<https://perma.cc/6ZTC-4WLT>]. However, this comes with its own complications, as many legitimate bodywork operations such as practitioners who study Feldenkrais or shiatsu may be unable comply with state licensing requirements.

RELEVANT MASSACHUSETTS HUMAN TRAFFICKING STATUTES

LAW	RELEVANT LANGUAGE	PENALTY	ISSUES/ADDITIONAL INFORMATION
Deriving Support from Prostitution, MASS. GEN. LAWS ch. 272, § 7	Whoever, knowing a person to be a prostitute, shall live or derive maintenance, in whole or in part from the earnings or proceeds of his prostitution . . . or shall share in such earnings, proceeds or moneys.	<ul style="list-style-type: none"> • Five years imprisonment and a fine of \$5,000. • The sentence shall not be reduced to less than two years. 	<ul style="list-style-type: none"> • Statute is intended to punish “pimping” and not those who play a lesser role in commercial sexual exploitation. See <i>Commonwealth v. Thetonia</i>, 27 Mass.App. Ct. 783 (1989). For further comments on sufficiency of evidence to prove “deriving maintenance,” see <i>Commonwealth v. Brown</i>, 90 Mass. App. Ct. 1107 (Sept. 30, 2016).
Deriving Support from a Minor Prostitute, MASS. GEN. LAWS ch. 272, § 4B	In addition to the elements needed to prove that a person derived support from prostitution; must prove that the person engaged in prostitution was under 18.	<ul style="list-style-type: none"> • Imprisonment for not less than five years and a \$5,000 fine. • The sentence shall not be reduced to less than five years. 	<ul style="list-style-type: none"> • Does not require proof that the defendant knew or should have known that the minor was under 18 years old.
Inducing a Minor into Prostitution, MASS. GEN. LAWS ch. 272, § 4A	Whoever induces a minor to become a prostitute or knowingly aids and assists in such inducement.	<ul style="list-style-type: none"> • Imprisonment for not less than three years and not more than five years and a fine of \$5,000. 	<ul style="list-style-type: none"> • The statute does not punish the conduct of inducing a minor into a single act of sex for a fee.
	Must prove that the defendant induced a minor, who was not then so engaged in prostitution, to engage in prostitution.	<ul style="list-style-type: none"> • The sentence shall not be reduced to less than three years. 	<ul style="list-style-type: none"> • Also requires proof that the minor had never before engaged in prostitution, or abandoned prostitution, before being induced back into commercial sex by the defendant.
			<ul style="list-style-type: none"> • <i>Commonwealth v. Matos</i>, 78 Mass. App. Ct. 578 (2011).
Keeping a House of Prostitution, MASS. GEN. LAWS ch. 272, § 6	Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or on such a place for the purpose of unlawfully having sexual intercourse for money or other financial gain.	<ul style="list-style-type: none"> • Five years imprisonment and \$5,000 fine. • Sentence shall not be reduced to less than two years. 	<ul style="list-style-type: none"> • Sexual intercourse is defined only as penile-vaginal penetration. • <i>Commonwealth v. Purdy</i>, 459 Mass. 442 (2011).

CRIMINAL STATUTES CREATED BY THE MASSACHUSETTS ANTI-TRAFFICKING STATUTE

LAW	RELEVANT LANGUAGE	PENALTY
Trafficking in Persons for Sexual Servitude, MASS. GEN. LAWS ch. 265, § 50	Whoever knowingly: (i) subjects, or attempts to subject, or 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 to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i).	Imprisonment for not less than five years and not more than twenty years and a fine of not more than \$25,000. Sentence shall not be reduced to less than five years. If victim is a minor: Maximum sentence is life or any term of years.
Trafficking in Persons for Forced Services, MASS. GEN. LAWS ch. 265, § 51	Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or 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, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i).	If subsequent offense: Imprisonment for not less than ten years with a maximum of a sentence of life or any term of years. Same penalty as trafficking for sexual servitude.
Organ Trafficking, MASS. GEN. LAWS ch. 265, § 53	Whoever: (i) recruits, entices, harbors, transports, delivers or obtains by any means, another person, intending or knowing that an organ, tissue or other body part of such person will be removed for sale, against such person's will; or (ii) knowingly receives anything of value, directly or indirectly as a result of a violation of clause (i).	Imprisonment for not more than fifteen years, or by a fine of not more than \$50,000, or both. When the victim is under the age of 18, punishment shall be imprisonment for five years.
Enticement of a Child by Means of Electronic Communications, MASS. GEN. LAWS ch. 265, § 26D	Whoever, by electronic communication, knowingly entices a child under the age of 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so.	Imprisonment in the House of Correction for not more than two and one half years or State Prison for not more than five years, or by a fine of not less than \$2,500, or both.

8.1.3. Strategies for Effective Prosecution Under the Act

It is important for those who prosecute human trafficking cases to use a trauma-informed approach to working with trafficking victims. To use a trauma-informed approach, lawyers should be aware that human trafficking victims often present with complex issues stemming from domestic violence, sexual assault, drug abuse, and childhood sexual and physical assault. Because of these complex dynamics, victims of human trafficking are often afraid, unwilling, or unable to participate in the prosecution of their perpetrators. See [Section 4](#) for more information about working with human trafficking victims.

To prosecute perpetrators of human trafficking effectively, the best practice is to use a multidisciplinary, victim-centered team approach. This multidisciplinary team should ideally consist of local, state, and federal law enforcement, victim service providers, and those who can assist in the provision of food,

housing, and benefits as needed. When a victim is represented by counsel, the prosecution team should work with the victim's attorney to ensure that the victim's concerns are adequately addressed. Prosecutors and law enforcement should also strive to build cases against perpetrators that require little to no victim participation whenever possible. Although it is the goal of a criminal prosecution to obtain a conviction, a successful prosecution, with or without victim participation, ideally concludes with the victim being able to live a life free of human trafficking.

8.1.4. Victim Rights Under the Massachusetts Victim Bill of Rights

The Massachusetts Victim Bill of Rights provides several rights to victims of state law crimes, their family members, and other witnesses.⁴⁴⁹ These rights allow victims to attend and participate in criminal proceedings, to be heard and informed, and to be protected and compensated.

Some of the rights afforded to victims of and witnesses to state law crimes include:

- The right to be informed about:
 - o the rights and the services available;
 - o the criminal case as it progresses through the court;
 - o what is expected of victims and witnesses;
 - o court dates and continuances in a timely manner;
 - o the final disposition of the case; and
 - o the sentence imposed.
- The right to speak with the prosecutor before:
 - o the case begins;
 - o the case is dismissed; and
 - o the sentence recommendation is made to the court.
- The right to be present at all court proceedings (unless the judge determines that testimony may be influenced by his or her presence in court).
- The right to agree or to refuse to participate in interviews with the defense attorney or investigator (and to set reasonable conditions on such interviews).

⁴⁴⁹ MASS. GEN. LAWS ch. 258B, § 3.

- The right to provide a Victim Impact Statement at sentencing, which informs the court about the physical, emotional, and financial impact of the crime, and any opinions regarding sentencing.
- The right to financial assistance, which may include:
 - o restitution for a financial or property loss, or a physical injury;
 - o if eligible, the right to apply for Victim Compensation for certain out-of-pocket expenses, including medical, counseling, or funeral costs; and
 - o the right to receive a witness fee (if the person received a summons to appear in court).
- The right, upon request, to be notified of an offender’s temporary, provisional, or final release from custody.⁴⁵⁰

8.1.5. Role of Victims’ Advocates in Massachusetts

Throughout the prosecution of human trafficking cases under Massachusetts law, victim witness advocates, professionals trained to support victims, are responsible for informing victims of the rights afforded to them under the Victim Bill of Rights and liaising between victims, law enforcement, and local social service agencies.⁴⁵¹ In addition, the primary role of the victim witness advocate is to help ensure the safety and overall well-being of victims. This can include helping victims gain access to medical care, mental health services, and emergency shelter or housing. It is critical that victim witness advocates work collaboratively with experienced social services agencies that specialize in working with survivors of human trafficking.

8.1.6. Challenges When Cooperating with Law Enforcement

Although victims are afforded several rights under the Victim Bill of Rights, they nonetheless may face barriers to cooperating fully with law enforcement. Some reasons for this are:

- Trauma may prevent victims from wishing—or being able—to relay their experiences to their attorneys or to law enforcement.⁴⁵²
- The relationship between perpetrators and victims is complex, and much like domestic violence victims, trafficking victims may be reluctant to cooperate with law enforcement.⁴⁵³

⁴⁵⁰ *Id.*

⁴⁵¹ For more information on the role of victim witness advocates, see generally MASS. DIST. ATTORNEYS ASS’N (MDAA), *The Massachusetts Victim-Witness Advocate Reference Manual* (2d ed. 2010), available at www.mass.gov/mdaa/docs/victim-witness-ref-manual-2010.pdf [<https://perma.cc/55LU-CTKT>].

⁴⁵² *Id.* at 5-6.

⁴⁵³ Lauren Hersh, *Sex Trafficking Investigations and Prosecutions*, LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS 255, 256-57 (Jill L. Goodman & Dorchen A. Leidholdt eds., 2018), available at

- Perpetrators often coerce victims not to talk to law enforcement through threats or tell them that, if they talk to law enforcement, immigration officials will arrest or deport them.⁴⁵⁴
- Victims from foreign countries may distrust law enforcement based on experiences in their native countries.⁴⁵⁵
- Victims and their attorneys may find it challenging to refuse to comply with requests from law enforcement authority figures, “especially those who have the power to detain, arrest, and prosecute.”⁴⁵⁶ This power dynamic may make working with law enforcement uncomfortable.
- Victims may have first encountered law enforcement during an arrest or at a crime scene. Victims may be arrested or incarcerated when law enforcement initially fails to recognize them as victims of human trafficking.⁴⁵⁷
- Cooperating with law enforcement may involve multiple interviews with the victim, which can overwhelm the victim or serve to re-traumatize the victim.⁴⁵⁸

It is important to note, however, that despite these challenges, a “Law Enforcement Agency” certification is required to attain a U visa.⁴⁵⁹ For more on these immigration remedies, *see supra* [Section 5](#).

8.1.7. Criminal Restitution in Massachusetts

If available, prosecutors should seek restitution under either the state or federal anti-trafficking acts.⁴⁶⁰ Although restitution is mandatory under the Trafficking Victims Protection Reauthorization Act (“TVPA”), victims must request that restitution be granted for prosecutions under the Massachusetts

http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/LMHT_0.pdf [<https://perma.cc/3D4P-LW49>]

(“The trafficker often serves as the victim’s employer, family, landlord, and sexual partner or love interest.”).

⁴⁵⁴ Leidholdt, *supra* note 34, at 169, 172 (“Traffickers also instill in their victims fears about the response of law enforcement and immigration authorities. Sex trafficking victims are routinely told by their traffickers that if they try to seek help from the police they will be arrested for prostitution and, if they are immigrants, summarily deported.”).

⁴⁵⁵ U.S. CONF. OF CATHOLIC BISHOPS, ET AL., *supra* note 127 at § 2.7.

⁴⁵⁶ IMMIGRANT LEGAL RES. CENTER, REPRESENTING SURVIVORS OF HUMAN TRAFFICKING: A PROMISING PRACTICES HANDBOOK § 7.2 (2010).

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* at § 7-4.

⁴⁵⁹ NY ANTI-TRAFFICKING NETWORK LEGAL SUBCOMM., IDENTIFICATION AND LEGAL ADVOCACY FOR TRAFFICKING SURVIVORS (3d ed. 2009). “Law Enforcement Agency” (LEA) refers to any federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. Qualified LEAs include, but are not limited to, the offices of the Department of Justice, the United States Attorneys, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation, the United States Citizen and Immigration Services, the Immigration and Customs Enforcement, the United States Marshals Service, and the Diplomatic Security Service of the Department of State. 8 C.F.R. § 214.11(a).

⁴⁶⁰ 18 U.S.C. § 1593 (mandatory restitution under the TVPA); MASS. GEN. LAWS ch. 258B, § 3(o) (a victim may request restitution).

Anti-Trafficking Statute.⁴⁶¹ Victims may obtain assistance from the prosecutor in documenting their losses in state cases. However, below are some practice tips to maximize the amount of restitution granted.

- Use experts on wage rates and calculating the victim’s “losses”;
- Calculate the value to the defendant of the victim’s forced services;
- Insist that plea agreements include restitution orders;
- Make pleas contingent upon pre-payment of restitution into an escrow account; and
- Argue to include liquidated damages in forced labor wage calculations.

Under Massachusetts law, a judge must evaluate a criminal defendant’s financial circumstances before determining how much restitution the defendant should pay the victim.⁴⁶² In addition, a court can order that restitution be paid to victims out of seized assets. Such assets must be distributed first before any forfeited assets.⁴⁶³ In contrast, restitution for federal crimes is calculated by determining the victim’s loss with no consideration of the defendant’s ability to pay.⁴⁶⁴

Under federal law, restitution for human trafficking victims is mandatory and available under 18 U.S.C. § 1593(b)(3). Section 1593 requires that restitution awards include: (1) restitution as calculated under Section 2259(c)(2); *plus* (2) the greater of either (a) the gross income or value to the defendant of the victim’s services or (b) the value of the victim’s labor under the Fair Labor and Standard Act.⁴⁶⁵ The first part of the equation refers to mandatory restitution under 18 U.S.C. § 2259. Under § 2259(c)(2), victims are entitled to recover the full amount of their losses. This is defined as “any costs incurred by the victim,” including: (A) medical services relating to physical, psychiatric, or psychological care; (B) physical and occupational therapy or rehabilitation; (C) necessary transportation, temporary housing, and child

⁴⁶¹ 18 U.S.C. § 1593; MASS. GEN. LAWS ch. 258B, § 3(o).

⁴⁶² *Commonwealth v. Henry*, 475 Mass. 117, 188 (2016) (“To allow a judge to impose a restitution amount that the defendant cannot afford to pay simply dooms the defendant to noncompliance.”).

⁴⁶³ MASS. GEN. LAWS ch. 265, § 55 (“All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B”).

⁴⁶⁴ 18 U.S.C. § 3664(f)(1). Note also that, under 18 U.S.C. § 3664(f)(3)(B), “if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments,” a federal judge may still order a defendant “to make nominal periodic payments” toward the ordered restitution amount.

⁴⁶⁵ VICTIMS LAW BULLETIN, *Ensuring Full Restitution for Trafficking Victims: Case Studies Compel a Call to Action*, (2003), available at <https://law.lclark.edu/live/files/16052-ncvlivirestitution-for-trafficking-victims---call> [<https://perma.cc/CK9Z-UPPA>].

care expenses; (D) lost income; (E) reasonable attorneys' fees, as well as other costs incurred; and (F) any other relevant losses incurred by the victim.⁴⁶⁶

For information about criminal restitution under the TVPRA, see DANIEL WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF TRAFFICKING (3d ed. Oct. 13, 2008).⁴⁶⁷

8.2. Federal Trafficking Crimes and Penalties (Trafficking Victims Protection Act): Overview and Challenges to Prosecution

8.2.1. Examples of Federal Prosecution of Perpetrators of Trafficking

- In 2012, federal prosecutors successfully brought charges against perpetrators of sex and labor trafficking in New York and Texas who trafficked and subjected to commercial sexual exploitation young U.S. citizens from “troubled backgrounds.”
- DOJ also successfully prosecuted an “MS-13 gang member who forced a 12-year-old victim into prostitution in Virginia” and a Chicago-based perpetrator of sex trafficking who used beatings, threats, and sexual assault to force Eastern European victims to perform sexual favors for buyers in massage parlors.⁴⁶⁸
- In Massachusetts, a Boston man was sentenced to seventeen years and three months after being convicted on charges of sex trafficking by force, fraud or coercion, engaging in a conspiracy to commit sex trafficking, and transporting three individuals for prostitution.⁴⁶⁹

8.2.2. Federal Legislation: Available Tools for Prosecution

Federal prosecutors have several statutes with which to prosecute perpetrators. The following table provides a brief summary of each.⁴⁷⁰

⁴⁶⁶ 18 U.S.C § 2259(c)(2).

⁴⁶⁷ Available at

https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/splc_human_trafficking.pdf [<https://perma.cc/8L6K-KDKC>].

⁴⁶⁸ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2012, at 361 (2012), available at <https://2009-2017.state.gov/documents/organization/192587.pdf> [<https://perma.cc/872M-EJJ9>].

⁴⁶⁹ See Dep't of Justice, *Milton Man Sentenced for Sex Trafficking* (May 7, 2019), available at <https://www.justice.gov/usao-ma/pr/milton-man-sentenced-sex-trafficking> [<https://perma.cc/5DRY-UPJZ>].

⁴⁷⁰ *Coakley Testimony*, *supra* note 84, at 2 (“We know the best way to stop human trafficking is by addressing all three fronts of the problem. We need to go after the supply, address the demand that feeds this industry, and support its victims.”).

RELEVANT FEDERAL STATUTES

LAW	RELEVANT LANGUAGE	PENALTY
<p>Trafficking Victims Protection Act (“TVPA”), 18 U.S.C. § 1589.</p>	<p>§ 1589. Forced labor</p> <p>(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—</p> <p>(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;</p> <p>(2) by means of serious harm or threats of serious harm to that person or another person;</p> <p>(3) by means of the abuse or threatened abuse of law or legal process; or</p> <p>(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, shall be punished as provided under subsection (d).</p> <p>(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).</p>	<p>Subsection (d) provides that:</p> <p>Whoever violates this section shall be fined under this title, imprisoned for not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.</p>
<p>Trafficking Victims Protection Act (“TVPA”), 18 U.S.C. § 1591.</p>	<p>§ 1591. Sex trafficking of children or by force, fraud, or coercion</p> <p>(a) Whoever knowingly —</p> <p>(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1); knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)</p> <p>(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not</p>	<p>Subsection (b) provides that:</p> <p>(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or</p> <p>(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.</p>

LAW	RELEVANT LANGUAGE	PENALTY
	<p>attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).</p>	
<p>The Mann Act, 18 U.S.C. § 2421.⁴⁷¹</p>	<p>18 U.S.C. § 2421 (Adults)</p> <p>Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned for not more than ten years.</p>	<p>10 years imprisonment, fines, or both.</p>
<p>The Mann Act, 18 U.S.C. § 2423(a).</p>	<p>18 U.S.C. § 2423 (Minors)</p> <p>A person who knowingly transports an individual who has not attained the age of eighteen years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned for not less than ten years or life.</p>	<p>10 years imprisonment and fines.</p>
<p>The Travel Act, 18 U.S.C. § 1952.</p>	<p>Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—</p> <ol style="list-style-type: none"> (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform— 	<p>For acts covered by paragraphs (1) or (3): Fined, imprisoned for not more than 5 years or both.</p> <p>For any crime of violence to further unlawful activity: Fined, imprisoned for not more than 20 years, or both.</p>
<p>Alien Smuggling, Harboring and Transportation, 8 USC § 1324.</p>	<p>Any person who—</p> <ol style="list-style-type: none"> (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United 	<p>For commercial advantage or private financial gain: Fined, maximum of 10 years imprisonment, or both.</p> <p>Violation of paragraph (ii),(iii), or (iv): Maximum of five years imprisonment, fines, or both.</p> <p>Serious bodily injury or jeopardizes life: Maximum of 20 years imprisonment, fined, or both.</p>

⁴⁷¹ See *McCarty's Case*, 445 Mass. 361, 366 (2005) (noting that the Legislature is presumed to be aware of previous judicial decisions when amending a statute); *Commonwealth v. Callahan*, 440 Mass. 436, 440-41 (2003) (same); *Waldman v. Am. Honda Motor Co.*, 413 Mass. 320, 323 (1992) (same).

LAW	RELEVANT LANGUAGE	PENALTY
	<p>States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;</p> <p>(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or</p> <p>(v)(i) engages in any conspiracy to commit any of the preceding acts, or (ii) aids or abets the commission of any of the preceding acts.</p>	

8.3. Additional Resources/Appendices

See Appendix 11.1, Portal Organizations: Gateways to Services, at the end of this Guide for a list of portal organizations that serve as gateways to victim services, law enforcement, and investigative agencies, as well as non-profit agencies, healthcare providers, and community centers that provide services to victims of human trafficking.

9. Remedies Available to Victims of Human Trafficking

9.1. Civil Remedies Available to Victims of Human Trafficking

Civil litigation is a crucial tool for victims of human trafficking who wish to seek redress for the physical, psychological, and financial harms they have suffered. Civil suits provide victims the opportunity to vindicate their own rights, attain economic independence, and hold unindicted or acquitted perpetrators or co-conspirators accountable. Damage awards in civil cases are often substantial, aimed not only to compensate victims for the harm they have suffered but also to punish perpetrators for their outrageous conduct and to deter future trafficking activities.⁴⁷²

This section provides an overview of the various federal and state causes of action that may be available to trafficking victims in Massachusetts. It is not, however, an exhaustive exploration of all the issues and strategy questions an attorney will face when litigating a civil case. For a more comprehensive resource, see DANIEL WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF TRAFFICKING (3d ed. Oct. 13, 2008).

9.1.1. Federal Trafficking Victims Protection Act

The Trafficking Victims Protection Act (“TVPA”) provides trafficking victims with a private right of action against perpetrators of human trafficking.⁴⁷³ Pursuant to the TVPA,

“An individual who is a victim of a violation of [the Act] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.”⁴⁷⁴

Although the statute enables victims to seek damages, it does not explicitly specify *what* damages are available. Courts that have considered the issue have held that the statute sounds in tort, and that it therefore allows for the recovery of punitive damages.⁴⁷⁵ Indeed, litigants have recovered extensive

⁴⁷² For a summary of damages awarded in several recent civil cases, see *infra* [Section 9.2](#).

⁴⁷³ See 18 U.S.C. § 1595.

⁴⁷⁴ *Id.* § 1595(a). As originally enacted, the TVPA did not provide a civil remedy. The civil remedy provision was added in the 2003 reauthorization. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2878 (2003). At that time, it was available to victims of forced labor and sexual servitude. See *id.* § 4(a)(4)(A). In the 2008 reauthorization, the statute was amended to allow for recovery against individuals who benefit from participation in a trafficking venture. See Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 221(2)(A), 122 Stat. 5067 (2008).

⁴⁷⁵ See *Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011); *Francisco v. Susano*, No. 12-1376, 2013 WL 2302691, at *4-5 (10th Cir. May 28, 2013); *Doe v. Howard*, C.A. No. 11-CV-1105, 2012 WL 3834867, at *4 (E.D. Va. Sept. 4, 2012).

punitive damages for egregious harms suffered while trafficked.⁴⁷⁶ Note, however, that the civil remedy provision has been held not to apply retroactively to conduct occurring prior to its enactment in 2003.⁴⁷⁷

A civil lawsuit under the TVPA may be initiated in a variety of situations, including:

- following a criminal conviction for a trafficking crime;
- following a criminal conviction for a lesser crime;
- following a criminal plea;
- following an acquittal; or
- where there has been no criminal prosecution at all.

However, civil actions will be stayed “during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.”⁴⁷⁸ There is a ten-year statute of limitations on civil claims under the TVPA.⁴⁷⁹

Attorneys should note that the civil remedy provision is not limited to trafficking crimes but extends to all violations of Chapter 77, Title 18 of the U.S. Code,⁴⁸⁰ including peonage,⁴⁸¹ enticement into slavery,⁴⁸² sale into involuntary servitude,⁴⁸³ or confiscation of passports or other immigration documents in furtherance of such crimes.⁴⁸⁴ A complaint should thus incorporate these violations, where applicable, into a claim for relief under the civil remedy provision.

9.1.2. The Thirteenth Amendment to the U.S. Constitution

The Thirteenth Amendment to the U.S. Constitution and its enabling statute, 18 U.S.C. § 1584, prohibit “involuntary servitude.”⁴⁸⁵ However, neither expressly provides a private civil remedy for victims of involuntary servitude, and the U.S. Supreme Court has yet to decide whether such a remedy is available.

⁴⁷⁶ See, e.g., *Howard*, 2012 WL 3834867, at *5 (awarding \$2 million punitive damages for forced labor, trafficking, and sexual servitude); *Shukla v. Sharma*, No. 07-CV-2972, 2012 WL 481796 (E.D.N.Y. Feb. 4, 2012) (awarding \$1 million in punitive damages for trafficking); *Pena Canal v. de la Rosa Dann*, No. 09-03366, 2010 WL 3491136 (N.D. Cal. Sept. 2, 2010) (awarding \$309,406.41 in punitive damages for violation of state and federal trafficking statutes and Thirteenth Amendment).

⁴⁷⁷ See *Velez v. Sanchez*, 693 F.3d 308, 325 (2d Cir. 2012); *Ditullio*, 662 F.3d at 1099-100.

⁴⁷⁸ 18 U.S.C. § 1595(b)(1). See also *id.* at § 1595(b)(2). (“[A] ‘criminal action’ includes investigation and prosecution and is pending until final adjudication in the trial court.”).

⁴⁷⁹ *Id.* § 1595(c) (“No action may be maintained under [this section] unless it is commenced not later than... 10 years after the cause of action arose...”).

⁴⁸⁰ See Pub. L. No. 110-457, § 221, 122 Stat. 5044, 5067 (2008) (amending civil cause of action to remove references to specific crimes and thus expanding its scope to include all violations of Chapter 77).

⁴⁸¹ 18 U.S.C. § 1581.

⁴⁸² *Id.* § 1583.

⁴⁸³ *Id.* § 1584.

⁴⁸⁴ *Id.* § 1592.

⁴⁸⁵ U.S. Const. amend. XIII, §§ 1-2.

Lower courts are divided.⁴⁸⁶ Even so, as discussed in the preceding subsection, the civil remedy provision of the TVPA incorporates violations of Section 1584.⁴⁸⁷

Thus, a claim for involuntary servitude should be included in a complaint, whether it is asserted as an independent cause of action or is incorporated within the civil remedy provision of the TVPA.⁴⁸⁸ Involuntary servitude is defined as “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.”⁴⁸⁹ To establish a claim, the plaintiff must show that she was “intentionally held in service against her will (i) by actual physical restraint or physical force or (ii) by legal coercion or (iii) by plausible threats of physical harm or legal coercion.”⁴⁹⁰ Courts may consider a victim’s age or other “special vulnerability” when “determining whether a particular type or a certain degree of physical or legal coercion is sufficient to hold that person to involuntary servitude.”⁴⁹¹ For example, threatening an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude even though such a threat to a citizen likely would not.⁴⁹²

9.1.3. Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”)

The Racketeer Influenced and Corrupt Organizations Act (“RICO”) provides a private right of action to “[a]ny person injured in his business or property” by a violation of its provisions.⁴⁹³ A human trafficking victim can state a claim under RICO by alleging: 1) an injury to her “business or property” resulting from 2) the defendant’s use of a “pattern of racketeering activity” or “collection of an unlawful debt” so as to 3) acquire, invest, or maintain any interest in an “enterprise” engaged in interstate commerce, or participate in such an enterprise.⁴⁹⁴ Importantly, the statute defines “racketeering activity” to include

⁴⁸⁶ *Compare, e.g., Buchanan v. City of Bolivar*, 99 F.3d 1352, 1357 (6th Cir. 1996) (holding Section 1584 does not provide for private civil remedy), with *Manliguez v. Joseph*, 226 F. Supp. 2d 377, 384 (E.D.N.Y. 2002) (holding implied private right of action exists under Section 1584).

⁴⁸⁷ See discussion *supra* Section 9.1.1. Furthermore, “[u]nlike the Fourteenth Amendment, the Thirteenth Amendment and its enabling statute apply not only to state action but also to private conduct.” *Manliguez*, 226 F. Supp. 2d at 383.

⁴⁸⁸ See WERNER & KIM, *supra* note 126 at 35-37. See also *Pena Canal v. de la Rosa Dann*, No. 09-03366, 2010 WL 3491136, at *4 (N.D. Cal. Sept. 2, 2010) (entering default judgment of \$309,406.41 in punitive damages for conscious violation of state and federal trafficking statutes and Thirteenth Amendment, stating that defendant “acted with a conscious disregard for [plaintiff’s] right to be free from involuntary servitude and she intentionally misrepresented facts for the purpose of depriving her of this right. The Court concludes that a punitive damages award in an amount equal to her compensatory damages is justified in light of [defendant’s] disregard of [plaintiff’s] basic rights.”).

⁴⁸⁹ *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

⁴⁹⁰ See *United States v. Alzanki*, 54 F.3d 994, 1001 (1st Cir. 1995).

⁴⁹¹ *Kozminski*, 487 U.S. at 948; *Alzanki*, 54 F.3d at 1001.

⁴⁹² See *Kozminski*, 487 U.S. at 948.

⁴⁹³ 18 U.S.C. § 1964(c).

⁴⁹⁴ *Id.* §§ 1962, 1964(c).

human trafficking.⁴⁹⁵ A “pattern” requires at least two acts of racketeering activity, the last of which occurred within ten years of a prior act of racketeering.⁴⁹⁶

Under RICO, a plaintiff may recover treble damages, costs, and attorney’s fees.⁴⁹⁷

9.1.4. Remedies Available Under Massachusetts Trafficking Law

The Massachusetts Anti-Trafficking Statute also provides trafficking victims with a private right of action against perpetrators. Pursuant to the Massachusetts Anti-Trafficking Statute,

A victim of trafficking of persons for sexual servitude under [M.G.L. c. 265, § 50] or of trafficking of persons for forced services under [M.G.L. c. 265, § 51] may bring a civil action for trafficking of persons for forced labor or services or sexual servitude. The court may award actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages may be awarded on proof of actual damages if the defendant’s acts were willful and malicious.⁴⁹⁸

Unlike the TVPA, the Massachusetts Anti-Trafficking Statute explicitly provides that victims may receive actual, compensatory, and punitive damages, and further allows for recovery of treble damages where a defendant’s acts are proved willful and malicious.⁴⁹⁹ Business entities that knowingly aid perpetrators, or that are joint venturers, may also be liable.⁵⁰⁰

The statute of limitations for civil actions under the Massachusetts Anti-Trafficking Statute is three years, beginning from the date a victim is freed from trafficking or, if a minor victim, turns 18 years old, whichever is later.⁵⁰¹

⁴⁹⁵ *Id.* § 1961(1)(B); *see also* WERNER & KIM, *supra* note 126 at 45. (“Other racketeering activities that qualify as criminal predicate acts for bringing a civil RICO claim in the trafficking context include: Mail and wire fraud; Fraud in connection with identification documents; Forgery or false use of passport; Fraud and misuse of visas, permits, and other documents; Peonage and slavery; Activities prohibited under the Mann Act; Importation of an alien for immoral use; Extortion (i.e., an employer threatening deportation when an employee complains about minimum wage or overtime amounts to unlawful extortion of employee’s property interest in minimum wage or overtime.”).

⁴⁹⁶ *Id.* § 1961(5).

⁴⁹⁷ *Id.* § 1964(c).

⁴⁹⁸ MASS. GEN. LAWS ch. 260, § 4D.

⁴⁹⁹ What constitutes “willful and malicious” actions in the context of this crime is unclear. For an interpretation of that state of mind in other contexts, *see Commonwealth v. Doyle*, 83 Mass. App. Ct. 384, 388 (2013) (with respect to malicious destruction of property, “willful and malicious” means “a state of mind infused with cruelty, hostility or revenge” (internal quotation omitted)); *Commonwealth v. McDonald*, 462 Mass. 236, 242 (2012) (“Willful conduct is that which is ‘intentional rather than accidental’; it requires no evil intent, ill will, or malevolence. A ‘malicious act,’ as defined in Black’s Law Dictionary 1043 (9th ed. 2009), is an ‘intentional, wrongful act done willfully or intentionally against another without legal justification or excuse.’”) (internal citation omitted).

⁵⁰⁰ MASS. GEN. LAWS ch. 265, § 50(d); *id.* § 51(d).

⁵⁰¹ MASS. GEN. LAWS ch. 260, § 4D(b).

Under the Massachusetts Act, unlike the TVPA, there is no automatic stay provision for civil cases while a criminal action is ongoing. However, a prosecutor may still intervene and attempt to stay a civil action. From a prosecutor’s perspective, a stay of the civil proceeding may be desirable to prevent criminal defendants from engaging in the more permissive civil discovery process while a criminal case is ongoing.⁵⁰² A stay may also benefit a civil plaintiff in terms of fact gathering and estopping a civil defendant from raising arguments or defenses that contradict the arguments that they raised in the criminal case.⁵⁰³ On the other hand, a stay may pose a challenge to a civil plaintiff as it may provide a civil defendant the opportunity to manipulate evidence, and defending the criminal action may exhaust a defendant’s assets (to the extent there is private representation) such that there will be fewer assets left to satisfy a civil judgment.⁵⁰⁴ There is thus a potential for conflict between private and public interests that attorneys should carefully consider when determining how to proceed with their cases.

9.1.5. Massachusetts Civil Rights Act

A trafficking victim may establish a claim under the Massachusetts Civil Rights Act (“MCRA”) if she is able to prove that her exercise or enjoyment of rights secured by the Constitution or laws of the United States or Massachusetts has been interfered with, or attempted to be interfered with, by threats, intimidation, or coercion.⁵⁰⁵ The MCRA is the state law parallel to Section 1983 under federal law, except that the MCRA specifically provides a right of action against private actors, in addition to state actors.⁵⁰⁶

There is a three-year statute of limitations on MCRA claims.⁵⁰⁷ Damages available under the statute include injunctive and other appropriate equitable relief, compensatory money damages, costs, and attorneys’ fees.⁵⁰⁸ Punitive damages are not available.

⁵⁰² WERNER & KIM, *supra* note 126, at 5-6.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.* at 6-7.

⁵⁰⁵ See MASS. GEN. LAWS ch. 12, §§ 11I-H. “A threat is ‘the intentional exertion of pressure to make another fearful or apprehensive of injury or harm.’ Intimidation ‘involves putting in fear for the purpose of compelling or deterring conduct.’ And coercion is ‘the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.’” *Ayasli v. Armstrong*, 56 Mass. App. Ct. 740, 750-51 (2002) (internal citation omitted).

⁵⁰⁶ See MASS. GEN. LAWS ch. 12, 11H (specifying that statute applies “whenever *any person or persons, whether or not acting under color of law*, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth”) (emphasis added).

⁵⁰⁷ *Flynn v. Associated Press*, 401 Mass. 776, 782 (1988) (noting that violation of civil rights is governed by general three-year statute of limitations for tort actions under MASS. GEN. LAWS ch. 260, § 2A).

⁵⁰⁸ MASS. GEN. LAWS ch. 12, § 11I. A violation of an injunction under this section is a criminal offense for which the violator may be fined, imprisoned, or both. *Id.* § 11J.

9.1.6. Intentional Tort and Negligence Claims

Labor or sex trafficking often involves torts including assault and battery, false imprisonment, invasion of privacy, trespass to chattels, conversion, fraudulent misrepresentation, intentional and negligent infliction of emotional distress, and general or gross negligence.

Attorneys should therefore consider including common law and statutory tort claims in any civil complaint. Such claims have been successfully litigated in several recent cases, and their inclusion maximizes a victim's chances of recovering damages for the physical and emotional harms inflicted.⁵⁰⁹ Victims may be entitled to punitive and compensatory damages for torts committed intentionally and maliciously.⁵¹⁰ Under settled principles of tort law, punitive damages are particularly appropriate to punish "conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others," and "to deter him and others like him from similar conduct in the future."⁵¹¹ Because human trafficking is often lucrative for perpetrators, hefty punitive damages may be necessary to effectively punish and deter such conduct.⁵¹²

In Massachusetts, tort actions must be commenced within three years after the cause of action accrues.⁵¹³

9.1.7. Contractual/Quasi-Contractual Claims

Victims are often lured into trafficking with false promises of employment, wages, living conditions, and support for family members. In such circumstances, it may be advisable to include contract or quasi-contract claims in addition to statutory employment claims in a civil lawsuit. Appropriate claims may include breach of an oral or written contract, breach of the covenant of good faith and fair dealing, unjust enrichment, and/or quantum meruit.

⁵⁰⁹ See, e.g., *Ballesteros v. Al-Ali*, C.A. No. 11-152 M, 2012 WL 13047582 (D.R.I. Dec. 26, 2012) (awarding \$840,000 for false imprisonment and negligent and intentional infliction of emotional distress). See also Note, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 HARV. L. REV. 2574, 2588-91 (2006) (discussing benefit of tort claims in human trafficking suits, including greater flexibility and adaptability of tort law and availability of greater damage awards in comparison to statutory law).

⁵¹⁰ See, e.g., *Peña Canal v. de la Rosa Dann*, No. 09-03366, 2010 WL 3491136, at *4 (N.D. Cal. Sept. 2, 2010) ("[Plaintiff] is also entitled to punitive damages under several of her state and federal causes of action. Here, [defendant] acted with a conscious disregard for [plaintiff's] right to be free from involuntary servitude and she intentionally misrepresented facts for the purpose of depriving her of this right."); *Mazengo v. Mzengi*, No. 07-756, 2007 WL 8026882, at *8 (D.D.C. Dec. 20, 2008) (awarding punitive damages after determining that defendant acted with "actual malice").

⁵¹¹ RESTATEMENT (SECOND) OF TORTS § 908 (AM. LAW INST. 1979).

⁵¹² See *Remedying the Injustices of Human Trafficking Through Tort Law*, *supra* note 509, at 2590 ("Because the trafficking industry has proven so profitable, substantial deterrents are needed to begin to dismantle current trafficking operations and to discourage future trafficking rings from forming. Until traffickers are faced with real risks of suffering substantial penalties, they will continue to view victims as 'expendable, reusable, and resalable cheap commodities.'") (internal citations omitted).

⁵¹³ MASS. GEN. LAWS ch. 260, § 2A.

Although punitive damages are not available for contract claims, courts may award compensatory damages sufficient to put the injured party in as good a position as he or she would have been in had the contract been performed.⁵¹⁴ In the context of trafficking cases, this could mean an award for past wages, overtime, and/or the value of services provided.⁵¹⁵

In Massachusetts, contract actions generally must be commenced within six years after the cause of action accrues.⁵¹⁶ In contrast, the statute of limitations for minimum wage and overtime claims in Massachusetts is two years. Thus, an attorney should consider filing a contract claim where a wage claim is no longer available.

9.1.8. Third Party Liability

With the reauthorization of the TVPA in 2003, Congress added a civil cause of action.⁵¹⁷ A subsequent reauthorization in 2008 established third party liability for those who “knowingly benefit[]” from the venture.⁵¹⁸ Recent efforts have been made to expand civil liability to third parties, including websites providing advertising services to perpetrators of human trafficking; hotels providing accommodations for perpetrators, victims, and buyers; and recruiters. When interviewing clients, pay close attention to any indication that a third party may have been aware of your client’s situation. While third party liability is still evolving, there are several notable cases that may be models for future lawsuits.

9.1.8.1. Websites

In *Jane Doe No. 1 v. Backpage.com, LLC*, victims of human trafficking sued Backpage.com for facilitating human trafficking in various ways, including through its advertising methods and rules.⁵¹⁹ Backpage.com argued that the Communications Decency Act (“CDA”) shielded it from liability.⁵²⁰ The CDA provided in pertinent part that a “provider . . . of an interactive computer service” would not be treated as the

⁵¹⁴ RESTATEMENT (SECOND) OF CONTRACTS § 344 (AM. LAW INST. 1981).

⁵¹⁵ See, e.g., *Ballesteros v. Al-Ali*, C.A. No. 11-152 M, 2012 WL 13047582 (D.R.I. Dec. 26, 2012) (for breach of written contract, awarding \$129,600 in unpaid wages, overtime pay and compensation for “additional work that was at least triple the contracted-for work”); *Gurung v. Malhotra*, 851 F. Supp. 2d 583 (S.D.N.Y. 2012) (for breach of written contract, awarding \$392,721 for unpaid wages, including liquidated damages); *Mazengo v. Mzengi*, No. 07-756, 2007 WL 8026882, at *4-5 (D.D.C. Dec. 20, 2008) (awarding \$45,101.69 in restitution under a theory of unjust enrichment for the value of the services plaintiff provided to defendants “to the extent that the value of her services exceeds the damage award to which she is entitled under [Maryland’s] Wage and Hour Law”).

⁵¹⁶ MASS. GEN. LAWS ch. 260, § 2. However, contract actions to recover for personal injuries and actions of replevin must be brought with three years. *Id.* § 2A.

⁵¹⁷ See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2878 (2003).

⁵¹⁸ See Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 221(2)(A), 122 Stat. 5067 (2008).

⁵¹⁹ 817 F.3d 12, 16 (1st Cir. 2016), *cert. denied*.

⁵²⁰ *Id.* at 18.

publisher of content provided by a third-party user of the service.⁵²¹ The First Circuit upheld the District Court’s dismissal of the victims’ claims, holding that the CDA protected Backpage.com.⁵²²

In 2018, Congress responded to this and similar litigation by passing the Allow States and Victims to Fight Online Sex Trafficking Act (“FOSTA”).⁵²³ The bill created an exception to the CDA by making website providers liable for some content published by third parties.

In particular, FOSTA creates civil and criminal liability for one who “operates an interactive computer service . . . with the intent to promote or facilitate the prostitution of another person” and “acts in reckless disregard of the fact that such conduct contributed to sex trafficking” as defined in 18 U.S.C. § 1591 (criminalizing sex trafficking of children).⁵²⁴ The law creates possible criminal punishment of fines and up to twenty-five years in prison. Importantly, it also provides for civil recovery for “any person injured by reason of a violation” of this section, including reasonable attorneys’ fees. Finally, the law creates mandatory restitution in addition to criminal and civil penalties.

In *Woodhull Freedom Foundation v. United States*, five plaintiffs argued that FOSTA was unconstitutional under the First Amendment.⁵²⁵ The D.C. District Court dismissed their claims, finding that none of the plaintiffs had standing because none had an imminent and credible threat of prosecution under FOSTA. Specifically, none of the plaintiffs alleged that they acted with the requisite intent such that their activities would likely be considered a violation of FOSTA. The court clarified that, to be liable under FOSTA, a person or organization must act with the “intent” to promote or facilitate “the prostitution of another person.”⁵²⁶ It concluded that FOSTA requires “the Government to show not simply that the defendant was aware of a potential result of the criminal offense, but instead that the defendant intended to ‘explicitly further’ a specified unlawful act.”⁵²⁷

9.1.8.2. Hotels

Hotels are often a site where perpetrators bring victims to perform forced labor and commercial sex. From 2007 to 2015, almost 1,500 cases of possible trafficking in hotels and motels were reported to the Polaris Project’s National Human Trafficking Resource Center hotlines.⁵²⁸ In the past, it has been difficult to hold hotels accountable for sex trafficking that occurs on their premises. Recently, in *Ricchio v. McLean*, the First Circuit and the District Court for the District of Massachusetts provided new insight

⁵²¹ *Id.* at 18-19; 47 U.S.C. § 230(c)(1).

⁵²² *Jane Doe No. 1*, 817 F.3d at 22.

⁵²³ H.R. 1865, 115th Cong. (2018); 18 U.S.C. § 2421A.

⁵²⁴ 18 U.S.C. § 2421A.

⁵²⁵ 334 F.Supp.3d 185 (D.D.C. 2018).

⁵²⁶ *Id.* at 200 (D.D.C. 2018).

⁵²⁷ *Id.* at 201 (citation omitted).

⁵²⁸ *Human Trafficking and the Hotel Industry*, Polaris, <https://polarisproject.org/sites/default/files/human-trafficking-hotel-industry-recommendations.pdf> [<https://perma.cc/3J5J-Q299>].

into how one may file a civil complaint against hotels and hotel owners that provide accommodations to perpetrators of trafficking and their victims.

In *Ricchio v. McLean*, the First Circuit reversed the grant of a motion to dismiss a victim’s claims under the TVPA against a motel and its two operators.⁵²⁹ The complaint stated that the plaintiff, Ricchio, had been enticed to drive to the motel where her perpetrator, McLean, physically and sexually abused her. It further stated that McLean and one of the operators of the hotel “exchang[ed] high-fives in the motel’s parking lot while speaking about ‘getting this thing going again,’” and that the operators had “nonchalantly ignored Ricchio’s plea for help” and “had shown indifference to Ricchio’s obvious physical deterioration.”⁵³⁰

Notably, the First Circuit held that the hotel and its operators received something of value by conspiring with McLean by “renting space in which McLean obtained, among other things, forced sexual labor or services from Riccio.”⁵³¹ The court explained that it gave “attention to the whole body of allegations as circumstantially supplying meaning to particular acts by the [defendants],” such as the high-five in the parking lot, “that the trial judge found too ambiguous to support the claims when considered in isolation.”⁵³² Finally, the court concluded that the TVPA does not require a showing that the defendants’ actions “succeeded in actually establishing a going business of supplying third parties with sexual opportunities.”⁵³³ Instead, “the objective of forced labor, forced services, or the intended trafficking need not be satisfied for liability to attach.”⁵³⁴

Upon remand to the district court, the parties engaged in extensive pretrial briefing, including a key summary judgment motion regarding insurance coverage. The district court ruled that the insurance company could not be relieved from its duty to defend because the TVPA’s civil remedy only required plaintiffs to meet a negligence standard to prevail and the standard insurance language therefore triggered a duty to defend viable TVPA actions against the insured.⁵³⁵ That decision also made clear that plaintiffs alleging violations of the TVPA are not held to higher standards than other civil plaintiffs.⁵³⁶ After jury empanelment and one day of trial, the case settled with a favorable outcome for Ricchio.

⁵²⁹ *Ricchio v. McLean*, 853 F.3d 553, 555 (1st Cir. 2017).

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² *Id.* at 557.

⁵³³ *Id.* at 557-58.

⁵³⁴ *Ricchio*, 843 F.3d at 558.

⁵³⁵ *Ricchio v. Bijal, Inc.*, No. CV 15-13519-FDS, 2019 WL 6253275, at *10 (D. Mass. Nov. 22, 2019); see Jack Queen, *Insurer Must Defend Motel In Kidnapping, Sex Assault Suit*, LAW360 (Nov. 22, 2019, 6:44PM EST), <https://www.law360.com/articles/1222708> [<https://perma.cc/EEF9-JU7Y>].

⁵³⁶ *Ricchio*, 2019 WL 6253275, at *10.

In addition to claims under the TVPA, hotels may be liable under analogous state laws and under tort law, including negligence, negligent intention of emotional distress, and intentional infliction of emotional distress.⁵³⁷

Practice Tip: A claim against a hotel under the TVPA must show that the defendant hotel profited from perpetrators and knowingly aided in the trafficking. It is essential to show that the hotel, through its employees or other agents, had constructive or actual knowledge of the trafficking. This is often shown by identifying the “indicators” of human trafficking that were visible to hotel employees or agents. These indicators include paying for rooms with cash or a pre-paid card; an extended stay with few possessions; requesting room overlooking the parking lot; excessive foot traffic in and out of hotel room; restricted or controlled communications; and fearful, anxious, or submissive behavior.⁵³⁸

⁵³⁷ See *supra* Section 9.1.6.

⁵³⁸ See *Human Trafficking and the Hotel Industry*, *supra* note 528.

9.2. Damage Awards in Civil Trafficking Lawsuits

As discussed above, many avenues exist to seek monetary relief for victims of human trafficking. The following table summarizes key decisions in which compensatory and punitive damages were awarded in civil lawsuits brought by survivors against their perpetrators.⁵³⁹

CASE	FACTS	DURATION OF LABOR	JUDGMENT
<i>Ballesteros v. Al-Ali</i> , C.A. No. 11-152, 2012 WL 8017783 (D.R.I. Dec. 26, 2012)	<p>Plaintiff was recruited from the Philippines with a false employment contract requiring plaintiff to care for defendants' youngest child 40 hours per week in exchange for \$1,600 per month and \$10 per hour for overtime. Instead, plaintiff was forced to work 120 hours per week caring for all five of defendants' children, cooking three meals a day for the family, cleaning the house, doing the laundry and ironing, taking out the garbage, washing the cars, and cleaning the garage and the yard.</p> <p>Plaintiff was never paid what the contract had promised and never received overtime. Her passport was confiscated, and her travel and communications restricted.</p>	3 months	<p>Default judgment for:</p> <ul style="list-style-type: none"> • \$130,600 in unpaid wages, overtime pay and compensation for "additional work that was at least triple the contracted-for work" (breach of contract). • \$261,200 for (1) forced labor and involuntary servitude under the TVPA, and (2) minimum wage violations under the Fair Labor Standards Act (FLSA). • \$840,000 for false imprisonment, negligent and intentional infliction of emotional distress, and fraud. <p>Total award = \$1,231,800 plus interest</p>
<i>Doe v. Howard</i> , No. 11-cv-1105, 2012 WL 3834867 (E.D. Va. Sept. 4, 2012)	<p>Plaintiff was recruited from Yemen by false promises regarding salary, benefits, and working and living conditions. Instead, she was forced to work 80 hours or more per week as a house cleaner. She was repeatedly raped, otherwise sexually abused, and starved. Her passport was confiscated, she was a virtual prisoner in the defendants' house, and her telephone calls were strictly monitored. She was threatened with arrest, imprisonment, and deportation.</p>	3 months	<ul style="list-style-type: none"> • \$44,500 in compensatory damages for forced labor and trafficking under the TVPA. • \$500 in compensatory emotional distress damages for forced labor under the TVPA. • \$1.25 million in compensatory emotional distress for sexual servitude under the TVPA. • \$2 million in punitive damages for forced labor, trafficking, and sexual servitude under the TVPA. • \$11,968 in wage restitution for forced labor and trafficking.

⁵³⁹ As of the time of this guide's publication, there have been no published decisions interpreting the Massachusetts anti-trafficking statute, MASS. GEN. LAWS ch. 260, § 4D.

CASE	FACTS	DURATION OF LABOR	JUDGMENT
<i>Fernandes v. Hayes</i> , No. W-11-CA-137 (W.D. Tex. Apr. 27, 2012)	<p>Plaintiff recruited in Kuwait by false promises regarding salary, working conditions, and support to plaintiff's family in India. Instead, plaintiff was forced to work more than 40 hours per week as a live-in maid to defendants, and was at times forced to work for defendants' friends.</p> <p>Plaintiff's passport and possessions were confiscated, and her travel and communications were restricted.</p>	2 years	<p>Total award = \$3,306,468</p> <p>Default judgment for:</p> <ul style="list-style-type: none"> • \$808,897 in damages for violations of the FLSA, forced labor under the TVPA, theft, conversion, false imprisonment, and breach of contract. • \$20,700 attorney's fees. • \$430 court costs. <p>Total award: \$830,027</p>
<i>Gurung v. Malhotra</i> , 851 F. Supp. 2d 583 (S.D.N.Y. 2012)	<p>Plaintiff was recruited in India when she was 17 years old by false promises regarding salary and working conditions. Instead, she was forced to work 16 hours a day cooking and cleaning, and providing daily massages to one of the defendants. She was forced to sleep on the floor in the living room and was essentially starved.</p> <p>She was paid less than \$120 in over 3 years. Her passport was confiscated, her travel was severely restricted, and she was not allowed to telephone her family. She was subject to physical and mental abuse, and restricted in her ability to practice religion. She was repeatedly threatened with arrest, abuse, imprisonment, and deportation.</p>	3 years	<ul style="list-style-type: none"> • \$392,721 for unpaid wages (including liquidated damages) and overtime pay under the FLSA, state labor laws, and breach of contract. • \$36,076 in prejudgment interest on state law claims. • \$500,000 for emotional distress under the TVPA and New York common law. • \$300,000 in punitive damages. • \$199,893 in attorney's fees. • \$8,640 in costs. <p>Total award: \$1,458,335</p>
<i>Shukla v. Sharma</i> , No. 07-cv-2972, 2012 WL 481796 (E.D.N.Y. Feb. 4, 2012)	<p>Plaintiff was recruited from India by false promises regarding salary and living conditions. Instead, he was forced to work 17 hours a day as a priest and a janitor. His living space was cramped, dirty, and infested with rats. His passport was confiscated, his movements and privacy monitored, and he was threatened with arrest, imprisonment, and deportation.</p>	7 years	<ul style="list-style-type: none"> • \$250,000 in compensatory damages for forced labor under the TVPA. • \$750,000 in compensatory damages for trafficking under the TVPA. • \$1 million in punitive damages for trafficking under the TVPA <p>Total award = \$2 million</p>
<i>Mazengo v. Mzengi</i> , No. 07-756, 2007 WL 8026882 (D.D.C. 2008)	<p>Plaintiff was recruited from Tanzania with a false employment contract requiring plaintiff to perform childcare and normal housework for forty hours a week, at \$900 per month plus</p>	4 years	<ul style="list-style-type: none"> • \$510,249.21 for past wages, overtime pay, and treble damages under Maryland Wage and Hour Law.

CASE	FACTS	DURATION OF LABOR	JUDGMENT
	<p>overtime and other benefits. Instead, plaintiff was forced to work 16 hours a day, seven days a week. She cared for the defendants' three children, cleaned the house, cooked meals for the family, cared for the yard and shoveled snow, and cooked food for a catering company. She was subjected to physical and emotional abuse.</p> <p>In four years, she was never paid. Her passport was confiscated, and her travel and communications were severely restricted.</p>		<ul style="list-style-type: none"> • \$45,101.69 in restitution for unjust enrichment. • \$19,961.64 in compensatory damages for fraudulent inducement. • \$250,000.00 for emotional distress damages arising from negligent conduct. • \$150,000.00 in punitive damages under Maryland law for fraud perpetrated with "actual malice." • \$84,036.25 in attorney's fees. <p>Total Award = \$1,059,348.79</p>
<i>Peña Canal v. de la Rose Dann</i> , No. 09-03366, 2010 WL 3491136 (N.D. Cal. Sept. 2, 2010)	<p>Plaintiff was recruited from Peru with false promises that she would work as a daycare provider for defendant's children at \$600 per month plus free room and board (with her own private living space), working five days a week during regular business hours. Instead, she worked 15 hours per day, 7 days per week caring for three children, cooking, and cleaning houses for defendant's real estate business. She was forced to sleep on the living room floor and kept from communicating with family in Peru. She was also subject to verbal abuse.</p> <p>Her identification documents were confiscated, her travel, communications, and meals were restricted, and she was threatened with arrest and deportation.</p>	1 Year, 9 Months	<ul style="list-style-type: none"> • \$340,746.75 in past wages, increased by state labor code penalties; reduced by criminal restitution order of \$123,740.34. • \$92,400 in compensatory damages for emotional distress and other tort damages. • \$309,406.41 in punitive damages for conscious violation of state and federal trafficking statutes and the Thirteenth Amendment. <p>Total Award = \$618,812.82</p>

9.2.1. Protective Orders

A civil protective order (also known as a restraining order) may be a valuable tool to protect a victim of human trafficking. In Massachusetts, abuse prevention orders are available under M.G.L. c. 209A, § 1-12, and harassment prevention orders are available under M.G.L. c. 258E, §§ 1-12.

9.2.1.1. Chapter 209A Abuse Prevention Orders

Chapter 209A permits a victim who has suffered physical harm, attempted physical harm, or who has been placed in fear of physical harm, or who has been forced to have sex by force, threats, or duress, to seek an abuse prevention order from the court if the victim is, or has been, in any of the following relationships with an abuser:

1. living together in the same household;
2. in a substantive dating relationship;
3. related by blood or marriage;
4. have a child in common; or
5. engaged or married.⁵⁴⁰

Abuse prevention orders under Chapter 209A provide several important remedies. For example, the court can require:

- a defendant to refrain from abusing, refrain from contacting, or merely stay away from a plaintiff, whether at home, at work or at school;
- that plaintiff have temporary custody of children;
- a defendant to surrender any firearms and firearm identification cards;
- a defendant to pay the plaintiff for losses suffered as a direct result of the abuse, such as costs related to moving, changing locks, medical expenses, lost wages, destruction of property, and reasonable attorney's fees; and
- that plaintiff's address and other information be impounded so they remain unknown to the defendant.⁵⁴¹

⁵⁴⁰ MASS. GEN. LAWS ch. 209A, § 1. To determine whether the parties were in a substantive dating relationship, the court will consider the following factors: "(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship." *Id.*

⁵⁴¹ *Id.* § 3. A blank Abuse Prevention Order is available online at <https://www.mass.gov/doc/gl-c-209a-abuse-prevention-orderrestraining-order-application-forms/download>.

Chapter 209A also contains a catchall provision that can be used to order that a plaintiff be allowed to collect, in the presence of the police, any personal belongings that a defendant has confiscated, such as a passport or other immigration documents.

The court is initially limited to entering a temporary (i.e., ten business days) order, and then a one-year protection order, but the court may enter a permanent order on a request to renew the initial order.⁵⁴² Violation of a 209A protective order is a criminal offense, punishable by imprisonment, a fine, or both.⁵⁴³

9.2.1.2. Chapter 258E Harassment Prevention Orders

Chapter 258E harassment prevention orders are similar to 209A abuse prevention orders, but they are not contingent on the parties' relationship. Rather, they are available to anyone subject to "harassment," defined as:

1. Three or more acts of willful and malicious conduct⁵⁴⁴ aimed at a specific person, committed with the intent to cause fear, intimidation, abuse, or damage to property, and that do in fact cause fear, intimidation, abuse, or damage to property; or
2. An act that:
 - a) by force, threat or duress causes another to involuntarily engage in sexual relations; or
 - b) constitutes certain enumerated crimes, such as indecent assault, rape, stalking, or criminal harassment.⁵⁴⁵

9.3. Remedies Available to Victims of Labor Trafficking

Victims of labor trafficking may find relief under federal and state employment laws that address abusive working conditions. Federal and Massachusetts law provide remedies for workers' rights violations relating to wages, leave time, retaliation, discrimination, sexual harassment in the workplace, and the right to organize. This section summarizes potential causes of action under labor and employment laws that can be brought on behalf of trafficking victims.

⁵⁴² MASS. GEN. LAWS ch. 209A, § 3; *Vittone v. Clairmont*, 64 Mass. App. Ct. 479, 486-87 (2005) ("The judge is to consider the basis for the initial order in evaluating the risk of future abuse should the existing order expire").

⁵⁴³ MASS. GEN. LAWS ch. 208, § 34C.

⁵⁴⁴ "Malicious" is defined as "characterized by cruelty, hostility or revenge." MASS. GEN. LAWS ch. 258E, § 1.

⁵⁴⁵ MASS. GEN. LAWS ch. 258E, §§ 1-3. Specifically, the enumerated crimes include: indecent assault and battery on a child under 14, on a mentally retarded person, or on a person 14 years old or older; rape; rape of a child using force; rape and abuse of a child; assault with intent to commit rape; assault of a child with the intent to commit rape; enticement of a child; criminal stalking; criminal harassment; and drugging for sexual intercourse. *Id.* § 1.

9.3.1. Claims Under Federal and Massachusetts Wage and Hour Laws

9.3.1.1. Federal Fair Labor Standards Act

The Federal Fair Labor Standards Act (“FLSA”)⁵⁴⁶ guarantees most employees a minimum wage of \$7.25 per hour⁵⁴⁷ and overtime pay when they work more than forty hours per week.⁵⁴⁸ Note, however, that if an employee is entitled to Massachusetts’ minimum wage, which is \$12.75 per hour, the U.S. Department of Labor (“DOL”) will enforce the state minimum wage of \$12.75 in weeks in which overtime is due.⁵⁴⁹ These provisions are enforceable regardless of an employee’s immigration status.⁵⁵⁰ Victims of FLSA violations are eligible to recover both compensatory damages and liquidated damages.

Under the FLSA, employers may not retaliate by threatening to contact immigration authorities against employees for making a complaint about violations of the FLSA.⁵⁵¹ Moreover, the DOL and the Department of Homeland Security (“DHS”) have signed a memorandum of understanding that, absent a determination from ICE, DOL, or DHS that enforcement is necessary, DHS will not intervene or investigate the presence of undocumented workers (via, for example, I-9 audits) while a DOL investigation is ongoing.⁵⁵² Some courts have held if an employee files an FLSA claim, employers may not seek discovery of an employee’s immigration status due to its chilling effect on an employee’s decision to exercise his or her rights.⁵⁵³

Employers are permitted to deduct certain benefits from employees’ salaries. Generally, the cost of food, board, and other facilities provided to employees can be credited against their wages or

⁵⁴⁶ 29 U.S.C. §§ 201-19.

⁵⁴⁷ *Id.* § 206.

⁵⁴⁸ *Id.* § 207.

⁵⁴⁹ *Questions and Answers About the Minimum Wage*, DEP’T OF LABOR, WAGE & HOUR DIV., www.dol.gov/whd/minwage/q-a.htm [<https://perma.cc/ME2A-YHB8>]. Massachusetts minimum wage is scheduled to go up in steps to reach \$15 per hour in January 2023. *See Guide: Pay and recordkeeping*, MASS.GOV, <https://www.mass.gov/guides/pay-and-recordkeeping> [<https://perma.cc/Z98K-YFEZ>].

⁵⁵⁰ *See, e.g., Jin-Ming Lin v. Chinatown Restaurant Corp.*, 771 F. Supp. 2d 185, 190 (D. Mass. 2011); *Montoya v. S.C.C.P. Painting Contractors, Inc., et al.*, 530 F. Supp. 2d 746, 751 (D. Md. 2008); *Galaviz-Zamora v. Brady Farms, Inc.*, 230 F.R.D. 499, 502 (W.D. Mich. 2005). The Massachusetts Attorney General’s Office recently reaffirmed this by publishing an advisory on the wage and hour rights of immigrant workers, available at: <https://www.mass.gov/doc/advisory-on-the-wage-and-hour-rights-of-immigrant-workers/download> [<https://perma.cc/QM2X-85JW>].

⁵⁵¹ 29 U.S.C. § 215(a)(3); *see also Singh v. Jutla & C.D. & R’s Oil, Inc.*, 214 F. Supp. 2d 1056, 1059 (N.D. Cal. 2002) (“reporting an illegal alien with a retaliatory motive was prohibited conduct under § 215(a)(3)”).

⁵⁵² DEP’T OF LABOR, Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (2011), <https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/EEOC.pdf> [<https://perma.cc/MAY5-ZRPZ>]. Note, however, that this is only an agreement of operation between two agencies, and that it is subject to change depending on the will of the administration.

⁵⁵³ *See, e.g., Flores v. Albertsons, Inc.*, No. 0100515, 2002 WL 1163623 (C.D. Cal. Apr. 9, 2002); *Zeng Liu v. Donna Karan Int’l, Inc.*, 207 F. Supp. 2d 191, 193 (S.D.N.Y. 2002).

overtime.⁵⁵⁴ However, no credit applies if: (1) the employee’s acceptance was not “voluntary and uncoerced;”⁵⁵⁵ (2) the employee was given facilities “primarily for the benefit or convenience of the employer”;⁵⁵⁶ (3) the benefit violates the law;⁵⁵⁷ or (4) the credit exceeds the item’s reasonable cost.⁵⁵⁸ For example, in *Lopez v. Rodriguez*, the U.S. Court of Appeals for the D.C. Circuit stated that in order for a trafficked worker’s employer to receive credit for board and lodging, the district court must determine whether the employment “conditions [were] so onerous and restrictive that the employee’s continued employment and acceptance of board and lodging ceases to be voluntary.”⁵⁵⁹ Note that Massachusetts regulations are more restrictive than federal law and set maximum deductions below state minimum wage that cannot be exceeded.⁵⁶⁰

Employers may attempt to classify their workers as something other than “employees” to avoid certain requirements under the FLSA. However, courts are sometimes willing to look beyond an employer’s classification of its own workers. For example, in *Chellen v. John Pickle Co.*, citizens from India were brought to work in Oklahoma and then denied minimum wages and overtime pay because the employer claimed they were “trainees.”⁵⁶¹ The court disagreed, and held that the workers were employees and were therefore entitled to damages under the FLSA.⁵⁶²

9.3.1.2. Massachusetts: Wage and Hour Laws

Massachusetts wage and hour laws provide additional protections to employees in Massachusetts.⁵⁶³ These laws require most employers to pay most employees a minimum wage of \$12.75 per hour⁵⁶⁴ and time-and-a-half for every hour worked over forty hours per week.⁵⁶⁵ Massachusetts law also mandates the timely and full payment of all wages once they are earned, in most cases, within six days after the

⁵⁵⁴ 29 C.F.R. § 531.30.

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.* § 531.3(d)(1).

⁵⁵⁷ *Id.* § 531.31.

⁵⁵⁸ *Id.* §§ 531.3, 531.33.

⁵⁵⁹ *Lopez v. Rodriguez*, 668 F.2d 1376, 1380 (D.C. Cir. 1981). Rodriguez was not explicitly referred to as a trafficking victim by the court; however, the district court found that after she was brought to the United States from Bolivia, “[s]he worked seven days per week, ten to twelve hours per day, without vacation and with minimal time off. She received room, board, miscellaneous clothing and toiletries, medical expenses, and minimal pocket money. Although appellants told appellee that they were putting money in the bank for her, appellee never received payment for her work, even after she demanded it.” *Id.* at 1378. See also *Marshall v. IntraWorld Commodities Corp.*, No. 79 C 918, 1980 WL 2097 (E.D.N.Y. June 9, 1980), described *infra* [Section 9.3.3.1](#).

⁵⁶⁰ See 454 C.M.R. 27.05.

⁵⁶¹ *Chellen v. John Pickle Co.*, 344 F. Supp. 2d 1278, 1290 (N.D. Okla. 2006).

⁵⁶² See *id.* at 1294.

⁵⁶³ MASS. GEN. LAWS ch. 151.

⁵⁶⁴ *Id.* § 1. State minimum wage is scheduled to increase as follows: Effective 1/1/2020, the minimum wage will be increased to \$12.75; on 1/1/2021, to \$13.50; on 1/1/2022, to \$14.25; on 1/1/2023, to \$15.00.

⁵⁶⁵ *Id.* § 1A. Massachusetts exempts several types of work from minimum wage (e.g., camp counselors) and overtime (e.g., fishing, farming, and restaurant work) but state-exempt employees may be entitled to minimum wage and overtime protections under federal law. See *id.* §§ 1A, 7.

pay period ends.⁵⁶⁶ For retail workers, premium pay for work on Sundays and certain holidays may be required under the Massachusetts Blue Laws.⁵⁶⁷ As with the FLSA, these provisions are enforceable regardless of an employee's immigration status.⁵⁶⁸

Plaintiffs who prevail in minimum wage, overtime, and nonpayment of wages claims through private actions are entitled to treble damages as well as costs and attorneys' fees.⁵⁶⁹ The statute of limitations for civil minimum wage and overtime claims in Massachusetts is three years,⁵⁷⁰ and the statute of limitations for civil nonpayment of wage claims is three years.⁵⁷¹

Practice Tip: Attorneys should assess whether their clients are excluded from coverage under the FLSA or Massachusetts wage and hour laws. For example, the FLSA covers restaurant workers while Massachusetts' overtime provisions do not. In contrast, domestic workers are generally covered under Massachusetts wage and hour laws and have additional protections under M.G.L. c. 149, sec. 190, whereas certain types of domestic workers are excluded from coverage under the FLSA. Note, however, that there is case law holding that wages required by federal law, but not under state law, are recoverable as unpaid wages under the Massachusetts Wages Act. *See, e.g., Lambirth v. Advanced Auto Inc.*, 140 F. Supp. 3d 108, 112-13 (2015).

Deductions from wages are generally restricted to those required by law and those authorized by an employee for his or her own benefit.⁵⁷² Any other deduction is generally prohibited unless it represents a "valid set-off" to satisfy a "clear and established debt" owed to the employer by the employee.⁵⁷³ Similarly, the law prohibits "special contracts" or other devices whereby employers recoup earned wages.⁵⁷⁴ The Massachusetts Minimum Wage Regulations expressly provide that no deduction, other than those required or specifically allowed by law and those allowed for lodging and meals, shall be made from the basic minimum wage.⁵⁷⁵ In addition, the amounts that may be deducted for lodging and

⁵⁶⁶ MASS. GEN. LAWS ch. 149, § 148. The premium pay for retail workers is being phased out and will be eliminated by 2023.

⁵⁶⁷ MASS. GEN. LAWS ch. 136, § 6.

⁵⁶⁸ *Jin-Ming Lin v. Chinatown Rest. Corp.*, 771 F. Supp. 2d 185, 190 (D. Mass. 2011) (finding FLSA applicable to employees regardless of immigration status); *Mullally v. Waste Mgmt. of Mass., Inc.*, 452 Mass. 526, 532 (2008) (noting that Massachusetts wage and hour laws should generally be interpreted consistently with the FLSA); ATT'Y GEN. OF MASS., Attorney General Advisory: All Workers Are Entitled to Employment Protections Irrespective of Immigration Status (2017), <https://www.mass.gov/files/documents/2017/05/zu/AG%2520Advisory%2520Immigrant%2520Workers%2520Rights.pdf> [<https://perma.cc/F5S7-T2Q9>] ("The Massachusetts Attorney General's Office reaffirms its longstanding position that all workers, irrespective of immigration status, are protected by labor and employment laws").

⁵⁶⁹ MASS. GEN. LAWS ch.149, § 150; MASS. GEN. LAWS ch. 151, § 19.

⁵⁷⁰ *See id.* § 20A.

⁵⁷¹ MASS. GEN. LAWS ch. 149, § 150.

⁵⁷² *Id.* § 150.

⁵⁷³ *See Somers v. Converged Access, Inc.*, 454 Mass. 582, 593 (2009).

⁵⁷⁴ *See Awuah v. Coverall North America*, 460 Mass. 484, n.22 & 24 (2011).

⁵⁷⁵ 454 MASS. CODE. REGS. § 27.05.

meals must be voluntarily accepted by the employee, part of a written notice provided to the employee by the employer, and limited pursuant to the amounts listed in the regulation.⁵⁷⁶ Examples of improper deductions and charges include fees charged as a condition of employment,⁵⁷⁷ premiums for an employer’s liability and workers’ compensation insurance,⁵⁷⁸ damage to the employer’s property where liability was not established through a procedurally fair process,⁵⁷⁹ and costs for uniforms or uniform maintenance.

Massachusetts retaliation laws prohibit employers from punishing or harming employees in any way—including by threatening to harm employees or their families—because the employees exercised wage and hour rights. Protected activities include: complaining to any person regarding the employee’s or a co-worker’s rights; initiating, participating in, or assisting in an investigation or proceeding concerning an alleged violation; and testifying in any such proceeding.⁵⁸⁰ Employers may face civil or criminal penalties for engaging in retaliation, and employees may receive payment of up to two months’ wages.⁵⁸¹ Indeed, employees may be entitled to substantially more than two months’ wages: according to M.G.L. c. 149, § 148A, employees are entitled to “any damages incurred” for violations of the anti-retaliation provision, including potentially emotional distress damages.⁵⁸² Of note, a recent SJC case awarded treble damages, in addition to full lost wages, in a retaliation case.⁵⁸³ Employers may try to avoid the requirements of wage and hour laws by denying that their workers should be classified as “employees.” However, there is a presumption under Massachusetts law that anyone performing services is an employee.⁵⁸⁴ Moreover, Massachusetts courts have resisted employers’ efforts to classify certain employees as independent contractors in order to avoid wage and hour law requirements. For example, in *Chaves v. King Arthur’s Lounge, Inc.*, the court found that the employer failed to meet its burden of proving that

⁵⁷⁶ *Id.* The amount deducted for food and beverages cannot exceed \$1.25 for breakfast, \$2.25 for lunch and \$2.25 for dinner. The amount deducted for lodging cannot exceed \$35.00 per week for a room occupied by one person, \$30.00 per week for a room occupied by two persons, and \$25 per week for a room occupied by three or more persons.

⁵⁷⁷ *Id. Awuah*, 460 Mass. at 498.

⁵⁷⁸ *Awuah*, 460 Mass. at 484, 495-97 & n.22.

⁵⁷⁹ *Camara v. Atty. Gen.*, 458 Mass. 756, 763 (2011).

⁵⁸⁰ MASS. GEN. LAWS ch. 149, § 148A; MASS. GEN. LAWS ch. 151, §§ 19(1), (5); ATT. GEN. OF MASS., ANTI-RETALIATION PROTECTIONS UNDER THE MASSACHUSETTS WAGE AND HOUR LAWS, <https://www.mass.gov/files/documents/2016/08/ql/anti-retaliation.pdf> [<https://perma.cc/ZS2H-MDKF>].

⁵⁸¹ See ATT’Y GEN. OF MASS., *supra* note 582.

⁵⁸² For example, in *Pineda v. JTCH Apartments, L.L.C.*, 843 F.3d 1062, 1064 (5th Cir. 2016), the Court held that emotional distress damages are available under the FLSA retaliation provision.

⁵⁸³ See *Parker v. EnerNOC, Inc.*, 139 N.E.3d 328, 336 (Mass. 2020).

⁵⁸⁴ MASS. GEN. LAWS ch. 149, § 148B.

exotic dancers were independent contractors under M.G.L. c. 149 § 148B.⁵⁸⁵ The court held that the dancers were employees with a potential cause of action under Massachusetts' wage and hour laws.⁵⁸⁶

Most workers in Massachusetts have the right to earn and use up to forty hours of job-protected sick leave per year to take care of themselves and certain family members. Workers must earn at least one hour of earned sick leave for every 30 hours worked. Employers with eleven or more employees must provide paid sick leave; those with fewer than eleven employees must provide earned sick time, but it does not need to be paid.⁵⁸⁷

Temporary workers who work for temporary or staffing agencies are protected by the same laws as other workers. There are also specific, additional protections set out in the Massachusetts Temporary Workers Right to Know Law, including required job order information that must be provided to workers and prohibitions against certain fees and charges.⁵⁸⁸

Practice Tip: Attorneys should consider including claims under Massachusetts wage and hour laws in lawsuits on behalf of victims of labor trafficking. Wage and hour claims are routinely overlooked, as attorneys are often most concerned about getting their clients out of exploitive situations. However, considering that treble damages under Massachusetts' wage and hour laws are often automatic,⁵⁸⁹ the relief that can be provided for workers under Massachusetts' wage and hour laws is substantial and potentially life-changing.

9.3.2. Claims Under Federal and Massachusetts Anti-Discrimination Laws

9.3.2.1. Title VII of the Federal Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (the "Civil Rights Act") prohibits employers with 15 or more employees from discriminating in the hiring and firing of employees, as well as the terms and conditions of employment, with respect to sex (including pregnancy), race, national origin, religion, and color.⁵⁹⁰ Sexual harassment is considered discrimination based on sex under the statute.⁵⁹¹ Importantly, the Civil Rights Act's protections apply regardless of immigration status.⁵⁹²

⁵⁸⁵ See *Chaves v. King Arthur's Lounge, Inc.*, 2009 Mass. Super. LEXIS 298, at *4-5, 20 (Mass. Super. July 20, 2009); See also *Sandoval v. M.J.F. Bowery Corp.*, 2011 Mass. Super. LEXIS 228, at *15 (Mass. Super. July 22, 2011) (finding that the club failed to meet all the elements to prove the dancers were independent contractors).

⁵⁸⁶ See *Chaves*, 2009 Mass. Super. LEXIS 298, at *3.

⁵⁸⁷ MASS. GEN. LAWS ch. 149, § 149C.

⁵⁸⁸ MASS. GEN. LAWS ch. 149, § 159C.

⁵⁸⁹ *Id.* § 150; MASS. GEN. LAWS ch. 151, § 19.

⁵⁹⁰ 42 U.S.C. § 2000e-2.

⁵⁹¹ See *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 753-54 (1998) ("When a plaintiff proves that a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands, he or she establishes that the employment decision itself constitutes a change in the terms and conditions of employment that is actionable under Title VII.").

⁵⁹² BRUGGEMAN & KEYES, *supra* note 110, at 19.

9.3.2.2. *Massachusetts Fair Employment Practices Act*

The Massachusetts Fair Employment Practices Act⁵⁹³ (“FEPA”) similarly prohibits employers from discriminating on the basis of sex, race, national origin, religion, and color. However, it goes further than the Civil Rights Act in that it also prohibits discrimination based on ancestry, sexual orientation, age, handicap status, and genetic information. Additionally, the FEPA prohibits employers from retaliating against employees who make complaints.⁵⁹⁴ The FEPA applies to employers with six or more employees.⁵⁹⁵

9.3.2.3. *Massachusetts Equal Pay Act*

On July 1, 2018, an updated equal pay law went into effect in Massachusetts, which requires equal pay for comparable work, regardless of gender.⁵⁹⁶ Titled the Massachusetts Equal Pay Act (“MEPA”), MEPA also provides that employers may not prohibit employees from disclosing or discussing their wages, nor may they seek the salary or wage history of any prospective employee.

9.3.2.4. *Labor Organizing Claims: National Labor Relations Act*

The National Labor Relations Act (“NLRA”) was designed to protect the rights of employees to organize for their collective benefit. It protects any activity by at least two employees, or one employee acting in common cause with others, for their “mutual aid or protection.”⁵⁹⁷ Union action is not necessary for the activity to be protected under the NLRA. Certain types of employees are excluded from the NLRA’s protections, however, including farm workers, individuals employed by parents or spouses, and independent contractors.⁵⁹⁸

The NLRA applies to all employees covered by the Act regardless of their immigration status.⁵⁹⁹ In *Sure-Tan, Inc. v. National Labor Relations Board*, the Supreme Court found that retaliating against employees’ union activities by reporting them as undocumented immigrants violated the NLRA.⁶⁰⁰ When the National Labor Relations Board investigates a claim under the NLRA, it does not inquire into immigration status, and routinely objects to employers’ attempts to obtain discovery of this information.⁶⁰¹

⁵⁹³ MASS. GEN. LAWS ch. 151B, § 4.

⁵⁹⁴ *Id.* § 4.

⁵⁹⁵ FEPA does not apply to employers of domestic workers. However, under the Domestic Worker Bill of Rights, MASS. GEN. LAWS ch. 151B, § 1(5), the definition of an employer was amended to “include an employer of domestic workers, including those covered under section 190 of chapter 149.”

⁵⁹⁶ MASS. GEN. LAWS ch. 149, § 105A.

⁵⁹⁷ 29 U.S.C. § 157.

⁵⁹⁸ *Id.* § 152(3).

⁵⁹⁹ *Hoffman Plastic Compounds, Inc. v. Nat’l Labor Relations Bd.*, 535 U.S. 137, 137-38 (2002).

⁶⁰⁰ *Sure-Tan, Inc. v. Nat’l. Labor Relations Bd.*, 467 U.S. 884, 895-96 (1984).

⁶⁰¹ Memorandum OM 11-62 from Richard A. Siegel, Assoc. Gen. Counsel I for the Nat’l Labor Relations Bd., to All Reg’l Dir., Officers-in-Charge and Resident Officers, regarding Updated Procedures in Addressing Immigration Status Issues that Arise During NLRB Proceedings at 3(June 7, 2011) [hereinafter *NLRB Assoc. Gen. Couns. Siegel Mem.*], <https://www.nationalimmigrationproject.org/PDFs/nlrb-protocol.pdf> [<https://perma.cc/8XGQ-VFKX>].

In *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, the Supreme Court held that the remedies of reinstatement and back pay are generally not available for undocumented immigrants under the NLRA.⁶⁰² There are, nevertheless, some factors that mitigate the effects of this decision. First, the party alleging undocumented status has the burden of proving that the individual in question is undocumented.⁶⁰³ Second, reinstatement conditional upon employment status verification remains an appropriate remedy in some cases.⁶⁰⁴ And third, back pay may still be sought through parallel employment discrimination and wage claims.

9.3.3. Remedies and Challenges for Domestic Workers

9.3.3.1. Federal Fair Labor Standards Act

Although domestic workers are generally covered by the minimum wage⁶⁰⁵ and overtime⁶⁰⁶ provisions of the FLSA, some categories of domestic workers are excluded. Casual babysitters, as well as domestic workers who provide “companionship services” for aged or infirm persons who cannot care for themselves, are generally excluded from FLSA minimum wage and overtime coverage.⁶⁰⁷ However, domestic workers who provide “companionship services” are eligible for minimum wage and overtime benefits if:

- The domestic worker’s “general household work” exceeds 20 percent of total weekly hours worked (“general household work,” however, does *not* include work related to care for the aged or infirmed person, such as meal preparation, bed making, clothes washing, etc.);⁶⁰⁸ or
- The domestic worker qualifies as “trained personnel,” such as a registered or practical nurse.⁶⁰⁹

⁶⁰² *Hoffman*, 535 U.S. at 140, 144. A Second Circuit case held that back pay is not available to undocumented workers regardless of whether those workers submit false documentation to their employers. *Palma v. Nat’l. Labor Relations Bd.*, No. 12-1199, 2013 U.S. App. LEXIS 13911, at *25 (2d Cir. July 10, 2013).

⁶⁰³ See *Asgar-Ali v. Hilton Hotels Corp.*, 798 N.Y.S.2d 342 n. 2 (Sup. Ct. 2004) (describing a case that placed the burden of proof of employment authorization on the employee as “fl[y]ing in the face of every other decision rendered subsequent to Hoffman”) (internal quotation marks omitted).

⁶⁰⁴ *Id.* at *3; see also *Palma*, 2013 U.S. App. LEXIS 13911, at *29 (“Thus, although the Hoffman Plastic Court did not directly deal with an issue of reinstatement, its discussion plainly did not foreclose relief in the nature of an order for reinstatement conditioned upon an employee’s submission of documentation as required by IRCA.”).

⁶⁰⁵ 29 U.S.C. § 206(f).

⁶⁰⁶ *Id.* § 207(l).

⁶⁰⁷ *Id.* § 213(a)(15). Companionship services are generally defined as providing “fellowship, care and protection” for an aged or infirmed person. 29 C.F.R. § 552.6.

⁶⁰⁸ 29 C.F.R. § 552.6.

⁶⁰⁹ *Id.* However, trained personnel such as nurses, especially registered nurses, may be exempt from coverage under the FLSA based on their status as learned professionals. See U.S. DEP’T OF LABOR, WAGE & HOUR DIV., *FACT SHEET #17N: NURSES AND THE PART 541 EXEMPTIONS UNDER THE FAIR LABOR STANDARDS ACT (FLSA)* (2008), https://www.dol.gov/whd/overtime/fs17n_nurses.pdf [<https://perma.cc/Q4GU-JBD5>].

In addition, individuals who are “employed in domestic service in a household and who reside[] in such household” are not entitled to overtime benefits under the FLSA.⁶¹⁰ However, courts have made clear that these employees are still entitled to minimum wages for all hours worked. For example, in *Kiwanuku v. Bakilana*, a domestic servant in Virginia arrived from Tanzania only to have her passport confiscated, be threatened with deportation, and receive less than the minimum wage for working twenty-four hours a day.⁶¹¹ The court noted that even though domestic workers living in the home cannot receive overtime, they must still be paid at least the minimum wage for all hours worked.⁶¹²

When a domestic worker performs both work that is exempt from the FLSA’s coverage and non-exempt work, some federal courts have been willing to treat the worker’s entire work week as covered by the FLSA’s wage and overtime provisions. In *Marshall v. Intraworld Commodities Corp.*, the court found a willful violation of the FLSA, because the perpetrator of trafficking “took advantage of an ignorant alien, unable to speak English when he arrived here, and put him to work in his house and in his office without paying any substantial amount.”⁶¹³ The trafficking victim⁶¹⁴ performed both live-in domestic work and factory work, but the court found that where both exempt and non-exempt work are performed during the work week the entire week is treated as non-exempt.⁶¹⁵ Additionally, the employer was not entitled to credit against wages for meals, lodgings, and other facilities, because the worker’s acceptance of these conditions was not voluntary and uncoerced.⁶¹⁶

9.3.3.1.1. Protections for Domestic Workers under the FLSA Effective January 1, 2015

On September 17, 2013, the Department of Labor announced a final rule,⁶¹⁷ which took effect on January 1, 2015, which extended minimum wage and overtime protections to many previously excluded domestic workers.⁶¹⁸ Among other key provisions, the rule:

⁶¹⁰ 29.U.S.C. § 213(b)(21).

⁶¹¹ *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 111-12 (D.D.C. 2012).

⁶¹² *See id.* at 117.

⁶¹³ *Marshall v. Intraworld Commodities Corp.*, No. 79 C 918, 1980 WL 2097 at *3 (E.D.N.Y. June 9, 1980).

⁶¹⁴ While he was not referred to as such by the court, the facts indicate that he was brought to the United States from India where he worked for years for no pay. When he asked to return to India, his “employer” misled him into believing he could get a green card if he stayed, and on that basis persuaded him to stay. *Id.*

⁶¹⁵ *Id.* at *4.

⁶¹⁶ *Id.* at *4-5.

⁶¹⁷ Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,454 (Oct. 1, 2013) (codified at 29 C.F.R. 552).

⁶¹⁸ U.S. DEP’T OF LABOR, WAGE & HOUR DIV., MINIMUM WAGE, OVERTIME PROTECTIONS EXTENDED TO DIRECT CARE WORKERS BY US LABOR DEPARTMENT (2013), available at <https://www.dol.gov/newsroom/releases/whd/whd20130917>; S. DEP’T OF LABOR, WAGE & HOUR DIV., PAYING MINIMUM WAGE AND OVERTIME TO HOME CARE WORKERS: A GUIDE FOR CONSUMERS AND THEIR FAMILIES TO THE FLSA, available at <https://www.dol.gov/agencies/whd/direct-care/guide>.

- Requires third party employers of domestic workers to provide domestic worker employees with minimum wages and overtime, regardless of whether these employees are live-in domestic workers or are providing “companionship services”,⁶¹⁹
- Clarifies the definition of the “companionship services” to mean domestic workers who primarily provide “fellowship” and “protection” services to the ill, disabled, and elderly, such as conversation, games, and accompaniment on walks or errands;⁶²⁰
- Excludes from the definition of “companionship services” medical-related services that are typically performed by trained personal, regardless of the training or occupation of the domestic worker performing the services;⁶²¹
- Entitles a domestic worker who provides “companionship services” to minimum wage and overtime benefits if:
 - she spends more than 20% of her work week providing assistance with activities of daily living, such as dressing, feeding, bathing, meal preparation, housework, managing finances, and arranging medical care;⁶²² or
 - she does housework that primarily benefits members of the household apart from the ill, disabled, or elderly person;⁶²³ and
- Requires individuals, families, or households (i.e., non-third party employers) who employ live-in domestic workers (who do not fall under the “companionship services exemption”) to maintain records of all hours worked, in order to ensure that the domestic worker is being paid minimum wage for all worked hours.⁶²⁴

9.3.3.2. Title VII of the Federal Civil Rights Act

Domestic workers are not usually protected by the Federal Civil Rights Act, since it applies to employers with fifteen or more employees.⁶²⁵

⁶¹⁹ U.S. DEP’T OF LABOR, WAGE & HOUR DIV., FACT SHEET: APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICES, FINAL RULE (2013), www.dol.gov/whd/regs/compliance/whdfsFinalRule.htm [<https://perma.cc/MUV5-Z5ZK>].

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ *Id.*

⁶²⁴ U.S. DEP’T OF LABOR, WAGE & HOUR DIV., FACT SHEET #79C: RECORDKEEPING REQUIREMENTS FOR INDIVIDUALS, FAMILIES, OR HOUSEHOLDS WHO EMPLOY DOMESTIC SERVICE WORKERS UNDER THE FAIR LABOR STANDARDS ACT (FLSA) (2013), www.dol.gov/whd/regs/compliance/whdfs79c.pdf [<https://perma.cc/4NGS-CYZ4>].

⁶²⁵ 42 U.S.C. § 2000e.

9.3.3.3. Federal National Labor Relations Act

Domestic workers are explicitly excluded from the definition of an employee under the NLRA and thus are not eligible for its protections.⁶²⁶

9.3.3.4. Massachusetts Wage and Hour Laws

Massachusetts wage and hour laws apply to domestic workers.⁶²⁷ As such, domestic workers are entitled to minimum wage and/or overtime, as well as rights provided by other Massachusetts wage and hour laws,⁶²⁸ regardless of whether they live in the home or conduct companion services. Note, however, that janitors or caretakers of residential property who are furnished with living quarters are not entitled to overtime under Massachusetts laws.⁶²⁹ Additionally, deductions from lodging are prohibited for domestic workers, who are required to live on the employer's premises or in a particular location.⁶³⁰

As with other employers, employers of domestic workers are prohibited from retaliating against their domestic worker employees for complaining of violations of Massachusetts wage and hour laws. Also as with other employers, employers of domestic workers may face civil or criminal penalties for engaging in retaliation, and certain domestic worker employees may receive payment of up to two months' wages.⁶³¹

9.3.3.5. Massachusetts Anti-Discrimination Laws

9.3.3.5.1. Massachusetts Domestic Workers Bill of Rights

There are additional protections for domestic workers in Massachusetts.⁶³² These protections apply to workers who provide domestic services in a home such as: housekeeping, cleaning, childcare, cooking, home management, or caring for someone who is old or ill.⁶³³ Employers must comply with all laws relating to their domestic workers regardless of immigration status.⁶³⁴ Employers must also comply even if they employ less than six workers.⁶³⁵ Domestic workers have the same rights as other workers to protection from discrimination, workers' compensation, minimum wage, overtime, and other wage and

⁶²⁶ 29 U.S.C. § 152(3).

⁶²⁷ See MASS. GEN. LAWS ch. 151, §§ 1A, 2.

⁶²⁸ See MASS. GEN. LAWS ch. 149, §§ 148 *et seq.*

⁶²⁹ See MASS. GEN. LAWS ch. 151, § 1A *et al.*

⁶³⁰ See MASS. CODE REGS. 32.03(5)(c).

⁶³¹ MASS. GEN. LAWS ch. 149, § 148A; MASS. GEN. LAWS ch. 151, §§ 19(1), (5); ATT'Y GEN. OF MASS., ANTI-RETALIATION PROTECTIONS UNDER THE MASSACHUSETTS WAGE AND HOUR LAWS, www.mass.gov/ago/docs/workplace/anti-retaliation/anti-retaliation.pdf [<https://perma.cc/3KVF-W84Z>]. As noted above, *see supra* 9.3.1.2, broader damages for "any damages incurred" may be available for violations of the Wage Act's anti-retaliation provision.

⁶³² See MASS. GEN. LAWS ch. 149, § 190; 940 MASS. CODE REGS. 32.01 *et seq.*

⁶³³ See MASS. GEN. LAWS ch. 149, § 190; 940 MASS. CODE REGS. 32.01 *et seq.*

⁶³⁴ See MASS. GEN. LAWS ch. 149, § 190; 940 MASS. CODE REGS. 32.01 *et seq.*

⁶³⁵ See MASS. GEN. LAWS ch. 151B, § 1(5).

hour protections. In addition, domestic workers are subject to special rules for recordkeeping, rest time, and charges for food and lodging, and they must be provided certain information about their jobs and rights.⁶³⁶ There are also special protections for live-in workers.⁶³⁷

9.3.3.5.2. Fair Employment Practices Act

Under the Domestic Workers Bill of Rights, domestic workers are covered under the FEPA definition of “employee” and are entitled to all the rights of an employee provided by that statute.⁶³⁸

9.3.3.5.3. Right to Freedom from Sexual Harassment: M.G.L. c. 214 § 1C

A domestic worker may also bring a suit in Superior Court against an employer for sexual harassment pursuant to M.G.L. c. 214, § 1C. This law has been found to apply where the FEPA does not, in order to prevent sexual harassment.⁶³⁹

9.3.3.5.4. Massachusetts Equal Rights Act: M.G.L. c. 93 § 102

A domestic worker may also have a claim for sex, race, color, creed, national origin, disability, and/or age discrimination pursuant to the Massachusetts Equal Rights Act (M.G.L. c. 93, § 102). Note, however, that to raise a claim under the Massachusetts Equal Rights Act, the worker must file a complaint directly in Superior Court.⁶⁴⁰

9.3.3.5.5. Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (“PWFA”), effective April 2, 2018, amends the Massachusetts statute prohibiting discrimination in employment, M.G.L. c. 151B, § 4, enforced by the Massachusetts Commission Against Discrimination (MCAD).

PWFA expressly prohibits employment discrimination on the basis of pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child. The act places affirmative obligations on the part of employers and provides additional protections to pregnant or lactating employees.

⁶³⁶ See MASS. GEN. LAWS ch. 149, § 190; 940 MASS. CODE REGS. 32.01 *et. seq.*

⁶³⁷ *Id.*

⁶³⁸ MASS. GEN. LAWS ch. 151B, § 1(5) (definition of an employer amended to “include an employer of domestic workers including those covered under section 190 of chapter 149”).

⁶³⁹ See *Guzman v. Lowinger*, 422 Mass. 570, 572 (“G.L. c. 214, § 1C . . . permits employees [of companies with fewer than six employees] such as the plaintiff to bring suit in the Superior Court for damages [a]rising from sexual harassment in employment.”).

⁶⁴⁰ MASS. GEN. LAWS ch. 93, § 102.

9.3.4. Remedies and Challenges under Employment Laws for Victims of Sex Trafficking

Protections provided to employees under employment and labor laws are usually not available to sex trafficking victims because forced prostitution is either not acknowledged as employment or is explicitly excluded under most state statutes.⁶⁴¹

Likewise, the FLSA does not apply to forced prostitution.⁶⁴²

Whether forced prostitution is covered by the NLRA or Title VII of the Civil Rights Act has not been tested in any reported cases as of the date of the writing of this Guide. Nor does the statutory language indicate on its face whether forced prostitution is excluded from the NLRA⁶⁴³ or Title VII.⁶⁴⁴

Similarly, no reported cases have tested whether Massachusetts labor and employment laws apply to prostitution. Nor do the statutes specify whether they exclude forced prostitution.

In addition to legal ambiguities, there are practical reasons why sex trafficking victims may not wish to bring employment law claims against their perpetrators. Criminal prosecution of perpetrators is much more likely in sex trafficking cases than in labor trafficking cases. Therefore, sex trafficking victims may be satisfied with the compensation available through restitution, particularly because of the trauma many of these victims would be forced to relive if they were to initiate civil litigation.⁶⁴⁵ If victims were to pursue civil litigation, tort or contract claims may be more straightforward.⁶⁴⁶ Claims may also be possible under RICO and the Alien Tort Claims Act.⁶⁴⁷

⁶⁴¹ WERNER & KIM, *supra* note 126, at 11.

⁶⁴² *Id.* at 56.

⁶⁴³ It has been argued that sex workers are not covered under the NLRA, because the client alone determines the length and limit of the employment. Oliver J. McKinstry, Note, *We'd Better Treat Them Right: A Proposal for Occupational Cooperative Bargaining Associations of Sex Workers*, 9 U. PA. J. LAB. & EMP. L. 679, 692 (2007). However, it could also be argued that a trafficking victim engaged in forced sex is employed, not by the victim, but by her pimp and perpetrator, who determines her employment's limit and length. This is particularly true given that the NLRA has been willing to protect semi-unlawful employment before, such as with undocumented workers.

⁶⁴⁴ Vicki Schultz, *Sex and Work*, 18 YALE J.L. & FEMINISM 223, 234 n.7 (2006). ("Nothing in the language of Title VII precludes its application to employment in activities or industries that are illegal. I could not find any case law directly addressing the issue."). It is also of interest that the Seventh Circuit affirmed the dismissal of a Title VII sexual harassment claim against an employer in a "house of prostitution," not on the basis that prostitution is not covered under Title VII, but rather because there were too few employees for coverage under Title VII. *Stinnett v. Iron Works Gym/Executive Health Spa, Inc.*, 301 F.3d 610, 612-616 (7th Cir. 2002).

⁶⁴⁵ WERNER & KIM, *supra* note 126, at 11.

⁶⁴⁶ See *supra* Section 9.1.6.

⁶⁴⁷ *Id.* RICO, or the Federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1960-68, creates civil liability for people involved in "a pattern of racketeering activity." 18 U.S.C. § 1962. "Racketeering activity" includes "trafficking in persons." *Id.* § 1961. The Alien Tort Claims Act extends federal jurisdiction to include "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. See *supra* Section 9.1.

9.4. Compensation for Victims of Violent Crime Under Massachusetts Law

Attorneys representing human trafficking victims in Massachusetts should also determine whether their clients are eligible for compensation under M.G.L. c. 258C, §§ 1-13. Pursuant to that statute, the Massachusetts Victim Compensation and Assistance Division provides eligible victims of violent crime reimbursement for out-of-pocket expenses (e.g., uninsured medical and dental care, mental health counseling, funeral and burial costs, and income lost due to the inability to work). The Victim Compensation and Assistance Division uses funds obtained primarily from fines paid by criminal defendants, and assists with expenses up to a maximum of \$25,000 per crime.

Please note, however, that victim compensation funds are funds of last resort and are to be awarded only after all other forms of insurance or other assistance have been exhausted. Applicants must report all other potential sources of funds that may fully or partially cover their expenses, such as health insurance and public benefits, on their application for compensation. Applicants must also inform the Division of any funds that they receive from any source for the losses for which they have requested compensation, and they must agree to reimburse the state for any such funds.⁶⁴⁸

Information on how to determine eligibility and apply for compensation is provided below. For more information, contact the Victim Compensation staff at the Office of Attorney General Maura Healey, (617) 727-2200 ext. 2160, or visit that office’s website.⁶⁴⁹

9.4.1. Who is Eligible for Victim Compensation?

- Victims of violent crimes occurring in Massachusetts (maximum award of \$25,000);⁶⁵⁰
- Victims, dependents and family members of victims with a catastrophic injury (maximum award \$50,000); and

⁶⁴⁸ Application for Victim Compensation. Available online at:

<https://www.mass.gov/files/documents/2019/04/02/application%20for%20web%20040119.pdf>

[<https://perma.cc/3NFU-DUQN>]. For further information regarding eligibility, requirements, and covered expenses of the program, see Applying for Victims of Violent Crime Assistance, <https://www.mass.gov/massachusetts-victims-of-violent-crime-compensation> [<https://perma.cc/L9TM-CJJC>].

⁶⁴⁹ MASS. GEN. LAWS ch. 258C, §§ 1-13.

⁶⁵⁰ A “crime” is defined as “an act committed by a person which, if committed by a mentally competent, criminally responsible adult who has no legal exemption or defense, would constitute a crime. Crime shall apply to an act occurring within the commonwealth, and to an act of terrorism ... occurring outside the United States or territories against a resident of the commonwealth.” MASS. GEN. LAWS ch. 258C, § 1. A “victim” is defined as “a person who suffers personal physical or psychological injury or death: (a) as a direct result of a crime as defined in this section; (b) as a result of attempting to assist a person against whom a crime was attempted or committed; or (c) as a result of efforts to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence.” *Id.*

- Any person responsible for the funeral expenses of a victim of a crime occurring in Massachusetts (maximum award \$8,000).⁶⁵¹

9.4.2. Who is Ineligible for Compensation?

- An offender or accomplice of an offender is not eligible to receive compensation with respect to a crime committed by an offender.
- To the extent the victim's acts or conduct provoked or contributed to the injuries, the Victim Compensation and Assistance Division shall reduce or deny an award.
- A claimant is not eligible for compensation if such compensation would unjustly benefit the offender. However, a claimant will not be denied compensation because of his or her familial relationship with the offender or because of a shared residence with the offender.⁶⁵²

9.4.3. Requirements for Victim Compensation

- The division must find that a crime was committed and that it directly resulted in physical or psychological injury to, or death of, the victim;
- The crime must have been reported to police within five days unless there was good cause for delay; and
- The claimant must cooperate with law enforcement officials in the investigation and prosecution of the crime unless there is a reasonable excuse not to cooperate.⁶⁵³

9.4.4. Compensable Expenses

- The maximum award is \$25,000 for victims of violent crimes and \$50,000 for victims, dependents, and family members of victims with a catastrophic injury.
- To the extent insurance or other funds do not cover crime-related expenses, claimant may be reimbursed for:
 - Hospital services and medical or dental expenses as the direct result of injury to the victim (including equipment, supplies, and medications);
 - Counseling expenses (for victims, for family members of homicide victims, and for children who witness violence against a family member);
 - Funeral/burial costs up to \$8,000;

⁶⁵¹ MASS. GEN. LAWS ch. 258C, § 2.

⁶⁵² *Id.*

⁶⁵³ *See id.*

- o Lost wages (for victims only);
- o Loss of financial support (for dependents of homicide victims); and
- o Homemaker expenses.
- Additional expenses covered for crimes that occurred on or after November 5, 2010:
 - o Ancillary funeral/burial;
 - o Replacement bedding/clothing;
 - o Crime scene cleanup;
 - o Forensic Sexual Assault Exam;
 - o Security measures; and
 - o Counseling for non-offending parents of a child victim.⁶⁵⁴

9.4.5. Expenses Not Covered

- Property losses;
- Compensation for pain and suffering; and
- All losses not included in the list of compensable expenses above.

9.4.6. Filing and Proof of Claims⁶⁵⁵

A claim for compensation must be filed within three years of the crime. Victims under the age of 18 at the time of the crime may apply until age 21, or later in certain limited circumstances. The claimant has the burden of proving by a preponderance of the evidence that he or she is eligible to receive compensation.

A completed application should be returned to the Victim Compensation and Assistance Division for verification.⁶⁵⁶ A decision is generally received within four to six months. A claim may be reopened for future expenses.

⁶⁵⁴ *Id.* § 3.

⁶⁵⁵ *See id.* § 5.

⁶⁵⁶ OFFICE OF ATTORNEY GENERAL, VICTIM COMPENSATION & ASSISTANCE DIVISION, *Victim Compensation: Financial Assistance for Victims of Crime in the Commonwealth of Massachusetts*, available at www.mass.gov/ago/docs/victim/victim-comp-app-updated.pdf [<https://perma.cc/HB7W-LKKV>].

9.4.7. Judicial Review⁶⁵⁷

Within 30 days of mailing the notice of award or denial by the program director, the claimant may petition for judicial review in the district court within the judicial district in which the claimant resides or, in the case of a nonresident claimant, in the Boston Municipal Court.

9.4.8. Attorneys' Fees⁶⁵⁸

The statute permits claimants to retain counsel to represent them in their claims for compensation. It provides that attorneys' fees will be deducted from the total award for compensation. Attorneys must submit an affidavit setting forth the hours worked and the services rendered. The Victim Compensation and Assistance Division may then include as part of its award reasonable attorneys' fees to be determined by the Division in an amount not to exceed 15 percent of the total award for compensation.

⁶⁵⁷ MASS. GEN. LAWS ch. 258C, § 9.

⁶⁵⁸ *See id.* § 2(g).

10. Non-Legal Benefits and Resources Available to Victims of Human Trafficking

Note: *Victims of human trafficking often face a constellation of legal issues. While this chapter summarizes the non-legal benefits and resources available to victims of human trafficking, attorneys should be attentive to whether their clients also have legal issues that are summarized in other chapters of this Guide.*

10.1. Importance of Determining Non-Legal Needs

When an attorney encounters a victim shortly after she has left a trafficking situation, urgent issues such as safety, housing, or medical needs may be more pressing than her legal case. This section discusses resources that may be available to meet victims' immediate non-legal needs. Being able to guide clients through the requirements for these benefits and resources may help attorneys build rapport with their clients and alleviate some of the burdens faced by victims, so that they can focus on the legal matters at hand.

10.1.1. Federal Benefits & Services

The U.S. Department of Health and Human Services ("HHS") is empowered by the TVPA to certify foreign victims of severe forms of trafficking, "making these individuals eligible for federally funded benefits and services to the same extent as refugees."⁶⁵⁹ Such benefits may include cash, employment and housing assistance, food stamps, and medical and mental health care services.

HHS regulations define a "foreign" victim as an individual who is neither a U.S. citizen nor a lawful permanent resident.⁶⁶⁰ The process of certification and available benefits and services upon certification varies depending on whether the victim is an adult or a minor:

- **Adult foreign national victims** of human trafficking must receive a "Certification Letter" from HHS before they will have access to federal benefits and services.⁶⁶¹ The TVPA imposes three requirements for certification:

⁶⁵⁹ U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, SERVICES AVAILABLE TO VICTIMS OF HUMAN TRAFFICKING: A RESOURCE GUIDE FOR SOCIAL SERVICE PROVIDERS 1 (2012) [hereinafter HHS RESOURCE GUIDE], available at <https://www.acf.hhs.gov/sites/default/files/otip/trafficking-services.pdf> [<https://perma.cc/S4NH-7YH8>]; 22 U.S.C. § 7105(b)(1)(A).

⁶⁶⁰ See HHS RESOURCE GUIDE, *supra* note 659, at 2. Trafficking victims who are U.S. citizens or lawful permanent residents do not need certification from HHS to be eligible for similar benefits and services. However, lawful permanent residents will have a five-year waiting period before they are eligible to apply for certain benefits and services. See *id.* at 8 & n.1; see also *infra* § 10.2.

⁶⁶¹ See 22 U.S.C. § 7105(b)(1)(C), (E); HHS RESOURCE GUIDE, *supra* note 659, at 8. This letter is different from the U or T visa certification that is sought from law enforcement and used as primary evidence in the visa application.

1. An individual must have been subjected to a severe form of human trafficking, as defined in the TVPA;
 2. A victim must be willing to assist in every reasonable way in the investigation and prosecution of the trafficking case, or is unable to cooperate with such a request due to physical or psychological trauma; and
 3. The U.S. Department of Homeland Security (“DHS”) must have granted Continued Presence to the victim, or notified the victim that his or her T visa application is bona fide or approved.⁶⁶²
- **Minor foreign national victims** of human trafficking must receive an “Eligibility Letter” from HHS (the same letter needed by adult victims) before they will have access to federal benefits and services. Minor foreign victims are not required to comply with requests to assist law enforcement investigation or prosecution, nor to have been granted Continued Presence or a T visa.⁶⁶³ Instead, they can apply directly to HHS for certification and receive the letter qualifying them for benefits.

Furthermore, the TVPA directs HHS, upon receipt of credible information that a child may have been subjected to trafficking, to make a prompt determination if the child is eligible for up to 90 days of interim assistance.⁶⁶⁴ Before the 90-day period has expired, HHS, in consultation with the U.S. Department of Justice (“DOJ”), DHS, and nongovernmental organizations with expertise in human trafficking, must determine if the child is eligible for long-term assistance.⁶⁶⁵ During the interim period, the child will have access to the same benefits as they would upon receipt of an Eligibility Letter (e.g., cash assistance, food stamps, and certain foster care/residential programs).⁶⁶⁶

Note that even foreign victims who have not received a Certification or Eligibility Letter from HHS are nevertheless eligible for some limited federal benefits and services. They may also obtain assistance from community resources, such as food pantries, soup kitchens, domestic violence shelters, faith-based shelters, community health centers, migrant health clinics, and legal aid.⁶⁶⁷

⁶⁶² HHS RESOURCE GUIDE, *supra* note 659, at 8; *see also* 22 U.S.C. § 7105(b)(1)(E).

⁶⁶³ *See* 22 U.S.C. § 7105(b)(1)(F); HHS RESOURCE GUIDE, *supra* note 659, at 9.

⁶⁶⁴ *See* 22 U.S.C. § 7105(b)(1)(F)(i)-(iii); 22 U.S.C. § 7105(b)(1)(G) (“Not later than 24 hours after a Federal, State, or local official discovers that a person who is under 18 years of age may be a victim of trafficking in persons, the official shall notify the Secretary of Health and Human Services to facilitate the provision of interim assistance under subparagraph (F).”). “A determination regarding eligibility for interim assistance will not affect the independent determination of whether a minor is a victim of a severe form of trafficking.” 22 U.S.C. § 7105(b)(1)(F)(i).

⁶⁶⁵ 22 U.S.C. § 7105(b)(1)(F)(iv).

⁶⁶⁶ *See id.* § 7105(b)(1)(F).

⁶⁶⁷ *See, e.g.*, HHS RESOURCE GUIDE, *supra* note 659, at 2-4 (listing various community resources).

The tables in [Section 10.2](#) list the types of federal benefits and services available to adult trafficking victims who have received a Certification Letter and minor trafficking victims who have received an Eligibility Letter.⁶⁶⁸ They also list the types of federal benefits and services available to adult trafficking victims who have not received a Certification Letter and minor trafficking victims who do not have an Eligibility Letter.⁶⁶⁹

10.1.2. “Public Charge” Determinations

While many government benefits discussed in the following section may be helpful for clients, advocates should note that the use of some benefit programs may have consequences for noncitizens. U.S. Citizenship and Immigration Services (“USCIS”) may deny a noncitizen’s application for admission to the United States or for adjustment of status if it determines that the applicant is likely to become a “public charge.” In 2019, USCIS significantly expanded the types of benefits considered when making this determination.

Practice Tip: As of the time of this guide’s publication, victims of severe forms of trafficking who have a pending application for a T visa or who have a valid T visa as well as victims of criminal activity who having a pending application for a U visa or who were granted a U visa are exempt from the public charge rule.⁶⁷⁰ Regardless, advocates who are representing noncitizens should discuss with their client, and potentially consult with an experienced immigration attorney, regarding any consequences of applying for public benefits, especially if the applicant is denied U or T visas.

USCIS began implementing its new public charge rule on February 24, 2020, except in Illinois where the rule was enjoined by a federal court.⁶⁷¹ The rule applies to applications and petitions mailed or electronically submitted after February 24, 2020.⁶⁷² This section provides guidance on both the “Prior Rule” and updated Final Rule. Advocates should research the current state of the rule before advising their clients.

Advocates should also note that the State Department recently published an interim final rule, formalizing changes to its public charge guidelines for those applying for visas to enter the United States

⁶⁶⁸ See *infra* [Section 10.2](#).

⁶⁶⁹ See *infra* [Section 10.3](#).

⁶⁷⁰ See *To Whom Does It Apply?; Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248), available at <https://www.federalregister.gov/d/2019-17142/p-353> [<https://perma.cc/2KRF-ZF4A>].

⁶⁷¹ See *Public Charge Fact Sheet*, USCIS, available at <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet> [<https://perma.cc/J272-5G9H>]. At the time of writing, the 7th Circuit has taken under advisement whether the new public charge rule should be stayed. See *Cook County v. Wolf*, No. 19-03169 (7th Cir. Feb. 26, 2020), D.I. 126).

⁶⁷² *Id.*

to align with the final rule published by USCIS.⁶⁷³ At the time of writing, the State Department had not yet implemented this rule.⁶⁷⁴

10.1.2.1. Background and the Prior Rule

A noncitizen may be ineligible for admission to the United States, a visa, or an adjustment of status if USCIS determines that he or she falls within a statutory class of “Inadmissible Aliens.”⁶⁷⁵ One such statutory class of inadmissibility are persons “likely at any time to become a public charge”⁶⁷⁶ DHS considers an applicant’s age, health, family status, assets, resources, financial status, education, and skills in determining whether the applicant is likely to become a public charge.⁶⁷⁷ DHS may also consider an affidavit of support submitted on the applicant’s behalf, as well as receipt of federal benefits.⁶⁷⁸ DHS currently follows the 1999 Interim Field Guidance issued by INS, which sets forth in detail how the public charge determination is made.⁶⁷⁹

USCIS previously considered the use of two types of benefits under a totality of the circumstances test: 1) cash benefits for income maintenance, and 2) institutionalization for long-term care at government expense.⁶⁸⁰ Considered cash benefits included Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and state and local cash assistance programs.⁶⁸¹ USCIS previously did *not* consider the use of non-cash benefits, such as Medicaid (except for long-term institutionalization), food stamps (SNAP), the Children’s Health Insurance Program (CHIP), Section 8

⁶⁷³ See The National Law Review, Public Charge Rule Update (Oct. 26, 2019), <https://www.natlawreview.com/article/public-charge-rule-update-making-sense-all-moving-pieces> [<https://perma.cc/K6B8-K5XM>]; Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019).

⁶⁷⁴ The National Law Review, Public Charge Rule Update (Oct. 26, 2019), <https://www.natlawreview.com/article/public-charge-rule-update-making-sense-all-moving-pieces> [<https://perma.cc/K6B8-K5XM>].

⁶⁷⁵ Immigration and Nationality Act § 212(a)(4), codified at 8 U.S.C. § 1182(a)(4).

⁶⁷⁶ *Id.*

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.*

⁶⁷⁹ *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689 (INS No. 1988–99) [hereinafter “1999 Interim Field Guidance”]. Available at <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf> [<https://perma.cc/K7D5-8U8F>]. See also *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,123 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248) [hereinafter “NPRM”] (clarifying that this guidance is still followed by DHS). Under the 1999 Interim Field Guidance, a public charge determination is a “prospective evaluation” based on “the totality of the [noncitizen’s] circumstances at the time of his or her application.” See 1999 Interim Field Guidance at 28,690. The presence or absence of a single factor “should never be the sole criterion” for a determination, and positive factors may outweigh a negative factor. See *id.* The amount of benefits received, the length of time they were received, and how long ago they were received all influence how much weight this factor is given. See *id.*

⁶⁸⁰ *Id.* at 28,692.

⁶⁸¹ *Id.*

housing assistance, or emergency disaster relief, among other programs, when making a “public charge” determination.⁶⁸²

10.1.2.2. August 2019 Final Rule

On August 14, 2019, DHS (the parent agency of USCIS) published a final rule relating to inadmissibility on Public Charge Grounds.

Primarily, DHS expands the list of benefits considered in a public charge determination. Specifically, it adds Medicaid, food stamps (SNAP), the Medicare Part D Low Income Subsidy, and certain housing benefits (namely the Section 8 Voucher Program, Section 8 Project-Based Rental Assistance, and other forms of public housing).⁶⁸³ Under the new rule, USCIS will only consider the use of these newly added benefits—i.e., those not covered by the 1999 Interim Field Guidance—if an applicant received the benefits *after* the final rule takes effect.⁶⁸⁴

In addition, DHS will now weigh five factors to assess whether it is “more likely than not” that the applicant will become a public charge.⁶⁸⁵ These factors include: (1) age; (2) health; (3) family status; (4) assets, resources, and financial status; and (5) education and skills.⁶⁸⁶ The rule also includes “heavily weighted negative” and “heavily weighted positive” factors.⁶⁸⁷

10.1.2.3. To Whom Does It Apply?

Victims of trafficking are exempt from this rule as an “exempt class.”⁶⁸⁸ Most other visas are subject to the public charge rule, including student visas (F-1 and M-1) and employment-based visas (e.g., H-1B and H-2B).⁶⁸⁹ USCIS will also make a public charge determination when a noncitizen applies to extend their stay on, or change their status to, any of these visas.⁶⁹⁰

⁶⁸² *Id.*

⁶⁸³ *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292, 41,501 (Aug. 14, 2019); U.S. Citizenship and Immigration Services (USCIS), *Final Rule on Public Charge Ground of Inadmissibility*, <https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility> [<https://perma.cc/VL3R-YTE4>].

⁶⁸⁴ U.S. Citizenship and Immigration Services (USCIS), *Proposed Change to Public Charge Ground of Inadmissibility*, <https://www.uscis.gov/legal-resources/proposed-change-public-charge-ground-inadmissibility> [<https://perma.cc/9VZQ-3CLJ>].

⁶⁸⁵ *Inadmissibility on Public Charge Grounds*, *supra* note 672, at 42,502.

⁶⁸⁶ *Id.* at 41,502-504; *see also* DHS Finalizes Public Charge Rule, Catholic Legal Immigration Network, Inc. (Aug. 12, 2019), available at: <https://cliniclegal.org/resources/dhs-finalizes-public-charge-rule> [<https://perma.cc/E9LD-69TV>].

⁶⁸⁷ *Inadmissibility on Public Charge Grounds*, *supra* note 672, at 42,502.

⁶⁸⁸ *See* USCIS, *Public Charge*, <https://www.uscis.gov/greencard/public-charge> [<https://perma.cc/JCW9-QUYL>].

⁶⁸⁹ *Inadmissibility on Public Charge Grounds*, *supra* note 685, at 41,336-341 (Table 2 – Summary of Nonimmigrant Categories Subject to Public Benefits Condition).

⁶⁹⁰ *Id.*

Congress specifically exempted certain classes of noncitizens from public charge determinations, and the final rule does not affect these classes.⁶⁹¹ Noncitizens exempt from, or eligible for a waiver for, public charge determinations include the following: refugees, asylum applicants, asylees applying for permanent resident status, individuals applying for a U or T visa, individuals with a U or T visa applying for permanent resident status, and those self-petitioning for legal status pursuant to the VAWA.⁶⁹² Noncitizens who fall within these exemptions (and obtain a waiver, if applicable) will not be denied admission or a change of status on public charge grounds.⁶⁹³ Advocates may consult the final rule for the full list of exempt classes.⁶⁹⁴ For further information regarding U and T visas, see *supra* Section 5.1.

There is no public charge test for noncitizens who apply for naturalization.⁶⁹⁵ However, the public charge issue may arise during the naturalization process if a noncitizen withheld or misrepresented material facts relating to the public charge determination at the time of admission or an earlier adjustment of status.⁶⁹⁶ This may render their previous admission for permanent residence unlawful.⁶⁹⁷ There are also some circumstances in which being a “public charge” is grounds for deportation, but naturalization is not barred unless USCIS has actually instituted deportation proceedings.⁶⁹⁸ The 1999 Interim Field Guidance noted that “[a]s a practical matter, neither of these situations is likely to occur” with regard to naturalization.⁶⁹⁹

⁶⁹¹ NPRM at 51,156, *supra* note 681.

⁶⁹² *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. at 41504-505; USCIS, *Public Charge*, *supra* note 688 (within “Who is exempt from this rule?”). See also USCIS, *Green Card for VAWA Self-Petitioner*, <https://www.uscis.gov/green-card/green-card-va-wa-self-petitioner> [<https://perma.cc/NMX9-39QT>] (clarifying in “Grounds of Inadmissibility” that VAWA self-petitioners are exempt from public charge determinations). For more information on the VAWA, see *supra* § 5.2.1 (“Violence Against Women Act Self-Petitions”).

⁶⁹³ *Id.* at 51,157; see also 8 U.S.C. § 1182(a)(4) (listing the VAWA and Victim of Criminal Activity exemptions); 8 U.S.C. § 1182 (d)(13)(A) (stating that the public charge ground “shall not apply” to nonimmigrants described in § 1101(a)(15)(T), Severe Trafficking in Persons).

⁶⁹⁴ For a detailed chart of noncitizens subject to the public charge rule, see *Inadmissibility on Public Charge Grounds*, *supra* note 685, at 41,336-341 (Table 2 – Summary of Nonimmigrant Categories Subject to Public Benefits Condition).

⁶⁹⁵ 1999 Interim Field Guidance, *supra* note 679, at 28,693.

⁶⁹⁶ *Id.* See also ERIN QUINN & MELISSA RODGERS, IMMIGRANT LEGAL RESOURCE CENTER, PUBLIC CHARGE AND NATURALIZATION 4 (2018), available at https://www.ilrc.org/sites/default/files/resources/public_charge_naturalization-20181121.pdf [<https://perma.cc/HP3M-S5HY>] (noting that fraudulent use of benefit programs can count against an applicant’s “good moral character” in naturalization).

⁶⁹⁷ 1999 Interim Field Guidance, *supra* note 679 at 28,693.

⁶⁹⁸ *Id.* For more information on the “public charge” ground for deportation, see the 1999 Interim Field Guidance, *supra* note 679 at 28,691 (section 3). The Final Rule issued by DHS does *not* propose changes to the public charge deportability ground, which is governed by § 237(a)(5) of the INA, codified at 8 U.S.C. § 1227(a)(5). This deportability ground is controlled by Department of Justice precedent decisions. See *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. at 41,295.

⁶⁹⁹ 1999 Interim Field Guidance, *supra* note 679, at 28,693.

10.1.2.4. Conclusions

Advocates should consider whether the use of government benefits may negatively impact a client in a public charge determination, and if so, verify whether the client qualifies for an exemption. If a noncitizen client wishes to receive benefits that are considered by USCIS in public charge determinations under the new final rule (e.g., Medicaid), advocates should advise their clients that any such benefits may be considered in a public charge determination.

10.2. Federal Benefits and Services Available to Adult Trafficking Victims Who Have Been Certified and Minor Trafficking Victims Who Have Received an Eligibility Letter⁷⁰⁰

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	MASSHEALTH	CHILDREN’S HEALTH INSURANCE PROGRAM (“CHIP”)	HEALTH RESOURCES AND SERVICES ADMINISTRATION PROGRAMS	SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION PROGRAMS
Certified Adult	Yes	Yes	No	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes	Yes	Yes

PROGRAMS ADMINISTERED BY HHS OFFICE OF REFUGEE RESETTLEMENT (“ORR”) PROGRAMS

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	REFUGEE CASH ASSISTANCE (“RCA”)	REFUGEE MEDICAL ASSISTANCE (“RMA”)	REFUGEE SOCIAL SERVICES AND TARGETED ASSISTANCE	VOLUNTARY AGENCY MATCHING GRANT PROGRAM
Certified Adult	Yes, available up to eight months from the date of Certification.	Yes, available up to eight months from the date of Certification.	Yes, available up to 60 months from the date of Certification.	Yes, enrollment must occur within 31 days of the date of Certification; only available for six months from the date of Certification.
Minor with Eligibility Letter (Under 18)	No	Yes, available up to eight months from the date of Eligibility.	Yes, available up to 60 months from the date of Eligibility for minors 16 years of age and older who are not full-time students. Full-time students may apply if they are seeking part-time or temporary employment while a student, or full-	Children under 18 are only eligible if they are part of a family/case where there is an employable adult; the adult/case must enroll within 31 days of Eligibility.

⁷⁰⁰ For additional detail about the programs and program eligibility described in these charts, please See U.S. DEP’T OF HEALTH & HUMAN SERVS., Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers (2012), available at https://www.acf.hhs.gov/sites/default/files/orr/trafficking-services_0.pdf [<https://perma.cc/S4NH-7YH8>].

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	REFUGEE CASH ASSISTANCE (“RCA”)	REFUGEE MEDICAL ASSISTANCE (“RMA”)	REFUGEE SOCIAL SERVICES AND TARGETED ASSISTANCE	VOLUNTARY AGENCY MATCHING GRANT PROGRAM
			time permanent employment upon completion of school.	

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	ORR MEDICAL SCREENINGS	UNACCOMPANIED REFUGEE MINORS (URM) PROGRAM	SERVICES FOR SURVIVORS OF TORTURE
Certified Adult	Yes	No	Must meet definition of torture victim.
Minor with Eligibility Letter (Under 18)	Yes	Yes	Must meet definition of torture victim.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF AGRICULTURE (“USDA”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	CHILD NUTRITION PROGRAMS	SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (FOOD STAMP PROGRAM)	SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)
Certified Adult	No	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	PUBLIC HOUSING PROGRAM	TENANT-BASED VOUCHERS
Certified Adult	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF JUSTICE (“DOJ”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	VICTIMS OF CRIME (VOCA) EMERGENCY FUNDS	VICTIM RIGHTS AND SERVICES - FEDERAL VICTIM-WITNESS COORDINATORS	EMERGENCY WITNESS ASSISTANCE	WITNESS SECURITY PROGRAM
Certified Adult	Yes	Yes	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes	Yes

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	OVC SERVICES FOR TRAFFICKING VICTIMS DISCRETIONARY GRANT ⁷⁰¹	VOCA VICTIM ASSISTANCE	VOCA VICTIM COMPENSATION
Certified Adult	No	Yes ⁷⁰²	Subject to specific state guidelines.
Minor with Eligibility Letter (Under 18)	No	Yes	Subject to specific state guidelines.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF LABOR (“DOL”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	ONE-STOP CAREER CENTERS CORE SERVICES	ONE-STOP CAREER CENTERS INTENSIVE SERVICES	JOB CORPS
Certified Adult	Yes	Yes	Yes
Minor with Eligibility Letter (Under 18)	Yes	Yes	Yes

⁷⁰¹ “OVC” stands for “Office for Victims of Crime.”

⁷⁰² OVC provides formula grant funding to the states to support local victim assistance programs that provide direct services to victims. Typically the state awards sub-grants to victim assistance programs to provide specialized services at the community level. Some victim assistance providers serve all crime victims; others may limit services to a specific type of victimization, such as child abuse, sexual assault, or domestic violence. While there are few VOCA-supported programs that are dedicated solely to serving human trafficking victims, many programs, such as rape crisis centers and domestic violence shelters, do provide services to human trafficking victims.

PROGRAMS ADMINISTERED BY U.S. SOCIAL SECURITY ADMINISTRATION (“SSA”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	SUPPLEMENTAL SECURITY INCOME
Certified Adult	Yes
Minor with Eligibility Letter (Under 18)	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF EDUCATION (“ED”)

CERTIFIED OR ELIGIBLE TRAFFICKING VICTIM	TITLE IV FEDERAL STUDENT FINANCIAL AID
Certified Adult	Yes
Minor with Eligibility Letter (Under 18)	Yes

Source:

HHS RESOURCE GUIDE, *supra* note 659.

10.3. Federal Benefits and Services Available to Uncertified Adult Trafficking Victims and Minor Trafficking Victims Without an Eligibility Letter⁷⁰³

- “Unlawfully Present in the U.S.” includes persons who entered the United States without inspection or who overstayed their visas, and persons not in compliance with the terms of their visas or orders of the Immigration Court.
- “Lawfully Present in the U.S.” includes persons paroled for at least one year, persons whom the government has agreed not to remove from the United States for a temporary period, and some other categories. Also includes nonimmigrants who are persons admitted to the United States on a temporary basis, such as a person on a student visa, exchange visit or visa, or temporary worker visa.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”)

TRAFFICKING VICTIM BY IMMIGRATION	TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	MASSHEALTH	CHILDREN’S HEALTH INSURANCE PROGRAM	HEALTH RESOURCES AND SERVICES	SUBSTANCE ABUSE AND MENTAL HEALTH
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No	No	No	Yes	Yes
Lawfully Present in the U.S. (not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No	No	Yes	Yes
Refugees, asylees, and Cuban/Haitian entrants	Yes	Yes	Yes	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes, after a five-year waiting period.	Yes, after a five-year waiting period.	No for adults; yes after a five-year waiting period for minors	Yes	Yes

⁷⁰³ For additional detail about the programs and program eligibility described in these charts, please See U.S. DEP’T OF HEALTH & HUMAN SERVS., Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers (2012), available at <https://www.acf.hhs.gov/sites/default/files/otip/traffickingservices.pdf> [<https://perma.cc/S4NH-7YH8>]. This guide was last reviewed by the Office on Trafficking in Persons on May 13, 2019, see <https://www.acf.hhs.gov/otip/resource/services-available-to-victims-of-human-trafficking> [<https://perma.cc/W5N3-WLYW>].

TRAFFICKING VICTIM BY IMMIGRATION	TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	MASSHEALTH	CHILDREN'S HEALTH INSURANCE PROGRAM	HEALTH RESOURCES AND SERVICES	SUBSTANCE ABUSE AND MENTAL HEALTH
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes	No for adults; yes for minors	Yes	Yes

PROGRAMS ADMINISTERED BY HHS OFFICE OF REFUGEE RESETTLEMENT (“ORR”) PROGRAMS

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	REFUGEE CASH ASSISTANCE (“RCA”)	REFUGEE MEDICAL ASSISTANCE (“RMA”)	REFUGEE SOCIAL SERVICES AND TARGETED ASSISTANCE	VOLUNTARY AGENCY MATCHING GRANT PROGRAM
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No	No	No	No
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No	No	No
Refugees, asylees, and Cuban/Haitian entrants	Yes, if within time limits.	Yes, if within time limits.	Yes, if within time limits.	Yes, if within time limits.
Lawful Permanent Resident, Adult or Minor (Under 18)	No	No	No	No
U.S. Citizen, Adult or Minor (Under 18)	No	No	No	No

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	ORR MEDICAL SCREENINGS	UNACCOMPANIED REFUGEE MINORS (“URM”) PROGRAM	SERVICES FOR SURVIVORS OF TORTURE
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	ORR MEDICAL SCREENINGS	UNACCOMPANIED REFUGEE MINORS (“URM”) PROGRAM	SERVICES FOR SURVIVORS OF TORTURE
Refugees, asylees, and Cuban/Haitian entrants	Yes, if within time limits.	Yes, if within time limits.	Must meet definition of torture victim.
Lawful Permanent Resident, Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.
U.S. Citizen, Adult or Minor (Under 18)	No	No	Must meet definition of torture victim.

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF AGRICULTURE (“USDA”)

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	CHILD NUTRITION PROGRAMS	SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (FOOD STAMP PROGRAM)	SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No for adult; yes for minor.	No	Yes
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No for adult; yes for minor.	No	Yes
Refugees, asylees, and Cuban/Haitian entrants	No for adult; yes for minor.	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	No for adult; yes for minor.	Yes, after a five-year waiting period for adult (contact USDA for other LPR eligibility requirements); yes, no waiting period for minor.	Yes
U.S. Citizen, Adult and Minor (Under 18)	No for adult; yes for minor.	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”)

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	PUBLIC HOUSING PROGRAM	TENANT-BASED VOUCHERS
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No	No
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No	No
Refugees, asylees, and Cuban/Haitian entrants	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF JUSTICE (“DOJ”)

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	VICTIMS OF CRIME (“VOCA”) EMERGENCY FUNDS	VICTIM RIGHTS AND SERVICES - FEDERAL VICTIM - WITNESS COORDINATORS	EMERGENCY WITNESS ASSISTANCE	WITNESS SECURITY PROGRAM
Unlawfully Present in the U.S., Adult or Minor (Under 18)	Yes	Yes	Yes	Yes
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	Yes	Yes	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes	Yes	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes	Yes	Yes

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	OVC SERVICES FOR TRAFFICKING VICTIMS DISCRETIONARY GRANT	VOCA VICTIM ASSISTANCE	VOCA VICTIM COMPENSATION
Unlawfully Present in the U.S., Adult or Minor (Under 18)	Yes	Yes*	Subject to specific state guidelines.
Lawfully Present in U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	Yes	Yes*	Subject to specific state guidelines.
Lawful Permanent Resident, Adult or Minor (Under 18)	No	Yes*	Subject to specific state guidelines.
U.S. Citizen, Adult or Minor (Under 18)	No	Yes*	Subject to specific state guidelines.

* VOCA victim assistance grants are provided to states, which typically then award sub-grants to various victim assistance programs. Some programs serve all crime victims, but others might limit their services to a specific type of victimization, such as child abuse, sexual assault, or domestic violence.⁷⁰⁴

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF LABOR (“DOL”)

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	ONE-STOP CAREER CENTERS CORE SERVICES	ONE STOP CAREER CENTERS INTENSIVE SERVICES	JOB CORPS
Unlawfully Present in the U.S., Adult or Minor (Under 18)	Yes	No	No
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	Yes	No	No
Refugees, asylees, and Cuban/Haitian entrants	Yes	Yes	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes	Yes	Yes
U.S. Citizen, Adult or Minor (Under 18)	Yes	Yes	Yes

⁷⁰⁴ U.S. DEP’T OF HEALTH & HUMAN SERVS., *Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers* (2012), at 25, available at <https://www.acf.hhs.gov/sites/default/files/otip/trafficking-services.pdf> [<https://perma.cc/S4NH-7YH8>].

PROGRAMS ADMINISTERED BY U.S. SOCIAL SECURITY ADMINISTRATION (“SSA”)

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	SUPPLEMENTAL SECURITY INCOME
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No
Lawfully Present in the U.S. (not U.S. Citizen or LPR), Adult or Minor (Under 18)	No
Refugees, asylees, and Cuban/Haitian entrants	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes, after a five-year waiting period.
U.S. Citizen, Adult or Minor (Under 18)	Yes

PROGRAMS ADMINISTERED BY U.S. DEPARTMENT OF EDUCATION (“ED”)⁷⁰⁵

TRAFFICKING VICTIM BY IMMIGRATION CATEGORY	TITLE IV FEDERAL STUDENT FINANCIAL AID
Unlawfully Present in the U.S., Adult or Minor (Under 18)	No
Lawfully Present in the U.S. (Not U.S. Citizen or LPR), Adult or Minor (Under 18)	No
Refugees, asylees, and Cuban/Haitian entrants	Yes
Lawful Permanent Resident, Adult or Minor (Under 18)	Yes* as long as the individual meets financial and other eligibility requirements.
U.S. Citizen, Adult or Minor (Under 18)	Yes

⁷⁰⁵ Source for above charts: HHS RESOURCE GUIDE, *supra* note 659.

10.4. Massachusetts Organizations Providing Support and Services to Victims Of Human Trafficking

Although some states, including New York and California, have created diversion programs intended to connect adult victims to services and reduce criminal penalties for sex for fee cases, the Massachusetts Anti-Trafficking Statute does not create a similar diversion program for adults. It does, however, authorize state-funded services to be available to sexually exploited children. Under the Massachusetts Anti-Trafficking Statute, the Department of Children and Families (“DCF”) must “provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child’s welfare.”⁷⁰⁶ Benefits range from food and medical care to counseling and assessments for an emergency residential placement.⁷⁰⁷ If a child declines these services or is unable or unwilling to participate in them, DCF, or any person, may file a Care and Protection Petition.⁷⁰⁸ But, all sexually exploited children will have access to an advocate, who “shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court.”⁷⁰⁹ Organizations providing services and resources to victims of human trafficking, whether adult or children, including the following:

- **Boston University School of Law’s Immigrants’ Rights and Human Trafficking Program**, Boston, MA, 617-353-2807, [jadahl@bu.edu](mailto:jadah1@bu.edu)
Law students in Boston University’s Human Trafficking program represent survivors of labor and sex trafficking in a wide range of civil and policy-related matters.
- **The EVA Center**, Boston, MA, www.evacenter.org
A Boston-based program with the goal of creating a sustainable comprehensive exit program for adult women wanting out of the sex trade. It is a survivor-led program that offers individualized support, services, information, and resources.
- **Gaining Independence for Tomorrow (GIFT)**, www.roxburyyouthworks.org
A community-based program at Roxbury Youthworks that provides intensive case management services to help girls leave commercial sexual exploitation.

⁷⁰⁶ MASS. GEN. LAWS ch. 119, § 39K(a). Note that “[i]f a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24.” *Id.*

⁷⁰⁷ “Appropriate services” includes “the assessment, planning and care provided by a state agency or non-governmental organization or entity, through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family-based foster care or the community, including food, clothing, medical care, counseling and appropriate crisis intervention services, provided: (i) that such agency, organization or entity has expertise in providing services to sexually exploited children or children who are otherwise human trafficking victims; and (ii) that such services are provided in accordance with such regulations that the department of children and families may adopt or the policies of such department.” MASS. GEN. LAWS ch. 119, § 21.

⁷⁰⁸ MASS. GEN. LAWS ch. 119, § 39K(a). Such petitions are filed pursuant to MASS. GEN. LAWS ch. 119, § 24.

⁷⁰⁹ *Id.* at § 39K(a).

- **Ascentria Care Alliance**, Worcester, MA 774-243-3021, <https://www.ascentria.org/>
Provides legal and social services to survivors of labor and sex trafficking throughout Massachusetts. Services include pro bono legal advice and immigration assistance, comprehensive case management services, employment services, ESL classes and educational programs, and referrals to community-based organizations. Through case management, advocacy, and legal representation, Ascentria seeks to remove the barriers faced by adult and minor survivors when attempting to leave exploitation.
- **Massachusetts Coalition of Occupational Safety (MassCOSH)**, Dorchester, MA, 617-825-SAFE (7233), www.masscosh.org/
Organizes and trains workers to protect themselves against abusive work conditions. MassCOSH centers also support collective action by workers and provide a space for workers to express and address their common grievances.
- **Metrowest Worker Center**, Framingham, MA, 508-532-0575
A worker-led program that is available throughout the Commonwealth. This initiative identifies exploited workers and trafficking survivors and supports them in their efforts to obtain fair wages.
- **My Life My Choice**, Boston, MA, 617-779-2179, www.fightingexploitation.org/
A survivor-led Boston-based program of the Justice Resource Institute that offers a continuum of services aimed at preventing commercial sexual exploitation of girls, boys, and transgender youth including training and education, advocacy, and intervention services. Youth who have been exploited receive a survivor mentor who can offer long-term support and case management. In addition, youth have opportunities to participate in MLMC groups, leadership opportunities, and various other programming.
- **Project REACH/The Trauma Center**, Brookline, MA, www.traumacenter.org/
Provides outpatient mental health services as a satellite clinic of the Metrowest Behavioral Health Center of Justice Resource Institute. Clinic services are reimbursable through selfpay, Victim's Compensation Fund, MassHealth administered through the Massachusetts Behavioral Health Partnership (MBHP), and Tufts Health Plan. Clients with out-of-network insurance benefits may also qualify for services.
- **The Support to End Exploitation Now (SEEN)**, Suffolk County, 617-779-2146, <https://www.suffolkcac.org/what-we-do/seen>
A ground-breaking partnership operated by the Children's Advocacy Center of Suffolk County that unites more than 35 public and private agencies who partner to coordinate services to sexually exploited youth in order to apprehend adult offenders and connect exploited youth to needed services.

- **RIA House**, 774-245-9153, <https://www.riahouse.org/index.html>
Provides group therapy, one-on-one therapy, clinical case management, Empowerment Groups, and peer mentorship for women affected by sex trafficking, prostitution, and sexual exploitation.
- **Living in Freedom Together**, Worcester, MA, 774-243-6025, <https://liftworcester.org/>
A survivor-led organization that provides resources, policy advocacy, and other forms of support for survivors of commercial sexual exploitation.

11. Appendix: Resources for Advocates and Victims of Human Trafficking

11.1. Sample Intake Questions and Responses to Victim Concerns

11.1.1. Massachusetts Interagency Human Trafficking Policy Task Force Suggested Questions

The Massachusetts Interagency Human Trafficking Policy Task Force (the “Task Force”) has developed a set of guiding principles and potential screening questions that are helpful in navigating conversations with potential victims, both minor and adult, about their experiences to identify indicators of human trafficking.⁷¹⁰ As discussed in preceding sections, trafficking situations are often complex and ambiguous, and trafficking victims may not be forthcoming about exploitation experiences or self-identify as victims of a crime. Thus, lawyers must be equipped to recognize indicators of exploitation (see *supra* Sections 2.1 and 4.1) and must be particularly sensitive and carefully consider appropriate screening questions in initial interviews.

At the outset, attorneys should identify any language or cognitive barriers to the questions. Trained third-party translators should be used where appropriate. Attorneys should also try to ensure the safety of a potential victim before he or she leaves, and determine if any immediate safety planning, medical, or mental health needs exist.⁷¹¹

It is essential to begin an interview with an explanation of the attorney-client privilege and an assurance of confidentiality. It is also important to explain to the individual that she can stop the interview at any time or take a break if she would like. Note that it may be overwhelming to the individual to share information about all of the topics below in the first few meetings, and attorneys should provide individuals with the opportunity to direct the fact-gathering process. Inappropriate persistence on the part of the attorney may result in an individual becoming fearful or withdrawn. Thus, attorneys must carefully gauge the individual’s reactions and perhaps refrain from the more sensitive questions until later interviews, when the individual may be more receptive to them.

The following are potential screening questions the Task Force has developed for case workers and law enforcement. Questions such as these should be asked in a conversational style, and not read as a checklist.⁷¹²

⁷¹⁰ TASK FORCE REPORT, *supra* note 4, at 69-74; see also BRUGGEMAN & KEYES, *supra* note 110 at 11; ZIMMERMAN & WATTS, *supra* note 124 at 5; Heather J. Clawson & Nicole Dutch, U.S. Dep’t of Health & Human Servs., Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the Field 6 (2008), available at <https://aspe.hhs.gov/system/files/pdf/75321/ib.pdf> [<https://perma.cc/G8TP-UM34>].

⁷¹¹ TASK FORCE REPORT, *supra* note 4 at 71, 73.

⁷¹² *Id.* at 69-70.

Potential Screening Questions:

- How old are you?
- Where do you live (where do you sleep and eat)?
 - Who else lives there?
 - Do you feel that you can leave if you want? Do you have to ask permission to leave?
 - Have you ever been threatened if you tried to leave?
- Does anyone stop you from getting food, water, sleep, or medical care?
- Do you work? (Alternative: Do you get paid for what you do?)
 - How do you get to and from work?
 - Do you get paid for your work?
 - How did you find your job?
 - Do you owe anyone money because they helped you find your job?
 - Have you ever felt like you could not leave your job or felt pressured to work?
- Have you ever exchanged sex for anything of value such as shelter, food, clothing, or money?
- Have your identification or travel documents been taken from you?
- Have you ever been physically harmed in any way or seen anyone else harmed?
- Has anyone ever threatened you or your family?
- Has anyone ever threatened you with calling immigration authorities or the police?
- Is anyone making you do anything that you do not want to do?
- How are you feeling?
- Do you need any medical assistance?
- Do you feel safe?

The following questions are questions particularly useful in meetings with victims who appear to be minors:

- How old are you?

- Are you in school?
 - o If yes, where do you go to school?
- Where do you live?
 - o Who else lives there?
 - o Can you come and go as you please?
 - o Have you ever been threatened if you tried to leave?
- Whom would you contact in an emergency?
- Do you work or how do you get money?
- Have you ever exchanged sex for food, clothing, shelter, or money?
- Has anyone forced you to do something that you did not want to do?
- Did someone ever touch you in a way you did not like?
- Has anyone hurt or tried to hurt you?
- How are you feeling?
- Do you need any medical assistance?
- Do you feel safe?
- Are you lonely? Do you get to see your friends?

11.1.2. Checklist of Additional Topics to Discuss with Potential Trafficking Victims

In addition to the Task Force questions listed above, attorneys may find it useful to discuss the topics below with the individual to elicit factual information important in trafficking cases. Note that the intake questions will vary depending on the goal of the representation (e.g., obtaining a U visa versus sealing a CORI record).

1. Assessment of security

- Has the individual ever spoken to an attorney before? What was the experience like?
- Did the individual express any concerns about carrying out the interview, or think talking with an attorney would pose problems with the victim's employer, family, friends, or anyone else?
- Did the individual feel secure in the location of the interview? If not, did the victim express a preference for another time or place?

- Did the individual express concerns about the attorney leaving voicemails, sending emails or postal mail to him or her?

2. Topics specific to potential labor trafficking cases

- How did the individual come to his or her current employment (newspaper or internet advertisement, e.g.)?
- What kind of work does the individual do? What is an average day like for the individual?
- Was the individual lied to about the kind of work he or she would be doing?
 - Is this the work he or she expected to be doing? Is he or she doing more or less than expected?
 - For whom did the individual expect to work? Is he or she working for that person(s) now, or working for more than that person(s)?
- Under what conditions does the individual work?
 - What are the individual's hours, and how many days a week does he or she work?
 - Does the individual live in his or her employer's home?
 - Does the individual know his or her work address?
 - Does the individual have to ask permission to eat, sleep or go to the bathroom? Where does he or she eat and sleep?
- How is the individual being paid, if at all?
 - Does the individual believe that he or she owes a debt, whether to his or her employer or someone else? If so, is he or she working to pay off a debt?
 - Is the individual receiving his or her wages directly? Does the individual have control over those wages?
- Is the individual fearful of his or her employer, or has the individual been threatened at work?
 - Has the individual ever been forced or pressured to work? Did anyone ever threaten to hurt the client, or the individual's family, if the individual did not work?
 - Was the individual ever beaten or assaulted by his or her employer, or others at work?
 - Is the individual's ability to communicate with family and friends restricted by his or her employer?
 - Does the individual feel free to come and go as he or she pleases? Did the individual fear what would happen if he or she left?
 - Does the individual feel free to find another job if he or she wanted?
- Are the individual's co-workers treated similarly to the client?

- Does the individual get any time off? If so, what does the individual do in his or her leisure time?

Practice Tip: Some domestic workers may not understand the term “work” in the same way as lawyers. For example, some workers may believe they are not “working” when the children they care for are napping. In reality, they are working. Thus, it is important to make sure the advocate and the worker have the same understanding of working time. Additionally, asking more open-ended questions might be helpful in understanding the hours and specific tasks a victim in fact works. For example, ask the victim to walk you through a typical day and, as the victim is talking, ask about details about the tasks being performed. For example, ask the victim questions about who is cleaning the house or caring for the children.

Additionally, some domestic workers may be borrowed by other employers, or shared. It is very important to understand who the worker thinks he or she works for, especially in suits for back wages and fines.

3. Topics specific to potential sex trafficking cases

- Does the individual have family or friends? If so, are they nearby? Is the individual disconnected from them?
- Did the individual report a history of physical or sexual abuse? Was the individual ever forced to do something sexual, or touched or treated in a way that made him or her uncomfortable?
- Does the individual appear to currently be in an abusive relationship? Does the individual show any signs of physical discomfort as a result of beatings or other abuse?
- Has the individual ever done something sexual with someone in exchange for money, shelter, food, or something else? If so, how was the individual paid? Does the individual have a pimp or manager?
- Has the individual had any prior experience with the criminal or juvenile justice systems? If so, does the individual have any sort of criminal record?
- Does the individual have a history of running away from home, or being in and out of foster homes?

4. Client’s living conditions and eating and sleeping habits

- Where does the individual eat and sleep? Does the individual have somewhere he or she considers a home? If so, are the living conditions poor? Do others stay there? Are there locks on the doors or windows that the individual cannot unlock?
- What does the individual typically eat in a day? How many times a day does the individual typically eat?

- How many hours does the individual sleep in a typical day? Does the individual have any problems with sleeplessness?
- Are there limits on how much the individual can eat or sleep?
- Is the individual's sleep interrupted to work?
- Is the individual charged for eating and, if so, is it added to his or her "debt"?

5. Immigration, control over money and identification documents

- Does the individual have a passport, visa or any other identification documents? If so, are they in the individual's possession? Were they ever taken from the individual?
- How did the individual enter the United States?
- Does the individual have a bank account?
- Is the individual paid directly, or not?
- Has anyone ever taken the money that the individual earned for work?

6. General physical health, healthcare and hospital visits

- Does the individual have any health insurance?
- Has the individual ever visited a hospital or medical clinic?
 - If so, what for?
 - Who took the individual?
 - What was the individual diagnosed with, if anything?
 - What was the individual prescribed, if anything?
- Does the individual have any chronic health conditions?
- Does the individual currently have any cuts, bruises, aches, or pains?
- Does the individual currently suffer from any physical pain?

7. General psychological health

- Does the individual appear anxious, afraid or depressed?
- Does the individual exhibit behavior associated with complex trauma, described *supra* [Section 6.1.1](#)?
- Does the individual feel lonely or isolated from family and friends?
- When does the individual feel the most relaxed and happy?

8. Substance use

- Does the individual use substances? If so, under what circumstances?

11.2. Portal Organizations: Gateways to Services

The following portal organizations connect victims to human trafficking service providers. Please note that each organization below may not provide specialized services for human trafficking victims, although clients may be eligible for general services. Although this list is not exhaustive, it aims to provide a starting point for attorneys or clients looking for services.

However, attorneys should be aware that resources available to victims are, unfortunately, extremely limited.

NAME	ADDRESS/CONTACT INFO.	WEBSITE	DESCRIPTION
SafeLink	PO BOX 180019 Boston, MA 02118 Tel: 877-785-2020 Email: info@casamyrna.org	https://www.casamyrna.org/get-support/safelink/	<p>SafeLink is Massachusetts' statewide, 24/7, toll-free domestic violence hotline run by CasaMyrna. SafeLink hotline advocates are multilingual, and have access to a translation service that can provide translation in more than 130 languages. All calls to SafeLink are free, confidential, and anonymous.</p> <p>Specifically, SafeLink provides:</p> <ul style="list-style-type: none"> • Safety Planning – victims of domestic violence learn how they and their families can stay safe • Supportive Listening – providing a safe space in which to talk about what's happening in a relationship • Direct connection to domestic violence shelter programs across Massachusetts • Referrals to local domestic violence and community services • Support and resources for anyone who is concerned about a victim of domestic violence
Polaris Project	P.O. Box 65323 Washington, D.C. 20035 Tel: 202-745-1001 Hotline: 1-888-373-7888 Text: BeFree (233733) Fax: 202-745-1119 Email: NHTRC@polarisproject.org	http://www.polarisproject.org	<p>The National Human Trafficking Resource Center (NHTRC) is a national, toll-free hotline, available to answer calls and texts from anywhere in the country, 24 hours a day, 7 days a week, every day of the year. The Hotline is used for:</p> <ul style="list-style-type: none"> • Reporting tips • Finding anti-trafficking services • Requesting training and technical assistance, general information, or more specific anti-trafficking resources

NAME	ADDRESS/CONTACT INFO.	WEBSITE	DESCRIPTION
SEEN Coalition Support to End Exploitation Now	Commonwealth Ave. Boston, MA 02215 Tel: 617-779-2145 Email: cac@suf.state.ma.us	https://www.suffolkcac.org/	SEEN is a partnership of more than 35 public and private agencies working to end child sexual exploitation. It is located at the Child Advocacy Center of Suffolk County, a non-profit organization in partnership with the Suffolk County District Attorney. The SEEN Case Coordinator will contact each provider connected to the child and schedule a conference call in order to develop a comprehensive action plan.
Massachusetts Office for Victim Assistance ("MOVA")	One Ashburton Place, Suite 1101 Boston, MA 02108 Phone: 617-586-1340 Fax: 617-586-1341 Email: mova@state.ma.us	https://www.mass.gov/orgs/massachusetts-office-for-victim-assistance	MOVA was established in 1984 with the enactment of the Commonwealth's first Victim Bill of Rights. Its purpose is to advocate for and assist victims of crime. Victims can receive assistance through MOVA's Service Programs, the SAFEPLAN Program, and through its Help Directory. Through its Victim Services Coordinator, MOVA provides referrals to appropriate programs and service providers and information and advocacy to help victims better understand the justice system.

11.3. Law Enforcement / Investigative Agencies

Name	ADDRESS/CONTACT INFO.	WEBSITE
Department of Justice Trafficking in Persons Hotline	950 Pennsylvania Avenue, NW Washington, D.C. 20530 Tel: 888-373-7888	www.justice.gov/actioncenter/crime.html
U.S. Department of State's Office to Monitor and Combat Trafficking in Persons	Boston Field Office: Thomas P. O'Neill Federal Building 10 Causeway Street Suite 1001 Boston, MA 02222 Tel: 617-565-8200 Fax: 617-565-8222 DC Unit: Human Smuggling and Trafficking Center 1800 G Street NW Suite 2210 Washington, D.C. 20223 Email: HSTC@state.gov	https://www.ice.gov/human-smuggling-trafficking-center
U.S. Department of Justice Human Trafficking Prosecution Unit	Civil Rights Division, Criminal Section 950 Pennsylvania Avenue, NW Washington, D.C. 20530 Tel.: 202-514-4609	www.justice.gov/crt/about/crm/htpu.php#vic

Name	ADDRESS/CONTACT INFO.	WEBSITE
Federal Bureau of Investigation, Boston Field Office	Attn: Human Trafficking Supervisory Special Agent 201 Maple Street Chelsea, MA 02150 Tel.: 857-386-2000	www.fbi.gov/boston/
Attorney General Maura Healey	One Ashburton Place Boston, MA 02108 Tel.: 617-963-2011 Email: Sindhu.Kadhiresan@State.MA.US	https://www.mass.gov/fighting-human-trafficking
Boston Police Human Trafficking Unit	989 Commonwealth Avenue Boston, MA 02215 Tel.: 617-343-6533 Tel.: 617-779-2100	http://bpdnews.com/fjc
U.S. Attorney's Office, District of Massachusetts	Boston: John Joseph Moakley United States Federal Courthouse 1 Courthouse Way, Suite 9200 Boston, MA 02210 Tel.: 617-748-3100 TTY: 617 748-3696 Worcester: Donohue Federal Building Room #206 595 Main St. Worcester, MA 01608 Tel: 508-368-0100 Fax: 508-923-0742 Springfield: Federal Building and Courthouse 300 State Street, Suite 230 Springfield, MA 01105 Tel.: 413-785-0235 Fax.: 413-785-0394	https://www.justice.gov/usao-ma
U.S. Department of Homeland Security	Department of Homeland Security 245 Murray Lane SW Washington, D.C. 20528-0075 Tel: 202-282-8000 Boston Office of Homeland Security Investigations: Group Supervisor Office Tel: 617-565-4949 Victim Assistance Coordinator Office Tel: 617-565-4945	www.dhs.gov/

Name	ADDRESS/CONTACT INFO.	WEBSITE
U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HIS), Tip Line	500 12th St., SW Washington, D.C. 20536 Tel.: 866-347-2423	https://www.ice.gov/hsi
U.S. Department of Labor, Women's Bureau and Wage and Hour Division	Women's Bureau 200 Constitution Avenue, NW Washington, D.C. 20210 Tel.: 800-827-5335 Wage and Hour Division Help Line: 866-487-9243	https://www.dol.gov/agencies/oasp/resources/trafficking
U.S. Department of Labor, Office of Inspector General	U.S. Department of Labor Office of Inspector General John Joseph Moakley United States Courthouse 1 Courthouse Way, Suite 9200 Boston, MA 02210 Tel.: 617-748-3218 Fax: 617-748-3965 OIG Hotline: 202-693-6999 or 1-800-347-3756	www.oig.dol.gov/hotlinemain.htm
U.S. Department of State's Office to Monitor and Combat Trafficking in Persons	Tel: 202-312-9639 Fax: 202-312-9637 Email: TIPReport@state.gov	https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-to-monitor-and-combat-trafficking-in-persons/
U.S. Citizenship and Immigration Services Trafficking in Persons and Worker Exploitation Task Force Complaint Line	Tel: 1-800-375-5283	www.uscis.gov
U.S. Department of Homeland Security: US Citizenship and Immigration Services USCIS and Bureau of Immigration and Customs Enforcement (ICE)	USCIS Tel: 800-375-5283 ICE Reporting Hotline: 866-347-2423 ICE Public Affairs Tel: 202-732-4646	https://www.ice.gov/