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# HUMAN TRAFFICKING

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*Please see the Checklist Section for the Human Trafficking checklist.*

## A. Definition of Human Trafficking

Human trafficking is a term that refers to labor and sex trafficking of minors and adults. While all forms of trafficking are dangerous and exploitative, children and youth in foster care are especially vulnerable to child sex trafficking.

### 1. Federal Law

Under the federal Trafficking Victims Protection Act,<sup>121</sup> severe forms of trafficking in persons is defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- 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. [22 U.S.C. § 7102\(11\)](#).

The term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. [22 U.S.C. § 7102\(12\)](#). A “commercial sex act” is defined as any sex act on account of which anything of value is given to or received by any person. [22 U.S.C. § 7102\(4\)](#).

**Special Issue:** Force, fraud, or coercion are not required elements of sex trafficking when the victim is a child. In addition, movement of the child is not required and money need not be exchanged to prove a child was trafficked. Traffickers often manipulate children with promises of food, clothing, shelter, and love.

### 2. Trafficking of Children Defined

In Texas, “trafficking” is defined as transporting, enticing, recruiting, harboring, providing, or otherwise obtaining a person by any means. [Tex. Penal Code § 20A.01\(4\)](#).

For sex and labor trafficking offenses, a “child” is defined as a person younger than 18 years of age. [Tex. Penal Code § 20A.01\(1\)](#). Both child sex and labor trafficking are offenses in Texas regardless of whether the actor knew the age of the child at the time of the offense. [Tex. Penal Code § 20A.02\(b\)\(1\)](#).

### 3. Child Sex Trafficking

Texas law defines child sex trafficking as knowingly trafficking a child and by any means causing the trafficked child to engage in, or become the victim of, conduct prohibited by:

- Continuous Sexual Abuse of Young Child or Children, [Tex. Penal Code § 21.02](#);

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- Indecency with a Child, [Tex. Penal Code § 21.11](#);
  - Sexual Assault, [Tex. Penal Code § 22.011](#);
  - Aggravated Sexual Assault, [Tex. Penal Code § 22.021](#);
  - Prostitution, [Tex. Penal Code § 43.02](#);
  - Promotion of Prostitution, [Tex. Penal Code § 43.03](#);
  - Online Promotion of Prostitution, [Tex. Penal Code § 43.031](#);
  - Aggravated Promotion of Prostitution, [Tex. Penal Code § 43.04](#);
  - Aggravated Online Promotion of Prostitution, [Tex. Penal Code § 43.041](#);
  - Compelling Prostitution, [Tex. Penal Code § 43.05](#);
  - Sexual Performance by a Child, [Tex. Penal Code § 43.25](#);
  - Employment Harmful to Children, [Tex. Penal Code § 43.251](#); or
  - Possession or Promotion of Child Pornography, [Tex. Penal Code § 43.26](#). [Tex. Penal Code § 20A.02\(a\)\(7\)](#).

Alternatively, a person commits the crime of child sex trafficking if that person knowingly receives a benefit from participating in a venture that involves an activity described by [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or engages in sexual conduct with a child trafficked in the manner described in [Tex. Penal Code § 20A.02\(a\)\(7\)](#). [Tex. Penal Code § 20A.02\(a\)\(8\)](#).

The landmark case of *In re B.W.* addressed the issue of whether a thirteen year old child can be adjudicated a juvenile delinquent for committing the offense of prostitution. The Supreme Court of Texas held that a child under the age of 14 lacks capacity to consent to sex and thus cannot be charged with the offense of prostitution. The court found that, “[c]hildren are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution, and experts have described in detail the extent to which they are manipulated and controlled by their exploiters.” *In re B.W.*, [313 S.W.3d 818, 826](#) (Tex. 2010).

**Special Issue:** Other terms referring to child sex trafficking include Commercial Sexual Exploitation of Children, Domestic Child Sex Trafficking, and Domestic Minor Sex Trafficking.

#### 4. Child Labor Trafficking

In Texas, a person commits child labor trafficking by knowingly trafficking a child with the intent that the trafficked child engage in forced labor or services. [Tex. Penal Code § 20A.02\(a\)\(5\)](#). In addition, knowingly receiving a benefit from participating in a venture that involves an activity described by [Tex. Penal Code § 20A.02\(a\)\(5\)](#), including by receiving labor or services the person knows are forced labor or services, constitutes labor trafficking. [Tex. Penal Code § 20A.02\(a\)\(6\)](#).

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“Forced labor or services” is defined as labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion. [Tex. Penal Code § 20A.01\(2\)](#).

**Special Issue:** Force, fraud, or coercion are required elements of child labor trafficking or adult labor or sex trafficking. Under Texas law, child sex trafficking can be accomplished by any means. Force, fraud, or coercion are not required.

## 5. Continuous Trafficking of Persons

A person commits the offense of continuous trafficking of persons if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under [Tex. Penal Code § 20A.02](#) against one or more victims. [Tex. Penal Code § 20A.03\(a\)](#).

# B. Trafficking and Child Welfare

## 1. CPS Investigations Involving Trafficking

The definition of child abuse includes compelling or encouraging a child to engage in sexual conduct as defined by [Tex. Penal Code § 43.01](#) including compelling or encouraging a child in a manner that constitutes an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or (8), prostitution under [Tex. Penal Code § 43.02\(b\)](#), or compelling prostitution under [Tex. Penal Code § 43.05\(a\)\(2\)](#). [Tex. Fam. Code § 261.001\(1\)\(G\)](#).

Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under [Tex. Penal Code § 20A.02\(a\)\(5\)](#), (6), (7), or (8), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections also constitutes child abuse. [Tex. Fam. Code § 261.001\(1\)\(L\)](#).

**Special Issue:** CPS Policy outlines the circumstances when a person traditionally responsible for a child's care, custody, or welfare can be investigated by CPS as an alleged perpetrator of sex or labor trafficking. For more information, see Section 2380 Child Trafficking (Sex and Labor Trafficking) available online at: [https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_2200.asp#CPS\\_2380](https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2380).

## 2. Trafficking May be Considered as Basis for Removal of Child

If there is no time to obtain a temporary order, temporary restraining order, or attachment under [Tex. Fam. Code § 262.102\(a\)](#) before taking possession of a child consistent with the health and safety of that child, an authorized DFPS representative, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions related to trafficking:

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#); or

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- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.104\(a\)\(3\)-\(4\)](#).

### **3. Standard for Decision at Initial Hearing After Taking Possession Includes Consideration of Trafficking**

The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity, unless the court is satisfied that

- The evidence shows that one of the following circumstances exists:
  - there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;
  - the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#) on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
  - the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health & Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child; or
  - the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine;
- Continuation of the child in the home would be contrary to the child's welfare; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child. [Tex. Fam. Code § 262.107\(a\)](#).

In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child. [Tex. Fam. Code § 262.107\(b\)](#).

### **4. Required Findings at Adversary Hearing if Child Victim of Trafficking to Remain in Care**

In a suit filed under [Tex. Fam. Code § 262.101](#) or [Tex. Fam. Code § 262.105](#), at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession

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unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;
- The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home. [Tex. Fam. Code § 262.201\(g\)](#).

### 5. Aggravated Circumstances

The court may find under [Tex. Fam. Code § 262.2015\(a\)](#) that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against the child or another child of the parent that would constitute an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [\(8\)](#). [Tex. Fam. Code § 262.2015\(b\)\(3\)\(O\)](#).

## C. Risk Factors and Indicators

Children and youth who run away or experience foster care are at a higher risk of commercial sexual exploitation.<sup>122</sup> According to the Office of the Texas Attorney General, potential indicators, or red flags, that a child may be a trafficking victim include:

- Changes in school attendance, habits, friend groups, vocabulary, demeanor, and attitude;
- Sudden appearance of luxury items — e.g., manicures, designer clothes, purses;
- Truancy (absence) from school;
- Sexually provocative clothing;
- Tattoos or branding;
- Refillable gift cards;
- Multiple phones or social media accounts;
- Lying about the existence of social media accounts;
- Provocative pictures posted online or stored on the phone;
- Unexplained injuries;
- Social interaction and schedule being strictly controlled by someone else; or

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- Isolation from family, friends, and community.<sup>123</sup>

**Special Issue:** The availability of the internet means trafficking can happen anywhere. Traffickers often use the web to recruit and exploit child victims. Teaching youth in foster care about internet safety is a critical part of any effort to prevent and address human trafficking.

## D. CPS Reporting Requirements Regarding Child Sex Trafficking

### 1. Preventing Sex Trafficking and Strengthening Families Act

Under the Preventing Sex Trafficking and Strengthening Families Act (SFA), as of September 29, 2016, DFPS must report immediately, and in no case later than 24 hours after receiving information on children or youth who have been identified as being a sex trafficking victim, to the law enforcement authorities.<sup>124</sup> [42 U.S.C. § 671\(a\)\(34\)\(A\)](#).

Under SFA, DFPS is also required to develop and implement specific protocols for:

- Expeditiously locating any child missing from foster care;
- Determining the primary factors that contributed to the child's running away or otherwise being absent from care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements;
- Determining the child's experiences while absent from care, including screening the child to determine if the child is a possible sex trafficking victim (as defined in [42 U.S.C. § 675\(9\)\(A\)](#));
- Reporting such related information as required by the Secretary of the Department of Health and Human Services; and
- DFPS must report immediately, and in no case later than 24 hours after receiving, information on missing or abducted children or youth to the law enforcement authorities for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children. [42 U.S.C. § 671\(a\)\(35\)](#).

**Special Issue:** The National Human Trafficking Hotline receives tips about human trafficking and makes referrals for services.

For more information, please visit <https://humantraffickinghotline.org/> or call 1-888-373-7888.

## E. Children Who are Missing or Victims of Sex Trafficking

If a child in DFPS managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, DFPS shall notify the following persons that the child is missing:

- The appropriate law enforcement agencies;

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- The court with jurisdiction over the department's managing conservatorship of the child;
  - The child's attorney ad litem;
  - The child's guardian ad litem; and
  - The child's parent unless the parent:
    - cannot be located or contacted;
    - has had the parent's parental rights terminated; or
    - has executed an affidavit of relinquishment of parental rights. [Tex. Fam. Code § 264.123\(a\)](#).

DFPS must provide the notice required by [Tex. Fam. Code § 264.123\(a\)](#) not later than 24 hours after the time DFPS learns that the child is missing or as soon as possible if a person entitled to notice under [Tex. Fam. Code § 264.123\(a\)](#) cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(b\)](#).

If a child has been reported as a missing child under [Tex. Fam. Code § 264.123\(a\)](#), DFPS must notify the persons described by [Tex. Fam. Code § 264.123\(a\)](#) when the child returns to the child's substitute care provider not later than 24 hours after the time the department learns that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(c\)](#).

DFPS must make continuing efforts to determine the location of a missing child until the child returns to substitute care, including:

- Contacting the appropriate law enforcement agencies, the child's relatives, the child's former caregivers; and any state or local social service agency that may be providing services to the child on a monthly basis; and
- Conducting a supervisory-level review of the case on a quarterly basis if the child is 15 years of age or younger to determine whether sufficient efforts have been made to locate the child and whether other action is needed. [Tex. Fam. Code § 264.123\(d\)](#).

DFPS must document in the missing child's case record:

- The actions taken by the department to determine the location of the child; and persuade the child to return to substitute care;
- Any discussion during, and determination resulting from, the supervisory-level review under [Tex. Fam. Code § 264.123\(d\)\(2\)](#);
- Any discussion with law enforcement officials following the return of the child regarding the child's absence; and
- Any discussion with the child described by [Tex. Fam. Code § 264.123\(f\)](#). [Tex. Fam. Code § 264.123\(e\)](#). (See below).

After a missing child returns to the child's substitute care provider, DFPS must interview the child to determine the reasons why the child was missing, where the child stayed during the time the child

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was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense under [Tex. Penal Code § 20A.02\(a\)\(7\)](#). DFPS must report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. DFPS shall make a report under this subsection not later than 24 hours after the time the disclosure is made. DFPS is not required to interview a missing child under this subsection if, at the time the child returns, DFPS knows that the child was abducted and another agency is investigating the abduction. [Tex. Fam. Code § 264.123\(f\)](#).

## F. Secure Agency Foster Home

A court in an emergency, initial, or full adversary hearing conducted under [Tex. Fam. Code Chapter 262](#) may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with [Tex. Hum. Res. Code § 42.0531](#), if the court finds that:

- The placement is in the best interest of the child; and
- The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.011](#).

A secure agency foster home verified under [Tex. Hum. Res. Code § 42.0531](#) is one that provides:

- Mental health and other services specifically designed to assist children who are victims of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), including:
  - victim and family counseling;
  - behavioral health care;
  - treatment and intervention for sexual assault;
  - education tailored to the child's needs;
  - life skills training;
  - mentoring; and
  - substance abuse screening and treatment as needed;
- Individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;
- 24-hour services; and
- Appropriate security through facility design, hardware, technology, and staffing. [Tex. Hum. Res. Code § 42.0531\(c\)](#).

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**Special Issue:** Very few placements exist to address the physical, mental, and emotional needs of child sex trafficking victims. Judges can play a critical role in working with community stakeholders to develop local strategies to prevent trafficking and support survivors.

## G. Resources

Children's Commission Jurist in Residence letters on human trafficking:

- Resources Related to Preventing and Addressing Domestic Child Sex Trafficking (May 2019): <https://conta.cc/2EuYkJP>
- The Texas Response to Human Trafficking (Jan 2018): <http://texaschildrenscommission.gov/media/83730/012218-the-texas-response-to-human-trafficking.pdf>
- Foster Care and Human Trafficking (Jan 2015): <http://texaschildrenscommission.gov/media/1348/foster-care-and-human-trafficking.pdf>

Department of Family and Protective Services

- Texas Youth Connection Physical Safety: [https://www.dfps.state.tx.us/txyouth/safety/physical\\_safety.asp](https://www.dfps.state.tx.us/txyouth/safety/physical_safety.asp)
- Understanding Human Trafficking: [https://www.dfps.state.tx.us/Investigations/Human\\_Trafficking/default.asp](https://www.dfps.state.tx.us/Investigations/Human_Trafficking/default.asp)

National Center for Juvenile and Family Court Judges

- Domestic Child Sex Trafficking Series: <https://t.e2ma.net/click/6jz2w/qruzvi/ua0jbg>
- National Judicial Institute on Domestic Child Sex Trafficking online resources: <http://www.ncjfcj.org/DCST-Materials>
- Voices from the Bench: Judicial Perspectives on Handling Child Sex Trafficking Cases: <https://t.e2ma.net/click/6jz2w/qruzvi/24wjbq>

National Center for Missing and Exploited Children child sexual trafficking: <http://www.missingkids.com/theissues/trafficking>

National Human Trafficking Hotline (888) 373-7888 or <https://humantraffickinghotline.org/>

Office of the Texas Attorney General information on human trafficking, including Be the One online training video: <https://www.texasattorneygeneral.gov/cj/human-trafficking>

Office of the Texas Governor Child Sex Trafficking Team: [https://gov.texas.gov/organization/cjd/topic\\_trafficking](https://gov.texas.gov/organization/cjd/topic_trafficking)

Polaris human trafficking resources: <https://polarisproject.org/human-trafficking>