



Courts are uniquely positioned to see the many faces of human trafficking. This article tells you how the Maryland Judiciary is becoming better equipped to identify and address human-trafficking issues, what it has learned, and its plans for the future.

A Firm Foothold: Establishing the Judiciary's Role in the National Response to Human Trafficking

Abigail Hill, Staff Attorney, Department of Juvenile and Family Services, Administrative Office of the Courts-Programs Division, Maryland

Court leaders and other decision makers sometimes have difficulty grasping the scale of human trafficking in the world today. According to the latest global estimate (September 2017), 24.9 million people are victims of human trafficking (ILO and Walk Free Foundation, 2017). A grotesquely lucrative business, human trafficking generates approximately \$150 billion in annual profits. Global aid organizations estimate that most human trafficking is labor exploitation. Only an estimated 19 percent of activity in human trafficking is commercial sexual exploitation, but that 19 percent generates an estimated 66 percent of the \$150 billion of profits (Human Rights First, 2017).

There is no way to accurately estimate the number of traffickers. But compared to the number of victims and the revenue generated by their exploitation, the number of prosecutions is infinitesimal. According to the 2017 U.S. Department of State *Trafficking in Persons Report*, there were only 14,894 prosecutions and 9,071 convictions for trafficking globally in 2016. U.S. Department of Justice prosecutions resulted in only 439 human-trafficking convictions, up from 297 in 2015 and 184 in 2014 (Human

Rights First, 2017). This number does not include cases brought in state courts, and state laws and penalties vary substantially. The National Conference of State Legislatures (2016) notes that “[c]urrently there is uneven data, particularity [sic] across state and local jurisdictions, concerning the extent to which state laws criminalizing trafficking have acted as an effective deterrent or been utilized in prosecutions.”

To ensure fair and effective justice, it is critical for the courts to be aware of the many aspects that surround the ongoing fight against human trafficking. What follows is a brief description of the Maryland Judiciary's initiatives to educate its judges about human trafficking and to equip the courts with knowledge and skills about these challenging cases.

The Maryland Judiciary's Efforts

Maryland is a relatively small state; it is 42nd in size, but ranks 13th-15th in number of human-trafficking cases (National Human Trafficking Hotline, 2016). The state has a variety of features that contribute to its high rate of trafficking: It lies in the middle of the highly populated Eastern Seaboard; it is directly in the path of Interstate

95 and intersected by Interstates 81 (North-South) and 70 (East-West) and, therefore, is heavily traveled by tractor-trailers; Baltimore's BWI airport is easily accessible; and there are casinos, sports arenas, national sporting events, and major transit hubs clustered conveniently together.

In October 2015, Maryland Court of Appeals Chief Judge Mary Ellen Barbera led a delegation to the National Human Trafficking Summit in New York. That summit provided invaluable information about the scope and complexity of the issue. Shortly after returning from the national summit, Chief Judge Barbera convened a new work group of judges to examine issues related to human trafficking. The Judicial Council's Work Group on Human Trafficking was formed in March 2016 and was charged with developing and implementing plans to educate judges, magistrates, appropriate judiciary staff, and justice partners on issues related to human trafficking.

"An informed bench will allow the judiciary to be mindful of the unique challenges that a trafficking case presents without exceeding the scope of a judge's authority."

In addition, the work group was asked to identify other resources and best practices for helping victims of human trafficking who come into the court system.

As the work group delved deeper into human trafficking, they realized that the problem is far more complex and insidious than it initially seemed, and that it makes its way into the courtroom in a broad range of cases. Judges occupy a unique role, and the work group was mindful that judges must remain fair and impartial arbiters and, thus, are somewhat limited as to what, if any, actions they can take to fight trafficking. The work group determined that the judiciary can make the greatest impact by making sure that judges are educated about the crisis in human trafficking. An informed bench will allow the judiciary to be mindful of the unique challenges that a trafficking

case presents without exceeding the scope of a judge's authority. As they planned the education initiatives, the work group members considered the concepts they felt were most central to the judiciary's mission.

Commercial Sexual Exploitation: Not Just Prostitution by Another Name

Judges encounter victims and survivors of human sex trafficking far more often than they may think. Human sex trafficking is not simply prostitution by another name; it does not show up in courtrooms as an orderly procession of young women arrested for engaging in commercial sex. Arrests for prostitution are increasingly rare. Instead, a trafficked individual is far more likely to end up in court on a "masking charge": an ancillary offense that is, on its face, unrelated to commercial sex, but is a direct result of being trafficked. Examples include shoplifting, possession of prohibited substances or paraphernalia, loitering, and theft.

Human sex trafficking can also come into the courtroom under the guise of an immigration case, a truancy petition, a motion for third-party custody, or other case types that seem to have nothing to do with human trafficking. And while the outcome of the case may not be directly affected, the judge is better able to do his or her job if the judge understands what is happening in the courtroom. For example, a judge who can discern that a defendant has most likely been a victim of human trafficking, and that his or her trafficker might be present in the courtroom, can use the available tools to help ensure the defendant's safety. This may include bringing counsel to the bench to ask if the defendant has been screened for trafficking, using an address-confidentiality program (if available), and ordering a staggered exit from the courtroom, as in domestic violence cases.

Similarly, judicial education must prepare the bench for the effects of trauma on survivors of human trafficking. Most victims of human trafficking have experienced multiple forms of trauma. Some experience post-

traumatic stress disorder. Others exhibit behaviors of “complex trauma,” which results from ongoing exposure to trauma, rather than a discrete incident. Complex trauma is often characterized by an increase in symptoms, both in number and severity. Survivors who suffer from complex trauma can come across as emotionless, oppositional, and aggressive, among other symptoms. It is important for judges to recognize that a witness’s or defendant’s blunted affect or uncooperative behavior may be a manifestation of trauma and that it should not be taken as repudiation of human-trafficking allegations.

Judges should also be aware of the risk factors for human trafficking. No one is immune from being exploited;

“The Administration for Children and Families estimates that between 50 and 90 percent of trafficking victims have had some involvement with the child welfare system.”

traffickers are often skilled predators who can manipulate, intimidate, woo, cajole, and threaten with equal ease. However, there are some circumstances

that correlate with a higher risk of being trafficked, such as a history of sexual abuse or commitment to foster care. Children in foster care are far more likely than their non-foster peers to become victims of human trafficking. The Administration for Children and Families estimates that between 50 and 90 percent of trafficking victims have had some involvement with the child welfare system (Child Welfare Information Gateway, 2017). These data are corroborated by other agencies, both governmental and nongovernmental: In 2012 the National Center for Missing and Exploited Children reported that 67 percent of youth who were reported missing—and likely trafficked—were in foster care at the time (Children’s Rights, 2014). And in 2013 the FBI reported that 60 percent of child-sex-trafficking victims recovered from across the nation were in foster care (Rights4Girls, 2017).

Involvement in foster care is a risk factor for another reason: Under the best of circumstances, it presents a situation in which the child’s physical self has a pecuniary value. Former foster youth and trafficking victims have reported that the child welfare system served to prime them for trafficking, as it “normalize[d] the perception that [the children’s] presence is to be used for financial gain” (former foster youth Withelma “T” Ortiz Walker Pettigrew, testifying before the House Ways and Means Committee on October 25, 2013).



LGBTQ youth (already dramatically overrepresented in the child-welfare population) are even more likely to become trafficking victims. LGBTQ kids are more likely to be homeless, or to feel like they have no safe place to go, because of their gender identity or sexual orientation. They are far more likely than their non-LGBTQ peers to be shut out of foster homes or to feel unsafe in a group home.

For survivors of human trafficking, recovery is a very long road. In many instances, judges must make difficult choices about where to place a juvenile who has been recently recovered from a trafficker.

The judge must be aware of the possible dynamics between the trafficker and the survivor and must understand the effects of trauma bonding

“The more a judge understands the powerful dynamic at play, the better positioned he or she is to make informed decisions regarding the youth and the case.”

and its implications. For example, judges must be aware that it is highly likely that the survivor will run back to

his or her trafficker, not once but several times. The more a judge understands the powerful dynamic at play, the better positioned he or she is to make informed decisions regarding the youth and the case.

One of the most serious, but often overlooked, problems facing survivors is the difficulty of rebuilding their lives once they have been recovered from traffickers. Survivors face numerous obstacles because of convictions for prostitution and criminal charges that resulted from being trafficked. Almost all facets of survivors' lives are affected by these convictions, including access to housing, jobs, public benefits, and student loans. In addition to the practical and logistical barriers that a criminal conviction creates, it also hinders the survivor's emotional recovery and ability to heal from the trauma of being trafficked.

While this is true of all criminal convictions, it is especially so for survivors of human trafficking because the underlying actions were often not under their control. The traffickers' influence and control over their victims cannot be overstated. The survivors may be stripped of their identity (if the trafficker has confiscated their driver's license or other form of identification); physically branded by the trafficker to show his or her ownership; wholly dependent on the trafficker for food, shelter, or affection; and threatened with violence to themselves or their families (or any number or combination of other things).

Judicial education must include post-conviction issues. Many states have limited tools for survivors of human sex trafficking who seek post-conviction relief, and for many survivors of human trafficking, the criminal records that result from being trafficked will present an insurmountable obstacle to building a new life.

Labor Trafficking

All too often, "human trafficking" is used to mean only sex trafficking. The reality, as discussed at the beginning of this article, is that labor trafficking, while far less lucrative than sex trafficking, is far more prevalent. According to the 2017 *Trafficking in Persons* report (U.S. Department of Justice, 2017), approximately 79 percent of human trafficking across the globe—almost 20 million people—is for labor, not for sex. Yet labor trafficking generates only \$51 billion a year, while sexual exploitation earned traffickers a whopping \$99 billion (LIO, 2014).

Despite the prevalence of labor trafficking and its majority share of the global trafficking market, there is very little information

about it. In many states, there is a shocking paucity of information on labor-trafficking cases and trends. There are several reasons for this, including 1) there are no robust statutes under which to prosecute labor traffickers; 2) there have been no resources allocated to the investigation of labor-trafficking cases; and 3) it is very difficult to investigate reports of suspected activity because labor trafficking occurs mainly in homes and on farms that are private property.

"...approximately 79 percent of human trafficking across the globe—almost 20 million people—is for labor, not for sex."

Now for the Hard Part: Implementation

The work group considered all the information it had gathered and reviewed and identified several key components of a judicial education program.

First, a “Trafficking 101” section provides a broad introduction to the topic, including applicable federal and state statutes; factors that make Maryland particularly attractive to traffickers; risk factors and demographic information; and observable indicia of trafficking, such as certain tattoos or patterns of behavior. In addition to providing a general overview, this section also helps judges and magistrates understand how prevalent human trafficking is and how it pervades many more types of cases than one might expect.

Second, it is important to understand the dynamic of the trafficker-victim relationship and the trauma that results, with emphasis on the effects of complex trauma and on trauma bonding. In many ways, judicial education on human trafficking is analogous to domestic violence. It helps judges understand the issues at play, anticipate safety concerns, and make informed decisions about service referrals, conditions of probation, placement decisions, and many other considerations. The judiciary’s educational initiatives will include information on trauma-informed practices and services that are available for survivors of human trafficking.

Third, the education program should include issues related to conviction and post-conviction relief, such as juvenile immunity, affirmative defenses, and vacatur. While the specifics will vary widely from state to state, particularly regarding immunity and vacatur, most states (32) have some form of vacatur law.

Having determined what content was necessary, the work group then faced the question of *how* to deliver this information. The work group decided a three-pronged approach was necessary: 1) in-person programs, which

would be taught by subject-matter experts and for which judges could individually register; 2) a comprehensive resource manual of written materials, including the material taught in the live classes, as well as benchcards and best-practices materials; and 3) a Web-based course, which would provide an interactive and engaging curriculum and be available to all judicial officers.

As Maryland’s judicial work group continues, it will consider the experiences of other states as it develops best practices, needed resources, and innovative judicial education programs, while contributing to the national discourse on this important issue.

References

Children's Rights (2014). "In Focus: Foster Youth Fall Prey to Traffickers." *Notes from the Field: The Children's Rights Newsletter*, fall. Online at <https://tinyurl.com/y8empfel>.

Child Welfare Information Gateway (2017). "Human Trafficking and Child Welfare: A Guide for Child Welfare Agencies." *Bulletin for Professionals*, July.

Human Rights First (2017). "Human Trafficking by the Numbers: Fact Sheet." New York; Washington, D.C.; Houston, Texas; and Los Angeles, January 7.

Rights4Girls (2017). "Child Welfare and Domestic Child Sex Trafficking." Resource, November. Online at <https://tinyurl.com/yclxnk83>.

International Labour Office (ILO) (2014). *Profits and Poverty: The Economics of Forced Labour*. Geneva: ILO.

International Labour Office (ILO) and Walk Free Foundation (2017). *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. Geneva: ILO.

National Conference of State Legislatures (2016). "Human Trafficking State Laws." Denver and Washington, D.C., December 5. Online at <https://tinyurl.com/y6wprblt>.

National Human Trafficking Hotline (2016). "Hotline Statistics." Online at <https://tinyurl.com/znaoqw2>.