HUMAN TRAFFICKING, DOMESTIC VIOLENCE, AND FAMILY LAW: TIPS FOR ATTORNEYS AND ADVOCATES

The Intersection of Domestic Violence and Human Trafficking:

- Individuals can be subjected to both domestic violence and human trafficking by an intimate partner or spouse. **Domestic Violence** is a pattern of coercive, controlling behavior that can include emotional or psychological abuse, reproductive or sexual abuse, physical abuse, or financial abuse to gain or maintain power and control over an intimate partner. **Sex Trafficking** occurs when a trafficker (who may be a spouse or intimate partner) induces a victim to engage in commercial sex through force, fraud, or coercion, or when a victim engaging in such an act is under the age of eighteen. **Labor Trafficking** occurs when a trafficker uses force, fraud, or coercion to compel a victim to provide labor services.
- A history of trafficking may make an individual more vulnerable to future domestic violence; similarly, a history of domestic violence and/or sexual abuse can also make individuals more vulnerable to human trafficking. Both traffickers and abusers often seek out potential victims that have experienced past trauma.
- Victims of domestic violence as well as human trafficking victims whose intimate partners are also their traffickers may similarly experience victim blaming for failing to leave their abusers.
- Victims may not perceive their abuser or trafficker as a perpetrator and may be reluctant to access help. If they do reach out for help, survivors of both domestic violence and human trafficking are more likely to identify first as survivors of domestic violence.
- Identifying a client as *either* a human trafficking *or* domestic violence survivor may limit their ability to access services and legal remedies.

Red Flags for Human Trafficking in Domestic Violence Situations:

Below please find examples of ways that a victim may be trafficked by their intimate partner or spouse. This list of examples is not comprehensive, and advocates and attorneys working with survivors should be alert for any indication of trafficking and exploitation. Red flags may include:

- Being “loaned out” by the abuser to others for sex.
- Engaging in sex work once in a while at the request of abuser.
- Having arrests or convictions for prostitution or other related offenses.
- Working at the abuser’s (or their relative’s) home or business for little or no pay.

Considerations When Representing Human Trafficking Survivors in Family Law Matters:

Survivors of human trafficking can face unexpected hurdles when seeking remedies in family law court. Judges and court personnel often lack training on human trafficking issues, and the trauma they have experienced may impact survivors’ credibility during hearings. Trafficking survivors may have different safety concerns than domestic violence survivors, including fear of prolonging contact with the trafficker and risk of retaliation if the trafficker is in a gang or other criminal network. Survivors may also be involved in proceedings in multiple court systems (civil, criminal, and/or immigration), and attorneys should provide as much information as possible about the process and potential outcomes in any family law matter so survivors can weigh any safety risks and make an informed decision based on their particular situation.

Considerations for Protection Orders, Custody, and Divorce:

Protection Orders may be available to trafficking survivors seeking protection from a spouse or intimate partner (or anyone who sexually assaulted them). In addition to establishing an enforceable no contact order for their and their children's safety, protection orders against a spouse or intimate partner can also establish temporary custody, emergency family maintenance, and use of the family home or car, among other protections. For some survivors, a protection order may not be an ideal remedy, particularly if they have been traumatized by prior interactions with the criminal legal system or if taking legal action would increase risk to the survivor or their loved ones. Additionally, attorneys should ensure trafficking survivors are aware that anything they say during protection order hearings could be used against them in other legal proceedings.

Custody Cases: The trafficking survivor will have to evaluate whether they want to request sole or joint custody. In Maryland, there is no presumptions against awarding custody or visitation to an abusive parent; the court must only ensure that the victim and children are safe and protected by any custody or visitation arrangement. During adversarial custody proceedings to determine what is in the best interest of the child, the court may consider criminal activity such as arrests for prostitution or other crimes that resulted from the survivor's trafficking experience. Survivors should also consider if they want to bring a custody case in the first place – the adversarial process may expose parts of their lives they wish to keep private or subject them to severe and re-traumatizing questions. An opposing party who is trafficker will likely try to hold the victim responsible for their behavior – particularly if the victim has been arrested, but the trafficker has not. Survivors may also face credibility issues or have difficulty introducing evidence to establish domestic violence or trafficking by the abuser and convincing the court that it is relevant to their ability to parent. Assessing liability for child support may also be challenging if the abuser's income was based on trafficking earnings and therefore not reported.

Divorce: While Maryland has a twelve-month separation requirement for a "no fault" divorce, survivors who are married to their trafficker may also request a divorce sooner based on "fault" grounds of cruelty or excessively vicious conduct, which can include human trafficking or domestic violence. The court may consider fault when dividing property and considering alimony, and attorneys may be able to successfully argue that their client is entitled to more property or support due to trafficking and other forms of violence in the marriage. Attorneys should provide survivors with options and information so they can decide whether they wish to share their story or opt for potentially less adversarial "no fault" proceedings.

This tipsheet was created as part of the Human Trafficking Prevention Project (HTPP), a collaboration between the University of Baltimore School of Law and Maryland Volunteer Lawyers Service (MVLS).

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