

**NATIONAL HUMAN TRAFFICKING PROSECUTION  
BEST PRACTICES GUIDE**



**WHITE PAPER**

**National District Attorneys Association**

**Women Prosecutors Section**

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The National Human Trafficking Prosecution Best Practices Guide is a living document highlighting current best practices in the prosecution of human trafficking.

Prosecutors and associated professionals are encouraged to continue developing this guide by contributing information on emerging best practices. NDAA recognizes that funding, local rules, or other state laws or local restrictions may prevent an office from adopting the various approaches suggested. This guide is not intended to replace practices and procedures already in operation, but to simply inform and recommend practices that are effective and consistent throughout the nation.

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## INTRODUCTION

*“Slavery is founded in the selfishness of man's nature – opposition to it is in his love of justice.” – President Abraham Lincoln*

Although slavery and involuntary servitude were abolished by President Abraham Lincoln in 1865, in 2017, human trafficking cases were reported in every state in America, with California ranking as a top three destination for this vile crime.<sup>1</sup>

The reason? Human trafficking is one of the most profitable criminal enterprises in the world. It's an estimated \$32 billion industry according to a 2012 report by the United Nations Office on Drugs and Crime,<sup>2</sup> with tens of millions of people being trafficked worldwide.

Human trafficking is a form of modern-day slavery where perpetrators profit from the control and exploitation of men, women and children through force, fraud, or coercion for sex, labor, or both. Human Trafficking is also widely recognized as the biggest human rights violation of our time.

Human Trafficking is a crime under U.S. federal law, and similar laws passed on the state side, providing jurisdiction to local prosecutors in each state of the United States. Human Trafficking is the second most profitable criminal industry behind the drug trade, estimated at billions annually in the U.S. and worldwide. The International Labor Organization estimates forced labor and human trafficking to be a \$150 billion industry worldwide.<sup>3</sup>

### **Prevalence of Human Trafficking**

According to the International Labour Organization (ILO), in 2016, an estimated 40.3 million people were trapped in modern slavery.<sup>4</sup> This number included 24.9 million in forced labor and 15.4 million in forced marriage. The ILO explained these numbers mean that there are 5.4 victims of modern slavery for every 1,000 individuals in the world. And of that number, they report that 1 in 4 victims of modern slavery are children.

The California Department of Justice's The State of Human Trafficking in California, 2012 report confirmed California is one of the states most affected by human trafficking, due in part to its proximity to the U.S. southwest border, its robust economy, and a large immigrant population.<sup>5</sup> Transnational criminal organizations and gangs motivated by these high profits and the notion that human trafficking carries a lower risk of detection have expanded their criminal enterprises in California and allows for the renewable exploitation of human beings.

The Polaris Project, which houses the National Human Trafficking Hotline, confirms reported cases of human trafficking in all 50 states.<sup>6</sup> Although there is no official estimate of the total number of human trafficking victims in the U.S. Polaris estimates that the total number of victims nationally reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated.

Polaris also reports statistics from the National Human Trafficking Hotline and Polaris BeFree Textline as follows:

- More than 49,000 total cases of human trafficking have been reported to the Hotline in the last 10 years.
- Annually, the Hotline receives multiple reports of human trafficking cases in each of the 50 states and D.C.
- The number of human trafficking cases that Polaris learns about in the U.S. increases every year.
- Regarding methods of reporting, 24% of texting conversations on the Polaris BeFree Textline were from survivors of human trafficking compared to 14% of phone calls on the Hotline.
- The Hotline receives an average of 1500 calls per day.

### **TOOL BOX IDEAS**

- **Prosecutors and investigators should be aware of the latest findings regarding the human trafficking epidemic, including the latest statistics.**
- **Law enforcement should receive ongoing training in human trafficking signs, trends, and laws, in order to ensure they are armed with the most up to date information to use in ferreting out trafficking activity, and bringing perpetrators to justice.**
- **Community members should be aware of the scope of human trafficking in every area, as well as the best methods of reporting suspected trafficking activity.**

## SEX TRAFFICKING AND LABOR TRAFFICKING

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Human trafficking victims are often invisible. Their involuntary servitude is often performed behind the scenes, below the radar, in all types of venues ranging from busy downtown metropolis areas to upscale neighborhoods. One question that often comes up, is whether known statistics more accurately reflect sex trafficking or labor trafficking—understanding that in many cases, individuals are victims of both.

### **Sex Trafficking**

The Federal Bureau of Investigation's Efforts to Combat Crimes Against Children, Audit Report from January 2009 has a list of 13 cities across the United States that are classified as "High Intensity Child Prostitution Areas."<sup>7</sup> The 13 cities are (1) Los Angeles, California; (2) Minneapolis, Minnesota; (3) Dallas, Texas; (4) Detroit, Michigan; (5) Tampa, Florida; (6) Chicago, Illinois; (7) San Francisco, California; (8) San Diego, California; (9) Miami, Florida; (10) New York City; (11) Washington, D.C.; (12) Las Vegas, Nevada; and (13) St. Louis, Missouri.

A 2007 SANDAG study in San Diego found 1 in 3 youth surveyed had been sexually exploited.<sup>8</sup> They found that sexually exploited youth were more likely than other vulnerable youth to be runaways, have suffered victimization in the past by others they knew, to be school dropouts, and have used drugs. They further found that 1 in 5 runaway youth have been recruited to enter into prostitution.

A 2014 study of 8 cities by the Urban Institute sought to estimate the size and scope of the underground sex industry. Focusing on Atlanta, Dallas, Denver, Kansas City, Miami, Seattle, San Diego, and Washington, DC, they estimated the worth of the underground sex economy in 2007 to be between \$39.9 and \$290 million.<sup>9</sup>

Polaris Project reports that in 2017, an estimated 1 out of 7 endangered runaways reported to the National Center for Missing and Exploited Children were likely child sex trafficking victims.<sup>10</sup> They note that of those, 88% were in the care of social services or foster care when they ran.

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### **Labor Trafficking**

The International Labour Organization (ILO) compiled statistics as well.<sup>11</sup> Out of the 24.9 million people trapped in forced labor, they report that 16 million are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million are trapped in forced sexual exploitation, and 4 million are being subjected to forced labor imposed by state authorities.

Regarding gender based differences, the ILO reports that women and girls are disproportionately affected by forced labor, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.

The Urban Institute compiled a comprehensive report about the organization, operation, and victimization of labor trafficking and its victims in the United States.<sup>12</sup> The subjects in their sample were all immigrants working in the United States, most of whom entered the country on a temporary visa—most commonly for work in agriculture, hospitality, construction, and restaurants. Those who entered the country without authorization were most commonly trafficked in domestic work and agriculture.

The Urban Institute data was drawn from a sample of 122 closed labor trafficking victim service records from providers in four US cities, in addition to interviews with labor trafficking survivors, legal advocates, law enforcement officials, and service providers at each site.

All victims in the Urban Institute sample experienced the required elements of force, fraud and coercion necessary to substantiate labor trafficking. The reported elements of force, fraud and coercion included “document fraud; withholding documents; extortion; sexual abuse and rape; discrimination; psychological manipulation and coercion; torture; attempted murder; and violence and threats against themselves and their family members.” They also found that labor trafficking victims suffered civil labor exploitation. Forms of civil labor exploitation included, but were not limited to, “being paid less than minimum wage; being paid less than promised; wage theft; and illegal deductions.” They also noted, “While legal under some visa programs and labor law, employers/traffickers also controlled the housing, food, and transportation of a significant proportion of our sample. Immigration status was a powerful mechanism of control – with employers threatening both workers with visas and unauthorized workers with arrest as a means of keeping them in forced labor.”

### **TOOL BOX IDEAS**

- **Prosecutors and law enforcement should be aware of the distinct differences between sex trafficking and labor trafficking, and how to recognize each crime.**
- **Train first responders to recognize the unique red flags associated with sex trafficking and labor trafficking, including signs that are associated with both.**
- **Educate the community about the similarities and differences between sex trafficking and labor trafficking, and how to best report suspected sex or labor trafficking activity.**

## STATE HUMAN TRAFFICKING LAWS

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Human Trafficking is a historic threat internationally and in the United States to the dignity and safety of human and communities. Trafficking activity is a worldwide problem that has impacted the dignity and safety of victims across the globe. There are, however, an increasing amount of laws designed to define, combat, and punish trafficking activity.

As Martin Luther King Jr. said, “Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless.” Put less eloquently, the United States is a country of laws, which is what allow law enforcement and prosecutors to act.

### Definitions

Laws that directly address human trafficking did not exist until 2000, when the Trafficking Victims Protection Act passed. Consequently, laws to effectively deal with human trafficking activity, including definitions, appropriate punishment, and deterrence are new. Here are some simple definitions that are fairly similar across the U.S.:

- Sex trafficking is the exploitation of a person by means including coercion or deceit to engage in commercial sexual activity, prostitution, exotic dancing, or pornography. (When the victim is a minor under the age of 18 years old, sex trafficking does not require force or coercion. Minors cannot legally consent to sexual activity).
- Labor trafficking is the exploitation of a person by means including coercion or deceit for labor services. Labor trafficking victims are often forced into domestic servitude, construction, restaurant, agricultural, massage parlors, or sweatshop factory work with little or no pay.”<sup>13</sup>

### Differences Between State Laws

Washington became the first state to recognize the crime of human trafficking in 2003.<sup>14</sup> Since that time, all 50 states have criminalized human trafficking.

The National Conference of State Legislatures (NCSL) gives examples of the types of facts and circumstances that enhance criminal penalties for violating state trafficking laws. They note that laws may impose more severe or additional penalties when trafficking crimes are committed against vulnerable populations like undocumented immigrants, the mentally ill, or children, or when the crimes are committed through aggravating circumstances like using violence, branding, or when they involve drug addiction.<sup>15</sup>

The NCSL also recognizes the wide variety of activities that qualify as trafficking activity under different state laws. They note that most commonly, trafficking activities are defined as consisting of “the recruitment, transportation, transfer, harboring or receipt of persons for the purpose of exploitation.”<sup>16</sup> They note that some jurisdictions have adopted a more expansive definition of trafficking, which includes activities such as “purchasing, benefitting or profiting.”<sup>17</sup>

Although specific elements of trafficking statutes that vary from state to state, the NCSL recognizes that many are consistent. They note that most states require prosecutors to prove traffickers compelled their victims into engaging in labor or sexual servitude.<sup>18</sup> They further note that the majority of laws include elements of “force, fraud and coercion,” but note that definitions are subject to significant variation between states.<sup>19</sup> As an example, they note that some states use a definition that focuses primarily on the use of physical force, while



other states have adopted a broader definition, which includes psychological control, legal harassment, financial threats, and drug addiction.<sup>20</sup>

## **Business Liability**

The NCSL notes that some states have created measures to penalize businesses that have been used in committing human trafficking.<sup>21</sup> Accompanying laws specify the procedures to follow in dissolving an offending business entity, in addition to imposing fines.<sup>22</sup> States that specifically penalize business entities include Alabama, Massachusetts, South Carolina, Hawaii, Minnesota, and Vermont.<sup>23</sup>

## **Enhanced Penalties Addressing Demand**

One of the persistent challenges surrounding the fight against human trafficking is addressing demand. Many jurisdictions impose significantly different penalties on traffickers, versus commercial sex consumers. This discrepancy exists despite the fact that demand drives trafficking activity.

The NCSL notes that some states have attempted to level the playing field, imposing the same penalties on offenders who purchase sex that apply to traffickers—usually at the felony level.<sup>24</sup> Other states, however, punish solicitation or buying sex as misdemeanors.<sup>25</sup> The NCSL notes that a third group of states have attempted to find a middle ground, creating a crime consisting of a more serious version of solicitation, or a less serious type of human trafficking.<sup>26</sup>

Specifically, the NCSL notes that Washington classifies individuals who purchase a sexually explicit act as a felony level human trafficker.<sup>27</sup> South Dakota classifies hiring a person for sexual activity as a misdemeanor, unless the perpetrator should have known he or she was hiring a human trafficking victim—in which case the crime is classified as a felony.

### **TOOL BOX IDEAS**

- **Prosecutors should be aware of the differences between human trafficking laws in their state, and how they differ from federal laws.**
- **First responders and investigating officers should be familiar with the elements of human trafficking in their jurisdiction, as well as the elements of related crimes, such as pimping and pandering, false imprisonment, criminal threats, etc.**
- **Prosecutors and law enforcement should keep up with changes in the law of human trafficking, both statutory and case law, in order to ensure all steps in the investigation and prosecution of such cases are up to date.**

## FEDERAL HUMAN TRAFFICKING LAWS

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Human trafficking is governed by a wide range of federal laws, in addition to state laws. If appropriate to prosecute federally, the Federal Bureau of Investigations or the United States Attorney's Office should be contacted.

The United States passed the Trafficking Victims Protection Act, a subsection of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2, 114 Stat. 1464, 1466 (2000), amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4, 117 Stat. 2875, 2877 (2003), and the Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005).

Codifications appear at 18 U.S.C. §§ 1589-95 (forced labor, trafficking, sex trafficking of children, document fraud/destruction/misconduct connected to trafficking, mandatory restitution, benefitting financially from trafficking), in Chapter 77 with the older slavery and involuntary servitude crimes, and also in 22 U.S.C. §§ 7101-7110 (making findings and committing resources to combat human trafficking).

Title 18, Chapter 77, contains a number of different criminal statutes prohibiting various forms of compelled or coerced labor, services, or commercial sex. The statutes passed in the post-civil war era are sometimes referred to as Involuntary Servitude and Slavery crimes. The remaining statutes were passed as part of the Trafficking Victims Protection Act (TVPA) of 2000.

### **A. Involuntary servitude and slavery statutes**

#### **1. 18 U.S.C. § 1581 – Peonage**

The statute provides:

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

#### **2. 18 U.S.C. § 1582 - Vessels for Slave Trade**

The statute provides:

Whoever, whether as master, factor, or owner, builds, fits out, loads, or otherwise prepares or sends away any vessel, in any port of place with the United States, or causes such vessel, to sail from any such port or place, for the purpose of procuring any person from any foreign kingdom or country to be transported and help, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined under this title or imprisoned not more than seven years, or both.

Very few cases have been brought under this statute in the last century.

### **3. 18 U.S.C. § 1583 – Enticement into Slavery**

The statute provides:

(a) Whoever--

(1) kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave;

(2) entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he or she may be made or held as a slave, or sent out of the country to be so made or held; or

(3) obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Whoever violates this section shall be fined under this title, imprisoned for any term of years or for life, or both if—

(1) the violation results in the death of the victim; or

(2) the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, an attempt to commit aggravated sexual abuse, or an attempt to kill.

### **4. 18 U.S.C. § 1584 – Sale into involuntary Servitude**

The statute provides:

(a) Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a).

### **5. Other Statutes**

There are a few other statutes that criminalize various types of conduct in the slave trade including (1) being a crew member of a slave vessel [18 U.S.C. §1585]; (2) volunteering to serve on a slave vessel [18 U.S.C. §1586]; (3) possessing slaves aboard a vessel [18 U.S.C. §1587]; and (4) transportation of slaves from or within the United States. [18 U.S.C. §1588]. Needless to say, these statutes are rarely used.

### **B. Trafficking Victims Protection Act statutes**

The main provisions of the Trafficking Victims Protection Act (TVPA) are the forced labor statute, 18 U.S.C. § 1589, and the sex trafficking statute, 18 U.S.C. § 1591. Both of these statutes criminalize broader forms of coercion than those prohibited under the older, involuntary servitude and slavery statutes and include threats of nonphysical harm as well as threats of harm to third persons.

## 1. 18 U.S.C. §1589 – Forced Labor

The statute provides:

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means--

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "serious harm" means 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.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

In sum, section 1589 prohibits the obtaining of labor or services by any of three means:

- by threats of serious harm to or physical restraint of any person;
- by means of a scheme, plan, or pattern intended to cause the person to believe that they or another would suffer serious harm or physical restraint if they did not perform such services; or,
- by means of the abuse or threatened abuse of law or legal process.

## 2. 18 U.S.C. §1591 – Sex Trafficking of children or by force, fraud or coercion

The statute provides:

(a) Whoever knowingly--

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is--

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, patronized, or solicited, the Government need not prove that the defendant knew, or was in reckless disregard the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means--

(A) threats of serious harm to or physical restraint against any person;

(B) 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; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "serious harm" means 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 commercial sexual activity in order to avoid incurring that harm.

(5) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

### **1. Other Statutes under the TVPA**

The TVPA contains additional criminal provisions including, 18 U.S.C. § 1592 (2000), which prohibits the withholding of identification documents in connection with a trafficking offense, 18 U.S.C. § 1590, which prohibits trafficking a person into servitude, 18 U.S.C. §1593A, which makes benefiting financially or by receiving anything of value related to a venture engaged in a violation of trafficking a criminal offense, and 18 U.S.C. § 1594, which makes an attempted violation of Chapter 77 punishable to the same extent as a completed violation. Section 1594 also criminalizes conspiracies of certain trafficking activity. This latter provision also provides for mandatory restitution for any trafficking survivor.

#### **TOOL BOX IDEAS**

- **Prosecutors should be aware of the differences between state and federal law in human trafficking cases.**
- **If a crime can be prosecuted both statewide and federally, prosecutors should work with their federal partners to determine which option would result in a greater punishment for the defendant.**
- **Train first responders and investigating officers in human trafficking cases to recognize elements of state versus federal law violations, in order to document all relevant evidence necessary to statin a prosecution in either venue.**

## IDENTIFYING HUMAN TRAFFICKING VICTIMS

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Law enforcement and prosecutors are unable to generate evidence against traffickers to hold them accountable without an identifiable victim. Unfortunately, the greatest obstacle to rescuing victims of human trafficking is identifying them, according to a recent study by The Vera Institute of Justice.<sup>28</sup> The problem is that young women who are bought and sold in the sex trade often do not self-identify as victims. They have been so traumatized, they want to believe they are making a willing choice.

The problem with invisible victims walking among us, is that many people believe they do not “have a human trafficking problem” in their city. Unfortunately, that belief is not true. Trafficking activity can occur in any type of neighborhood and in any zip code. From rural areas to the busiest urban metropolis, where there is a market, there will be trafficking activity.

### **Trafficking Victims Hiding in Plain Sight**

Human trafficking victims are missed because people are misled as to what they look like. While accurate in some tragic instances, for the most part, media images of young women bound together with chains, gagged, confined in cages or branded with bar codes are not an accurate portrayal of human trafficking.<sup>29</sup>

Victims are bound by invisible chains of emotion, coercion, love, or loyalty—bonds which are often stronger than fear. These invisible, yet often much stronger forms of restraint, are established through manipulative relationship building with potential victims. Metaphorically, traffickers get farther with honey than vinegar when it comes to seducing victims and securing love and loyalty.

Accordingly, some relationships between human traffickers and their victims masquerade as consensual romantic relationships. These relationships are out in the open, paraded around town right in front of citizens who fail to recognize the signs of deception, manipulation, and coercion that distinguish them from healthy ones.

### **Victim Myths Fuel Misidentification**

Many community members fail to perceive signs of trafficking activity, and even some members of the law enforcement community, if they are not trained to identify victims of human trafficking, may view victims as illegal immigrants.<sup>30</sup>

Even more basic is the reality that neither community members nor law enforcement can focus on the identification of a crime they do not understand.<sup>31</sup> Prioritization of law enforcement efforts starts with the community, because authorities are not inclined to focus on criminal activity that has not been identified.<sup>32</sup> As one prosecutor notes, stereotypical views of human trafficking as sex slaves shipped from overseas at gunpoint results in a failure to identify other cases that do not fit the stereotype.<sup>33</sup>

Myths about human trafficking have contributed to the difficulty identifying trafficking victims.<sup>34</sup> Law enforcement professionals will be unable to identify victims if they hold preconceived notions regarding what to look for.

Research demonstrates that acceptance of human trafficking myths contributes to perception of victim responsibility.<sup>35</sup> Researchers note that the media portrays sex trafficking victims as children who are young, vulnerable, and innocent, while showcasing promiscuous, hardened youth as willful sex workers.<sup>36</sup>

Sometimes investigation is hampered by individual feelings about reported trafficking. For example, one detective describes reluctance among his colleagues to investigate cases involving male victims.<sup>37</sup>

## **Identifying Victims Through Health Care Institution Protocols**

When it comes to identifying human trafficking victims, health care providers are often uniquely situated to recognize warning signs and symptoms. Consequently, there has been an increased emphasis on providing training to educate and inform health care workers about what to look for, and what to do with the information they perceive.

Research indicates that in the health care field, human trafficking victims may be revealed through patient histories. Health care institution protocols have identified common bases to identify human trafficking victims. According to a 2016 study by Hanni Stoklosa et al., “A Review of U.S. Health Care Institution Protocols for the Identification and Treatment of Victims of Human Trafficking,”<sup>38</sup> the indicator of human trafficking that was found to be most commonly listed was a patient history of physical or sexual abuse. This indicator was listed in 73% of the protocols analyzed.

Stoklosa et al. note that health care providers are important partners in human trafficking detection, because even victims who are physically or psychologically controlled by traffickers visit emergency rooms or other facilities to address urgent health issues.

## **Labor Trafficking Victims Are Often Overlooked**

Labor trafficking victims are often harder to identify than sex trafficking victims. Labor trafficking victims fly under the radar because authorities are focused on detecting the sex trafficking of minors.<sup>39</sup> Identifying labor trafficking cases is complicated by victim unfamiliarity with the elements of the crime, resulting in an inability to accurately classify their employment situation.<sup>40</sup> One detective recognized the challenge of separating exploitive labor practices from trafficking, noting that involuntary servitude does not require a victim to be chained in a basement.<sup>41</sup>

Another problem involves public lack of sympathy for labor trafficking victims, who are often undocumented adults, due to negative views on illegal immigration.<sup>42</sup>

The identification of labor trafficking victims also may be overshadowed by what one researcher describes as the “Celebrityization of Human Trafficking,” where celebrity activists highlight the prevention of child sex trafficking, which can divert money and law enforcement effort away from other types of trafficking victims.<sup>43</sup>

In reality, both types of victims need to be understood, identified, and ultimately rescued through good investigation, and sufficient allocation of resources.

## **Tips to Identifying Victims**

Polaris provides many tips to identifying human trafficking victims—many of which are relevant to ferreting out both sex and labor trafficking cases.

When it comes to working conditions, some of the factors they list include being paid very little or not at all, being paid only through tips, working excessive hours or unusual hours, being denied breaks, or being subjected to unusual work restrictions.<sup>44</sup> Another red flag is high security precautions in the workplace (or residence) such as boarded up windows, security cameras, barbed wire, or other methods of obstructing an outsider’s view of the victim.



With both labor and sex trafficking victims, Polaris lists behavioral indicators as including presenting as anxious, tense, nervous, or fearful—particularly when the subject of law enforcement comes up. Avoiding eye contact is another potential indicator, although this type of behavior might have cultural underpinnings as well.

Regarding physical health, Polaris lists observable red flags as including a malnourished appearance, or displaying signs of physical abuse, confinement, or restraint.

Regarding the perception of autonomy, or more frequently, the lack thereof, Polaris lists warning signs as including having few or no personal possessions, lacking control over finances or identification, and lacking the ability to express themselves except as through a 3<sup>rd</sup> person who appears to control their conversations.<sup>45</sup>

The Department of Homeland Security presents a list of potential indicators of human trafficking,<sup>46</sup> which can be used as a list of questions to ask potential victims. They include the following list, reproduced here:

Behavior or Physical State:

- Does the victim act fearful, anxious, depressed, submissive, tense, or nervous/paranoid?
- Does the victim defer to another person to speak for him or her?
- Does the victim show signs of physical and/or sexual abuse, physical restraint, confinement, or torture?
- Has the victim been harmed or deprived of food, water, sleep, medical care, or other life necessities?
- Does the victim have few or no personal possessions?

Social Behavior:

- Can the victim freely contact friends or family?
- Is the victim allowed to socialize or attend religious services?
- Does the victim have freedom of movement?
- Has the victim or family been threatened with harm if the victim attempts to escape?

Work Conditions and Immigration Status:

- Does the victim work excessively long and/or unusual hours?
- Is the victim a juvenile engaged in commercial sex?
- Was the victim recruited for one purpose and forced to engage in some other job?
- Is the victim's salary being garnished to pay off a smuggling fee?

(Paying off a smuggling fee alone is not considered trafficking.)

- Has the victim been forced to perform sexual acts?
- Has the victim been threatened with deportation or law

enforcement action? Is the victim in possession of identification and travel documents; if not, who has control of the documents?

### **Specific Questions of Trafficking Victims**

The Vera Institute of Justice suggests the use of a questionnaire to interview suspected sex and labor trafficking victims.<sup>47</sup> The tool is a result of a two-year study, Improving Trafficking Victim Identification, which resulted in the creation of a field tested and validated screening tool, the first of its kind, that can reliably identify trafficking victims, adults and minors, both citizens and foreign born, who are victims of sex and labor trafficking. The tool is a statistically validated 30-topic questionnaire geared to obtain evidence of trafficking. It is also available in a shorter 16-question version, containing the following questions:

#### Labor Trafficking

- Have you ever worked without getting the payment you thought you would get?
- Have you ever worked in a place where the work was different from what you were promised or told it would be?
- Did anyone at your workplace make you feel scared or unsafe?
- Did anyone at your workplace ever harm or threaten to harm you?
- Have you ever felt you could not leave the place where you worked or lived?

#### Sex Trafficking

- Did anyone you worked for or lived with trick or force you into doing anything you did not want to do?
- Did anyone ever pressure you to touch another person or have any unwanted physical or sexual contact with another person?
- Did you ever have sex for things of value (for example money, housing, food, gifts, or favors)?

The Vera Institute cautions, however, that the use of the tool is only a first step. Considering the more expansive goal of building trust between screeners and victims, they observe that knowing the right questions to ask is only a portion of the analysis. They advise that screeners should be sensitive to victim trauma and fear, before attempting to elicit facts about trafficking or assess a victim’s long-term needs.

### **TOOL BOX IDEAS**

- **Train first responders to recognize both obvious and subtle signs of trauma, both physical and emotional, that may indicate involuntary servitude—whether for sex or labor.**
- **Ensure first responders are proficient in recognizing behavioral indicators consistent with trafficking victims.**
- **Train first responders to document details of the conditions in which victims were found (locked in a room, lacking personal belongings).**
- **Educate first responders and follow up detectives about the types of questions that are most likely to reveal evidence of trafficking.**

## VICTIM RECRUITMENT

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Many trafficking victims are not abducted, they are recruited. They have been seduced into their circumstances by traffickers posing as friends, mentors, or adoring suitors. Only after victims have become emotionally involved in the relationship will the sinister nature of the true relationship come to light.

The most common scenario for trapping girls in the sex trade is a trafficker posing as an older boyfriend. In the beginning, Romeo-like tactics are used to lure the victim into what is portrayed as a romantic relationship. The “boyfriend,” who is really a pimp, doles out compliments, gifts and attention that the teen craves. Soon he asks her to sell her body for sex, “just this one time.” It is never just one time. But, now that she’s done it once, the victim can be demeaned and shamed into continuing to sell her body for sex. The trafficker brainwashes the young woman into believing he is the only person who will accept her after what she has done.

There’s no way out. She’s physically forced into everyday prostitution through starvation, coercion, threats, forced drugging and eventually addiction. Next comes branding – a form of control and ownership that takes on many forms such as the trafficker’s prison number, his name or his moniker. The tattoo often includes references to money. This is a game of psychological warfare that preys on the challenges of being an immature teenager.

Other recruitment methods include using women already involved in sex work who want to maintain their relationship with their pimp. They often recruit impressionable girls from school, inviting them to parties and enticing them with drugs and material items.

Those susceptible to being recruited include:

- Children who have witnessed domestic violence
- Children who have been victims of sexual or physical abuse
- Children with mental or learning disabilities
- Children with addiction problems
- Children with school attendance problems
- Children with gang ties
- Runaways

When it comes to recruitment techniques, research corroborates experience. Lisa Goldblatt Grace in “Understanding the Commercial Sexual Exploitation of Children” (2009) notes that while it is true that in some cases, pimps use forceful methods of getting women to sell their bodies for money, the most frequently used strategy is seduction.<sup>48</sup> Similar to the kinds of grooming techniques that are used by pedophiles, using professed love, affection, and attention in recruiting victims is an easier method of manipulation than using force or violence because of the emotional bonds formed between victims and offenders.<sup>49</sup> In other words, it is easier to gain the compliance of victims using honey instead of vinegar. The victims’ emotional attachment to the men they believe are their “boyfriends” allows the men to talk them into selling their bodies for money.<sup>50</sup>

The recruitment-seduction process affects more than the victim’s judgment in decision-making. It affects her sense of morality—or more accurately, her increasing lack thereof. M. Alexis Kennedy et al. in “Routes of Recruitment” (2007) note that the manipulation of an exploiter who professes false love and attention may adversely affect the victim’s sense of values and principles—perverting her sense of decency and morality—leading to her decision to prostitute for the offender.<sup>51</sup>

## **Recruitment Red Flags**

Smooth talking traffickers seduce young girls every day. Professing love and promising marriage, they use accelerated courtship strategies to win over their young victims, who are often reluctant at first, with attention, affection, and affirmation.

There are many versions of this fact pattern, where the relational dynamics that facilitate the progression from boyfriend to pimp are strikingly similar to those that set up a betrayal of trust in other situations. Criminally-minded individuals who hunt for victims to recruit into a lifestyle of vice are able to seduce young people looking for love and adventure into agreeing to participate in exploitive behavior through appealing to their sense of self-worth.

Many of their strategies, however, leave clues.

Consider the celebrity factor. There is nothing quite like the positive attention a young girl receives from her girlfriends when her “older” boyfriend rolls up in his flashy car to pick her up after school. To a thirteen year old, her mature paramour is a status symbol—a sign of success. And when he buys her a piece of jewelry to show off, her social worth rises even more.

Evidence in this scenario will include the observations of classmates, clothes, jewelry, and designer handbags gifted by the trafficker, text messages professing love and affection, and the possession of other objects the parents did not buy for their daughter—like a cell phone.

Although these unhealthy relationships are developed below the radar, there is usually a trail of evidence to work with, if prosecutors and law enforcement know where to look.

## **Agents of Traffickers**

A 40-year-old stranger is usually unable to persuade a thirteen-year-old girl to get into his car, no matter what he says. Not to be dissuaded, these men subcontract their malevolent techniques of seduction to same-aged girls who act as agents of the trafficker.

These scouts look for same-age peers to befriend, with an eye toward recruiting them into the trafficking lifestyle. Research corroborates the fact that some girls may enter a life of selling sex for money through friendship with other women who are selling their bodies for sex.<sup>52</sup>

Young same-aged recruiters bond with the new victims through areas of similarity. A relationship that starts with similarity in age, movie preference, music, and fashion, a recruiter slowly introduced the new victim into a lifestyle of deviance. First modeling, then dancing, then acting as an “escort,” slowly progressing to selling sex for money.

## **California Example Incorporating Recruitment Considerations**

As of 2012, California law allows triers of fact to consider some of the unique social and psychological aspects of trafficking recruitment. Proposition 35 expanded the factors one can consider in determining whether there was a “deprivation or violation of the personal liberty of another.” Penal Code section 236.1 paragraph (i) currently states that factors to consider in making this determination include “[t]he total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim.”

These factors are often relevant because traffickers are often much older than their teenage or sometimes pre-teen victims. In addition, as we see with child molesters, traffickers sometimes take advantage of victims who are vulnerable by virtue of specific disabilities, both mental and physical.

Some of the same factors are also permitted to be considered under Section 236.1 paragraph (d), which now provides that regarding the determination of whether or not a minor was “caused, induced, or persuaded to engage in a commercial sex act,” there shall be an analysis of “the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim.”

Allowing the trier of fact to take into consideration a victim’s “relation to the trafficker” will reveal the reality that a significant amount of offenders lure victims through professed love and devotion. In addition, the added language in paragraphs (d) and (i) which now includes a consideration of the relationship between the victim and the trafficker or the “agents of the trafficker”—which is an important addition to the code given the increasing frequency with which some pimps use young women who are already established working for him as prostitutes to recruit other girls.

### **TOOL BOX IDEAS**

- **Train first responders about some of the red flags displayed by agents of traffickers, who are often attempting to masquerade as same-aged peers of the victim.**
- **Enhance the ability of first responders to detect behavioral patterns displayed by offenders or their agents consistent with attempts to lure victims into an adult lifestyle of sexual activity.**
- **Train interviewers to elicit relevant details of the circumstances under which the victim was initially contacted by the perpetrator or agent, and what type of relationship was originally cultivated, in order to reveal motivation.**

## HUMAN TRAFFICKING MYTHS AND MISCONCEPTIONS

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The epidemic of human trafficking has received an increased amount of attention over the last several years. Nonetheless, myths and misconceptions persist. These relate to the relationship between a trafficking victim and the trafficker, the methods by which victims are recruited, and even suggested strategies for reducing demand.

Debunking the myths is an important part of prosecuting traffickers, and should be incorporated into all aspects of a case including investigation, victim support, voir dire, expert testimony in trial, and sentencing. It is impossible to effectively handle a human trafficking case without an accurate understanding of the human dynamics involved.

In order to counter the myths, here are some of the more common truths through which prosecutors can educate judges, juries, law enforcement and partner agencies, and the community at large.

### **Trafficking Victims Are Often Lured, Not “Taken”**

Powerful films like the Liam Neeson *Taken* series depict trafficking victims abducted by force in other countries. Although that certainly happens every day around the world, there are many other methods by which victims end up becoming trafficked.

Traffickers are often better to control victims with whom they have cultivated a relationship of love and loyalty, rather than fear. Establishing an emotional bond through false promises of love, marriage, money, and a better life, many traffickers effectively exploit areas of victim vulnerability, building relationships of trust, and giving them psychological control. Some of these relationships take years to develop, and are difficult to dissolve, even when law enforcement and prosecutors become involved.

### **Human Trafficking is Not Smuggling**

Human trafficking and smuggling are very different crimes. Trafficking involves criminal exploitation against a victim with no movement requirement, while smuggling is a crime of transportation committed against the integrity of national borders, without a requirement of exploitation.<sup>53</sup> Traffickers frequently exploit without transport, and smugglers transport illegal migrants across the border without exploitation.<sup>54</sup>

The fact that the crime of trafficking does not require smuggling or any movement whatsoever, traffickers can target anyone, from undocumented migrants, to lawful permanent residents, to United States citizens.<sup>55</sup> However, because traffickers target vulnerable individuals, immigration status presents an area of vulnerability that traffickers frequently seek to exploit.<sup>56</sup>

### **Human Trafficking is Not Prostitution**

Human trafficking victims are not prostitutes. Human trafficking involves exploitation and deprivation of liberty. In addition, many victims are trafficked for coerced labor, forced to work in areas of agriculture, domestic servitude, as well as a variety of other occupations.<sup>57</sup> Commercial sex transactions, on the other hand, some of which may include interstate travel for purposes of prostitution, occur in violation of other federal laws.<sup>58</sup> Although frequently termed “trafficking,” such conduct does not rise to the level of a federal human trafficking crime without the use of force, fraud, coercion, or commercial sexual exploitation when the victim is a minor.<sup>59</sup>

## **Legalizing Prostitution Does Not Decrease Human Trafficking**

Some speculate that legalization reduces exploitation. Research exploring economic theory debunks that theory. What is known as the scale effect indicates that expansion of prostitution increases the prevalence of human trafficking.<sup>60</sup> The substitution effect holds that demand for trafficked women is reduced when legal prostitutes are available as substitutes.<sup>61</sup> An examination of a cross section of 150 countries demonstrated the domination of the scale effect over the substitution effect.<sup>62</sup> In other words, legal prostitution appears to increase the inflow of trafficking victims.<sup>63</sup>

### **TOOL BOX IDEAS**

- **Consider using the investigating officer to explain the process of victim recruitment to a judge or jury, to dispel the notion that victims must be forcibly abducted.**
- **Enlist the services of a psychologist or other expert witness to describe the science behind the seduction—explaining how traffickers are able to lure their victims with promises, not punishment.**
- **Train first responders to be aware of the relational dynamics between traffickers and victims that might otherwise be mistaken for a consensual relationship.**

## GANG INVOLVEMENT IN HUMAN TRAFFICKING

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One of the trends in human trafficking is the increasing involvement of gangs. In 2010, the National Institute of Justice funded the Urban Institute's Justice Policy Center for the purpose of determining the structure and size of what they termed the “underground commercial sex economy” in eight major US cities.<sup>64</sup> Regarding their results, they found that in five of the sites they studied, the involvement of gangs in human trafficking appeared to be increasing.

Applying the findings to federal, state, and local law enforcement, the researchers made numerous recommendations, including the following suggestions pertaining to detecting gang involvement in human trafficking:

- Investigative techniques to uncover organized crime, drug trafficking and gangs should be adapted to better uncover organized crime presence within all forms of the underground commercial sex economy.
- Cross-training of narcotics, gang and prostitution/sex trafficking investigators should be developed and promoted

The FBI similarly reports that gang involvement in human trafficking is on the rise as a source of revenue.<sup>65</sup> Some gang members reportedly combine drug and human trafficking operations, using victims as sex workers, and to courier drugs.

There are local examples of gang involvement in human trafficking as well. The National Institute of Justice funded a \$500,000 study called “The Nature and Extent of Gang Involvement in Sex Trafficking in San Diego County,” (2016) which was released this year after three years of research. Doctors Ami Carpenter of the University of San Diego and Jamie Gates of Point Loma Nazarene University led the study.<sup>66</sup> It utilized records from San Diego Police, San Diego County Sheriff, eight victim service providers and reports from 140 victims as well as focus groups in 20 area high schools.

The study used data from interviews with almost 450 victims. The researchers interviewed 156 criminally involved persons, 54 of whom were traffickers.

Key San Diego County results included:

- There are about 3,417 to 8,108 trafficking victims per year
- The average age of entry is 16
- About 80 percent of victims are from the United States
- 100 percent of the schools that participated in the study say their high school students were being recruited and 90 percent had documented cases of their students as victims
- The majority of trafficked individuals in this study lived in ten zip codes in the county
- Homeless and foster youth are at the greatest risk for recruitment
- About 85 percent of trafficking is gang-involved

The study also firmly confirmed that sex trafficking is the second-largest criminal industry in San Diego County, consistent with international and U.S. studies. The scale of the illicit sex economy is \$810 million a year with each trafficker controlling about four victims and making an average of \$670,625 per year.



Gang involvement in human trafficking has been on the radar for a number of years in jurisdictions around the country, including gangs such as MS-13.<sup>67</sup> Some of the reasons gangs have treaded into sex trafficking include the fact that it is considered easy money with low associated costs, and it is considered to be less risky than trafficking narcotics or extorting business owners.<sup>68</sup>

### **TOOL BOX IDEAS**

- **Consider out the outset of a case, whether the facts lend themselves to a closer analysis of gang activity of the perpetrators or witnesses have gang involvement—and research each suspect for potential affiliation.**
- **Check social media activity quickly before gang-related posts are removed.**
- **Enlist the services of a gang detective or similar expert witness to identify signs or symbols associated with different gangs.**
- **Educate first responders about indicia of gang affiliation in terms of clothing, music, signs, or language, in order to preserve relevant evidence of gang involvement.**

## WORKING WITH HUMAN TRAFFICKING VICTIMS

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The relational dynamics between victims and traffickers present challenging issues for prosecutors and law enforcement seeking to gain their cooperation. Many of them do not present as the typical crime “victim.” In some ways, they have more in common with domestic violence victims than victims of stranger rape or kidnapping, due to the strong emotional bonds they have formed with the traffickers. The failure of many of them to acknowledge being victimized impacts their willingness to work with law enforcement, address issues of safety, and recognize the value of counseling.

Below the surface, human trafficking victims present a unique set of physical and emotional issues resulting from the trauma they have suffered during their time with their traffickers. Experiencing a confusing range of emotions stemming from fear, to love and loyalty, they often minimize, deny, or recant their statements. Here too, they are similar to domestic violence victims with respect to the trauma-bond with their abuser, the trafficker, and their unwillingness to provide incriminating evidence.

Some victims are ashamed to admit they have been engaging in sex work, even though it was under duress. They fear loss of friends, family, or community reputation, and also fear retaliation. They also fear future repercussions of admitting to engaging in sex work, including the loss of potential educational or professional opportunities in the future.

All of these issues require investigators to adopt an approach to questioning and interviewing trafficking victims that is distinct from the techniques used in other types of cases.

### **Types of Human Trafficking Victims**

Regarding types of victims, research shows that trafficking has a disproportionate impact on women and children.<sup>69</sup> Trafficking is intensified by factors that cause people to move or seek work far from home, such as societal conflict, socio-economic problems, and even natural disasters.<sup>70</sup> Globalization increases the prevalence of human trafficking as people seek work internationally, with desperation often rendering them vulnerable to deception.<sup>71</sup>

Estimates of numbers of victims have been modified downwards, indicating original over-estimation, reduction in victimization due to higher penalties, or an increase in the number of victims who remain unidentified.<sup>72</sup>

Some research indicates that fewer victims come forward due to the TVPA’s focus to use them as witnesses in law enforcement investigations,<sup>73</sup> while others are unaware of the existence of human trafficking laws that acknowledge their status as victims.<sup>74</sup> Others fail to come forward out of fear of retaliation.<sup>75</sup>

Some victims deny their victimization out of shame and embarrassment, not wanting to disclose things they did under force or duress.<sup>76</sup> Another motivation to avoid reporting victimization includes the reluctance to return to a home or residential housing facility, which may motivate runaway minors to avoid contact with law enforcement.<sup>77</sup>

### **Victim Reluctance to Cooperate**

The United States Department of Justice National Strategy to Combat Human Trafficking recognizes several common reasons trafficking victims do not want to cooperate. These include fears over their own criminal behavior, including status as undocumented, fear of the trafficker, and in the case of victims from abroad, knowledge of the corrupt laws or violent law enforcement practices in their home country.<sup>78</sup>

Exploring these concerns early on in the investigation will enable prosecutors to address areas of victim reluctance, and provide relevant information and resources, designed to enhance victim cooperation.

## TOOL BOX IDEAS

- Ensure adequate prosecutor human trafficking training before meeting with the victim.
- Enlist other human trafficking survivors to join the victim advocacy team to provide victim support.
- Educate first responders about victim trauma responses that can masquerade as defensiveness or unwillingness to cooperate.

## CULTURAL COMPETENCE

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Cultural issues impact human trafficking in many different ways. Victims come from many different cultures, bringing different experiences and cultural practices. Even if they grew up in the United States, many have been sheltered or literally confined for most of their lives, immersed in a cultural lifestyle that is very different from our own. Many do not speak English.

When interacting with this population, prosecutors and members of the prosecution team must be culturally competent in order to interact with victims in a meaningful and respectful way, which will both facilitate a smooth working relationship, and enhance the ability to elicit the maximum amount of information.

The United States Department of Health and Human Services provides some guidance for administering culturally appropriate case management and related services.<sup>79</sup> In a piece geared towards incorporating cultural factors to ensure client success, Heather J. Clawson and Nicole Dutch suggest that equipping case managers with the proper education regarding relevant culture and religious beliefs of potential clients can improve the client-provider relationship, facilitating a positive experience.<sup>80</sup>

Clawson and Dutch note this preparation can also help case managers determine victim needs, including knowledge of how to broach subjects that may be sensitive or even taboo in certain cultures.<sup>81</sup> Knowledge of culture and background can also assist case managers in identifying services that will be appropriate for different victims. They note that the determination of whether a program or service is culturally appropriate requires actually meeting with service providers, and possibly offering them training in working with human trafficking victims.<sup>82</sup>

### **LGBTQ Victims**

Some populations are particularly vulnerable to becoming victims of human trafficking. These populations include individuals who are lesbian, gay, bisexual, transgender, queer, or questioning (LGBTQ).

In addition to being sensitive to the special needs and fears of being rejected experienced by some members of this population, the Office of Justice Programs Human Trafficking Task Force lists some important facts to consider when working with this victim group.<sup>83</sup>

One is that victims may not initially appear to be a member or self-identify as a member of the LGBTQ community. Some may feel they were targeted and victimized as punishment for their sexual orientation. They may also be concerned that the trafficking impacted their sexual orientation—which can lead to community withdrawal and self-loathing.

The task force emphasizes the important of victim support: “Task force members should be committed to providing the best possible services to all victims and survivors regardless of gender identity and sexual orientation. It is important to have a statement that explicitly states that all survivors have access to services, including lesbian, gay, bisexual, transgender, and queer people.”

### **LGBTQ Youth as Victims**

Polaris Project recognizes that youth who are LGBTQ, particularly when there is a lack of adequate community support, constitute a high-risk group for sex trafficking.<sup>84</sup> They note that many LGBTQ youth still face the challenges of discrimination and abuse by community members, peers, and even family members.

They note that LGBTQ youth face discrimination, violence, and economic uncertainty at a higher rate than non-LGBTQ youth. With less resources, employment opportunities, and sources of social support, they explain that LGBTQ youth who are away from home seek ways to meet their basic needs—a vulnerability traffickers seek to exploit in order to compel youth into engaging in commercial sex.

They explain that in order to build dependency and rapport, traffickers may offer “a sense of family, protection, or love to build a sense of relationship and loyalty. This bond may complicate the youth’s understanding of their situation and prevent them from speaking out against their trafficker.”

Polaris Project recognizes it is especially difficult for trafficking victims to reach out for assistance when they are afraid they will be disbelieved or mistreated due to their sexual orientation or gender identity. Even if they are aware of anti-trafficking services, they may be apprehensive that service providers will not be welcoming to LGBTQ individuals.

Regarding access to specific services, the Urban Institute, in a piece outlining services available for LGBTQ youth who are forced to trade sex for survival, explains that from a service provider perspective, working with LGBTQ youth who are human trafficking victims triggers access to specific services.<sup>85</sup> These include legal services as well as other means of funding and resources that some organizations can access, such as Safe Harbor resources, designated to provide services specifically for eligible individuals who are victims of human trafficking.

### **TOOL BOX IDEAS**

- **Ensure first responders are culturally proficient when possible, to improve communication and connection with victims.**
- **Utilize expert witnesses to explain how cultural factors influence victim willingness to report the crime.**
- **Enlist law enforcement and other experts to explain how cultural issues impact victim willingness to self-identify as such.**

## UNDERAGE VICTIMS

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Human trafficking victims that are under the age of 18 present a unique set of issues. This population differs from adults in many different respects, both practical and legal. From maturity, to educational and occupational stage in life, minor victims require an entirely different skillset than adults.

The United States Department of Justice (USDOJ) National Strategy to Combat Human Trafficking recognizes that traffickers target underage victims because they view them as both easier to control, and more profitable.<sup>86</sup> Consequently, they troll for young victims in places where you might expect to find them, including schools, bus stops, group homes, and on the street in the case of runaways. They are also recruited online through social media.

The USDOJ National Strategy to Combat Human Trafficking also recognizes the tactics used by traffickers to recruit children. Similar to luring adult victims, they use emotional manipulation including promises of love, affection, and friendship. Targeting more basic human needs, they also offer food, clothing, and shelter.

The National Center for Missing and Exploited Children (NCMEC) notes that in addition to approaching children who are walking to and from school, waiting at bus stops, or present at shopping malls, most modern traffickers use social networking applications to recruit children online.<sup>87</sup>

Once recruited, the relational progression between trafficker and minor victim is similar to what we see with adult victims. Once a trafficker gains control over a child, the relationship evolves to incorporate the use of intimidation, violence, or psychological manipulation to maintain control of the child, now trapped in a life of sex trafficking.

### **Risk Factors for Underage Victims**

The NCMEC Child Trafficking Identification Resource lists a number of risk factors useful for identifying children at risk for being recruited into sex trafficking.<sup>88</sup> Traffickers often target children who are vulnerable in some areas, including:

- Children who are chronically missing or who frequently run away (especially 3+ missing incidents);
- Children who have experienced childhood sexual abuse, especially if the abuse was unreported or unaddressed, or resulted in the child being removed from the home;
- Children who have experienced prior sexual assault or rape;
- Children with significant substance abuse issues or who live with someone who has significant substance abuse issues; and
- Children who identify as LGBTQ and have been kicked out or who have been stigmatized by their family.

Red flags of child trafficking victims are different than for adults. Minors for one thing, given their limited mobility, both on and offline, might not be expected to be familiar with certain adult practices, language, and behavior. Prosecutors should talk to parents, guardians, and teachers about language used, and behavior exhibited by children, which expert witnesses could explain in trial, are unique to the world of sex trafficking.

The NCMEC lists a number of indicators of child sex trafficking victims.<sup>89</sup> Although they caution that no single indicator can accurately identify a child as a sex trafficking victim, the presence of multiple factors increases the likelihood of identifying victims, or preventing potential victims from being recruited.

Behavioral indicators in children include:

- Significant changes in behavior, including increased virtual behavior (e.g., online activity/profiles) or who associates with new groups of online friends/older friends;
- Avoiding answering questions or lets others speak for him or her;
- Appearing frightened, resistant, or belligerent to law enforcement;
- Lying about age and identity;
- Looking to others before answering questions;
- Declining the opportunity to ask for help or resisting offers to get out of the situation (child does not self-identify as a victim);
- Appearing coached when talking to law enforcement;
- Using prostitution-related terms such as "Daddy," "The Life," "The Game," and/or
- Preoccupied with "getting money" (e.g., displaying photos of cash).

The NCMEC also lists a number of physical indicators of child sex trafficking victims. These include:

- Child has no identification (or ID is held by another person);
- Multiple children are present with unrelated adult male(s) or female(s);
- Child has sexual paraphernalia (such as bulk condoms or lubrication);
- Child displays evidence of travel (child is living out of suitcases, at motels, or in a car);
- Child has a name or symbol tattooed, burned or branded onto his or her body, particularly when coupled with the child's reluctance to explain the tattoo or when the child's tattoo matches other children's tattoos;
- Child references traveling to other cities or states or is not from the current location; the child may also lack knowledge of his or her travel plans, destination, and/or his or her current location;
- Child has large amounts of cash or pre-paid credit cards;
- Child has hotel keys, hotel receipts or other items from hotel/motel; Presence of an overly controlling or abusive "boyfriend" or older female; Children recovered at hotels, street tracks, truck stops, or strip clubs;
- Child has multiple cell phones and/or electronic devices;
- Child has notebooks or slips of paper containing phone numbers, dollar amounts, names, or addresses;
- Child has items or an appearance that does not fit his or her current situation (e.g., a homeless or runaway child who has money, electronics, new clothes or shoes, and who has his or her hair or nails done);
- Child references online classified ads or escort websites (child-serving professionals are encouraged to research classified ads or escort websites as these sites change and are sometimes geographically specific);

- Child references traveling job opportunities (including modeling, singing and/or dancing in a music group or magazine sales crews); and/or
- Child has unaddressed medical issues or who goes to the ER or clinic alone, or with an unrelated female.

#### **TOOL BOX IDEAS**

- **Train first responders to recognize red flags signaling a trafficker-victim relationship between an adult and a minor—which might otherwise be mistaken for a familial association.**
- **Enhance the ability of law enforcement to recognize signs of adult behavior exhibited by minors, that might indicate involvement in trafficking activity.**
- **Equip interviewers with a checklist of possible types of evidence to be on the lookout for when speaking with potential victims, including taking note of their property and possessions.**



## VERTICAL PROSECUTION

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Prosecution of human trafficking cases presents unique issues that are best handled with a consistent prosecution team. From issuing through sentencing, a set group of prosecutors, investigators, and victim advocates provides stability and comfort to victims who are often understandably reluctant to cooperate, and often distrust law enforcement.

Providing stability through vertical prosecution builds victim confidence and trust—relational qualities that are lacking in most trafficker-victim relationships, which are characterized by uncertainty and fear. Trained prosecutors, detectives, and victim advocates who are familiar with trafficking relational dynamics are able to effectively work with this unique victim population, in order to facilitate case prosecution.

Unlike victims of other crimes who are often in favor of prosecution of the offender and willing to be involved, human trafficking victims are often reluctant to disclose the true nature of their relationship with the trafficker, much less the sex acts they were forced to perform. This is particularly true regarding disclosures to members of law enforcement and prosecutors, out of fear they will be prosecuted themselves, or deported if they are here illegally.

The physical and psychological damage that trafficking victims have endured make them distrustful and susceptible to being easily re-traumatized. This vulnerability is another reason that a consistent prosecution team is important, in order to provide support and assistance targeting the unique needs and issues of each trafficking victim individually. Specially trained law enforcement officers, prosecutors, and victim advocates have a better opportunity to build a meaningful relationship of trust with the victim during the pendency of the case.

Vertical case prosecution also helps victims regain self-confidence, which in turn can enhance their willingness to cooperate with prosecution. As a case moves forward, trafficking victims are able to express their feelings about what they have endured, often for the first time. Most victims will find it easier to open up when they are working with a consistent set of trained professionals. This team building also results in victims acquiring faith in the criminal justice system itself, which in turn facilitates case prosecution.

As a practical matter, in addition to disrupting the bond between prosecutor and victim, having the same prosecution team handle a case from beginning to end minimizes the delay and disruption which might accompany transferring a case to a new prosecutor who must get up to speed on the facts, and build a relationship with the victim from scratch.

There are some high-volume jurisdictions where vertical case handling is impossible. One team of prosecutors issue cases, others handle preliminary hearings, and different prosecutors take cases to trial. In jurisdictions following this model, there should be an effort to keep as many members of the prosecution team consistent as possible—such as the case detective and the victim advocates. At the very least, having several familiar faces remain consistent throughout the proceedings will provide some measure of consistency and predictability.

### TOOL BOX IDEAS

- Stay in regular contact with your victim and witnesses, in order to facilitate bonding and building rapport through consistency.
- Encourage survivors to contact you with any questions or concerns as the case progresses, to maintain victim trust.
- Brief survivors and witnesses after every court appearance or important meeting, to emphasize the collaborative nature of the prosecution, and the importance of their role in the process.

## THE PROSECUTOR-VICTIM RELATIONSHIP

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Prosecutors in human trafficking cases are faced with a unique opportunity to provide a sense of security and stability for human trafficking victims, who are often coming from lives of fear and unpredictability. Although working side by side with law enforcement professionals and victim advocates, prosecutors have a special role in the criminal justice process in terms of pursuing justice for victims. Although prosecutors must make clear they do not “represent” victims in the attorney-client sense, they do represent the interests of victims throughout the proceedings. This advocacy on behalf of trafficking victims is a great comfort to survivors, many of whom feel they have never had anyone “on their side.”

### **Interviewing the Victim**

The prosecutor, accompanied by an investigator and victim advocate if appropriate, should meet with the human trafficking victim as soon as possible to introduce the victim, who may still be recovering from acute trauma, depending on the circumstances, to the criminal justice process. Many trafficking victims come into the system paralyzed by fear of the unknown, concerned about whether they will be arrested, charged, or deported. An early meeting with the victim will give the prosecutor an opportunity to both explain the process and expand upon facts and circumstances raised in the initial law enforcement investigation.

In addition to fact gathering, interviewing the victim allows prosecutors to build rapport with the victim, which will facilitate a working relationship of trust throughout the case. Because trafficking victims are often distrustful of law enforcement, interviewing the victim early in the process allows prosecutors to humanize themselves, which can debunk stereotypes victims may have of law enforcement, and facilitate bonding.

### **Establishing a Relationship of Trust**

Interviewing trafficking victims along with an investigator is one of the best ways in which a prosecutor can establish a relationship of trust that will facilitate victim cooperation during case investigation and prosecution. Although there might not be immediately obvious points of commonality, during the interviewing process, prosecutors should emphasize common ground on which they can connect with victims. This requires prosecutors to learn all they can ahead of time about a victim’s background, including social, ethnic, cultural, and economic factors. Victims will be much more receptive to a prosecutor who has taken the time to learn about them individually, which transmits a sense of investment in the case, as well as concern for the victim as a person.

Throughout the interview, prosecutors should ask open-ended questions, engage in active listening, and above all else, considering the subject matter, ensure they do not come across as judgmental—either verbally or nonverbally. This means keeping a tight reign on the use of language, tone of voice, and emotional expressiveness. Maintaining composure during an interview where the victim is recounting behavior they view as shameful, humiliating, and painful to recount, will provide victims with a safe space to open up and describe both their relationship with their trafficker, as well as details of the sexual behavior performed under duress.

### **Victim Fear of Self-Incrimination**

One of the hallmarks of human trafficking cases is the fact that the victim has been forced to illegally perform sex work. In addition to being a basis for refusing to testify or being reluctant to cooperate with law enforcement, trafficking activity brings up a prosecutor’s obligations with respect to advising witnesses of rights against self-incrimination.

In a trafficking case, although the victim’s illegal activity was performed under duress, there may be other witnesses involved in the case the prosecutor wants to call, for which such a defense would not lie. In this circumstance, ABA Criminal Justice Standards may be instructive.

The ABA Criminal Justice Standards for the Prosecution provides guidance regarding the interaction between prosecutors and witnesses. Standard 3-3.4 advises in paragraph (g): “The prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to independent counsel when the law so requires. Even if the law does not require it, a prosecutor should consider so advising a witness if the prosecutor reasonably believes the witness may provide self-incriminating information and the witness appears not to know his or her rights. However, a prosecutor should not so advise, or discuss or exaggerate the potential criminal liability of, a witness with a purpose, or in a manner likely, to intimidate the witness, to influence the truthfulness or completeness of the witness’s testimony, or to change the witness’s decision about whether to provide information.”

This standard also covers the situation where the defense attorney seeks to interview the victim between the discovery of the offense and trial. Standard 3-3.4 advises in paragraph (h): “The prosecutor should not discourage or obstruct communication between witnesses and the defense counsel, other than the government’s employees or agents if consistent with applicable ethical rules. The prosecutor should not advise any person, or cause any person to be advised, to decline to provide defense counsel with information which such person has a right to give.”

Subsection (h) goes on to explain, “The prosecutor may, however, fairly and accurately advise witnesses as to the likely consequences of their providing information, but only if done in a manner that does not discourage communication.”

#### **TOOL BOX IDEAS**

- **Prosecutors should become familiar with the background of each victim before the initial interview, in order to formulate case-specific appropriate questions.**
- **Train both prosecutors and law enforcement about how to best relate emotionally to trafficking victims, given the unique trauma they suffer.**
- **Equip investigating officers and prosecutors with a checklist of potential questions designed to elicit helpful information while also conveying non-judgmental support of the victim.**
- **Increase awareness of potential victim reluctance due to fears of self-incrimination.**

## USING VICTIM ADVOCATES

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Human trafficking victims often present with a wide range of needs and concerns, including legal, physical, emotional, and financial issues. Trained prosecutors are skilled at working through the legal issues involved, but must enlist the services of experienced victim advocates to assist with victim non-legal needs and concerns.

### **Expedient Access to Services and Treatment**

Many victims require immediate attention, which can include medical treatment, psychological counseling, and basic necessities such as food and shelter. Victim advocates can assist with providing these services immediately, once an investigation is underway. Addressing a victim's basic and immediate needs at the beginning of a case will build victim trust in the prosecution team as well as the criminal justice system, which will promote victim cooperation.

Victim advocates can spend more time with victims than prosecutors may have available, and remain with victims even if a case gets transferred to a different prosecutor due to staffing or internal office transfers. This relational consistency can provide stability throughout the life of a case. This is very important for many trafficking victims who lack social support or family relationships in the community.

Advocates can also ensure victims receive all services to which they are entitled. For victims who have never been offered any type of assistance, whether financial, medical, or psychological, working with an advocate to secure such assistance can be an empowering and life changing experience.

### **Advocate Familiarity With Unique Trafficking Victim Issues**

Regarding rapport-building, some victim advocates are human trafficking survivors themselves—who can relate to the victim in a fashion other members of the prosecution team cannot. Advocates who can truly relate to the trafficking experience can encourage and affirm the trafficking victim and encourage disclosure and cooperation with the criminal justice process.

Experienced advocates are also familiar with common behaviors and coping mechanisms trafficking victims use, which can include the use of drugs or alcohol. Some victims may have become addicted to drugs due to forced administration by their traffickers in order to keep them in line and maintain their cooperation. Other victims may have turned to drugs or alcohol in an attempt to self-medicate in an effort to dull the physical and emotional pain inflicted by their traffickers, and the consumers they service.

When a prosecutor's office does not have enough victim advocates, it should partner with community-based organizations to provide services that trafficking victims need. Particularly in jurisdictions where prosecution resources are limited, community-based advocates can provide the same type of emotional support that a prosecution advocate can provide, in addition to services such as access to medical care, housing, financial assistance, and transportation.

## TOOL BOX IDEAS

- Prosecutors should get to know the victim advocates they will be working with, to facilitate a cooperative relationship as part of the prosecution team.
- Prosecutors should request victim advocates educate them about their role, victim resources, and other information that they use to assist victims.
- Learning about the dynamics of victim advocate-relationships allows prosecutors to replicate the rapport building strategies when interacting with victims themselves.
- Ensure victim advocates have sufficient time to devote to each victim in each case.

## RISK ASSESSMENT AND SAFETY PLANNING

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One challenge for prosecutors working with human trafficking victims occurs early in the life of the case: the issue of victim safety. Human trafficking victims face often very real threats of violence or other forms of retaliation, and are accordingly fearful for their own safety, as well as the safety of their loved ones.

The United States Department of Health and Human Services lays out the common needs of human trafficking victims.<sup>90</sup> They identify safety as the first priority—for both victims and providers. They identify a closely related need as the need for safe emergency housing. Other needs include clothing, food, and translation services for foreign victims who do not speak English.

### **Community Involvement**

Prosecutors can proactively impact risk of victimization by participating in local community efforts to proactively combat human trafficking. The United States Department of State Trafficking in Person’s Report 2018 recognizes that local communities are most affected by human trafficking, and also provide the first line of defense.<sup>91</sup> They further recognize the importance of community members working together: “By engaging and training law enforcement, religious leaders, teachers, tribal elders, business executives, and communities, we become more vigilant and learn to identify and address vulnerabilities swiftly. Proactive community-driven measures strengthen our ability to protect our most vulnerable and weaken a criminal’s ability to infiltrate, recruit, and exploit.”<sup>92</sup>

Individual and collective efforts to detect and combat trafficking activity involves the entire community. Prosecutors and law enforcement can play an important role in educating their respective communities about laws, red flags of potential trafficking activity, and reporting options. Correctly assessing youth or other vulnerable populations who are at risk facilitates effective safety planning. When community members are willing to accept that the insidious crime of human trafficking may be occurring in their own backyards, they are motivated to remain alert to signs of trafficking activity, and may end up becoming valuable sources of information relevant to case investigation.

### **TOOL BOX IDEAS**

- **Create community partnerships designed to share information and best practices designed to keep trafficking victims safe.**
- **Enhance the likelihood of effective prosecution through inter-agency cooperation which includes sharing resources and access to services.**
- **Train community members about potential red flags to be aware of that might indicate trafficking activity.**

## VIRTUAL CASE INVESTIGATION

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Human trafficking cases require unique investigative techniques due not only to the sensitive nature of the subject matter, but also the technology involved in modern trafficking activity. Investigation techniques must include up to date methods of evidence collection designed to detect and monitor trafficking activity both on and offline that are effective as well as ethical.

### **Virtual Evidence Collection**

In an Urban Institute Research Report, Meredith Dank et al. (2014) note that the Internet is changing the face of human trafficking.<sup>93</sup> They observe that sex work has decreased on the street, yet thrives online, with pimps and sex workers using social media as well as sites like Backpage.com and Craigslist.com to attract customers. They note that such sites are also used to recruit new employees, and evaluate business opportunities in other cities.

Prosecutors and investigators should make use of subpoenas for information, screen shots of ads, and other evidence of using online platforms to advertise illicit sex work. Even when ads themselves do not blatantly advertise sex for money, expert witnesses, including experienced investigating detectives, can testify as to the code names and language used in the trade that identifies the true nature of what is offered for sale.

Investigators and prosecutors must keep abreast of changing Internet platforms as well, because for every Internet site that is closed due to complaints of sex work, another opens—and traffickers simply transfer their marketing and advertising. Law enforcement expertise in tracking Internet activity is critical to detect and document underground activity in the sex trade.

### **Ethical Cybersleuthing**

As a general rule, law enforcement is permitted greater leeway than prosecutors in the use of ruse and subterfuge during case investigations—including online investigations. Issues arise, however, when prosecutors are working with law enforcement investigating a human trafficking case that involves online communication and evidence collection. While lawyers are not permitted to use deception, some jurisdictions recognize an exception when they are working with law enforcement.

California Rule of Professional Conduct 8.4, Misconduct, states in paragraph (c) that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation.” Rule 8.4 Comment [5], however states that paragraph (c) does not apply where a lawyer . . . “supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act. “

The Utah State Bar provides another example, noting that "a governmental lawyer who participates in a lawful covert governmental operation that entails conduct employing dishonesty, fraud, misrepresentation or deceit for the purpose of gathering relevant information does not, without more, violate the Rules of Professional Conduct . . ." (USB Ethics Advisory Opinion Committee Opinion No. 02-05 (2002)).

Prosecutors should familiarize themselves with the rules in their jurisdiction governing the extent to which they are allowed to participate in online investigation.

## **TOOL BOX IDEAS**

- **Train law enforcement in relevant, up to date methods of detecting and tracking online trafficking activity.**
- **Educate law enforcement about any applicable boundaries or restrictions governing online investigation when working with prosecutors.**
- **Equip prosecutors with the necessary information to decide how and when to participate in virtual investigations.**



# CHARGING, ARRAIGNMENT, AND EVIDENTIARY HEARINGS

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## Charging Options

Charging a human trafficking case involves considering the wide range of other offenses that may be involved. Although different states have a different range of options, most have a large number of potential offenses in common. In addition to the human trafficking charge itself, other options include the following:

- Pimping
- Pandering
- Extortion
- Kidnaping
- False imprisonment
- Rape
- Sexual assault offenses
- Assault with intent to commit a sexual assault
- Unlawful sexual contact with a minor
- Lewd act with a child

## Other Charges Supported By the Evidence

There are also a number of non-sex related charges that could be implicated in a human trafficking case. These include charges such as burglary, theft, and drug-related crimes.

In deciding what to charge, all decisions should be made with the victim in mind, including issues involving the goal of obtaining victim cooperation in the case.

## Arraignment and Bail

Arraignment is the first opportunity for the prosecutor to present the charges and request precautionary measures, such as victim protective orders in order to ensure victim safety.

In arguing for bail, prosecutors should stress the seriousness of the offense, the duration of the trafficking relationship, as well as the extent of manipulation, intimidation, physical violence, and threatening behavior that the defendant used to control the victim.

In cases where the defendant intends to post bail, there should be an effort to determine the legitimacy of the funds used to post bail—making every effort, under applicable laws, to ensure the money is not proceeds from human trafficking.

## Preliminary Hearings

Preliminary hearings offer the first opportunity to see how the victim weathers testifying in court with the trafficker, the defendant, sitting in the courtroom. Although the purpose of a preliminary hearing is to present evidence of probable cause that the defendant committed the crime charged, it also affords prosecutors the ability to gauge the impact of the victim's testimony, on both direct and cross-examination.

Other benefits of the victim testifying at the preliminary hearing including the opportunity to become comfortable with the form and substance of questions in a less public forum, as the trial will be. It also allows prosecutors to obtain testimony that can be used if the victim later recants at trial.

Speaking of trial, having a victim's preliminary exam testimony is important because we unfortunately, often lose track of human trafficking victims between the preliminary hearing and the trial date. This is because

many of them are not cooperative with law enforcement and do not show up in court, even if we manage to subpoena them. However, if they testified at the preliminary hearing, there are evidentiary provisions we can use in order to introduce their testimony at trial if we cannot locate them.

## **Grand Jury Indictments**

In jurisdictions that proceed by way of grand jury indictment, getting a feel for the impact of the victim's testimony is similarly valuable in deciding how to move forward. Early presentation of evidence can produce new leads regarding other witnesses and evidence, as well as other potential charges that may be appropriate.

In deciding whether to put on a victim during a grand jury proceeding, some prosecutors advise strategically interviewing the victim about certain topics first to get a feel for what he or she may say. Asking very basic questions like identifying the defendant, whether an ad belongs to them, or whether they were arrested, will help assess credibility and cooperation.

In addition, because a grand jury proceeding may be closer in time to the crime than a preliminary examination, prosecutors should consider whether a victim is able to handle describing the details to a room full of strangers so soon after the arrest. On the one hand, the details are likely to be fresher in the victim's mind. On the other, some victims might be reluctant to tell the whole story, or be motivated to downplay their involvement in the activity in question to save themselves, or protect the trafficker.

### **TOOL BOX IDEAS**

- **Consider the range of potential charges that might be included in addition to a human trafficking charge.**
- **Investigate the facts and circumstances that might support additional charges, as well as additional witnesses that need to be interviewed to establish such charges.**
- **Train first responders and investigating officers to recognize and consider both additional and alternative charges to human trafficking in order to maximize evidence gathering.**

## TRIAL ISSUES AND STRATEGIES

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### **Voir Dire**

Most jurors are totally unfamiliar with human trafficking, only having been exposed to the stereotypes. Prosecutors should therefore use voir dire as much as permitted by the court to investigate how many jurors hold preconceived notions about trafficking victims and trafficking activity that might compromise their ability to fairly and impartially judge the case.

Jurors are also likely to be completely unfamiliar with the relationship dynamics between traffickers and victims. This is particularly true when victims remain loyal and emotionally tied to the traffickers. Similar to domestic violence cases, trauma bonding and recantation are common, and thus are issues that need to be explored with prospective jurors.

### **Opening Statements**

In some trafficking cases, prosecutors are not completely sure what a victim will say when called to the stand, due to his or her level of cooperation (or lack thereof). In such cases, prosecutors may want to focus on the relational dynamics between victim and trafficker, and the expert witness testimony that will explain how intimidation and fear can impact a victim's willingness to be completely forthcoming with the history of their relationship, and the actions they were forced to perform.

### **Evidentiary Issues**

Prosecutors should be aware of evidentiary tools available in their states, such as non-hearsay and hearsay exceptions, issues with victim immunity, the appropriate use of forensic, medical, and subject matter expert witnesses, and the rules regarding using the testimony of an "unavailable" victim. They should also know the rules for using a victim's testimony at preliminary hearing at trial if the victim cannot be located for trial. In many jurisdictions, an advocate or other member of the prosecution team can "play" the victim on the witness stand, in order to introduce the transcript testimony from the prior hearing.

### **Fifth Amendment Assertions by the Victim**

In human trafficking cases, defense attorneys often encourage victims to assert their Fifth Amendment rights, do to their participation in sex work. Prosecutors in this situation should consult office policy and jurisdictional rules and practices regarding granting victim immunity, court ordered compelled testimony, and other legal and evidentiary measures designed to be used in such circumstances.

They should also be familiar with what ABA Standards advise regarding a defense attorneys attempts to improperly encourage a victim to assert the right against self-incrimination.

ABA Criminal Justice Standards for the Defense Function section 4-4.3, Relationship With Witnesses, states in paragraph (g), "It is not necessary for defense counsel or defense counsel's agents, when interviewing a witness, to caution the witness concerning possible self-incrimination or a right to independent counsel." The Standard goes on to caution, "Defense counsel should, however, follow applicable ethical rules that address dealing with unrepresented persons. Defense counsel should not discuss or exaggerate the potential criminal liability of a witness with a purpose, or in a manner likely, to intimidate the witness, to intimidate the witness, or to influence the truthfulness or completeness of the witness's testimony, or to change the witness's decision about whether to provide information."

## **Recanting Victims**

Human trafficking victims are often reluctant to testify out of fear, love, loyalty, shame, or other negative feelings. They are worried about their own criminality, they fear they will be deported, and they are often fearful for their own safety, as well as the safety of family members. All of these reasons explain recantation.

Many human trafficking victims are in love with the trafficker, and want to demonstrate their love and loyalty through recanting statements that may have been made earlier, when they were first rescued.

When a victim recants on the witness stand, prosecutors should attempt to refresh the victim's recollection with past statements, both verbal and electronic. Prosecutors may also impeach the victim or witness with prior inconsistent statements. When faced with consistent denials from a testifying victim, some prosecutors prefer not to re-traumatize the victim on the stand, but instead, in the face of the victim's denial, to use other witnesses to introduce the inconsistent testimony, which may be in the form of text messages, or even a transcript of testimony at a prior hearing.

## **Expert Testimony**

The vast majority of jurors and some judges have no familiarity with the reality of human trafficking. Without a frame of reference, they lack any type of foundation upon which to place the testimony and evidence presented in trial. Accordingly, the use of expert witnesses is a key part of presenting a human trafficking case, in order to explain the meaning and significance of the language, lingo, and lifestyle.

Expert witnesses called by the prosecution include law enforcement, psychologists, medical professionals, social workers, victim advocates, and others with expertise in human trafficking. When enlisting an expert, prosecutors should meet with and discuss the case with the expert sufficiently prior to trial in order to ensure the expert is familiar with the language, visual aids, and any other pieces of evidence he or she will be asked to explain during the course of the trial.

Investigating officers in human trafficking cases often make great expert witnesses. Many detectives specialize in human trafficking and have years of experience handling such cases. These witnesses qualify as experts under the evidence code by virtue of their years of training and experience, and are ideal witnesses to use as experts given their familiarity with the case.

Prosecutors can make use of expert testimony to explain to the judge and jury why victims and witnesses recant, minimize, change their stories, omit or withhold information, and are reluctant to testify against the defendant. Depending on the relationship between the victim and the trafficker, expert witnesses can explain how interpersonal dynamics color and shape victim reluctance, and subsequent testimony.

Expert witnesses can also explain the true nature of relationships that accompany some of the fact patterns that present the biggest challenges for prosecutors. These include cases in which the defendant and victim appear to be in a consensual boyfriend/girlfriend relationship, as well as cases where the victim has been in the business of sex work for demonstrably longer than the defendant. Many such victims have been trafficking victims for years, and an expert in the field can help the jury understand how traffickers exploit victims who are already caught in the vicious cycle.

## **Practical Use of Digital Evidence and Exhibits**

In an age of technology, most of the conversations between the victim and trafficker will be electronic. They will include language and slang that is meaningful in the sex trade, but beyond the comprehension of judges and juries. Expert witnesses can explain unfamiliar language and terminology to jurors and courts so they can evaluate the significance of word and phrases used by parties and witnesses, both on and offline.

The use of exhibits in human trafficking cases serves to illustrate and clarify the interaction and relationship between the victim and trafficker for the jury. Because so much of the communication regarding victims being forced to work as sex workers occurs over text message, having screen shots or printouts of this interaction can explain, corroborate, or even contradict a victim’s testimony. It can also place the victim’s testimony into context, affording the jury a fuller picture of the insidious nature of the relationship between victim and trafficker, and the types of sex acts the victim was being forced to perform.

Because some of the most helpful pieces of evidence in human trafficking cases are found on the victim and defendant’s phones, even when a victim recants or minimizes, evidence such as text messages, photos, videos, or ads found on the respective phones speak volumes about the true nature of the trafficking relationship. Even in cases where the victim never takes the witness stand, prosecutors can argue in closing that the jury met her through the text messages, ads, photos, and videos—which prove her activities and whereabouts, and how the defendant controlled every aspect of her life. Such evidence often shows how the victim had to ask the defendant for permission to eat, sleep, work, and stop working.

If available, exhibits should include body worn camera evidence showing the victim’s demeanor at the scene, which can be used to rebut a defense concerning the alleged “consensual” nature of the sex work.

#### **TOOL BOX IDEAS**

- **Consider ways to educate the jury early on about the relational dynamics inherent in the crime of human trafficking—as opposed to consensual relationships.**
- **Highlight and discuss the importance of using expert testimony in your case in your trial brief, to educate the court at the outset.**
- **Seek to secure trust and cooperation with the victim early in the case, to minimize evidentiary issues caused by failure to appear, assertion of the 5<sup>th</sup> Amendment, or recantation.**

## MULTIDISCIPLINARY COLLABORATIVE EFFORTS

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Human trafficking victims compromise a unique population in many different ways. Many have been traumatized both physically and psychologically, are often disenfranchised financially and socially, and are in need of a wide variety of services.

To adequately accommodate and support the needs of trafficking victims, prosecutors should partner with law enforcement agencies, community mental health agencies, and other victim and witness service organizations. Service providers must be adequately trained to work specifically with trafficking victims, given their unique characteristics, and history. Building rapport with a trafficking victim requires a working knowledge of victim-abuser dynamics, and an appreciation of their very real fear of retaliation or retribution. Accordingly, threat assessment is an important part of victim services.

Comprehensive victim support not only assists victims with immediate needs, such as food, medical care, and housing, it also provides psychological support, encouragement, and empowerment. Affirming and validating a victim's experience will enhance victim cooperation with prosecution, which increases the ability of prosecutors to bring offenders to justice.

### **HEAL Trafficking**

Efforts to provide services to trafficking victims are continuously being made by various groups. One of them is Health Education, Advocacy and Linkage (HEAL) Trafficking, a leading public health focused organization. HEAL promotes providing trafficking victims with access to an inclusive range of health care services including medical, reproductive health, dental, mental/behavioral health, and substance abuse services.<sup>94</sup> Operating as a united group of multidisciplinary professionals and survivors in 35 countries, HEAL is committed to fighting human trafficking and providing support to trafficking survivors from a public health perspective.

### **The Court System**

The National Center for State Courts promotes best practices in handling the prosecution of human trafficking in the court system through the judiciary.<sup>95</sup> Emphasizing the importance of both prevention and prosecution, it provides a wealth of resources for handling human trafficking cases, including individual case studies, manuals, and handbooks.

### **Prosecutors Offices And Community Partners**

Combatting human trafficking is a priority for prosecutor's offices around the nation. In 2015, the Office of the Alameda County District Attorney created the statewide research-based think tank Human Exploitation and Trafficking (H.E.A.T.) Institute designed to end human trafficking in California. The Institute formed a Blue Ribbon Commission to learn about how the many communities of California were responding to, or not, human trafficking. The Mission of the Institute is to unite members of law enforcement, criminal justice, health care, education, child welfare, non-profit organizations, survivors, and community partners to work together to fight human trafficking on every level. The Commission focuses on understanding and responding regionally to the Commercial Sexual Exploitation of Children (CSEC) as well as other types of human trafficking victims.

Out of the Institute, Alameda County now has a California Law Enforcement Protocol that can be edited for a community to include local partners. The Protocol outlines nine points to enhance the effectiveness of human trafficking investigations, which include, but are not limited, to the following:

1. Investigators should make every effort to ensure victim safety at the point of identification and throughout the investigation and prosecution of the trafficker. This includes gathering all victim contact information, on and offline.
2. Patrol officers and investigators are encouraged to minimize the number of interviews and people interviewing the victim.
3. Interviews of trafficking victims and witnesses should be audio and video recorded. Children 12 years and under should be interviewed at the County Child Advocacy Center, in “soft rooms” that evoke calm and relaxed emotions through the use of color, temperature, and furnishings.
4. Investigators should appropriately involve and leverage the capacities found in the entities listed in a provided Frequently Contacted Organizations and List of Human Trafficking Task Forces.
5. When conducting victim interviews, investigators should follow the same trauma-informed protocol of patrol officers. This includes wearing plain clothes if possible, conducting interviews in a private, neutral, and safe location, and adopting a culturally sensitive approach to conducting a victim-centered interview.
6. Follow the provisions of California Penal Code section 236.5 regarding law enforcement’s duty to document the cooperation of human trafficking victims in an investigation.
7. As part of a criminal investigation, conduct a comprehensive examination of all circumstances surrounding the trafficking activity.
8. Conduct a comprehensive financial investigation designed to end illicit activity and promote the forfeiture of money and assets that were acquired with ill-gotten gains.
9. Present the case to the County District Attorney prosecutor.

The Los Angeles County District Attorney’s Office is targeting human trafficking in several different ways. Specialized deputies have prosecuted sex trafficking cases throughout the county since 2014. Members of the Human Sex Trafficking Section also work with human trafficking task forces, meet with and provide training for community groups, and create training protocols for law enforcement. The Office’s Organized Crime and Consumer Protection Divisions prosecute human trafficking cases involving the illegal trade of people for commercial gain. The Human Trafficking Victim Assistance Program provides minor and adult victims of trafficking with necessary specialized services.

The Los Angeles County District Attorney’s Office is also taking steps to raise awareness of human trafficking. They distribute posters to businesses, hospitals and transit providers that urge people to call telephone hotlines if they suspect human trafficking activity, and have worked to inform victims that even if they are in the country illegally, there are laws protecting them from exploitation.

The California District Attorneys Association, in a 2019 Advanced Human Trafficking Seminar, assembled a wide range of programs designed to enhance all aspects of fighting human trafficking in California, from detecting trafficking activity online, to wiretaps, to reducing demand. Notably, the curriculum even included a course about prosecutors and mental health, addressing issues such as compassion fatigue, depression, burnout, and other psychological challenges that accompany prosecuting human trafficking cases.

### **The San Diego Fight**

San Diego has been a national leader in combatting human trafficking. San Diego’s fight against human trafficking combines the efforts of law enforcement, prosecutors, community partners, and efforts to raise community awareness. This includes engaging hotel and motel staff about human trafficking warning signs and what to do if they suspect it is happening, as well as a systematic effort to educate school staff, medical

professionals, and law enforcement about new mandatory reporting laws for child abuse, which now includes the commercial sexual exploitation of children.

San Diego has adopted the “Four Ps” model of the U.S. Department of Justice for effective combat:

- **Prevention** – Promoting awareness and education in schools and in the community. We’ve done this through specialized training of thousands of teachers, nurses, staff, parents and students. Enhanced technology over the last decade created an out-of-sight platform for human trafficking and prostitution: the Internet. Social media and other websites are the preferred method of buying and selling sex instead of the old street walking method, which was easier to detect and interrupt.
- **Protection** – We protect victims by aggressively working to identify them before further victimization occurs and working with victim service providers to help restore their lives.
- **Prosecution** – The San Diego District Attorney’s Office Sex Crimes and Human Trafficking Division prosecutes traffickers and those who buy human beings. Holding criminals accountable requires specialized prosecution with an emphasis on a victim-centered approach. DA prosecutors, investigators and victim advocates work together on these complex cases combining their expertise. The San Diego Human Trafficking Task Force helps our prosecution efforts through pooling resources of multiple agencies to attack sophisticated organized human trafficking. This is important because human trafficking so often moves across county and state lines.
- **Partnerships** – Combating human trafficking requires the expertise, resources and efforts of many people and organizations. It is a complex, multi-faceted issue requiring a comprehensive response of government and private entities. An example in San Diego includes The San Diego County Regional Human Trafficking and Commercial Sexual Exploitation of Children Advisory Council. The advisory council made recommendations that were adopted by the San Diego County Board of Supervisors.

The Four Ps Model has been integrated into the San Diego County Regional Human Trafficking and Commercial Sexual Exploitation of Children Advisory Council. As included in its Report to the San Diego County Board of Supervisors (October 2014), the goal of the Advisory Council, in addition to implementing the Four Ps model, is to “focus on identifying best practices and promising trends addressing the root causes of trafficking and exploitation, advance public policy, standardize training and protocols, and enhance victim services by creating an optimized, seamless service delivery system.” The Report also outlines the numerous collaborative groups that were formed in county to combat human trafficking.

The San Diego County Advisory Council on Human Trafficking and Commercial Sexual Exploitation of Children emphasized the fact that many human trafficking victims end up interacting with the medical community. As a result, in October 2018, the University of California at San Diego (UCSD) instituted a first-of-its-kind policy for all mandated reporters within UC San Diego Health to report suspected human trafficking.<sup>96</sup> Complementing existing state and federal laws that require mandatory reporters to report suspected abuse of children, dependent adults, elders, and suspicious physical injury, staff were trained to recognize signs of human trafficking within the course of treatment. Some of the warning signs they are trained to perceive include:

- Physical trauma, such as bruises and cuts at various healing stages.
- Indicators that the patient is fearful of any accompanying person or lack of personal identification.



- Risk factors, like multiple sexually transmitted infections, pregnancies, abortions or miscarriages.

In addition, the San Diego Human Trafficking Task Force (HTTF) includes numerous local and federal law enforcement agencies working together to combat human trafficking.<sup>97</sup> Partner agencies include San Diego state and federal prosecutors offices in addition to numerous police departments, California Department of Corrections and Rehabilitation (CDCR), San Diego County Probation Department (SDCPD), San Diego Sheriff's Department (SDSD), Immigration and Customs Enforcement (ICE)/Enforcement and Removal Operations (ERO), ICE/Homeland Security Investigations (HSI), Internal Revenue Service (IRS), and others.

In the education arena, San Diego has launched the San Diego Trafficking Prevention Collective,<sup>98</sup> which teaches elementary, middle, and high school students about human trafficking in neighborhoods and schools. The Collective is designed to transform future generations to spot and guard against human trafficking through a combination of classroom education, after-school intervention efforts, and training through interactive media.

This unique parent-teacher-student partnership brings three programs into schools. PROTECT is a holistic classroom education program that provides teachers and students with a comprehensive understanding of the dangers and signs of human trafficking and exploitation. Project ROOTS is an after-school program that addresses the root causes of gender-based violence, exploitation, and unhealthy relationships through group mentoring and social emotional learning. kNOw MORE is a student-centered human trafficking awareness and prevention curriculum for middle and high school students.

The Collective is both a partnership and a prevention model, designed to educate both students and educators, allowing the San Diego Unified School District to ensure middle and high school teachers are informed and prepared to join the fight against human trafficking.

### TOOL BOX IDEAS

- **Prosecutors should partner with both law enforcement and community agencies to maximize information sharing and cooperation on individual cases.**
- **Prosecutors should be familiar with the range of services available to victims in order to maximize the chances of success on individual cases.**
- **Emphasize programs and initiatives that target prevention, in addition to detection and prosecution.**

## CONCLUSION

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Prosecuting human trafficking cases is an intensive process that involves a working knowledge of the law, criminal procedure, and the interpersonal dynamics between the parties involved. Fighting the demand that drives profit and fuels trafficking is also imperative. In the continuing efforts to fight the epidemic of human trafficking, the cure depends on tenacity, courage, and collaborative work within our respective communities. This is one fight we have to win.

It is the intention of this White Paper to provide guidance and suggest some potential best practices that can facilitate smooth, successful prosecution of human trafficking cases. Please use this resource to inform and educate prosecutors within your jurisdiction, and feel free to provide suggestions as to how this resource can be improved and updated, particularly as human trafficking related laws continue to evolve. Working together, we can improve the quality of justice for victims, increase the likelihood of successful prosecutions, and keep our communities safe.

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The California District Attorneys Association

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