



MICHIGAN LAW  
HUMAN TRAFFICKING CLINIC  
UNIVERSITY OF MICHIGAN

# Human Trafficking

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## What does the Clinic do?

- Represent approximately 70 clients, regardless of:
  - Type of victimization
  - Gender
  - Age
  - Nationality
- Provide Comprehensive Legal Services:
  - Immigration
  - Family
  - Public Benefits
  - Post Adjudication Criminal Relief
  - Tax
  - Identity Protection

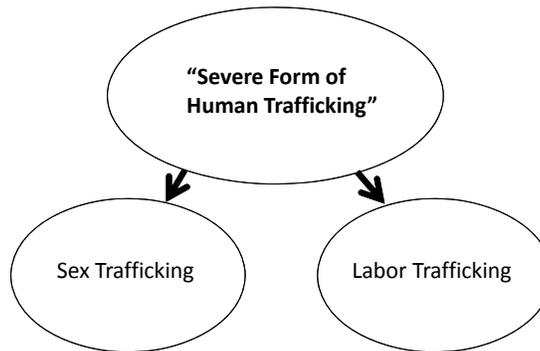
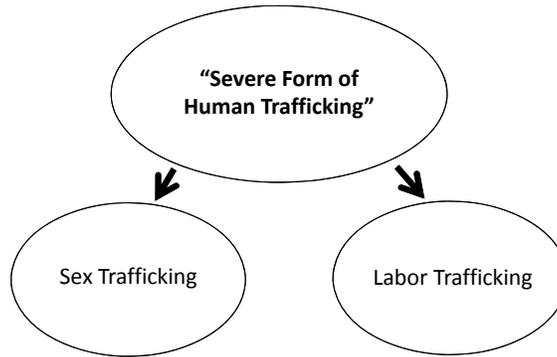
# Lesson 1: The Trafficking Victims Protection Act

## Trafficking Victims Protection Act

- Passed in 2000, reauthorized in 2003, 2005, 2008, 2013
- Prevent Human Trafficking
- Protect victims
- Prosecute traffickers
- Definitions codified at – 22 USC § 7102
- Criminal infractions codified at – 18 USC § § 1581-1597
- Immigration relief codified at – 18 U.S.C. § 1101(a)(15)(T)

# What is Human Trafficking?

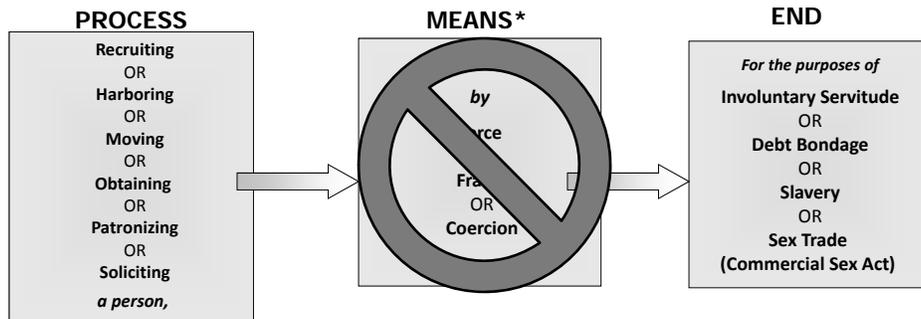
22 USC § 7102



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

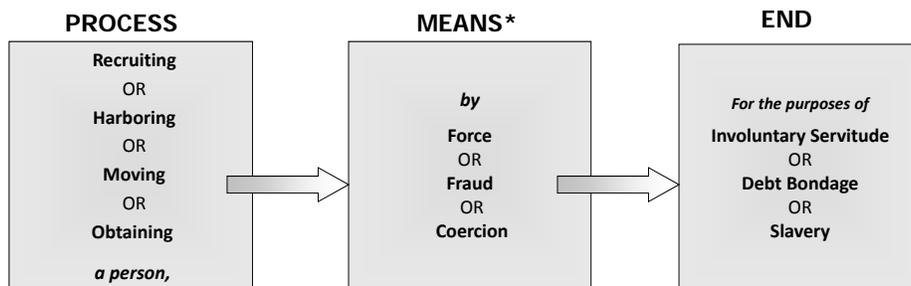
**Labor Trafficking:** Using force, fraud or coercion to recruit, harbor, transport, or obtain a person for labor or services in involuntary servitude, peonage, debt bondage or slavery.

## Three Elements of Sex Trafficking



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

## Three Elements of Labor Trafficking



## 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!**

## Debt Bondage

22 USC § 7102

- Status or condition of a debtor arising from a pledge by the debtor
- of his or her personal services or of those of a person under his or her control
- as a security for 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 respectively limited and defined.

## Is it still human trafficking?

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

Force, fraud, and coercion don't have to be physical at all. Psychological coercion is enough.

## Force or Fraud or Coercion

22 USC § 7102

- Force – common definition: physical violence, sexual violence, physical confinement, starvation
- Fraud – common definition: any offer or commitment that is not fulfilled.
- 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

18 USC § 1591

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

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

## Is it still human trafficking?

- *What if the victim took the job voluntarily?*

Many victims of trafficking take a job or consent to be smuggled only to later discover the true nature and conditions of the work.

- *What if the victim has performed an illegal act?*

Initial consent to engage in an illegal act does not mean they are free to be exploited. They are still protected by the law.

## Is it still human trafficking?

- *What if the victim can leave?*

Just because the victim can leave doesn't mean the victim is staying by choice. A lapse of freedom doesn't mean trafficking never happened.

- *What if the victim doesn't identify their experience as trafficking?*

Many victims do not recognize that what is happening is exploitation - whether due to trauma, mental illness, intellectual disabilities, personal conviction, or other reasons.

## Industries

### Sex Trafficking

- *Massage Parlors*
- *Brothels*  
*(commercial & residential)*
- *Strip Clubs*
- *Escort Services*

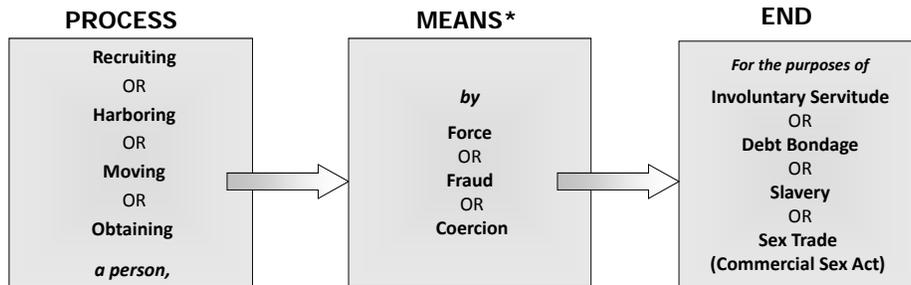
### Labor Trafficking

- *Domestic Servitude*  
*(nannies or maids)*
- *Sweatshop Factories*
- *Janitorial Jobs*
- *Construction Sites*
- *Beauty Industry*
- *Farm Work*
- *Restaurants*
- *Panhandling*

## Jose

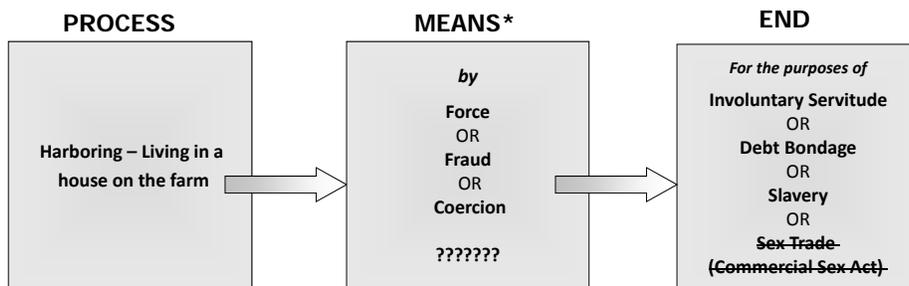
- Jose and other undocumented, foreign nationals working on a Michigan farm
- They live on the farm in a home with no running water
- They are exposed to pesticides without proper precautions
- Paid minimum wage, but only about half the time

## Three Elements of Trafficking



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

## Jose: Is it HT?

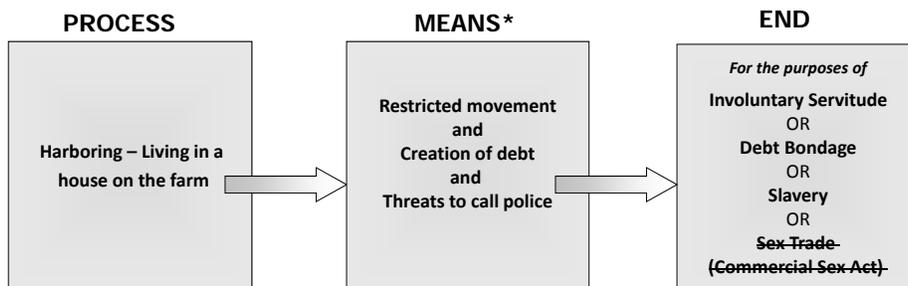


\*No force, fraud, or coercion required when a child is induced to perform a commercial sex act.

## Jose: Is it HT?

- He was not allowed to have visitors or ever leave the farm, except to buy groceries.
- Subsistence rate of pay workers were forced to borrow money from the owners for food, clothing, and other items.
- Whenever Jose questioned the pay, the owners threatened to call the police.

## Jose: Is it HT?



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

## **Involuntary Servitude**

22 USC § 7102

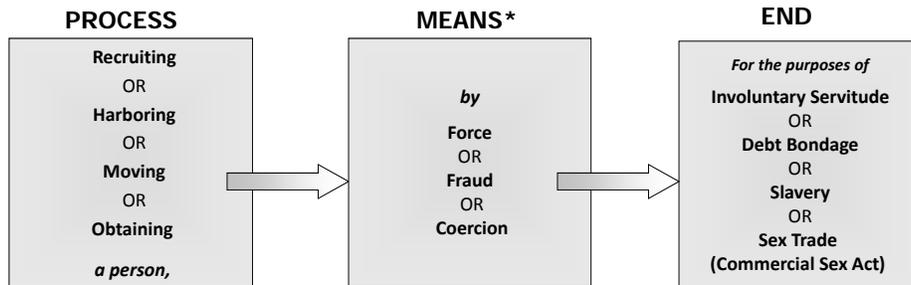
Servitude induced by means of –

- 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.

## **Maria**

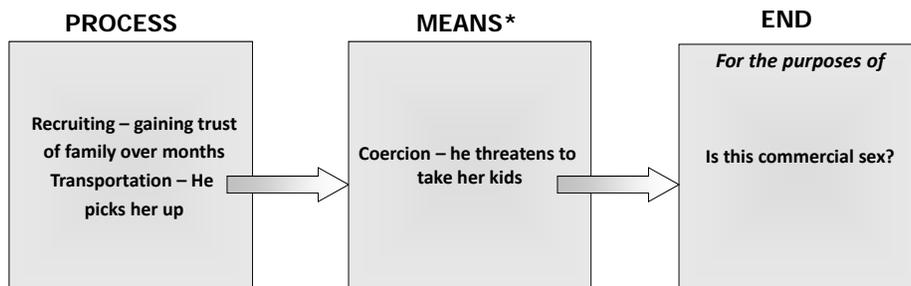
- Mother and wife living in Jackson is befriended by a neighbor
- Neighbor gains the trust of the family
- Eventually neighbor tells Maria she needs to have sex on tape or he will have her children removed by the state
- Maria never sees any money exchanged, but there is evidence that tapes were sold
- Neighbor will usually pick up Maria and take her to his home

## Three Elements of Trafficking



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

## Maria: Is it HT?



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

## Commercial Sex

- Any sex act on account of which anything of value is given to or received by any person.
- So, was Maria engaged in commercial sex?
- Servitude induced by means of the abuse or threatened abuse of the legal process.

## Intersections with Sexual Assault

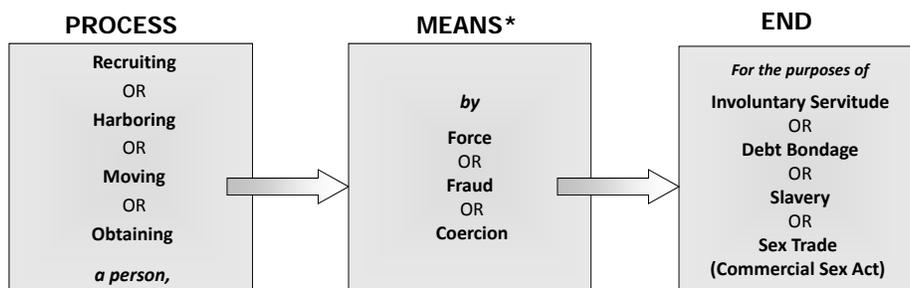
- By definition victims of sex trafficking are victims of sexual assault because they are induced into a sexual act without their consent.
- Sexual assault is a common forceful and coercive tactic used by traffickers in both sex and labor trafficking to control victims.

**BOTH ARE RELATIONAL CRIMES!**

## Tina

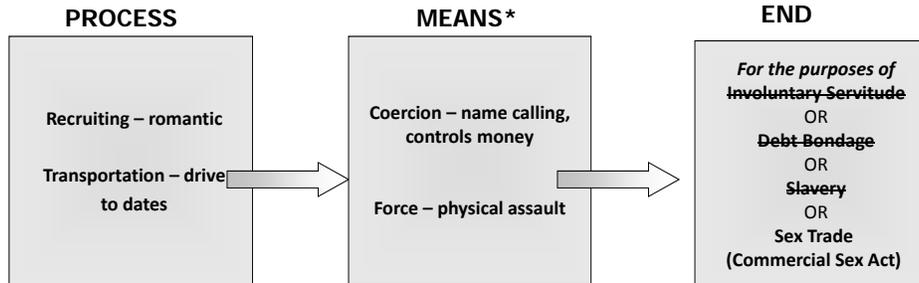
- 19 year old US citizen, single mother meets Ed
- Ed proposes a “business arrangement” with Tina – he will post on websites, drive her to dates, and she will engage in commercial sex, she is to earn 40%
- They begin a romantic relationship and Ed tells her that soon she can stop and they will start a business
- Ed keeps all of the money and Tina must ask for permission to access money
- Ed hits Tina and insults if she argues with him
- They have a child in common
- Tina is arrested and charged with prostitution

## Three Elements of Trafficking



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

## Tina: Is it HT?



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

## Intersections with Domestic Violence

### HUMAN TRAFFICKING

The recruitment, harboring, transportation, provision or obtaining of a person for labor or services or a commercial sex act by **force, fraud or coercion**

COMPARED TO:

### DOMESTIC VIOLENCE

A pattern of **coercive, controlling behavior** against a current or former intimate partner that can include **physical, sexual, emotional, psychological or financial abuse.**

**Domestic Violence and human trafficking can co-exist.** Intimate partners using violence and coercion both to control and to exploit.

**Push-Pull Relationship:** Individuals escaping domestic violence are vulnerable to trafficking, and vice versa.

**BOTH ARE RELATIONAL CRIMES!**

## Federal Crimes of Trafficking

- Forced Labor
- Sex trafficking of children or by force, fraud, or coercion
- Unlawful conduct with respect to documents in furtherance of trafficking
- Attempt
- Conspiracy
- Financially benefitting from trafficking
- Mandatory restitution

## Assessing for Human Trafficking

- Ensure basic needs are met.
- Remove any third parties.
- Get a translator if needed
- Do you have access to your identification and/or travel documents?
- Does it seem to you that the individual was coached/stating a rehearsed response?

## Assessing for Human Trafficking

- How much do you see or talk to family/friends?
- Do you move frequently? Why?
- What is your address? Can you tell me a few major intersections close by?
- Does the victim have few or no personal belongings?
- Can the victim socialize or attend religious services?
- Has the individual lost his/her sense of time?

## Assessing for Human Trafficking

- Does the individual avoid eye contact and exhibit a flat affect?
- Can you leave where you live/work? Why not?
- Has anyone ever told you they would call immigration/police on them?
- Has the victim been harmed or deprived of food, water, sleep, medical care or other life necessities?

BE AWARE that members of a household, other than children, may be victims – parents, nanny.

## Lesson 2: Michigan Human Trafficking Law

### Model State Laws

Model statutes contain ten provisions:

1. Sex trafficking provision
2. Labor trafficking provision
3. Asset forfeiture and/or investigation tools
4. Training and/or human trafficking task force
5. Posting human trafficking hotline
6. Safe harbor: protecting minors

## Model State Laws

Model statutes contain ten provisions:

7. Lower burden of proof for sex trafficking of minors
8. Victim assistance
9. Access to civil damages
10. Vacating convictions for sex trafficking victims

## Michigan Law

- Passed in 2006, amended in 2010 & 2014
- Strengthens criminal consequences
- Creates a standing Michigan Commission on Human Trafficking within the Department of Attorney General
- Creates the Michigan Human Trafficking Health Advisory Board within the Department of Community Health
- Expands medical care for victims and requires training for medical professionals

## Michigan Criminal Law

Concepts that are substantially similar to federal law:

- Coercion, including psychological, reputational, or financial harm
- Document Servitude
- Debt Bondage
- Commercial Sex

## Michigan Criminal Law

Concepts that are uniquely defined by Michigan Law:

- "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 or confinement without regard to whether injury occurs.
- "Fraud" includes, but is not limited to, a false or deceptive offer of employment or marriage.

## 750.462b Forced labor or services

*A person shall not knowingly recruit, entice, harbor, transport, provide, or obtain an individual for forced labor or services.*

"Forced labor or services means **labor or services** that are obtained or maintained by force, fraud, or coercion."

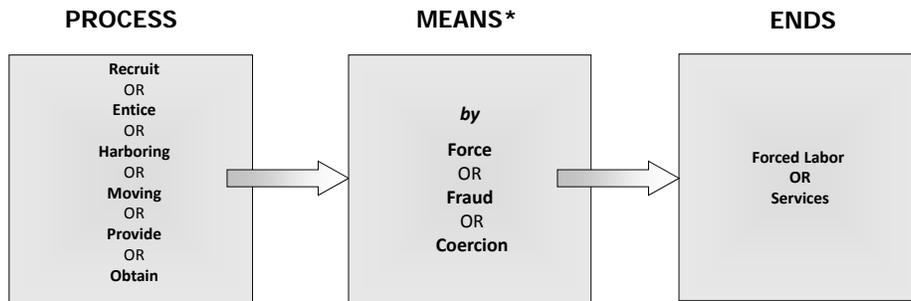
- "Labor" means work of economic or financial value.
- "Services" means an ongoing relationship between a person and an individual in which the individual performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.

## Kiran

- Indian man, Kiran, travels on visitor visa to U.S. and is befriended by another Indian man, Gautam
- Gautam tells Kiran he owns several convenience stores in Michigan and that Kiran could start managing one with weekly pay and eventually own it (rent to own)
- Kiran and his family arrive at the store and are told by Gautam that they have to live in the back of the store
- They live in and manage the store for months and are paid very little
- Gautam claims for 3 years the store will belong to them but never acts upon these claims

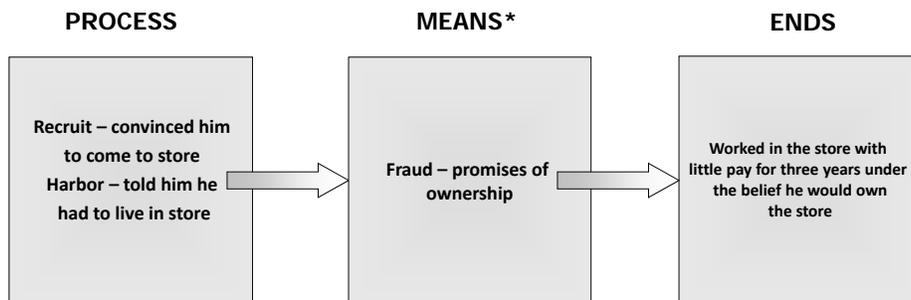
## Kiran: Is he a victim under MI law?

*A person shall not knowingly recruit, entice, harbor, transport, provide, or obtain an individual for forced labor or services.*



## Kiran: Is he a victim under MI law?

*A person shall not knowingly recruit, entice, harbor, transport, provide, or obtain an individual for forced labor or services.*



## Kiran

- Kiran is safe at the moment. Should you call police?

## 750.462c Holding individual in debt bondage.

*A person shall not knowingly recruit, entice, harbor, transport, provide, or obtain an individual for the purpose of holding the individual in debt bondage.*

## 750.462d Prohibited conduct.

*A person shall not do either of the following:*

- (a) *Knowingly recruit, entice, harbor, transport, provide, or obtain an individual by any means, **knowing that individual will be subjected to forced labor or services or debt bondage.***
- (b) *Knowingly benefit financially or receive anything of value from participation in an enterprise, as that term is defined in section 159f, if the enterprise has engaged in an act proscribed under this chapter.*

Creates accomplice liability.

## 750.462g Testimony

*The testimony of a victim is not required in a prosecution under this chapter. However, if a victim testifies, that testimony need not be corroborated.*

## **750.462h Relevancy of resistance or lack of resistance.**

*In a prosecution under this chapter, the victim's resistance or lack of resistance to the actor is not relevant.*

## **Safe Harbor Laws**

- A combination of criminal and child protection 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)]
- A 16 or 17 year old “who fails to substantially comply with court-ordered services” is not eligible for the presumption [MCL 750.451(6)]

## Safe Harbor Laws

MCL 712.a2: (3) If the juvenile is dependent and is in danger of substantial physical or psychological harm. The juvenile may be found to be **dependent** when any of the following occurs...

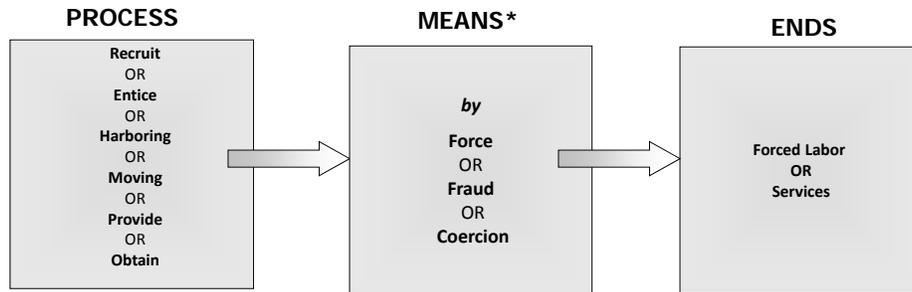
(C) The juvenile is alleged to have committed a commercial sexual activity ... a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or **other adult**.

## Joyce

- 16-year-old, Joyce, from Florida who has spent time in foster care
- She becomes friends with an 18-year-old woman, Sherri, and her 24-year-old boyfriend, Darren
- Darren asks Joyce and Sherri if they want to travel to Michigan to meet his family
- In Michigan they meet his family and stay with them for a few nights
- They move to a hotel and after a few nights Darren says Joyce and Sherri need to “contribute to the family”, which means engage in prostitution
- Several weeks later the local police arrest all three of them

## Joyce

- Is she a victim under federal law?
- Is she a victim under Michigan law?



## Criminalization of Victims

- No mechanisms or interventions that allow for the assessment of those accused of prostitution
- Many clients of the HTC come with lengthy criminal records, many of said convictions arising from trafficking
- Victimization is ongoing, particularly when unrecognized and untreated

## **Lesson 3: Legal Remedies for Victims of Human Trafficking**

### **Federal Law: Immigration Benefits**

Continued Presence –

- short term status in the U.S. that includes work authorization.
- Only federal law enforcement can apply for continued presence.
- Only requires that law enforcement believe a person is a victim, does not require any evidence.
- Not a permanent status, but can be renewed

## **Federal Law: Immigration Benefits**

### Trafficking Visa Eligibility

- victim of severe trafficking (federal law)
- In the U.S. on account of trafficking
- Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma)
- suffer extreme hardship involving unusual and severe harm if you were removed from the United States

## **Federal Law: Immigration Benefits**

### Trafficking Visa Benefits

- Lawful status for 4 years
- Work Authorization
- Can reunite with immediate family
- Eligible for a Green Card and then citizenship

## **Federal Law: Public Benefits for Foreign Nationals**

An adult victim of human trafficking that has continued presence or a T Visa, and any minor victim of human trafficking is eligible for:

- Food stamps
- Cash assistance
- English as a Second Language
- Case management through network of federal contractors
- Federal financial aid

## **Federal Law: Public Benefits for U.S. Citizens**

Let's discuss...

## Federal Law: Victims Rights

If a victim is involved in a federal criminal prosecution:

- Right to protection
- Right to reasonable disclosures about proceedings and involved parties
- Right to be heard at plea, discharge, release or parole hearing.
- Right to be present at all proceedings where the defendant is present
- Right to confer with prosecution
- Right to privacy and respectful treatment
- Right to restitution (specifically for human trafficking)

HOWEVER, THERE IS LIMITED ENFORCEMENT.

## Michigan Law: Victims Rights

Substantially similar to federal rights with the addition of:

- Receive an explanation of court procedures and appeals
- Be free from threats or acts of discharge from your employer because you are subpoenaed
- Notice of available emergency and medical services
- Return of any property seized during the investigation
- Information about applying to victim compensation fund

## Lesson 4: Human Trafficking in the U.S. & Michigan

### Scope: What you will see and hear

- 27 million - Number of people in **modern-day slavery** across the world (Free the Slaves, 2010)
- 21 million - Number of adults and children in **forced labor** around the world (ILO, 2012)
- 2.4 million victims worldwide (UNODC, 2012; taken from ILO)
- 79% of reported cases are sex trafficking (UN, 2010)
- 1:9 - Ratio of sex trafficking victims to labor trafficking victims, globally (ILO & U.S. Dept. State, 2010)
- 44758 - Number of **human trafficking victims** around the world who have been identified (U.S. Dept. State, 2014)
- 9460 - Number of successful trafficking prosecutions in 2009 (U.S. Dept. State 2014)

## Scope: What we really know

- “Due to the underground nature of trafficking, the number of victims is unknown.” National Institute of Justice
- Hotline tips of U.S. cases:
  - 2009 – 975 cases indicated
  - 2010 – 1053 cases indicated
  - 2011 – 2165 cases indicated
  - 2012 – 3279 cases indicated
  - 2013 – 4884 cases indicated
  - 2014 – 5042 cases indicated
- Hotline tips of MI cases:
  - 2009 – 14 cases indicated
  - 2010 – 26 cases indicated
  - 2011 – 37 cases indicated
  - 2012 – 69 cases indicated
  - 2013 – 118 cases indicated
  - 2014 – 131 cases indicated

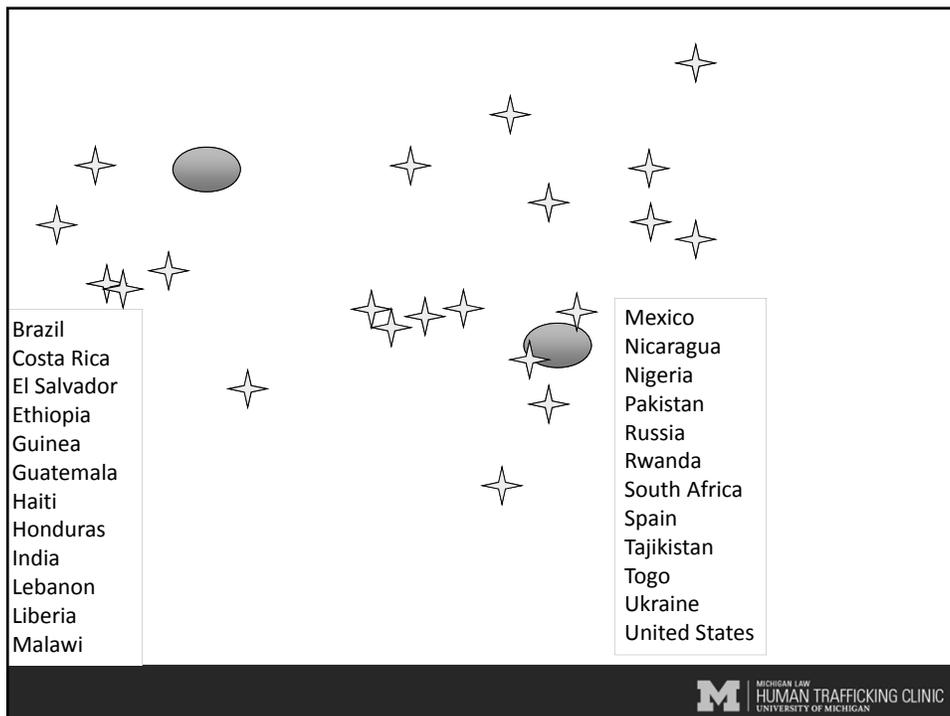
This indicates the more we know about the issue the more victims are identified. We don't know how big or small; we are learning.

## HTC Clients (approximations)

- 95 clients served since 2009 (cases are open for years)
- 82% female vs. 18% male
- 69% adult vs. 31% minor
- 55% labor vs. 45% sex (skewed)
- 68% foreign national vs. 32% U.S. Citizen (skewed)
- 38% have experienced domestic violence
- 14% have experienced stalking
- 55% have experienced sexual assault

## Known cases in:

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



## Court Cases of Human Trafficking in MI

### US v. Maksimenko (Metro Detroit) – Federal prosecution complete

- Forced labor in strip club of foreign national women
- Sexually assaulted, beaten, confined and threatened with arrest
- Investigated by Immigration and Customs Enforcement
- Multiple defendants convicted of various crimes including involuntary servitude, smuggling, money laundering

### U.S. v. Toviave & MI v. Toviave (Ypsilanti/Ann Arbor) – Federal & State prosecution complete

- Domestic servitude of foreign national minors
- Beaten, isolated, documents confiscated, and threatened with harm
- Investigated by Immigration and Customs Enforcement
- Convicted of federal crime of immigration and mail fraud, and state crime of child abuse

## Cases of Human Trafficking in MI

- U.S. v. Smith (Metro Detroit) – Federal sentencing pending
- Sex trafficking of U.S. Citizen woman by acquaintance/romantic partner
- Exploited existing drug addictions
- Investigated by Southeastern Michigan Crimes Against Children
- Found guilty of sex trafficking by force, fraud or coercion
  
- “Bryanna” (Metro Detroit) – State prosecution pending
- Sex trafficking of U.S. Citizen woman by boyfriend
- Domestic violence, sexual assault, defrauded, and threatened with arrest
- Investigated by Immigration and Customs Enforcement
- Charged by AG with forced labor – commercial sex, transportation for prostitution, collecting proceeds from prostitution

## Trends

- Visa Fraud – J visas, H2-A & H2-B visas, K visas, diversity visas
- U.S. Citizens exploited in illegal trades
- Exploitation of drug addictions
- Confiscation of documents and abuse of the legal system
- Most common form of sex trafficking is pimp-controlled exploitation advertised on the internet (Polaris Project)
- Service industries with anonymous workers (restaurants, farms, construction sites, private homes) are highly susceptible to trafficking
- Foster youth are very vulnerable to trafficking

## What can you do to help?

If you think you have come in contact with a victim of human trafficking, contact the

**Trafficking Resource Center and Referral Hotline:**

**CALL: 1.888.3737.888**

**TEXT: 233733**

The hotline will help you determine if the 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/>

**US Government Website: [www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking)**