Introduction to Human Trafficking Laws & the Collateral Consequences of Criminalizing Survivors

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Our Speakers Today

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Agenda

• Overview of Human Trafficking Laws – Federal and State

• The Criminalization of Human Trafficking Survivors and Collateral Consequences of a Criminal Record

• Why is Post Conviction Relief Important for Survivors of Trafficking?
What is Human Trafficking?

- A crime that is defined internationally, federally, and at the state-level
- Involves compelled service across a variety of labor sectors
- Includes both trafficking into the commercial sex trade as well as trafficking into other forms of labor
Federal Law: The Trafficking Victims Protection Act (TVPA)

- First comprehensive piece of federal legislation that addressed human trafficking
- Emerged on the heels of the *El Monte* case
- First enacted in the year 2000, it contains:
  - Human trafficking legal definitions
  - Criminal provisions for prosecution of traffickers
  - Immigration protections for trafficking victims
  - Civil remedies
  - Victim benefits
Definition of “Severe Forms of Trafficking in Persons”*

**Sex Trafficking:**
Using *force, fraud, or coercion* to recruit, harbor, transport, provide, obtain, patronize, or solicit a person for a commercial sex act, or in which person performing the act is under age 18.

**Labor Trafficking:**
Using *force, fraud or coercion* to recruit, harbor, transport, or obtain a person for labor or services in involuntary servitude, peonage, debt bondage or slavery.

*22 U.S.C.A. §7102(11)*
TVPA: Criminal Provisions

- **Forced Labor:** 18 U.S.C. § 1589 - Refers to the crime of providing or obtaining the labor/services of a person through force, fraud, or coercion

- **Sex Trafficking:** 18 U.S.C. § 1591 - Refers to the sex trafficking of children or of adults by force, fraud, or coercion

- **Trafficking:** 18 U.S.C. § 1590 - Criminalizes a broader range of actions than “providing or obtaining labor;” includes recruitment, harboring, or transporting victims
TVPA: Criminal Provisions


- **Attempt:**
TVPA: Restitution & Civil Relief

• **Restitution (18 U.S.C. § 1593):**
  - Under the TVPA, traffickers must be ordered to pay for “the full amount of the victim’s losses” resulting from the trafficking
  - Calculated as “the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.”

• **Civil Damages (18 U.S.C. § 1595):**
  - Added by the 2003 TVPA reauthorization
  - Victims of any violation of the TVPA may bring a civil case against their trafficker and anyone whoever knowingly benefitted
TVPA: Victim Benefits

- Foreign nationals who are victims of severe forms of trafficking are eligible for:
  - Immigration Relief (T Visa)
  - Cash assistance
  - Food stamps
  - Health coverage
  - Language training classes
  - Job training

- Adults must be certified by HHS to receive these benefits; child victims do not.
Maryland Human Trafficking Laws

• **Misdemeanor Human Trafficking: §11-303(a):**
  • Trafficking of an adult (no proof of F/F/C required)
  • Incarceration not exceeding 10 years, a fine not exceeding $5k, or both

• **Felony Human Trafficking: §11-303(b)(1), (2):**
  • §11-303(b)(1): Trafficking of a minor (no proof of F/F/C required)
  • §11-303(b)(2): Trafficking of adults (proof of F/F/C required)
  • Incarceration not exceeding 25 years, a fine not exceeding $15k, or both

Felony trafficking subsection doesn’t actually refer to sex trafficking...*

...nor is there actually a labor trafficking law!*  

*MD law will change in October 2019
Additional Maryland Laws

Courts & Judicial Proceedings
§ 3-801(y)(2):

- In 2012, the definition of sexual abuse was changed to include the sex trafficking of a child
- In 2017, the definition of sexual abuse was expanded to include sex trafficking of a child by any individual
- This change allows for all youth who trade sex, even if they do not have a trafficker, to be deemed a Child in Need of Assistance (CINA), thereby making them eligible to receive services
Additional Laws in Maryland

Criminal Procedure § 8-302:
• In 2011, Maryland passed a law allowing survivors of human trafficking to petition a court to vacate, or, set aside convictions for prostitution that result from their trafficking experience

Criminal Law § 11-303(f):
• In 2013, Maryland passed a provision stating that it is not a defense to a prosecution for trafficking a minor that the defendant did not know the age of the victim

Criminal Law § 11-306(c):
• In 2015, Maryland amended its prostitution statute to allow for a person charged with prostitution to assert defense of duress based on being a victim of human trafficking*

*MD law will change in October 2019
“Defining” Force, Fraud, or Coercion

**Force:**
- Physical abuse
- Sexual abuse
- Isolation/confine ment

**Fraud:**
- False promises of employment/education/a better life
- False promises of romance or marriage

**Coercion:**
- Threats of harm to victim, victim’s family, or other loved ones
- Emotional abuse
- Withholding or supplying basic needs like housing/clothing/food
- Exploitation of drug addiction, homelessness, or personal insecurity
Who is Most at Risk?

Anyone can be a target!

However, traffickers do target certain populations...

High-Risk Groups:

• Women
• Histories of sexual abuse/assault
• Immigrants
• Substance use/abuse
• Youth - runaway/homeless, LGBTQ+, child welfare involvement
Human Trafficking: Myths

- Victims see their traffickers as bad people
- All traffickers are “pimps”
- Real victims will come forward and report the crime that has been committed against them
- Human trafficking = human smuggling
- Human trafficking must involve forced prostitution
- Superbowl/average age of entry/100k-300k children
- Only cisgender women/girls are victims of human trafficking
- All prostitution is trafficking
What Collateral Consequences Flow from an Arrest or Conviction?
General Definitions

- **Collateral Consequences**: The penalties or disqualifications attached to an arrest or a criminal conviction.

- **Collateral Sanctions**: A legal penalty imposed automatically upon a person at the time of conviction.

- **Discretionary Disqualifications**: A legal penalty that a court, agency, or official is authorized but not required to impose.
Retaining Housing: “One Strike” Eviction Policy

- Created by “Anti-Drug Abuse Act” of 1988; Strengthened by 1996 Executive Order

- Tenants may be evicted from public housing for the criminal activity of a household member, guest, OR a person “under the tenant’s control,” that occurs on or off the premises, regardless of whether or not the tenant was aware of the activity OR if the activity resulted in a conviction

- Upheld by SCOTUS in 2002 in Dep’t of Hous. & Urban Dev. v. Rucker

- “Softened” in 2015 & 2016 by HUD guidelines. Currently: ??
Housing

Obtaining Housing:

• Public Housing Authorities, owners of federally-assisted public housing, and private landlords have broad discretion to set their own screening

• This can look like:
  • Flat bans on individuals and their family members
  • A ninety-nine year “lookback” policy
  • No appeal process for refusal of tenancy
Employment and Occupational Licensing

Impact of Criminal Records on Employability:
- Between 80-92% of employers run background checks
- A criminal record reduces job callbacks by ~50% and significantly limits earning potential
- 70 million (1 in 3) U.S. adults confront barriers in securing employment

Impact on Occupational Licensing:
- There are presently 16,772 licensing/occupational laws with criminal record provisions, more than 6,000 of which carry mandatory/automatic exclusions*

*National Inventory of Collateral Consequences of Conviction
Public Benefits

1996’s Personal Responsibility and Work Opportunity Reconciliation Act:

• Lifetime ban on receiving public benefits through TANF and SNAP for drug-related felonies

States given option of waiving or modifying the bans:

• As of 2019, all but 13 states have modified or eliminated the bans (3 still have full SNAP bans; 10 still have full TANF bans)

• Individuals with ongoing criminal justice issues (felony bench warrants, probation/parole violations, etc.) remain ineligible for SNAP, TANF, and SSI
Public Benefits

This Policy Has a Disparate Impact On:

• Women: 85.7% of adult TANF recipients are women

• Children: Overall TANF benefit reduced by the ineligible adult family member

• Communities of Color/Overpoliced Communities: Direct correlation with the enforcement of the “War on Drugs”
Eligibility for federal aid may be suspended if convicted of *any* drug offense while receiving aid:

- State *or* federal conviction; misdemeanor *or* felony; possession *or* distribution
- DoE has applied the ban more broadly with regard to applications
- Applies to both possession and sale
Family Law Matters

The Numbers:
- 2007: Approximately 1.7 million children had a parent in prison
- 80% increase between 1991 and 2007
- Fathers: 76% increase; Mothers: 122% increase
- Nearly half of all U.S. children have at least one parent with a criminal record

The Money:
- Child Support:
  - Prior to 2017, incarceration considered “voluntary unemployment” in 14 states, therefore no option to “pause” child support payments
  - Obama-era regulation requires states to create realistic payment amounts
Family Law Matters

The Impact:

• "Two Generation Barrier" to financial stability, education, housing, and family strength
• "Parental incarceration is one the most severe forms of trauma a child can go through, with major social, emotional and academic consequences"
• Significantly exacerbates childhood poverty
• Accumulation of arrears while incarcerated damages reunification and familial relationships
• Criminal records factor into “best interest” standard for purposes of child custody and visitation
Immigration

In addition to jail time, immigrants convicted of crimes in the U.S. face civil immigration detention, travel limitations, and removal proceedings.

Conviction broadly defined as:
- “a formal judgment of guilt . . . By a judge or jury[,]”
- a plea of guilty or nolo contendere[,]”
- or [the defendant] has admitted sufficient facts to warrant a finding of guilt[,]” and “some form of punishment, penalty, or restraint” is imposed.

Includes deferred adjudications, certificates of relief, and expungements.

Convictions that have been vacated do not “count” where the basis for vacatur was a procedural or substantive defect in the underlying proceeding.
Why is Criminal Record Relief So Important for Survivors of Trafficking?
Why is Post-Conviction Relief So Important for Survivors?

- Human trafficking victims are often convicted for acts over which they had no control

- Human trafficking victims are rarely identified as such at the time of arrest/prosecution

- National Survivor Network Survey (2016):
  - 91% of respondents reported having been arrested
    - 42% reported arrests as minors
    - Over 50% of respondents reported that every arrest on their criminal record was trafficking related
  - Over 40% were arrested 9 or more times
  - 60% reported being arrested for crimes other than prostitution
  - 80% reported that they did not disclose at the time of their arrest
Why is Post-Conviction Relief So Important for Survivors?

“Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.”

- 22 U.S.C.A. § 7101(b)(19)

** Arresting/incarcerating survivors is contrary to federal law! **
Why Is Post-Conviction Relief So Important for Survivors?

“I always felt like a criminal. I never felt like a victim at all. Victims don’t do time in jail, they work on the healing process. I was a criminal because I spent time in jail.”

BOTTOM LINE: A criminal record often keeps survivors trapped in the very industries they seek to escape, prevent healing, and make them vulnerable to re-victimization!
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If you are not currently a MVLS volunteer, please click here to register.

By taking a case today, you are helping MVLS to ensure Justice For All.

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Bankruptcy</td>
<td>Client is being sued by her former landlord for $4146.98. The client owes over $300 of the debt and is expecting a small refund. Court date set for 7/20/18 at 1:00pm.</td>
</tr>
<tr>
<td>Deed Collection</td>
<td>Client is being sued for $333.00 for failing to make payments towards a debt. Client has paid approximately $500 toward the debt and would like to work out a settlement for the remaining amount. Affidavit judgment hearing 7/23/18 at 1:00PM. Trial: 8/3/18 at 9:00AM.</td>
</tr>
<tr>
<td>Eviction</td>
<td>Gevald is in the process of filing an eviction against his landlord for non-payment of rent. The landlord is currently in court.</td>
</tr>
<tr>
<td>Foreclosure/Trust Sale</td>
<td>Client seeks help with expunging her criminal record.</td>
</tr>
<tr>
<td>Lease Transfer</td>
<td>Client seeks to remove a former landlord from her property record with a volunteer and to have the eligible cases expunged from her record.</td>
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Looking Towards a Fresh Start

Pro Bono Portal

FREE Upcoming Training & Volunteer Opportunities:

- **July 11** – Annapolis Advanced Tax Training – Frozen Bank Accounts.
- **August 7** – Filing for Vacatur of Prostitution Convictions in Maryland.

Go to [mvlslaw.org/events](http://mvlslaw.org/events) for more info!
Thank you!

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