

**Immigration Options
for Victims of Crime**

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Presentation Overview

- Understanding Human Trafficking or “trafficking in persons”
- Basic immigration remedies for crime victims
 - T Visa
 - U Visa
 - VAWA
 - SIJS

What is Human Trafficking?

- “Trafficking in persons”
- Form of modern-day slavery
- Victims are exploited for labor or the commercial sex trade
- Traffickers use force, fraud, or coercion to achieve exploitation

*One of the top three
criminal industries in the world*

What is Human Trafficking?

- **Labor Trafficking:** Using force, fraud or coercion to recruit, harbor, transport, obtain or employ a person for labor or services in **involuntary servitude, peonage, debt bondage or slavery**
- **Sex Trafficking: Commercial sex** act induced by force, fraud or coercion, or in which person performing the act is under age 18.

*Crime of trafficking occurs with the exploitation of the victim.
The physical movement of the victim is not a requisite.
The TVPA protects both U.S. citizens and non-citizens.*

What is Human Trafficking?

**Force, fraud and coercion
are methods used by traffickers to press
victims into lives of servitude, abuse**

- **Force:** Rape, beatings, confinement
- **Fraud:** Includes false and deceptive offers of employment, marriage, better life
- **Coercion:** Threats of serious harm to, or physical restraint of, any person; any scheme, plan or pattern intended to cause victims to believe that failure to perform an act would result in restraint against them; or the abuse or threatened abuse of the legal process.

Trafficking vs. Smuggling

Human Trafficking

- NO consent to the victims' situation
- Ongoing exploitation of victims to generate illicit profits for the traffickers
- Trafficking need not entail the physical movement of a person
 - Must entail the exploitation of the person for labor or commercial sex
- Can be legal residents, undocumented persons & U.S. citizens.

Smuggling

- Illegal crossing across an international border.
- Includes consent to being smuggled
- Free to leave their transporters once in in the U.S.
- If they are provided work, they may be reasonably paid, and more importantly, they are free to leave the job.

Immigration Remedies for Trafficking Victims

- Most common remedies:
 - Continued Presence
 - T visa
 - U visa

Continued Presence

- Temporary permission to remain in the U.S.
- Parole/deferred action and employment authorization
- Must be requested by federal law enforcement agency
- Designed to keep potential victim in U.S. during investigation
- Access to public benefits

T Visa Benefits

- Granted to victims of "severe form of trafficking" who are present in U.S. on account of the trafficking
- Nonimmigrant status for 4 years, including employment authorization
- Possible to obtain status for derivative family members
- Can seek LPR status after 3 years
- Annual cap of 5,000 per year

History of the Law

- Thirteenth Amendment to the U.S. Constitution outlaws slavery and involuntary servitude (holding another in service through force or threats of force).
- The Victims of Trafficking and Violence Protection Act of 2000 (VTPA) signed into law in 2000 making trafficking a federal crime
- Prior to 2000, no law to protect victims or prosecute traffickers
- Reauthorized by Congress

T Visa Requirements

1. Victim of "severe form of trafficking"
2. Present in U.S. on account of trafficking
3. If 18 or older victim must not have refused to comply with reasonable requests to assist with the investigation and/or prosecution of the crime (prosecution is not a requirement)
4. Applicant would suffer extreme hardship if returned to home country
5. Applicant must be admissible (or seek a waiver of crimes)

"Severe Forms" of Trafficking in Persons:

- The recruitment, harboring, transporting, 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, slavery or forced commercial sex acts.
 - Children under the age of 18 who are exploited through commercial sex fit the definition of trafficking regardless of the existence of force, fraud, or coercion.
 - However, a child under the age of 18 who is recruited for labor trafficking or other services is required to show inducement through force, fraud, or coercion.

Cooperation with law enforcement

- Determining reasonableness of request
 - Totality of the circumstances of law enforcement/prosecutorial practices, nature of the victimization, specific circumstances of the victim
 - DHS determines reasonableness of request
 - I-914 Supplement B, LEA certification

Extreme Hardship Factors

- DHS will consider:
- Age and circumstances;
 - Serious physical or mental illness & availability of medical/psychological attention in foreign country;
 - Physical & psychological consequences b/c of trafficking
 - Civil unrest or armed conflict affect applicant's safety in home country
 - Laws, social practices, or customs could penalize trafficked applicant in home country
 - Likelihood of re-victimization & ability & willingness of foreign authorities to protect the applicant
 - Likelihood of harm to applicant by trafficker or others on trafficker's behalf

Who qualifies as a derivative?

- If victim under 21, victim's:
 - Spouse
 - Children (unmarried, under 21)
 - Parents
 - Siblings (unmarried, under age 18)
- If victim over 21, victim's:
 - Spouse
 - Children (unmarried, under 21)

National Human Trafficking Resource Center

1-888-373-7888

A Department of Health and Human Services (HHS)-funded program operated and implemented by Polaris Project for the purpose of providing a national, 24-hour, toll-free hotline number for the human trafficking field in the United States.

U-Visa

- Victim of qualifying crime in the United States
- Possess information about the crime
- Assist the prosecuting or investigating agency
 - I-918 Supplement B
- Suffer substantial physical or mental abuse

U-Visa

- Nonimmigrant visa
- 4-years, employment authorization granted (and SSN eligibility)
- Assist the prosecuting or investigating agency
 - I-918 Supplement B
- Adjustment of status after three years – must file within third and fourth year of U nonimmigrant status
- Annual cap of 10,000

U-Visa

- Evidence packet
 - I-918 , I-918 Supp. A and I-918 Supp. B
 - LEA incident report
 - Court/DA documentation
 - Hospital records
 - Counselor reports
 - Personal statement
 - Discretionary evidence
 - Passport, passport photos
 - Waiver available for grounds of inadmissibility

U-Visa

Qualifying Crimes:

- Rape; torture; incest; domestic violence; sexual assault; prostitution; being held hostage; involuntary servitude; kidnapping; abduction; extortion; human trafficking; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault.....; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes

VAWA

- Battery or extreme cruelty
- Spouse, child of abusive U.S. citizen or legal resident
- Good faith marriage
- Residence with abuser
- Good moral character
- No annual cap

VAWA

■ Evidence packet

- Form I-360
- Battery or Extreme Cruelty
- Good faith marriage - Marriage certificate, photos, joint accounts
- Evidence of LPR/USC status of abuser
- Cohabitation
- Good moral character (criminal record check)
- Personal statement

Special Immigrant Juvenile Status 8 C.F.R § 204.11

- (1) Is under twenty-one years of age;
- (2) Is unmarried;
- (3) Has been declared dependent upon a juvenile court;
- (4) Has been deemed eligible by the juvenile court for long-term foster care (reunification not viable);
- (5) Continues to be dependent upon the juvenile court and eligible for long-term foster care;
- (6) Has been determined that it would not be in the alien's best interest to be returned to home country of nationality; and
- (7) Abuse, abandoned, neglected, or similar basis by one or both parents



Crime Victims Rights, Treatment And Expectations

Violent Crime in Texas

According to the Texas Department of Public Safety, in 2008 there were:

- 1,372 murders in Texas
 - 1 murder every 6 hours and 23 minutes
- 8,004 reported rapes
 - 1 rape every hour
- 37,757 robberies
 - 1 robbery every 14 minutes
- 76,487 Aggravated Assaults.
 - 1 Agg Assault every 7 minutes

Ethical Responsibilities

- Rule 1.01(a) – duty of competence
- Rule 1.01(b) – duty of diligence
- Rule 1.03 – timely communication
- Rule 2.01 – refer clients to outside professionals when appropriate
- Preamble – “...informed understanding of client’s legal rights and obligations...”

How does Crime Victim Compensation process work?

- Goal of Crime Victims Compensation is to reimburse victims of crime for certain out-of-pocket expenses
- Attorneys’ fees- a civil attorney can receive attorney’s fees, lesser of 25% of the amount or \$300, for a successful application if an award is made to the victim w/o hearing (CCP §56.43)
 - No contracting for a larger amount
 - Award is in addition to amount of compensation

Crime Victims Rights

- Right to receive information about Crime Victims Compensation
- Right to notice of:
 - Hearings
 - Bail and release
 - Victim Impact Statement
 - Appellate proceedings
 - Parole hearings and release
- Right to protection during the case
- Right to counseling and HIV/AIDS testing
- Right to victim/offender mediation
- Right to a forensic sexual assault examination

Eligibility for Crime Victims Compensation

- Types of victims
 - Physical or mental harm
 - Criminal injurious conduct
- Social Security Number or ITIN
- Residency
- Family members
- Denial or reduction: illegal activity, responsible for crime, or fails to cooperate with law enforcement

Violent Assault

- Injuries
- Lost Wages

Reimbursement of
Medical Expenses?

Reimbursement of
Medical Expenses?

Yes

Medical Expenses

- Hospital expenses
 - Doctors' fees
 - Prescriptions
- Emergency room
 - Ambulance
 - X-rays
- Rehabilitation
- Nursing home
 - Dental
 - Co-pays

No Double Dipping

No Double Dipping

Collateral Sources include:

- The United States, a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this subchapter;
- Social security, Medicare, or Medicaid;
- Another state's or another country's crime victims' compensation program;
- Workers' compensation;
- An employer's wage continuation program, not including vacation and sick leave benefits;
- Proceeds of an insurance contract payable to or on behalf of the claimant or victim for loss that the claimant or victim sustained because of the criminally injurious conduct;
- A contract or self-funded program providing hospital and other health care services or benefits; or
- Proceeds awarded to the claimant or victim as a result of third-party litigation.



Violent Crimes Only

- Poses a substantial threat of personal injury or death

Who is a Victim?

- "Victim" – CCP Ch. 56
 - A victim of sexual assault, human trafficking, kidnapping, agg. robbery, injury to child/elderly/disabled, or who has suffered personal injury or death as a result of criminal conduct of another
- "Relative" – spouse, parent, or adult brother, sister, or child of decedent

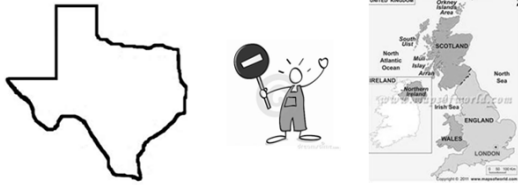
Texans Traveling Outside Texas



Non-Texas American Residents in Texas



Cannot Help Those Who Are Not Residents of the U.S.





- Must cooperate with law enforcement



- Victim cannot have been willingly part of the criminal conduct



FY 2010:
~\$75 million



Funds for Crime Victims Compensation Fund

- State Court Costs
- Parolee Supervision Fees
 - Donations
 - Subrogation
- Federal VOCA Grant
 - Restitution
- No Tax Dollars



-Funeral and Burial Expenses

-Immediate Family Member: psychiatric care, traveling to funeral

-Loss of Support for Dependent

-Crime Scene Cleanup

-Replacement Costs

-Execution Travel

Stalking and Family Violence



Stalking Family Violence

- Relocation Expenses
 - Utility connection
 - Utility deposits
 - Professional moving company
- Rental Assistance
 - \$1,800 rent

Money

- \$50,000 per claim
- Additional \$75,000 for the worst circumstances

TEXAS CRIME VICTIMS' COMPENSATION PROGRAM APPLICATION

CVC Official use only - VCS# _____ Application received _____

Please print clearly using black ink or type the information. **PLEASE COMPLETE ALL SECTIONS OR A DELAY MAY RESULT IN THE PROCESSING OF YOUR APPLICATION.** Information about this claim is confidential and will not be released to another person unless that person is included as a claimant. See #2 Claimant information below.

What is the language preference of the victim and/or claimant? _____

1. **VICTIM INFORMATION** - The victim is the person who was injured or killed as a result of the crime. If the victim is a minor, the claimant information below must be completed. If there is more than one victim, each victim must submit a separate application.

Has the victim previously filed a Crime Victims' Compensation Program (CVC) application? No Yes

Date of the crime? _____

Victim's Last Name _____ First _____ Middle _____

Mailing address _____ City _____ State/Zip _____

Home phone _____ Cell phone _____ Work phone _____

E-mail address _____

Does the victim have a Social Security Number or Tax ID number? No Yes Number: _____

Sex (check one) Male Female Date of birth _____

Does the victim have medical insurance? No Yes

Medical insurance company name is _____

Medicare number if applicable: _____

Medicaid number if applicable: _____

Has an application been made for Medicaid or Medicare since the crime? No Yes

Does the victim have dental insurance? No Yes

Dental Insurance Company name is _____

If victim is deceased, is there burial insurance? No Yes

Burial Insurance Company name is _____

Does the victim have access to any of the following collateral sources. Check all that apply. If none, check here _____

Workers' Compensation _____ Auto Insurance _____ Home Insurance _____ Retiree's Insurance _____ Disability Insurance _____

Crime Victims Compensation Fund

- Run by Texas AG
- In Texas, or traveling Texans
- Payer of last resort
- Pays medical expenses +
- Up to \$50,000 (sometimes more)
- Lots more crime victim rights

More Info

- Texas Attorney General website
 - oag.state.tx.us/victims

Crime Victims Compensation Act

- Texas Code of Criminal Procedure
 - Chapter 56
 - Subchapter B
