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Identifying and Responding to Sex Trafficking: A Guide for the Courts

The hidden nature of trafficking crimes makes it difficult to determine an exact number of victims. Estimates range that within the U.S., 300,000 to 2 million people are victims of human trafficking each year.[1] There is growing recognition that prostitution, chronic running away, homelessness, shoplifting, substance abuse, domestic violence, and loitering are all potential red flags for sex trafficking. Given this reality, courts can play a crucial role in not only identifying victims of sex trafficking but linking them to needed services. This guide provides judges and court staff with concrete steps to enhance their ability to respond effectively and sensitively to these difficult cases.

Step 1: Understanding the Victim-Defendant Paradigm in Sex Trafficking Cases

Victims of sex trafficking range across all ages, races, and nationalities. Foreign-born sex trafficking victims make up a significant portion of this population, but domestic sex trafficking victims in the United States also exist in alarmingly high numbers. According to a recent study by the National Human Trafficking Resource Center, pimp–controlled sex trafficking cases make up the majority of domestic cases; these cases also have the highest rates of minor sex-trafficking victims.[2] Despite differences amongst populations, sex trafficking victims share risk factors, barriers to being identified, and challenges in accessing help.

Recognizing the duality of the victim-defendant

Victims of sex trafficking appearing in the court system may be both victim and defendant. A victim may initially become visible in court as a defendant charged with a crime that might normally be appropriate for a punitive sentence. However, with further inquiry, it may be revealed that this defendant was forced into "the life" (i.e., the life of a prostitute) and is fearful of her trafficker/exploiter.

This duality poses a challenging question to the courts: how does the court hold the defendant accountable for his or her criminal act, while knowing the defendant could be a victim of sex trafficking or other forms of violence? It is a vexing question, without a simple answer. Addressing it requires a paradigm shift in which court staff and stakeholders move from viewing the defendant as a criminal to a victim who has complex needs that often lead to a cycle of recidivism. Experience suggests that providing a defendant with support and the tools to break free of a pimp/trafficker has a greater chance of restoring the victim-defendant to a life free from violence and exploitation than conventional prosecution and incarceration. If courts intend to make a difference, they can begin by acknowledging the tremendous impact of chronic victimization; understanding the multifaceted obstacles faced by this population; creating meaningful alternatives to incarceration; and searching for legal dispositions that support deferment/dismissal of cases and reduction of criminal record.

Understanding the Impact of Victimization

It is imperative that legal system players understand the impact of chronic victimization

and the role played by shame and stigma. Victimization often begins in childhood, and may be committed by multiple people, including family members, intimate partners, pimps/traffickers and purchasers. For example, sex trafficking victims experience high rates of childhood sexual abuse, which impacts their development, ability to trust others, and sense of self-worth. Reports estimate that 70 – 90 percent of commercially sexually exploited children have a history of childhood sexual abuse. Children who experience childhood sexual abuse are 28 times more likely to end up in prostitution and as a victim of sex trafficking.[3] Lifelong trauma can lead to other issues, such as not finishing school, homelessness and drug use. The way communities and systems react to a victim's experience (i.e. providing help, not harm) can influence a victim's level of engagement and trust.

Recognizing the Needs and Challenges that Victim-Defendants Face

Chronic victimization, poverty, homelessness, substance use and social stigma are some of the common obstacles that victims of sex trafficking face. The interconnection of these hardships often results in victims' distrust of people, resources, and systems, making it difficult for victims to connect to help. Additionally, a victim may not have the ability to access assistance because of his/her pimp/trafficker's control. The obstacles that block victims from accessing services are often the parts of their lives that need the most help.

See Chart 1: Victim-Defendant Needs, which highlights the myriad of needs that may be facing a victim-defendant of trafficking when they come into contact with the justice system.[4]

Lizzie's Story

Lizzie's story helps illustrate the complicated lives of victims. Her life provides the beginning of a blueprint for how courts and stakeholders can impact the lives of victims.

Lizzie was raised in extreme poverty in New York City. At the age of four, her father sexually abused her. She continued to experience sexually abuse and assault by other boyfriends of her mother. Her mother was also physically and emotionally abusive, often beating Lizzie with electric cords and telling her she was worthless. After years of abuse, Lizzie ran away at the age of twelve. Within the first week of being homeless, Lizzie met her first pimp while begging for change outside of a fast food restaurant. She was sexually assaulted and physically abused by him to "break her into the life." At seventeen, Lizzie met a pimp who she married and with whom she had two children. He physically, sexually and emotionally abused Lizzie throughout their twenty year relationship.

As a way to cope with the trauma that she had experienced, Lizzie began to use crack cocaine. She was arrested over forty-five times for prostitution and drug possession. After her forty-sixth arrest, she ended up in a court that offered specialized programming for people arrested for prostitution offenses. She was mandated to fifteen sessions with a trained social worker who listened to her story and provided support, counseling and case management. After her counseling sessions were completed, Lizzie continued to work with the social worker on a voluntary basis. With this assistance, she began a healing process. Today, she is drug free, living in her own apartment and working on reconciling with her children.

Step 2: Developing the Capacity to Identify Trafficking Victims

Courts and criminal justice stakeholders have begun to rely heavily on evidence-based tools and practices to determine the risks and needs of defendants. This information can be used to impose appropriate and informed sentences. This process is referred to as a risk-need-responsivity ("RNR") model. The assessment tools used in this process define risk as the likelihood of re-offense and the intensity of supervision required to manage the possibility of recidivism. The tools view need as composed of static and dynamic characteristics that are empirically related to the likelihood of recidivism (criminogenic factors). Criminogenic factors have been found to lead to

or cause crime, making them appropriate targets for interventions that aim to reduce recidivism.[5] Responsivity refers to the type of intervention that is most appropriate based on risk and need outcomes.

See Chart 2: Commonly Used Assessment Tools for a list of tools that are being used by courts and criminal justice stakeholders (pre-trial officers, probation officers, parole officers, and corrections officers).

Incorporating Experiences of Victimization into Existing Tools

Only one of these RNR tools actually screens for victimization and none are designed with the goal of identifying victims of trafficking. The impact of common elements of trafficking - force, fraud and coercion - are not considered. Without adding the context of trafficking, victim-defendants are likely to flag as high risk and need. This may reduce the likelihood that they will receive an appropriate response and/or intervention by courts or stakeholder agencies. In order to better identify and treat victims of sex trafficking, the current RNR tools and paradigm used by courts and stakeholders needs to be amended.[10] This means using domains that consider the elements of trafficking (force, fraud, coercion) and establishing appropriate interventions instead of relying on incarceration.

See Chart 3: Criminogenic Risk Factors for a chart examining the eight commonly cited criminogenic factors alongside related risk factors that incorporate the context of victimization and trafficking.[11] This chart offers a new paradigm for judges, courts and stakeholders to consider when assessing defendant recidivism and associated character traits.

Example from the Field: A Specialized Sex Trafficking Identification Tool

In 2010, the Midtown Community Court (a demonstration project of the Center for Court Innovation) hired a dedicated, on-site social worker to work with women, men, and transgender people arrested for prostitution. This resulted in the development of a tool that is a trauma-informed, strengths-based, comprehensive psychosocial assessment based on the following principles:

- Trauma and violence play a significant role in the way an individual thinks, feels and acts;
- An individual's way of coping, such as using drugs or in engaging in self-harm, are adaptations for survival;
- A victim often does not readily identify as a victim, therefore questions are asked in multiple ways using non-victim based language;
- Language must be sensitive to all gender and sexual identities;
- Including the victim's strengths into the assessment is an essential component of engagement; and
- There should be a commitment to providing welcoming, compassionate, and appropriate services for all victims.[12]

This tool assists the case manager in identifying trafficking by listening for:

- History of past victimization
- Experiences of current victimization
- Victim's experiences in prostitution
- Pimp-controlled trafficking
- Experiences of migration
- General information about housing, drug use, education,
- Current needs that contribute to risk
- While this tool has not yet been validated, Midtown Community Court staff has found the tool to be effective in screening for sex trafficking, particularly domestic, pimp-controlled trafficking. Using the tool, over half (53%) of the women who were arraigned on prostitution- related offenses at the Midtown Community Court in 2012 reported past or current pimp-controlled trafficking.

From the Bench: Identification Considerations for Judges and Court Personnel

Identification is a dynamic process and extends beyond the use of any single tool. Judges and court

staff can assist in this process by considering the effects victimization and trafficking may have on defendants in court. For instance, victims of trafficking may present as "defiant" and "antisocial", when, in fact their behavior may be better understood in the context of traumatic stress and experiences of trafficking. Judges and court staff should be listening for signs of trauma and trafficking when hearing cases. Here are several questions for judges, court staff and stakeholders to consider:

1. Have I considered whether or not trauma and/or trafficking are playing a role in this person's behavior?
2. Have I considered the elements of force, fraud and coercion[13] in relation to this person's recidivism?
3. If I am unsure if the person is really a victim of trafficking, have I considered connecting her to a community-based advocate/provider for services and further assessment?

Step 3: Strategies for Courts: Enhancing Response to Trafficking Victims

The following strategies provide a blueprint for judges and court personnel to begin to better address the needs of trafficking victims:

1) Lay the foundation

- Judicial leadership can impact outcomes. Judges can convene court staff and stakeholders to meet and discuss possible responses to trafficking. Recognizing that high rates of coercion and violence by pimps/traffickers/abusers result in frequent arrests, judges can use graduated sanctions as a response to recidivism and as a way to continuously bridge victims to services.
- Training can deepen a collective understanding of the complexity of sex trafficking. Judges and court personnel can convene multidisciplinary trainings that reinforce shared goals of identification and linkage to needed services. Examples of potential training topics include:
- Sex trafficking 101 and listening for trafficking "red flags"
- Trauma and trauma-informed care
- Lesbian, Gay, Bisexual, Transgender, Queer (LGTBQ) sensitivity
- How to talk to victims
- Available community resources

2) Develop a plan

- Courtroom protocols can enhance safety. Protocols aid in establishing safety within the court. Areas to consider are:
  - What will be said in open court?
  - What case information will be shared between stakeholders?
  - What kinds of training will be provided to all court room staff?
  - How can courtroom and courthouse safety be improved?

3) Build communication, collaboration and coordination

- Collaboration with community stakeholders can begin the process of change. Trained social workers at community stakeholder agencies are often best positioned to conduct in-depth assessments and provide services and case management. Building relationships and trust between the court and these community-based providers can help develop a specialized response to victim-defendants.
- Coordination among community providers enhances the response to victim-defendants. Creating networks, referral protocols and on-going dialogue among the court, criminal justice stakeholders and community advocates can assist in streamlining services for victim-defendants. Attorneys, probation and community stakeholders need to have a comprehensive understanding of protocols (judicial mandates, assessment, judicial monitoring, courthouse safety procedures etc.) that the court is using when handling trafficking cases.

4) Engage in self-reflection

- Improving the court response to victims of sex trafficking is not a one-time event. The field is constantly changing as new research and interventions emerge. Continuing to identify gaps in services, training needs and changes

in the victim-defendant population will allow local justice systems to improve responses to victims of trafficking over the long haul.

Conclusion

Using the steps outlined in this guide, courts have a unique opportunity to be leaders in the effort to identify and connect victims to needed resources. Judges and court personnel can assist in convening, coordinating and collaborating with community stakeholders in an effort to advance safe and liberating outcomes for victims of human trafficking.

Notes and Charts

1. Clawson, H.J., N. Dutch, A. Solomon and L.G. Grace. (2013) Human Trafficking Into and Within the United States: A Review of the Literature. Washington D.C.:U.S. Department of Health and Human Services accessed January 10th, 2013, available at http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/
2. Polaris Project, (2013), from Human Trafficking Trends in the United States: National Human Trafficking Resource Center, p.9
3. Adapted from U.S. Department of Health and Human Services Administration for Children, Youth and Families (ACYF): Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States. Bagley, C. & Young, L. (1987) Juvenile and Child Sexual Abuse: A controlled Study. Canadian Journal of Community And Mental Health.
4. Clawson, H.J., N. Dutch, A. Solomon and L.G. Grace. Human Trafficking Into and Within the United States: A Review of the Literature. (Washington D.C.:U.S. Department of Health and Human Services, 2009), accessed January 10th, 2013, http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/
5. Bonita, J., Andrews, D. (2007). Risk- Need-Responsivity model for offender assessment. Canada: Carlton University.
6. The Level of Services Inventory- Revised (LSIR) See: https://www.assessments.com/catalog/LSI_R.htm
7. The COMPAS See: http://www.northpointeinc.com/products/northpointe-software-suite
8. The Ohio Risk Assessment System (ORAS)See: https://www.assessments.com/purchase/detail.asp?SKU=5252
9. Women's Risk Needs Assessment See: http://www.uc.edu/womenoffenders.html
10. The adaptation with gender-responsive assessment tools, such as the Women's Risk Needs Assessment (WRNA; See chart) can provide guidance on how to create a new lens to understand criminogenic factors and how to add new population-specific factors.
11. Available at: http://www.samhsa.gov/co-occurring/topics/criminal-justice/screening.aspx
12. U.S. Department of Health and Human Services, 2008. Case Management and the Victim of Human Trafficking: A Critical Service For Client Success
13. The Trafficking Victims Protection Act of 2000 (TVPA) defines trafficking as: The recruitment, harboring, transportation, provision, or obtaining of a person for sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Coercion includes threats of physical or psychological harm to children and/or their families. Any child (under the age of 18) engaged in commercial sex is a victim of trafficking. http://www.state.gov/j/tip/laws/

1: Victim-Defendant Needs	
Need	*Description*
Basic Needs	For many victims, food and clothing are urgent needs.
Housing: emergency, transitional and permanent	Victims typically need immediate safe housing. Once they are safe and stable, they will need a long-term supportive and environment.
Medical Care	Repeated physical and sexual abuse can cause victims to need a range of medical care. Providers should be sensitive to the specific challenges faced by this population (i.e. , some victims are so traumatized that they have a fear of being touched, even by a professional).
Counseling	Trauma-informed counseling is critical to helping victims begin to process and heal from the variety of abuses they have experienced.
Substance Use Treatment	Victims may struggle with substance use. A continuum of care options are necessary ranging from immediate (detox) to longer term recovery programs.
Education	Victims often need access to a variety of education services, such as one-on-one tutoring, GED programming and certificate programs.
Employment	Work training programs and employment opportunities that can serve as an alternative to prostitution are necessary for victims to financially support themselves.
Intensive case management	A case manager can assist in navigating the many services needed to transition victims to safety and security.

2: Commonly Used Assessment Tools	
Assessment Tool	*Description*
The Level of Services Inventory- Revised[6] (LSIR)	A validated risk-need assessment tool that assesses the criminogenic needs of offenders, their risk of recidivism, and the most relevant factors related to supervision and programming. A short screener and case management tool are also available. These tools require in-depth clinical training and require that the user pay per assessment.
The COMPAS[7]	The COMPAS is a validated risk-needs assessment that uses a computerized tool to assess offenders' needs and risk of recidivism. It is designed to aid in correctional treatment for offenders starting at 17 years old. Separate assessment modules include reentry, women, youth, and case management. The system asks closed questions that offer little room for clinical discretion. Training is required for all users and there are fees associated with the software to administer the tool.
The Ohio Risk Assessment System[8] (ORAS)	The ORAS is a dynamic risk-needs assessment system to be used with adult offenders. It offers the ability to assess individuals at various decision points throughout the criminal justice system and is the only public domain instrument that explores all eight criminogenic domains and predicts both risk of recidivism and rehabilitative needs.
Women's Risk Needs Assessment[9]	The WRNA is a validated and gender-specific assessment tool that assesses both gender-neutral and gender-responsive factors. The WRNA developed separate forms for probation, prison, and pre-release. The WRNA incorporates questions that address needs such as: 1) trauma and abuse; 2) unhealthy relationships; 3) parental stress; 4) depression; 5) self-efficacy; and 6) current mental health symptoms.

3: Criminogenic Risk Factors	
Risk Factor	*Victims of Sex Trafficking*
1. History of antisocial behavior: criminal history The best predictor of future behavior is past behavior.	**Recidivism as a red flag** Without choice and freedom of options, victims are at high risk of being arrested multiple times. The pressure that victims face from their pimp/trafficker of making a "quota" of money every night (with violent consequences) forces victims to be in known areas of prostitution and increases their likelihood of arrest.
2. Antisocial attitudes, values, and beliefs What we think is related to how we act – blaming the victim, denying harm or denying that there was a victim	**Victim/Defendant Duality** A history of victimization informs how victims think and behave. When the defendant is also the identified victim, it is re-victimizing to ask him/her to take responsibility for the crime. Repeated victimization can cause victims to hold deep shame that informs attitudes, values, and self-worth.
3. Antisocial Associates and Peer Groups Who our friends are and who we socialize with impacts what we do – peers reinforce behavior	**Isolation of Victims** Victims of trafficking are likely to have limited interaction with those not involved in trafficking. Traffickers often isolate victims as a means of control. Runway and high-risk youth are likely to spend time with others in similar situations.

3: Criminogenic Risk Factors, con't.	
4. Antisocial Personality Characteristics These characteristics include: hostile interpersonal interactions, lack of empathy; weak socialization; impulsivity; restless/aggressive energy; poor self-regulation skills; weak problem-solving; taste for risk; below average verbal intelligence. Examples: 1) Hostile interpersonal interactions, lack of empathy 2) Poor self-regulation skills 3) Taste for risk	**Impact of Trauma and Influence of Trafficker** Repeated interpersonal violence (childhood sexual and physical abuse, neglect, sexual and physical assault) impacts a victim's interactions with others. Compounded by the influence of a trafficker, a victim's behavior can result in the display of qualities that mimic antisocial personality characteristics. Examples: 1) After repeated abuse by an adult, victims are likely to distrust people in authority. Traffickers train victims not to speak to or trust authorities. 2) Repeated abuse causes victims to remain in a state of flight/fight/freeze response, making it challenging to regulate themselves. 3) A victim of sex trafficking is typically not able to control the risks she takes. Also, victims of trauma are more likely to continue to be victims of trauma.
5. Education/Employment Work or school are pro-social activities that reduce the chances of recidivism.	**Control of trafficker and lack of options** While being trafficked, victims do not have the ability to attend school or obtain legal employment. Repeated convictions cause victims to have criminal records, prohibiting them from obtaining employment. This is often used as a tactic by traffickers to keep victims from leaving.
6. Family and/or Relationship Circumstances Family can provide the same influences as peers, re-enforcing behavior and shaping our values and beliefs.	**Family and/or Relationship Circumstances** Family dynamics can influence a victim's connection to support systems. When victims leave their families (biological or foster) because of abuse and/or neglect, they are often on their own without any support system. The trafficker can provide the victim's only sense of family and/or belonging.
7. Substance Abuse In addition to being illegal, drug abuse may lead to other criminal behaviors.	**Coping and Influence of Trafficker** Victims will find many ways to cope with their experiences. Substance use is a common way for victims to survive. Sometimes traffickers force victims to use drugs.
8. Lack of leisure and/or recreation pursuits Positive leisure and recreational activities occupy time constructively.	**Isolation, Victimization and Influence of Trafficker** Victims of trafficking do not have the ability to engage in leisure or recreation pursuits as they do not have control over their day-to-day lives. Repeated victimization can cause victims to feel isolated and as though they don't belong with others, prohibiting them from engaging in "pro-social" activities.