



VIRGINIA PROSECUTOR'S HUMAN TRAFFICKING TOOLKIT

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Since 2007, over 3,500 trafficking victims have been identified in the Commonwealth of Virginia, resulting in 1,689 cases of human trafficking.¹ Victims in these cases ranged from minors to adults, males to females, and victims of both labor and sex trafficking.²

This toolkit is intended to be a resource to help prosecutors initiate human trafficking charges and avoid charging human trafficking crimes as non-trafficking offenses. This document also strives to provide prosecutors with information to direct survivors of human trafficking to critical resources for the survivor's safety and recovery. This toolkit does not contain all necessary information to carry out a human trafficking prosecution, but includes vital statutes and case law to commence the process.

I. HUMAN TRAFFICKING AND THE ROLE OF PROSECUTORS

Human trafficking is the use of force, fraud, or coercion to entice a victim into performing a commercial sex act or forced labor.³ If the victim is a minor, it is not necessary to prove the element of force, fraud, or coercion to establish a human trafficking charge. Virginia law follows this definition of human trafficking, as defined in the Trafficking Victims Protection Act (TVPA).⁴

MYTH	REALITY
Trafficking requires movement of a victim.	The essence of trafficking is coercion—not movement. A person does not need to cross a border or even leave their own house to become a trafficking victim.
Human smuggling is Trafficking.	While smuggled persons are vulnerable to trafficking, not all smuggled persons are trafficking victims. It is important to examine the circumstances around the smuggling to understand the means and the purpose.
All trafficking victims are abducted or taken by force.	Though some victims may be taken by force, many are actually lured into their exploitation through some sort of fraud or false pretences.
All trafficking victims are exploited for commercial sex.	The majority of victims of trafficking in persons worldwide are forced to work outside the commercial sex industry. Relatedly, not all participants in the commercial sex industry are necessarily victims of trafficking in persons.
All trafficking victims are children.	While children can be particularly vulnerable to trafficking, anyone can be a trafficking victim: Children, adults, women, and men.

¹ Virginia, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/en/statistics/virginia> (last visited Jan. 29, 2023).

² *Id.*

³ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq.

⁴ See VA. CODE ANN. § 63.2-1506.1 (2020); see also 22 U.S.C. §§ 7101–7105a (2000).

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Investigating and prosecuting traffickers impacts not only individual cases and victims, but also can have a ripple effect on trafficking in Virginia. When a trafficker is identified, arrested, charged, and goes to prison:

- The trafficker may be prevented from exploiting future victims
- Victims build trust in the justice system
- Would-be traffickers may be deterred
- Additional victims may be encouraged to report to authorities

It is therefore important for prosecutors—and others who are on the frontlines of *identifying human trafficking* and *assisting victims in exiting exploitative situations*—to understand what is necessary to successfully prosecute traffickers for the crime of trafficking.

Using a prosecution-led approach requires prosecutors to be well-versed in human trafficking. A prosecution-led trafficking investigation includes early involvement and guidance from the prosecutor, along with a collaborative effort from investigators, victim service providers, frontline officials, and victim assistance coordinators. The goal is successful prosecution of the trafficker

while respecting the needs and dignity of the survivor. This approach recognizes that each professional and/or agency plays a distinct but equally important role in ensuring that a victim-centered investigation leads to a trafficking conviction. Without a collaborative approach, investigations can often stall at victim identification or the trafficker's arrest.

BEST PRACTICE TIP: Coercion is one of the most complex elements to prove in a human trafficking case. Why victims remain in the trafficking scheme is incredibly difficult to explain. Prosecutors and law enforcement should have conversations early in the investigation to determine what evidence can be obtained to prove the trafficker's methods of coercion. When traffickers utilize unique or unusual methods of coercion such as religious control (cults) or psychological manipulation, consider consulting with or securing an expert witness to help explain coercion to a jury or judge.

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II. VIRGINIA'S HUMAN TRAFFICKING LAWS

This section provides a list of relevant human trafficking statutes in Virginia. While many of these laws may not specifically fall within a human trafficking statute, they may be commonly charged with, or ancillary to, human trafficking charges.

Human trafficking, specifically sex trafficking, is illegal in Virginia under § 18.2-357.1 of the Virginia Code. The statute provides:

- A. Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of § 18.2-346, solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate § 18.2-346 is guilty of a Class 5 felony.
- B. Any person who violates subsection A through the use of force, intimidation, or deception is guilty of a Class 4 felony.
- C. Any adult who violates subsection A with a person under 18 years of age is guilty of a Class 3 felony.
- D. Each violation of this section constitutes a separate and distinct felony.

There are also several ancillary charges to the crime of human trafficking in the Virginia code. These ancillary charges are listed below:

- For the purposes of this chapter: ... “Tier III offense” means a violation of, attempted violation of, or conspiracy to violate: ... (4) Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.) (§ 9.1-902(A))
- “Predicate criminal act” definition includes human trafficking crimes (§ 18.2-46.1)
 - See § 18.2-355; see also §§ 18.2-356, 357, 357.1, 346.01, 348
- Abduction and Kidnapping Defined; Punishment (§ 18.2-47)
- Abduction with Intent to Extort Money or for Immoral Purpose (§ 18.2-48)
- Prostitution; Commercial Sexual Conduct; Penalties (§ 18.2-346)
 - Prostitution; Solicitation; Commercial Exploitation of a Minor; Penalties (§ 18.2-346.01)
- Aiding Prostitution or Illicit Sexual Intercourse, etc.; Penalty (§ 18.2-348)
 - Promoting Travel for Prostitution; Penalty (§ 18.2-348.1)
- Taking, Detaining, Person for Prostitution, or Consenting; Human Trafficking (§ 18.2-355)
- Receiving Money for Procuring Person; Penalties (§ 18.2-356)
 - “Any person who receives any money or other valuable thing for or on account of ... (ii) causing any person to engage in forced labor or services, ... is guilty of a Class 4 felony.”
- Receiving Money from Earnings of Male or Female Prostitute; Penalties (§ 18.2-357)
- Victims of Sex Trafficking; Affirmative Defense (§ 18.2-361.1)
 - Prostitution; Commercial Sexual Conduct; Penalties (§ 18.2-346)
 - Keeping, residing in, or frequenting a bawdy place; “bawdy place” defined; penalty (§ 18.2-347)
- Virginia Minimum Wage Act (§ 40.1-28.8 et seq.)
- Employment of Illegal Immigrants (§ 40.1-11.1)
- Virginia Racketeer Influenced and Corrupt Organization Act (§§ 18.2-512–513)

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III. CASE LAW

The below cases are prominent case law for sex trafficking charges in Virginia under § 18.2-357.1. Unfortunately, there is no relevant case law for state-level labor trafficking at this point.

JOHNSON V. COMMONWEALTH, 69 VA. APP. 639 (2019)

- **FACTS:** Victim posted an advertisement for commercial sex on Backpage.com, supervised by Defendant, then subsequently engaged in commercial sex acts with five or six clients. Defendant collected all of the money earned from Victim's commercial sex acts.
 - **HOLDING 1:** The prosecution charged Defendant under Va. Code § 18.2-357.1, and the trial court convicted under the commercial sex trafficking statute. The court of appeals affirmed Defendant's conviction and sentencing.
 - **HOLDING 2:** The fact that Victim was engaged in commercial sex before she met Defendant, and continued to do so after he was incarcerated, did not change the fact that Defendant "solicited, invited, recruited, encouraged, or otherwise caused" Victim to engage in commercial sex after she met him with the intent to receive money from the commercial sex acts.
-

LAMBERT V. COMMONWEALTH, 70 VA. APP. 740 (2019)

- **FACTS:** Defendant supplied Victim with drugs for several days, then ordered her to complete commercial sex acts in exchange for money. Victim's earnings from these commercial sex acts were collected by Defendant, who kept Victim supplied with heroin to keep her addicted and dependent on Defendant.
 - **HOLDING 1:** Defendant was charged and convicted under Va. Code § 18.2-357.1 of three counts of sex trafficking. The court of appeals affirmed Defendant's conviction.
 - **HOLDING 2:** Defendant's gang membership was a relevant factor in his conviction for sex trafficking because it indicates intimidation of Victim, which is an element of Virginia's commercial sex trafficking charge.
-

CARR V. COMMONWEALTH, 69 VA. APP. 106 (2018)

- **FACTS:** Victim was being sold for sex out of a hotel. Defendant seized Victim's earnings, telling Victim that it was to pay for her share of the hotel.
- **HOLDING 1:** Defendant was charged and convicted under Va. Code § 18.2-357.1 for forcing Victim to commit commercial sex acts out of a hotel. The court of appeals affirmed Defendant's conviction.
- **HOLDING 2:** While this case does contain elements of force and coercion, the Virginia statute does not require those elements be present. Rather, the statute "merely requires the Commonwealth to show that a defendant was 'solicit[ing] ... encourage[ing] ... or otherwise caus[ing] or attempt[ing] to cause' another to engage in [commercial sex] 'with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing.'"

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IV. RESOURCES FOR SURVIVORS

Human trafficking victims have their lives uprooted by their traffickers. When a victim leaves their trafficking situation and becomes a survivor, they may require various resources to begin the healing and recovery process. Needs may include financial assistance, housing and shelter, legal services, medical treatment, or mental health services, to name a few. Below are organizations that exist in the various regions of Virginia that offer support and services to human trafficking survivors.

NATIONAL

- [National Human Trafficking Hotline](#), Washington, D.C.; 24/7 confidential hotline to report potential trafficking situations, seek services, or receive human trafficking information and statistics: (888) 373-7888.
- [Polaris](#), Washington, D.C.
- [National Domestic Workers Alliance](#), Washington, D.C.
- [Virginia Victim Assistance Network](#), Henrico

SOUTHWEST VA

- [New Directions Center](#), Roanoke
- [The Lampstand](#), Roanoke
- [Project Horizon](#), Rockbridge

NORTHERN VA

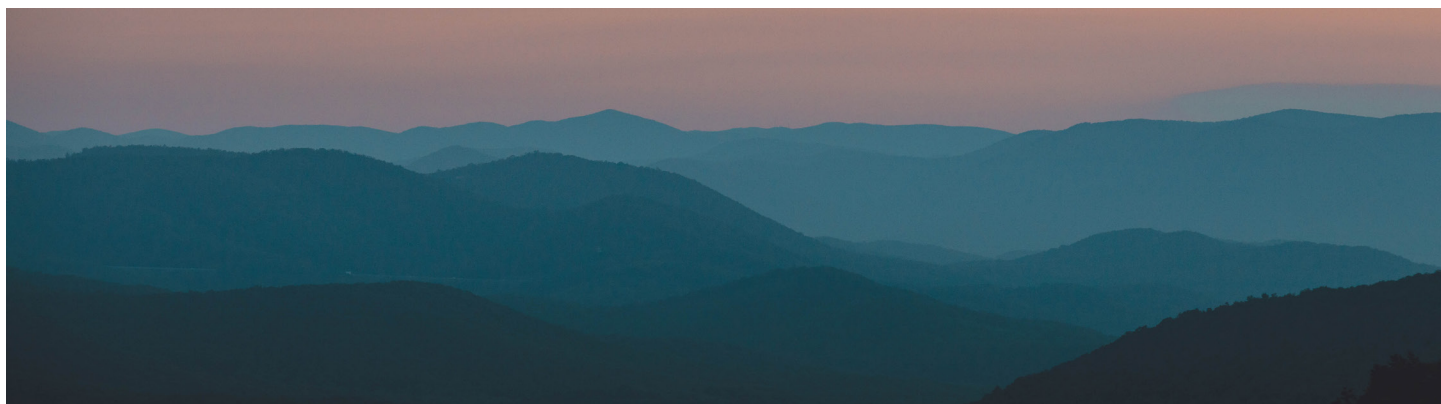
- [Reset 180](#) (formerly Northern Virginia Human Trafficking Initiative), Reston
- [Legal Services of Northern Virginia](#), Alexandria
- [U.S. Committee for Refugees and Immigrants \(USCRI\)](#) – HQ, Arlington
- [Tahirih Justice Center – Greater DC-Baltimore](#), Falls Church
- [Tahirih Justice Center – Forced Marriage Initiative](#), Falls Church
- [Legal Aid Justice Center](#), Falls Church

CENTRAL VA

- [Freekind](#), Hampton
- [Safe Harbor](#), Richmond
- [Central Virginia Justice Initiative](#), Fredericksburg
- [Freedom 4/24](#), Lynchburg
- [New Directions Center, Inc.](#), Staunton

SOUTHEAST VA

- [Freekind](#), Hampton
- [Samaritan House](#), Virginia Beach
- [Latisha's House](#), Williamsburg
- [Avalon Center](#), Williamsburg
- [Hampton Roads Human Trafficking Task Force](#), Norfolk (804-786-2071)



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V. LANGUAGE

The language that we use to address human trafficking victims and survivors matters.⁵ Using language that portrays a victim as an individual who “needs saving” or is “at fault” for their trafficking situation can be harmful to the victim on several levels. The use of improper language generates an inaccurate representation of what human trafficking looks like and who the victims are. This can potentially lead to development and use of ineffective survivor resources. Further, a victim may not identify as a victim, and rescue or victim-blaming language can prevent victims from pursuing opportunities to leave their trafficking situation. Perhaps most notably, prosecutors or investigators using improper language can discredit the inherent strength and perseverance of human trafficking survivors.

RESCUE LANGUAGE

“He was set free”
or “He was rescued”



“Law enforcement provided
him assistance to exit his
trafficking situation”

“They were saved”



“They were assisted with
services to heal or recover”

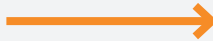
“Voice for the voiceless”



“Supporting survivors”

VICTIM-BLAMING LANGUAGE

“She sold sex” or
“She sold her body”



“She was sold for sex”
or “She was bought for sex”

PROSTITUTION ≠ SEX TRAFFICKING

The key element that distinguishes sex trafficking from prostitution is the absence of consent. Prostitution is consensual participation in a commercial sex act, whereas a sex trafficking victim is forced to participate in commercial sex acts. While it may appear that sex trafficking victims consent to commercial sex acts, making it look like prostitution, that consent is often solicited through force, fraud, or coercion.⁶ Keep in mind that minors cannot consent to sexual acts or exploitation, and there is no such thing as a “child prostitute.”

⁵ Polaris has published a helpful resource that has a section dedicated to language and imagery used to discuss and depict human trafficking. *Telling the Real Story of Human Trafficking*, POLARIS, <https://polarisproject.org/telling-the-real-story-of-human-trafficking> (last visited Feb. 9, 2023). See also U.S. DEP’T OF STATE, UNITED STATES ADVISORY COUNCIL ON HUMAN TRAFFICKING ANNUAL REPORT 2022 13–18 (Sept. 23, 2022), <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2022>.

⁶ Alyssa Grzesiak & Brittany Ferrigno, *The Importance of Accurate Storytelling in On-Screen Portrayals of Human Trafficking* (March 1, 2023) (unpublished manuscript) (on file with the Human Trafficking Institute).

CONCLUSION

To help create an opportunity for human trafficking victims to exit their trafficking situation and receive potentially life-changing support, prosecutors must be prepared to charge traffickers and provide survivors with available and accessible resources.

For questions or additional resources, please e-mail the Human Trafficking Institute at contact@traffickinginstitute.org.



www.TraffickingInstitute.org

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