

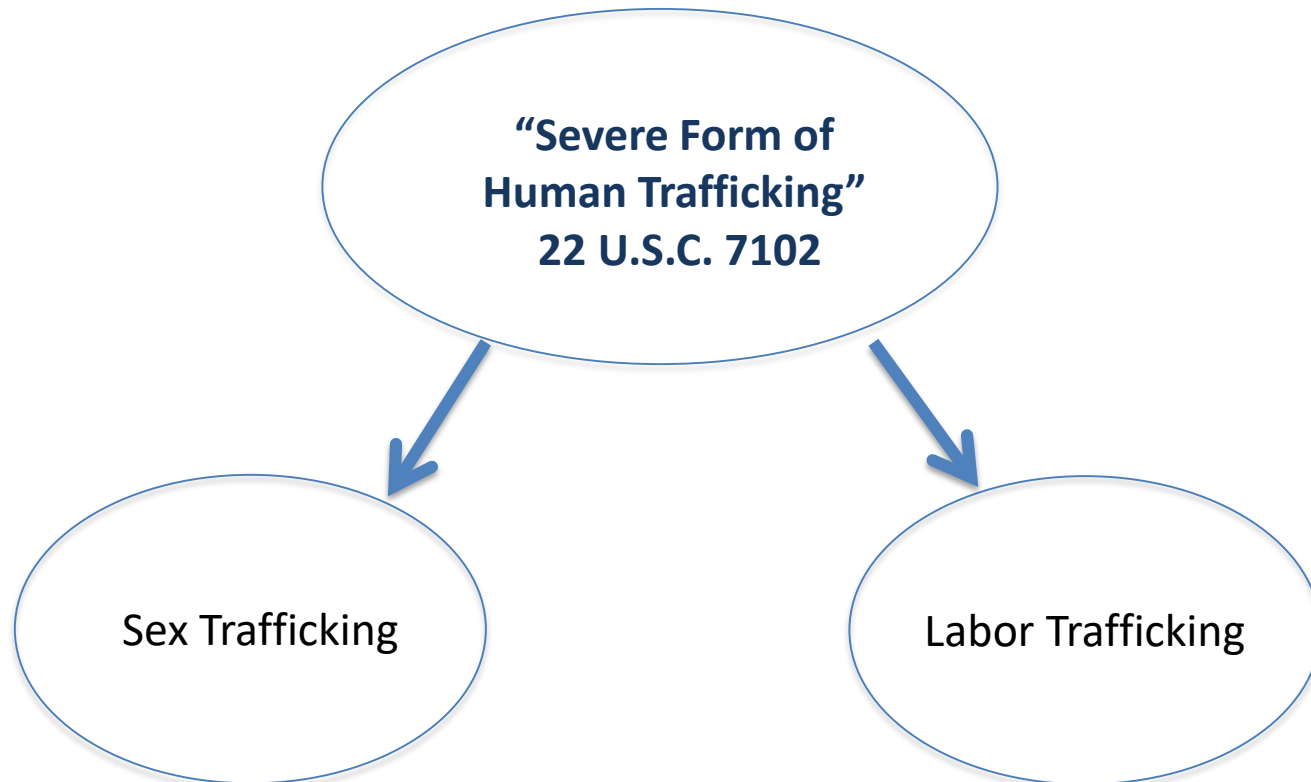


# Legal Remedies for Survivors of Human Trafficking

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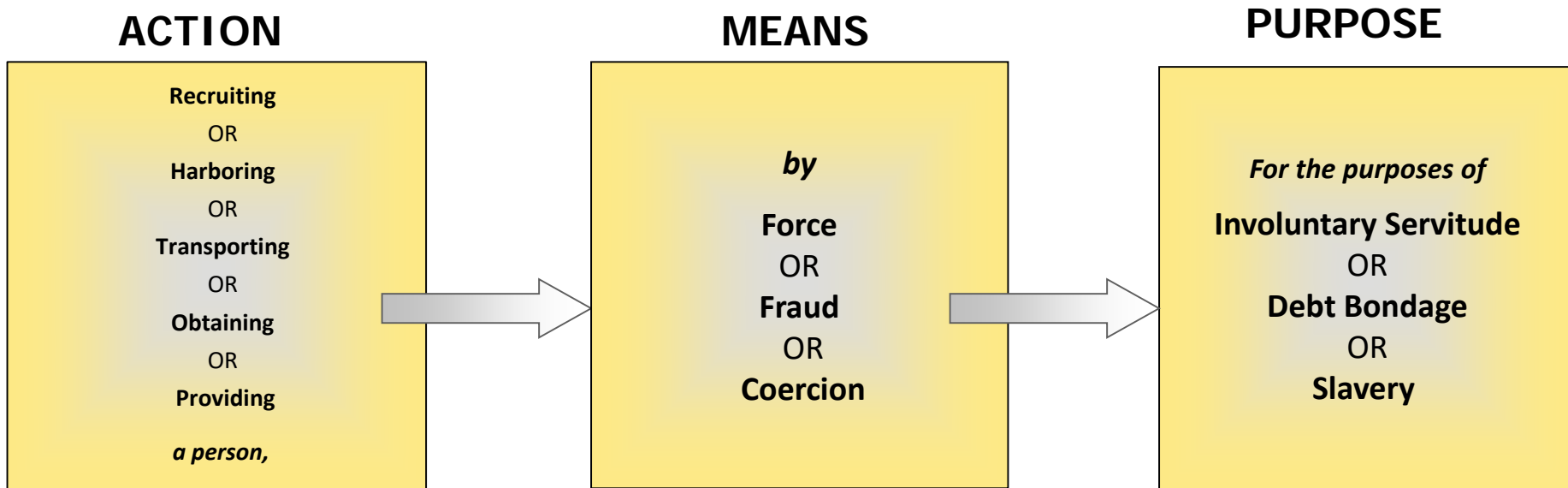
# **What is Human Trafficking?**



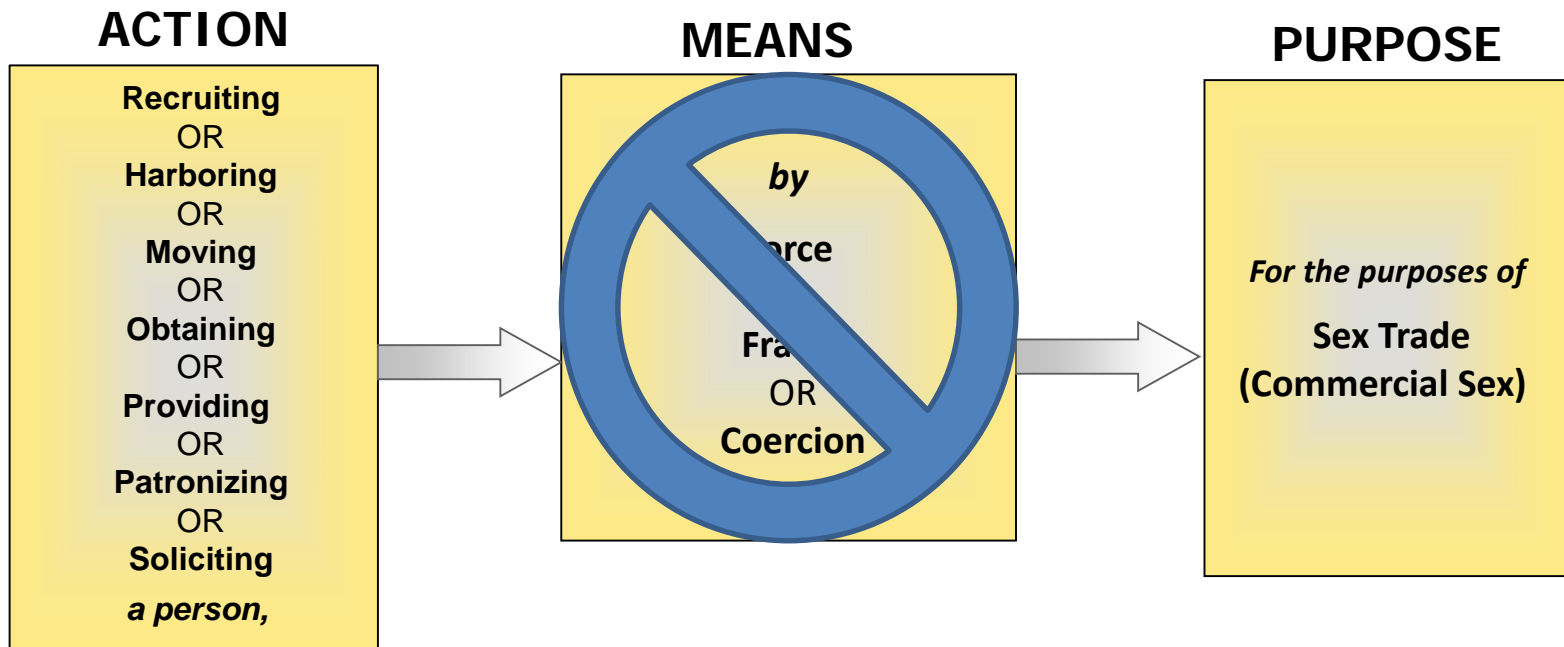
**Sex Trafficking:** The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act induced by force, fraud, or coercion, or in which person performing the act is under age 18.

**Labor Trafficking:** 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.

# Three Elements of Labor Trafficking: AMP Model



# Three Elements of Sex Trafficking: AMP MODEL



\*No force, fraud, or coercion required when a child is induced to perform a commercial sex act.

# Trafficking vs. Smuggling?

- Trafficking is exploitation-based.
- Smuggling is transportation-based.

Depending on when one decides to categorize the offense being committed, situations can evolve from smuggling to trafficking, or, seemingly, from trafficking to smuggling.

**HUMAN TRAFFICKING OCCURS  
REGARDLESS OF BORDERS!**

# Myths: Is it still human trafficking?

(22 U.S.C. 7102)

- *What if the victim isn't physically hurt?*

Coercion – **threats** of serious harm to or physical restraint against any person; any **scheme, plan, or pattern** intended to cause a person to believe that failure to perform an act would result in **SERIOUS HARM** to or physical restraint **against any person**, the abuse or threatened **abuse of the legal process**.

# Serious Harm

(22 U.S.C. 7102)

Any harm, whether physical or **nonphysical**, including **psychological, financial, or reputational harm**, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of **the same background and in the same circumstances** to perform or to continue performing labor or services in order to avoid incurring that harm.



# Abuse of the Legal Process

(22 U.S.C. 7102)

- Document Servitude - holding an actual or fake identity document of a victim
- Threats of criminalization
- Threats of deportation
- Threats of separating families

# Myths: Is it still human trafficking?

Commercial Sexual Act -

Any sex act on account of which anything of value is given to or received by any person.

- *What if the victim is compelled to engage in sex but there is no commercial element?*

Non-commercial sex can be considered a form of labor trafficking if it was induced by force, fraud, or coercion. Referred to as personal sexual servitude.

# Involuntary Servitude (22 U.S.C. 7102)

Servitude induced by means of –

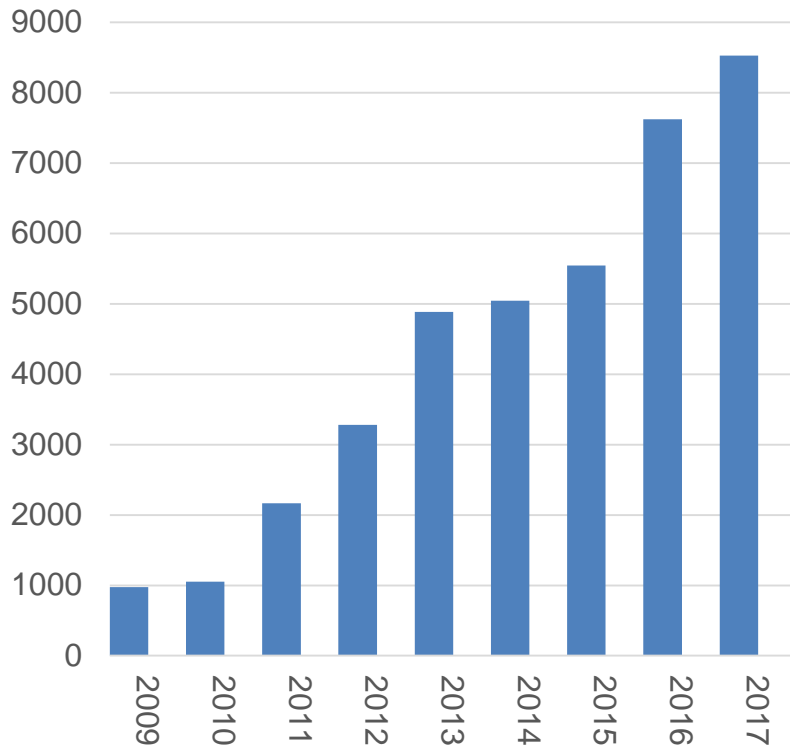
- Any scheme, plan, or pattern intended to cause a person to believe, that if they did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or
- The abuse or threatened abuse of the legal process.

# Truth: Data on Trafficking

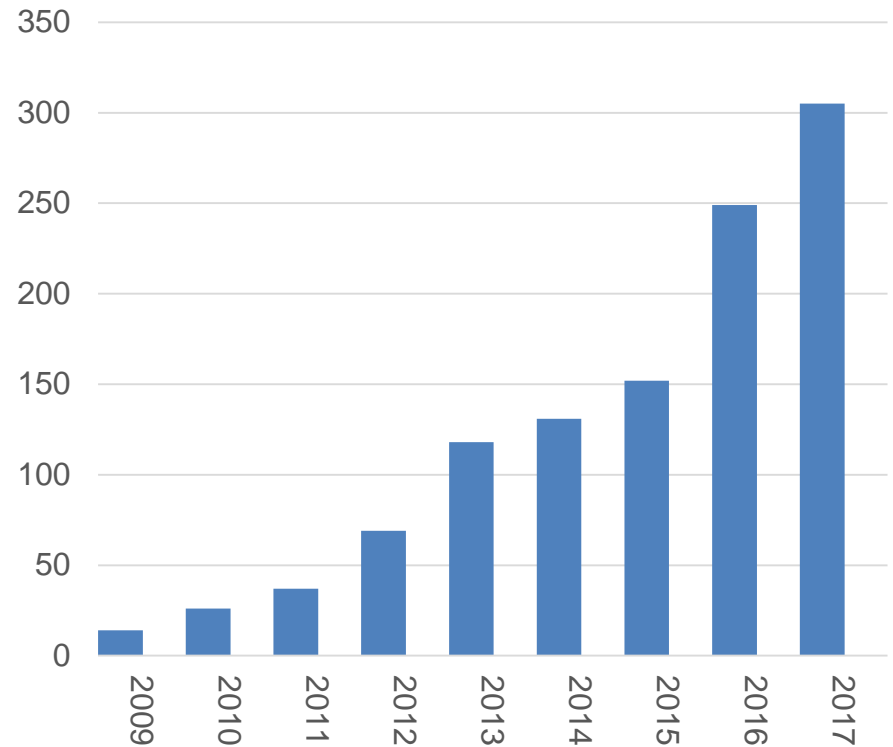
- “There is no official estimate of the total number of human trafficking victims in the U.S. Polaris estimates that the total number of victims nationally reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated.” Polaris Project
- We don’t have prevalence data because “the challenge is that modern slavery is a hidden crime. Every country has made slavery illegal, so collecting data on this matter has not been easy.”

# Scope: What we know

## Hotline Tips of U.S. Cases



## Hotline Tips of MI Cases



**This indicates the more we know about the issue the more victims are identified.  
We don't know how big or small; we are learning.**

# Known Cases

- Adrian
- Ann Arbor
- Battle Creek
- Bloomfield Hills
- Chelsea
- Dearborn
- Detroit
- Dexter
- Eastpointe
- Flint
- Grand Rapids
- Howell
- Jackson
- Lansing
- Livonia
- Madison Heights
- Romeo/New Baltimore
- Romulus
- Saginaw
- Southfield
- Traverse City
- Upper Peninsula
- Warren
- Ypsilanti
- And every other state in the U.S.

# Michigan's Human Trafficking Chapter

- Enacted in 2006: MCL 750.462a-i
- Amended in 2011:
  - Added MCL 750.462j
  - Crime Victim's Rights Act. MCL 780.766b
- Overhauled in 2014 PA 329 Eff. 1/14/2015
  - MCL 750.462a-l
- Amended in 2016 - 15yrs for sex trafficking -3/14/17
- Amended in 2018 -Coercion includes drugs -7/25/2018

# Restitution for Human Trafficking Victims

- In addition to mandatory restitution under Crime Victim's Rights Act:
  - HT Discretionary restitution MCL 780.766b:
    - Lost income
    - The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
    - Attorney fees and other costs and expenses incurred by the victim
    - Any other loss suffered by the victim as a proximate result of the offense.



# New Human Trafficking Chapter

Essentially 4 Human Trafficking crimes:

- Forced Labor or Services MCL 750.462b
- Debt Bondage MCL 750.462c
- Enterprise Liability; Financially Benefitting MCL 750.462d
- Trafficking a Minor MCL 750.462e

# "Forced labor or services"

"Forced labor or services" means labor or services that are obtained or maintained by FORCE, FRAUD OR COERCION. [MCL 750.462a\(g\)](#)

"Force" includes, but is not limited to, physical violence or threat of physical violence or actual physical restraint or confinement or threat of actual physical restraint of confinement, without regard to whether injury occurs.

[MCL 762.462a\(f\)](#)

"Fraud" includes, but is not limited to, a false or deceptive offer of employment or marriage. [MCL 762a\(h\)](#)

# "Forced labor or services"

"Coercion" includes, but is not limited to, any of the following: [MCL 762.462a\(b\)](#)

(i) threatening to harm or physically restrain any individual or the creation of any scheme, plan, or pattern intended TO CAUSE AN INDIVIDUAL TO BELIEVE that failure to perform an act would result in psychological, reputational, or financial harm to, or physical restraint of any individual.

(ii) abusing or threatening ABUSE OF THE LEGAL SYSTEM, including threats of arrest or deportation without regard to whether the individual being threatened is subject to arrest or deportation under the laws of this state or the United States.

Cont.

# "Forced labor or services"

"Coercion" cont.:

(iii) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported PASSPORT OR OTHER IMMIGRATION DOCUMENT or any other actual or purported government identification document from any individual without regard to whether the documents are fraudulent or fraudulently obtained.

**(iv) Facilitating or controlling an individual's access to a controlled substance, as that term is defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104, other than for a legitimate medical purpose. AS OF 7/25/2018**

# Debt Bondage

- Essentially a mounting debt impossible to repay
- Technically: the status or condition of a debt arising from a pledge by the debtor of his or her personal services or of those of an individual under his or her control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not specifically limited and defined. MCL 750.462a(b)

# Enterprise Liability

- Recruit, entice, harbor, transport, provide, or obtain by any means, knowing that the person WILL BE SUBJECTED TO forced labor or services or debt bondage. MCL 750.462d(b)
- Benefiting financially or receiving anything of value from participation in an enterprise engaging in HT. MCL 750.462d(b)

# Trafficking Of Minors

MCL 750.462e: SEX (a) and LABOR (b)

- NO Force Fraud or Coercion Required for sex trafficking minor
- Mistake of age is no defense
  - “regardless of whether the person knows the age of the minor”
- Sex trafficking a minor is SORA registerable
- “Commercial Sexual Activity”: any of the following for which anything of value is given or received by any person:
  - (i) An act of sexual penetration or sexual contact as those terms are defined in section 520a.
  - (ii) Any conduct prohibited under section 145c.
  - (iii) Any sexually explicit performance as defined in section 3 of 1978 PA 33, MCL 722.673.

# New Human Trafficking Chapter

## General Penalties: MCL 750.462(f)(1)(a)

- 10 years labor trafficking
- 15 years if bodily injury results OR sex trafficking
- 20 years if serious bodily injury results
- 20 years for trafficking a minor - (sex or labor)
- life sentence if involves kidnapping, CSC 1st or death



# Safe Harbor

## The Concept:

- Victims are not responsible for the criminal acts they commit under the duress of their trafficker
- The law should shield victims from legal consequences

# Safe Harbor

## The Law:

1. Safe harbor protecting minors who are being offered for commercial sex
2. Safe harbor protecting adult commercial sex victims
3. Opportunity to clear past commercial sex convictions resulting from trafficking

# Safe Harbor – Minors – Prostitution Chapter

- MCL 750.451(6) creates presumption that a minor found engaging in commercial sex is a victim of human trafficking
- MCL 750.451(7) and mandates law enforcement refer the minor victims for appropriate treatment within DHHS.
- MCL 750.451(8) mandates CPS begin an investigation into a HT report w/I 24 hours – and that the investigation “shall include a determination as to whether the [child] is dependent and in danger of substantial physical or psychological harm” under MCL 712A.2

# Safe Harbor – Minors – Probate Code

MCL 712A.2(b)(3) establishes NEW “Dependency” path to probate court jurisdiction for minor human trafficking victims who are dependent and in danger of substantial harm.

- A. Homeless or not living with a parent or other legally responsible person;
- B. Has repeatedly run away from home and is beyond control of a parent or other legally responsible person;
- C. Is alleged to have committed commercial sexual activity (as defined in the Michigan Penal Code, MCL 750.462a) or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult; **and/or**
- D. The custodial parent or legally responsible person has died or has become permanently incapacitated and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile.

# Minors: Safe Harbor Laws

- Individuals under 16 years of age cannot be arrested for prostitution and rather are children in need of protection by the state [MCL 750.448-750.450]
- Individuals that are 16 and 17 years of age are presumed to be victims [MCL 750.451(6)]
- A prosecutor can overcome the presumption and charge a 16 or 17 year old with prostitution [MCL 750.451(6)]

# Safe Harbor – Adults

## Statutory Prostitution Diversion

**MCL 750.451c** [in the prostitution chapter] provides adult human trafficking victims an opportunity to avoid a conviction for misdemeanor prostitution related offenses through a diversion process.

- Assert facts showing it is more likely than not that one engaged in the commercial sex act charged due to force, fraud or coercion by someone else.
- District Court **MAY** defer conviction after a period of court-supervision.
- If supervision period completed without violation, conviction is avoided.

# **Set Aside**

## **(MCL 780.621)**

Setting aside a conviction will remove the record of that conviction from your public criminal record. If granted, you do not need to list that application on a job or school application. You also don't have to list it on any application for for public benefits, or housing.

# Human Trafficking Set Aside (MCL 780.621(4))

An adult can request to have certain convictions removed from their record if the applicant can show:

- the conviction is for a state prostitution violation or a "local ordinance substantially corresponding" to a prostitution charge;
- the conviction was the "direct result" of human trafficking;
- The "circumstances and behavior of an applicant ... from the date of the applicant's conviction or convictions to the filing of the application warrant setting aside the conviction or convictions; and"
- "That setting aside the conviction is consistent with the public welfare."

No limit on the number of prostitution convictions.



# Human Trafficking Set Aside (MCL 780.621(4))

To determine “direct result” look to coercion (MCL 750.462a )

- Threatening to harm or physically restrain any individual
- the creation of any scheme, plan, or pattern intended to cause an individual to believe that failure to perform an act would result in psychological, reputational, or financial harm to, or physical restraint of, any individual.
- Abusing or threatening abuse of the legal system;
- Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document from any individual.
- Facilitating or controlling an individual's access to a controlled substance

# Consequences of Set Aside

IF GRANTED, the courts and the state police will keep a nonpublic record of the conviction. This is so they will know of any convictions previously set aside, should the applicant apply to have another conviction set aside in the future. A conviction that has been set aside can also be used as a factor in sentencing if applicant is later convicted of another crime.

IF DENIED, you must wait 3 years to reapply.

# T Visa

**(8 U.S.C. 1101(a)(15)(T))**

1. Victim of a severe form of human trafficking
2. Physically present in the U.S. on account of trafficking
3. Compliance with any reasonable requests for assistance in the investigation or prosecution of act of the trafficking (or was under the age of 18 at the time of the trafficking or suffers significant trauma)
4. Demonstration of extreme hardship involving unusual and severe harm if removed from the U.S.

# **National Human Trafficking Hotline**

**CALL: 1.888.3737.888**

**TEXT: 233733 (BE FREE)**

**24 hours a day, 365 days a year**  
**Anonymous and confidential**

The hotline will help you determine if a person is a victim and identify local resources to help.

They also have a robust set of outreach and training materials at: <http://www.traffickingresourcecenter.org/>

# **Human Trafficking Clinic**

**CALL: 734.615.3600**

**EMAIL: [humantrafficking@umich.edu](mailto:humantrafficking@umich.edu)**

Available to consult with attorneys to assist them in representing clients – assessing, working with law enforcement, crafting legal arguments. Able to take cases.

# Attorney General Assistance

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