



WASHTENAW COUNTY

OFFICE OF THE PROSECUTING ATTORNEY

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POLICY DIRECTIVE 2021-14: PROTOCOLS REGARDING POTENTIAL SURVIVORS OF HUMAN TRAFFICKING

I. Introduction and Background

Human trafficking can be simply defined as any kind of compelled service. Under federal law, however, sex and labor trafficking are defined independently.

Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, *or* in which the person induced to perform such an act has not attained 18 years of age.¹

Labor trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.²

The federal definition of trafficking is often represented by the AMP Model:

ACTION	MEANS*	PURPOSE
<ul style="list-style-type: none"> • Recruiting, or • Harboring, or • Transporting, or • Providing, or • Obtaining, or • Patronizing**, or • Soliciting** 	<ul style="list-style-type: none"> • Force, or • Fraud, or • Coercion 	<ul style="list-style-type: none"> • Commercial Sex Acts, or • Involuntary Servitude, or • Debt Bondage
<p>* No means is required for minor cases of sex trafficking ** Only applicable to cases of sex trafficking</p>		

Although sex and labor trafficking are merged into one definition under Michigan law, the practical operation of the definition is very similar to the federal definition.³ Like federal law, Michigan law does not require a show of force, fraud or coercion in the case of minor sex

¹ See 22 USC § 7102.

² *Id.*

³ See MCL 750.462a-h.

trafficking.⁴ Nevertheless, Michigan law permits those ages 16 and over to be arrested and convicted of prostitution, although it is the policy of the Washtenaw County Prosecutor's Office not to file charges against minors who are selling sex (though charges should of course still be sought against the buyer or prospective buyer).⁵

The safety and well-being of human trafficking survivors is a top priority for the Washtenaw County Prosecutor's Office, and it is the policy of this office to provide survivors whatever affirmative legal assistance is needed. As outlined below, such assistance may include expungement assistance, or certification of T-visa or U-visa applications.

The Prosecutor's Office is cognizant, however, that survivors of human trafficking may be distrustful of law enforcement. **Accordingly, as outlined below, the Prosecutor's Office will immediately refer any potential survivor of human trafficking to the University of Michigan's Human Trafficking Law Clinic**—which can directly provide legal services to the potential survivor. The Human Trafficking Law Clinic represents survivors of human trafficking in a variety of civil legal areas including immigration, post-adjudication criminal relief, family, housing, and access to public benefits.

The Prosecutor's Office will provide assistance as needed upon the request of the Human Trafficking Law Clinic, and will give affirmative assistance to trafficking survivors the highest priority. And the Prosecutor's Office will, of course, continue to zealously prosecute cases involving human trafficking in Washtenaw County.

II. Policy Directive

1. Immediate Referral to University of Michigan Human Trafficking Law Clinic:

Immediately upon becoming aware that a person may be a victim of human trafficking, assistant Prosecuting Attorneys (APAs) and/or Victim's Advocates should contact the University of Michigan Law School's Human Trafficking Clinic, so that the Clinic can reach out to provide legal services to the potential trafficking survivor.

Referrals and requests for assistance from the Human Trafficking Clinic should be directed to humantrafficking@umich.edu or (734) 615-3600. Outreach via email should avoid disclosing potentially sensitive information; initial phone conversations are preferred. If a referral is made to the Human Trafficking Clinic, APAs and/or Victim's Advocates should immediately inform the Chief Assistant Prosecuting Attorney and the Prosecuting Attorney.

2. Coordination with Victim's Advocates: APAs who become aware that a person may be the victim of human trafficking should coordinate, wherever possible, with the relevant Victim's Advocate. If no Victim's Advocate has yet been assigned to a case, APAs should inform the Victim/Witness Director that a potential victim of human trafficking has been identified.

⁴ See MCL 750.462e.

⁵ See Washtenaw County Prosecutor's Office, *Policy Directive 2021-08: Policy Regarding Sex Work* at 5 ("charges related to the exchange of sex [with a minor] for money should be brought only against the buyer or the prospective buyer, not the minor.").

3. Protocol Applicability: This protocol is effective **at all stages in a criminal case/investigation, and in all stages of a child welfare proceeding.** It is effective as soon as the Prosecutor’s Office becomes aware that a person may be a victim of human trafficking. That includes, but is not limited to:

- **Informal Communication Regarding an Ongoing Investigation:** If law enforcement alerts the Prosecutor’s Office to an ongoing investigation that may involve human trafficking victims.
- **Search Warrants:** When law enforcement requests authorization for a search warrant from the Prosecutor’s Office, and the factual circumstances of that case indicate that there may be human trafficking victims.⁶
- **Requested Authorization of Charges:** When law enforcement requests authorization of criminal charges, and the factual circumstances indicate that a person may be a victim of human trafficking.
- **Factual Developments in a Charged Case:** Where charges have already been authorized by the Prosecutor’s Office, and subsequent factual developments in the case indicate that there may be a victim of human trafficking.
- **Factual Developments in an Uncharged Case:** Where charges have not yet been authorized by the Prosecutor’s Office, but subsequent factual developments in the case indicate that there may be a victim of human trafficking.
- **Child Welfare Proceedings:** When it appears from the facts of a child welfare case that a minor may have been the victim of human trafficking.

It bears emphasis that this protocol applies to *all* cases—whether the charges directly relate to human trafficking or otherwise. If, for example, an APA or Victim’s Advocate suspects that a witness in a case involving a motor vehicle accident is the victim of human trafficking, the APA or Victim’s Advocate should immediately contact the Human Trafficking Clinic. APAs should also request that the relevant law enforcement agency investigate human trafficking wherever a potential human trafficking victim is identified, so that the traffickers may be prosecuted.

4. Signs of Human Trafficking: In assessing whether a person may be a victim of human trafficking, APAs and Victim’s Advocates should look for the following signs. This is a non-exhaustive list, as every case is different. Proper identification of human trafficking, as with any relational crime, will require understanding the victim’s relationship with the trafficker and the specific circumstances of their situation.

APAs and Victim’s Advocates should look to the totality of circumstances to determine whether a person is a victim of human trafficking. APAs and Victim’s Advocates, however, should err on

⁶ APAs should discuss with the Prosecuting Attorney and the Chief Assistant Prosecuting Attorney any concerns relating to potentially compromising an ongoing investigation; such concerns will be handled on a case-by-case basis.

the side of caution and on the side of informing the Human Trafficking Law Clinic.

Signs of human trafficking include:

- Feeling pressured by their employer/boss/supervisor to stay in a job or situation they want to leave
- Being recruited to work in one job/field and are working in a different job/field
- The pay, benefits, or terms of the job or services are different than as advertised or provided
- Owing money to an employer or recruiter or third party and their earnings are being applied directly to that debt
- Not having control of their passport or other identity documents
- Living and/or working in isolated conditions, largely cut off from interaction with others or support systems
- Appearing to be monitored by another person when talking or interacting with others
- Being threatened by their employer/boss/supervisor with deportation or other harm
- Working and/or living in dangerous conditions, without proper safety gear, training, adequate breaks, and other protections
- Wanting to stop participating in the labor or services, including selling or trading sex, but feeling scared or unable to leave
- Disclosing that they were reluctant to engage in labor or services but that someone pressured them into it
- Living where they work or being transported by someone associated with their labor or services between home and workplace
- Having a pimp or manager in the sex trade
- Working in an industry where it may be common to be pressured into performing sex acts for money, such as a strip club, illicit cantina, go-go bar, or illicit massage business
- Being under the age of 18 and engaged in commercial sex
- Having an older, or simply controlling parent, guardian, romantic partner, or “sponsor” who will not allow them to meet or speak with another person alone, or who monitors their movements, spending, and/or communications

It is crucial to understand that indicators or signs of human trafficking are often of limited use because cases are so unique. A survivor of human trafficking may not present any of the above circumstances. That is why it is so important to engage in an open-ended and broad discussion with the potential survivor to identify any potential exploitation. The Human Trafficking Clinic is happy to assist with such conversations.

5. Immediate Affirmative Assistance for Trafficking Survivors Wherever Requested: The Human Trafficking Law Clinic will provide direct legal services to human trafficking survivors, including, but not limited to, immigration, family matters, post-adjudication criminal relief, and access to public benefits. Where the Human Trafficking Clinic is unable to provide representation, they will assist in identifying alternative representation. Given that many survivors of trafficking (both sex and labor trafficking) may have been subject to traumatizing interactions with law enforcement in the past, it is best for the survivor to have attorneys that are

not directly connected with law enforcement.

If a trafficking survivor is a victim of a charged crime, Victim's Advocates in the Prosecutor's Office should coordinate with the Human Trafficking Law Clinic on any victim needs.

The Prosecutor's Office will make **top priority any legal needs for a trafficking survivor with which the Prosecutor's Office may assist**. These include, but are not limited to, certification of T-Visas (for noncitizen trafficking survivors) or U-Visas (for noncitizens who are survivors of certain crimes and cooperate with law enforcement).⁷

The Prosecutor's Office will also provide immediate affirmative assistance on expunging criminal records for any trafficking survivor. If the Human Trafficking Clinic requests assistance on an expungement matter, APAs and/or Victim's Advocates should **immediately bring the case to the attention of the Director of the Conviction Integrity and Expungement Unit** (if fully funded), as well as the Chief Assistant Prosecuting Attorney and the Prosecuting Attorney. Again, cases involving human trafficking survivors are to be given the highest priority, and should be immediately addressed.

If the Human Trafficking Law Clinic requests the assistance of the Prosecutor's Office on these or any other legal matters, APAs and/or Victim's Advocates should immediately inform the Chief Assistant Prosecuting Attorney and the Prosecuting Attorney.



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⁷ See also Washtenaw County Prosecutor's Office, *Policy Directive 2021-12: Policy Regarding Immigration and Immigration-Adjacent Issues* at 9-10 ("It is the policy of this Office to freely provide certification to anyone who may be eligible for a T-Visa or U-Visa.").