

2015 FAMILY LAW SEMINAR



Juvenile Law Track An Overview of PL 113-183, Preventing Sex Trafficking and Strengthening Families Act of 2014

10:00 a.m.- 11:00 a.m.

Presented by

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Preventing Sex Trafficking and Strengthening Families Act of 2014

Highlights for the Juvenile Practitioner

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Preventing Sex Trafficking & Strengthening Families Act of 2014

- P.L. 113-183 was signed into law on September 29, 2014.
- Provides new requirements to identify and provide services to victims of sex trafficking.
- Requires DHS to support youth who are expected to "age out" of care through improved case management.
- Ensures that children and youth in care have adequate social and developmental opportunities.

Supporting Normalcy for Children in Foster Care: Reasonable & Prudent Parent Standard

- Reasonable & Prudent Parent means:

The standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.

Supporting Normalcy for Children in Foster Care: Reasonable & Prudent Parent Standard

- "Caregiver" is defined as a foster parent or a designated official for a child care institution.
- For DHS purposes this includes foster care, group care and emergency juvenile shelters.
- For child care institutions, there must be at least one designated official on-site who is responsible for applying the reasonable and prudent parent standard for children placed at the institution in the same manner as foster parents.

Substitute Caregiver Activity Authority

- Educational and Extra-Curricular Activities
 - School sports
 - Field trips
 - School dances
- Community & Social Activities
 - Swimming at the city pool
 - Parades
 - Going to sporting events
 - Staying overnight with a friend
 - Attending birthday parties
 - Going to prom
- Cultural, Travel & Religious Activity
 - Iowa Administrative Code section 441-113.6(4) states that each child shall be given an opportunity, **in consultation with the child's parents**, to participate in the child's culture and religion.
 - Children shall not be **required** to participate in religious training or observances contrary to the wishes of the biological or adoptive family or the religious beliefs of the child.
- Employment & Job Training
 - In compliance with federal/state child labor laws

Activities Requiring Parent/Guardian Permission

- Out of state or country travel
- Activities involving hazardous equipment
 - Trampolines
 - Motorized vehicles
 - Including obtaining a driver's permit or license
 - DHS, as custodian, may also sign when the parent/guardian is not available
 - Power tools
- Hunting safety course and gun/bow hunting
 - Requires an exception to policy through central office

Application of Reasonable & Prudent Parent Standard

- DHS will discuss activities that are age/developmentally appropriate with the child's parent/guardian and the caregiver.
- Completion of the Agreement and Consent for Activities of a Child in Foster Care Form.
- Required training for foster parents/designated caregivers.

Improving Another Planned Permanent Living Arrangement (APPLA)

- APPLA – DHS maintains care and custody of the child and arranges a living situation in which the child is expected to remain until adulthood.
- APPLA is eliminated for any child under the age of 16.
- APPLA is only available for a child 16 or older when all other options (reunification, relative placement, adoption or legal guardianship) have been ruled out.

Improving Another Planned Permanent Living Arrangement (APPLA)

- Additional case plan and case review requirements when APPLA is the permanency goal:
 - DHS must document ongoing, but unsuccessful, efforts made to return the youth home or with a fit and willing relative, legal guardian or adoptive home.
 - The Court must ask the child about the desired outcome and make a judicial determination as to why APPLA is in the best interest of the child.
 - Requires the foster family/institution to follow the reasonable and prudent parent standard.
 - Requires DHS to meet new case plan requirements and foster children's rights.

Application of Improving Another Planned Permanent Living Arrangement (APPLA) Standard

- No APPLA goal for children under the age of 16 on any new case.
- For current cases where APPLA is the permanency goal for a child under the age of 16, the permanency goal must be changed at the next permanency hearing.
- Law became effective September 29, 2015.

Empowering Foster Children Age 14+ in the Development of their Case Plan

- Requires DHS to talk to any child in foster care at age 14 or older about any development or revision to the case plan.
- Youth may designate up to two members of the case planning team, chosen by the youth, who are not the foster parent or caseworker.
- DHS may reject the selected members if the State has good cause to believe the individuals would not act in the child's best interests.

Empowering Foster Children Age 14+ in the Development of their Case Plan

- One of the youth's selected team members may be designated as the youth's advisor and advocate for the child regarding application of the reasonable and prudent parent standard.
- Case plan must include a document describing the rights of the child to education, health, visitation and court participation; the right to stay safe and avoid exploitation.
- Case plan must include a signed acknowledgment that the child has received a copy of the plan.

Ensuring Foster Children Have Necessary Documents

- If a child is leaving foster care at age 18*, or a greater age if the state has elected, the child must be provided
 - An official or certified copy of the child's birth certificate;
 - A Social Security card issued by the Commissioner of Social Security;
 - Health insurance information;
 - A copy of the child's medical records; and
 - A Driver's license or identification card issued by a state.

*Children who have been in foster care for less than 6 months are exempt.

Application of Empowering Foster Children

- Transition planning will start at age 14.
 - Casey life skills
 - Youth Rights signed by foster child
 - Youth Centered Meetings
 - Part C/Transition plan begins
 - Credit Reporting/fraud alerts
 - NYTD - National Youth in Transition Database
 - Expanded checklist starting at age 14

Trafficking Basics

- International Labor Organization estimates there are 4.5 million people trapped in forced sexual exploitation globally.¹
- 1 out of 6 endangered runaway youth is likely to be a victim of human trafficking.²
- Average age of a teen that enters the sex trade in the U.S. is 12-13 years old.³
- National Human Trafficking Hotline has had reports of human trafficking in all 50 states.
- In 2014, U.S. ranked in the top 3 for countries of origin for victims.⁴
- Vulnerable populations include children in the child welfare or juvenile justice systems, runaway and homeless youth.⁵

1 Technical Report, National Labor Organization, June 2012
2 National Center for Missing & Exploited Children
3-5 Trafficking in Persons Report 2015, U.S. Department of State, p. 352

Trafficking Defined

- The Trafficking Victims Protection Act of 2000 (TVPA) defines sex trafficking as: "the recruitment, harboring, transportation, provision, or obtaining 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" (22 USC § 7102 (9-10)).
- The term "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)).

Trafficking Victim Protection Act (TVPA)*

- Any minor under the age of 18 engaged in commercial sexual activity is deemed a victim, regardless of consent.
- Non-U.S. Citizen victims are not violators of immigration laws, but are victims of a crime.
- Victims of Child Abuse Act, 42 USC § 13001 et seq., ensures protection of children in court and throughout the criminal justice system.
- Attorney General Guidelines, 18 USC § 3509, provide for extension of child abuse statute of limitations, MDT guidelines, privacy & protection, and closing the courtroom/alternatives to in-court testimony.
- Referrals are based on specific needs, for example: counseling, medical assistance, emergency shelter and transportation, relocation or state crime victim compensation information.

* Iowa Code Chapter 710A contains Iowa law on Human Trafficking.

William Wilberforce Trafficking Victims Reauthorization Act of 2008

- REQUIRES federal, state, or local officials who discover a minor may be a victim of human trafficking to NOTIFY WITHIN 24 HOURS the U.S. Department of Health and Human Services.
- Child Protection Specialists can be reached at 202.205.4582 or by email at Childtrafficking@acf.hhs.gov.
- Authorizes the U.S. Department of Health & Human Services to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied immigrant children. 8 USC § 1232(c)(6).

Preventing Sex Trafficking and Strengthening Families Act of 2014

- Requires DHS to have policies and procedures for identifying, documenting, screening and determining appropriate state actions and services for children in care who are victims of sex trafficking or at-risk of being victims of sex trafficking. (Eff. 9/29/15)
 - Children with an open case that have not been removed from their home;
 - Children who have run away from foster care; and
 - Children receiving adoption assistance.
- OPTIONAL: to include all young adults under 26.
- Expectation of collaboration: state and local law enforcement, juvenile justice systems, health care providers, education agencies, and organizations experienced in working with at-risk children and youth.

Preventing Sex Trafficking and Strengthening Families Act of 2014

- New state and federal reporting requirements for children in agency care who are sex trafficking victims.
 - DHS must report information on children identified as victims of sex trafficking to law enforcement within 24 hours. (Eff. 9/29/16)
 - DHS must report the numbers of children in their care, placement or supervision who are identified as sex trafficking victims to the U.S. Department of Health & Human Services, who must then report to Congress and make them publicly available. (Eff. 9/29/17)
 - HHS must also report annually to Congress the number of child victims and on children who have run away from foster care, including their risk of becoming sex trafficking victims. (Eff. 9/29/18)
 - Characteristics, potential factors associated with running away, experiences while absent from care and trends in the number reported as runaways; state efforts to provide services and placements, and state efforts to ensure children in care form and maintain long-lasting connections to caring adults.

Preventing Sex Trafficking and Strengthening Families Act of 2014

- Sex Trafficking Data to be reported in the Adoption and Foster Care Analysis and Reporting System. (Eff. 9/29/17)
 - DHS must report the annual number of children in foster care identified as sex trafficking victims, including those who were victims before entering care or while in care.
- Locating and Responding to children who run away from foster care.
 - Develop and implement protocols to locate children who have run away or are missing from care, determine their experiences while absent from care, screen for sex trafficking upon their return, and report to HHS. (Eff. 9/29/15)
 - Report within 24 hours to law enforcement for entry into the National Crime Information Center (NCIC). (Eff. 9/29/16)
 - Report within 24 hours to the National Center for Missing and Exploited Children. (Eff. 9/29/16)

Preventing Sex Trafficking and Strengthening Families Act of 2014

- Increase Information on Children in Foster Care to Prevent Sex Trafficking. (Eff. 9/29/16)
 - HHS reports to Congress.
- Establishment of a National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. (Eff. 9/29/16)
 - Advise HHS and AG on policies to improve our response to sex trafficking, including successful interventions and recommendations for administrative or legislative changes.
 - Cooperation of Federal, State, local and tribal governments; social service providers; physical and mental health providers; victim service providers; State or local courts involved in child welfare; Federal, State and local police; juvenile detention centers; runaway and homeless youth programs; schools; gaming and entertainment industry; and businesses and organizations that provide services to youth.

Preventing Sex Trafficking and Strengthening Families Act of 2014

- Receipt of federal funds under Title IV-E is contingent upon implementation of this Act.
- No new funding provided by the Act.
- Act does not address child labor trafficking.
- Act does not distinguish between domestic or foreign national victims of sex trafficking, so protocols should included best practices for non-U.S. citizen children.
- Emphasis is on children in foster care, but Act requires procedures to identify, document and serve victims of, or those at risk of, sex trafficking for all children in the care, placement and supervision of DHS.

Victims of Trafficking Act of 2015

- Expands the definition of "child abuse" under the Victims of Child Abuse Act of 1990 to include the commission of human trafficking and the production of pornography.
- Clarifies that child pornography producers are human traffickers.
 - Evidentiary burden on defense to show an accused reasonably believed the minor had attained the age of 18 increased to clear and convincing evidence.

Additional Provisions in Victims of Trafficking Act

- Stop Advertising Victims Exploitation Act of 2015 (SAVE Act of 2015):
 - Amends criminal code to prohibit the advertising of sex trafficking or benefiting from the advertising of sex trafficking;
 - Mandates that a database of resources for trafficking victims' services be placed on OJJDP webpage; and
 - Extends the statute of limitations for civil actions to 10 years after a victim reaches age 18.
- Stopping Exploitation Through Trafficking:
 - Amends the federal judicial code to authorize the United States Marshals Service to assist state, local, and other federal law enforcement agencies, upon request, in locating and recovering missing children.

Application of Trafficking Provisions

- Assess child safety.
- Make a law enforcement referral, if law enforcement is not already involved.
- Notify the U.S. Department of Health & Human Services within 24 hours if the child may be a victim of trafficking.
- Assist law enforcement with placement when necessary.
- Initiate court follow-up, as required under Iowa Code §232.79, if law enforcement removes and takes custody of the child.
- Follow consular notice requirements of the Vienna Convention on Consular Relations as soon as a foreign national child is taken into custody or initiate court action that could affect parental rights.

Trafficking: Steps During Assessment

- Treat children as children, regardless of how they look, act or what they say.
 - Highly vulnerable population.
 - These children are VICTIMS.
- Provide children with simple, clear information and concrete examples.
- Use child-sensitive and developmentally appropriate procedures for all interviews. Use CAC/CPC whenever possible.
- Children should have a parent, guardian, or advocate with them during any interviews with law enforcement. But be aware: a parent or guardian might be the trafficker.
- Prevent any direct contact between the child and the trafficker.
- Identify resources and services IMMEDIATELY.

Trafficking: Steps During Assessment

- Recognize that the runaway risk of the victim continues at removal.
 - Victims are generally fearful of their traffickers and do not believe the system can keep them safe.
 - Victims are repeatedly told by their traffickers that they have no other option, no other future.
 - Victims fear for the safety of family and other victims.
- Recognize that the child's basic needs must be met before the assessment will progress.
- Taking direction from National Experts is best practice.
- Collaboration is essential to provide for the diverse needs of trafficking victims.

Trafficking: Important Reminders

- Trafficked youth may not see themselves as victims and may appear hostile, angry, or protective of their traffickers.
- Ask the potential victim if it is alright to use an interpreter from their community. (Often victims/traffickers come from the same community and this may impact how much you will learn.)
- Do not use anyone at the scene to interpret.
- Request the interpreter to provide verbatim interpretation, without side conversations.
- Do not start the interview by asking about immigration status.
- Explain your role and distinguish yourself from law enforcement.
- Be sensitive to cultural and religious differences.
- Be realistic about how much information can be collected during the 1st interview.
- Understand that traffickers often threaten to harm someone else if a victim talks about their situation.

Trafficking: Important Reminders

- Victims may be emotionally attached to their trafficker.
 - They may be reluctant to answer direct questions.
 - Talk in context of "rules" of the house or place of employment.
 - Ask about things they didn't like about their job or services they were expected to perform.
 - Ask how the work was different from what was promised or expected.
 - Use simple language.
 - "Were you coerced to perform this work?" vs. "What would happen if you didn't want to work that day?"
 - Use short, open-ended, non-judgmental questions.
 - How did you come here? Are you in school? How many hours did you work? Do you owe anyone money? Tell me about your work.

Legal Assistance for Trafficking Victims

- Assistance for both U.S. Citizens and Non-U.S. Citizens:
 - Criminal Justice
 - Civil Litigation
- Additional Assistance for Non-U.S. Citizens:
 - Immigration
 - Repatriation

Legal assistance: Criminal Justice

- Status as a Victim-Witness*
 - Victim must be treated with a "victim-centered" approach
 - "[V]ictims of trafficking should not be inappropriately incarcerated, fined or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked." Trafficking Victim Protection Act 2008, Sec. 102(a)(19)
 - Legally entitled to:
 - Safety
 - Privacy
 - Information about the case
 - Legal Representation
 - To be heard in court
 - Medical attention
 - Access to appropriate social services
 - Compensation for damages
 - Repatriation (return home for foreign victims)
 - Seek residence (stay in U.S. for foreign victims)

*Traffickers do not need to be charged or convicted of human trafficking crimes for victims to receive appropriate protections & services.

Legal Assistance: Criminal Justice

- Mandatory Restitution
 - Child trafficking victims are eligible for mandatory restitution for the value of the services performed to the trafficker.
 - Value can be determined by the total profit victim generated for trafficker thru prostitution or pornography.
 - Think financial harm to victim (present & future) or victim's family; emotional distress; future medical (mental & physical health) needs; lost wages/opportunity; overtime wages; educational or vocational expenses.
 - Restitution can be made part of a plea agreement or ordered by a Judge during sentencing.
 - Advocates should work directly with child victims to ensure that detailed information regarding financial harm, physical/emotional harm, value of services to the trafficker, etc. are included in the victim impact statements and shared with prosecutors.

Legal Assistance: Civil Actions

- Civil Suits
 - All victims can file.
 - Civil actions should be stayed until the conclusion of the criminal matters.
 - Victims filing a civil suit have access to continued presence in the U.S. until their civil matter is resolved. 22 U.S.C. § 7105(c)(3)(A)(iii)

Legal Assistance: Immigration

- Victims are eligible for short and long term immigration relief.*
 - Continued Presence: federal law enforcement agents can permit an undocumented individual's "continued presence" in the U.S. if the individual is a victim of human trafficking and a potential witness in a potential trafficking investigation.
 - This does not convey any form of immigration status, but does provide temporary permission to remain in the U.S., temporary work authorization, and access to public benefits.
 - TVPA Reauthorization of 2008, Section 205, allows federal law enforcement agencies to parole (bring to the U.S. temporarily) family members of children, especially those in danger of retaliation as a result of the victim's escape and/or cooperation with law enforcement.
 - Takes 2 to 4 months to process and gives permission for remaining in U.S. for around 1 year. Can be renewed upon request.
 - Contact Victim Witness Coordinators at the U.S. Department of Justice, Civil Rights Trafficking Unit (1.888.428.7581) or the Department of Homeland Security (1.202.732.5827).

*Non-U.S. Citizen victims should consult with a competent immigration attorney and request continued presence as soon as possible.

Legal assistance: Immigration

- T Nonimmigrant Status*
 - A victim or his/her representative may petition for T nonimmigrant status by filing an application with the United States Citizenship and Immigration Services.
 - Provides lawful immigration status for 4 years (with an option to extend).
 - Work authorization for 4 years.
 - A certification letter to establish eligibility for federal and state public benefits.
 - Option to apply for lawful permanent residency after 3 years.
 - Options for qualified family members to join the victim in the U.S.
 - T derivative status is for a child's parents and unmarried siblings under 18 years of age.

*Minors are not required to prove cooperation with law enforcement to be eligible for a T visa.

Legal Assistance: Immigration

- Other Forms of Immigration Relief
 - SIJS (Special Immigrant Juvenile Status) for children who have been abused, neglected, or abandoned by their parents.
 - U nonimmigrant status for victims of qualifying crimes who assist government officials in investigating or prosecuting such criminal activity.
 - VAWA (Violence Against Women Act) Self-Petition for immigrants abused by a qualifying family member who is a U.S. Citizen or legal permanent resident.
 - Asylum for immigrants fleeing persecution on the basis of race, religion, nationality, or membership in a particular social group.

Legal Assistance: Immigration

- Certification and Access to Benefits
 - Immigration and welfare reform in 1996 disqualified many immigrants from public benefits.
 - TVPA provides an exception to victims of human trafficking, providing them with access to benefits similar to those of a refugee or asylee.
 - Continued presence or a T nonimmigrant visa is not required for a minor to receive benefits.
 - Eligibility letter comes from U.S. Department of Health & Human Services, Office of Refugee Resettlement and available benefits include:
 - Match grant programs, TANF, SSI, Medicaid, Food Stamps, Assistance from Legal Service Corporations, Job Corps, Federal Financial Aid for education and Unaccompanied Refugee Minor Program.

Legal Assistance: Repatriation

- Non-U.S. Citizens Can Return Home
 - So long as there are no safety concerns.
 - Assistance is provided by the International Organization for Migration, including assistance with flights, referrals to service providers and shelters in the home country.

Questions?





Rights of Youth in Out-of-Home Placement

Health

- ◆ You have the right to receive annual physicals including eye, ear, and dental exams. You also have the right to any routine, follow-up, and emergency treatment, as needed.
- ◆ You have the right to have your mental health needs assessed by a professional, and to receive recommended treatment and services.
- ◆ If you leave foster care at age 18 or older, you have the right to receive your most up-to-date health records and options for continued health care coverage.
- ◆ You have the right to stay safe and free from abuse or exploitation.
- ◆ At age 18 or older, you have the right to appoint a durable power of attorney for health care. In case you ever become unable to participate in health care decisions and you do not have or do not want a relative who would otherwise be authorized under state law to make such decisions, the person appointed will make health care decisions for you.

Education

- ◆ You have the right to education stability. If you must change schools, you have the right to be enrolled in your new school immediately, and to receive assistance in getting your credits transferred.
- ◆ You have the right to be enrolled in an appropriate educational setting that is fitting for you. If you need special services, those will be made available to you.
- ◆ You have the right to receive assistance with your educational and career goals and review your goals regularly with your caseworker and transition team. Your transition team should assist you with college planning and Financial Aid Applications.
- ◆ You have the right to participate in extra-curricular activities. In general, fees related to school classes and related activities are waived for children in foster care.
- ◆ If you leave foster care at age 18 or older, you have the right to be provided with your education records.

Visitation

- ◆ You have the right to be placed close to your home proximity, and with your siblings, and to receive an explanation if there are reasons that this cannot occur.
- ◆ You have the right to reasonable communication and visitation with your parents and siblings, unless it would not be positive to you or your family member's physical or emotional well-being.
- ◆ You have the right to contact, visit, and exchange information with your foster care placement before moving there.
- ◆ You have the right to monthly visits with a caseworker. If you are placed out-of-state, you have the right to be visited by a caseworker at least every six months. You also have the right to communicate privately with your attorney and worker about any concerns you are having.

Court Participation

- ◆ You have the right to representation through a guardian ad-litem and an attorney, if necessary, to advocate for your best interests and desires.
- ◆ You have the right to identify two people to help you develop your case plan, who may also advocate for you to participate in healthy opportunities and activities that interest you.
- ◆ You have the right to participate in your court hearings and case reviews which will determine if your foster care placement is still appropriate for you and if you are receiving the services, supports, activities, and referrals to programs that would best assist you in preparing for successful adulthood.

Documents

- ◆ If any consumer credit reports exist for you, you have the right to receive a copy every year while you are in foster care. Your caseworker will assist you in understanding the credit report and resolving any inaccuracies.
- ◆ If you leave foster care at age 18 or older, you have the right to receive your certified birth certificate, social security card, and driver's license or state identification card.

My worker has gone through my rights with me in a way that I understand and answered any questions I had. I understand my rights for health, education, visitation, court participation, and documents I am to receive. I have received a copy of this document.

Youth's Signature

Date



Agreement and Consent for Activities of a Child in Foster Care

Agreement

This agreement between the child's parent or guardian and foster parents or foster care provider is to allow _____ access to age-appropriate and developmentally-appropriate activities.

_____ acknowledges responsibility and approves the foster parent or foster care provider to apply the reasonable and prudent parent standard to authorize any of the following:

- ◆ **Community and social events** including, but not limited to, community activities, social activities with peers, and recreational activities.
- ◆ **Cultural, travel, and religious** activities.
- ◆ **Employment and job training** opportunities.
- ◆ **Educational and extra-curricular school-related** activities.

Comments:

Consent

I hereby consent to the authorization described above. I certify that I have read, or have had read to me, and fully understand the contents of this agreement and the reasons why my consent has been requested. I understand that I have the right to change or withdraw this consent at any time.

Parent or Guardian (or Legally Authorized Representative)

Date

I acknowledge the parent's or guardian's consent for the foster child's participation in these activities.

Foster Care Parent or Provider

Date

Foster Care Parent or Provider

Date