

So You Want to Represent and Legally Advocate for Survivors of Trafficking?



A Best Practices Training for Attorneys & Advocates
Shared Hope International JuST San Diego Oct. 17, 2018
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Meeting Clients Where They Are



The Real Experts Justice At Last Advisors





Goals of the Workshop

PART 1 - Articulate the legal definition of human trafficking

PART 2 - Identify the legal needs of survivors of trafficking

PART 3 - Review legal forms of relief

PART 4 - Learn how to represent & advocate in an empowering and rights-based manner

PART 1 Define human trafficking



What Does Human Trafficking Look Like in the US?

- 72% of child trafficking victims who received eligibility letters from Dept. of Health and Human Services were **labor trafficking victims** ([US TIP 2018 Report](#))
- 66% of trafficked victims (adults and minors) served by DOJ grantees were **US citizens**. ([US TIP 2018 Report](#))
- 72% of human trafficking victims in California are **US citizens**. (2012 State of [Human Trafficking in California](#))

Typology or Industries

Agriculture	Elder care / live-in care
Day Labor/Gardening	Hospitality/Hotel/Restaurant work
Childcare / Nanny	Manufacturing work
Cleaning / Janitorial Service	Organized begging
Construction	Magazine Sales
Criminal activity	Servile marriage/Mail-order bride
(including drug trafficking)	Sex work
Domestic work	Stripping/Exotic Dancing
Factory labor	Hostess Clubs/Cantina Bars
Nail Salons	



The Trafficking Victims Protection Act (TVPA) defines “severe forms of trafficking in persons”

- (9)(A) **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
- (9)(B) the recruitment, harboring, transportation, provision, or obtaining of a person for **labor or services**, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

22 U.S.C. 7102 (2000) (Reauthorized in 2003, 2005, 2008, 2013)

What Does Force, Fraud, or Coercion Look Like?

Force	Fraud	Coercion
<ul style="list-style-type: none"> • Rape • Beatings • Confinement • Taking passport/ID • Depriving of food, basic necessities 	<ul style="list-style-type: none"> • Promises of a good job or home or education • Promises of love and companionship • Promises of a better life 	<ul style="list-style-type: none"> • Threats to a person, family member or pet • Isolation • Psychological abuse

NO SUCH THING AS A CHILD PROSTITUTE

- Because force, fraud or coercion are **NOT** required for children that are sex trafficked a child can never be guilty of prostitution or solicitation
- What about children that are labor trafficked? Why do they have to show force, fraud or coercion existed?



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What About Children that Are Labor Trafficked?

- Why would the prosecuting agency have to show force, fraud or coercion existed for children that are labor trafficking?
- Do children have agency to consent to labor contracts?



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Red Flags When Assessing if Trafficking Victim

- ✓ Recruitment (in U.S. or abroad)
- ✓ Manner of entry into U.S.
- ✓ Type and length of labor
- ✓ Amount of payment
- ✓ Deductions for cost of smuggling, transportation, housing, food, etc.
- ✓ Living arrangements close to work arrangements
- ✓ Heightened fear of employer
- ✓ Controlled transportation
- ✓ Restricted movement
- ✓ Isolation from community
- ✓ Possession of identity/travel documents
- ✓ Abuse/coercion (physical, sexual, psychological, legal process)



PART 2

The legal needs of survivors of trafficking



What Are the Common Legal Needs of
Youth and Young Adult
Survivors
of
Human Trafficking?

- Criminal Defense – Juvenile Delinquency
- Records Clearance
- Crime Victim's Rights
- Immigration Relief
- Education Rights
- Health Rights
- Family Law & Parental Rights
- Identity Theft Recovery







Immigration Relief



Educational Rights



Health Rights







Non-legal Needs

- Language Interpretation and ESL Education
- Housing, food, clothing
- Medical care (emergency & long term)
- Mental health care
- Health education & rights
- Development of local independent living skills
- Safety planning
- Job placement & economic empowerment
- Access to family, celebrations, social connections, media, etc.

BARRIERS TO VICTIMS SEEKING ASSISTANCE

- Culture & language
- Lack of trust
- Undocumented/fear of deportation
- Fear of law enforcement
- Lack of knowledge of services, rights, and law
- Fear of retaliation from trafficker
- Gang involvement
- Withdrawn or isolated
- Trauma bonded/Stockholm Syndrome



Test Your Knowledge Activity

Is this human trafficking?

Law Enforcement receives a call regarding an accident involving an ice cream truck. Upon arrival at the scene there appears to be 2 youth Russian males, one speaks English with a heavy accent and the other speaks minimal English, neither have identification on them, and both appear to be extremely skinny and possibly malnourished. An older man claiming to be their uncle arrived at the scene of the accident the same time the ambulance arrives. The older man claims the youths are his nephews aged 18 and 20 years, that they live with him and work for him selling ice cream, and he then offers to take his nephews home because they are not injured. However, one of the two youth appears to be disoriented, and he is holding his head and the other youth's eyes appear to be dilated and neither youth knows the address of the "uncle's" residence.

- What additional information might you need?

Test Your Knowledge Activity

Is this human trafficking?

Law Enforcement gets a call at 3am on a cold night (33 degrees outside) from an injured female at a local motel. The call notes indicate this is a possible domestic violence call. EMS/EMT and Law Enforcement both arrive at the motel at the same time. Upon entry into the motel room there is a young female (she appears to be in her young teens) on the floor refusing to answer law enforcement questions. She is attempting to refuse medical assistance even though she appears to have some bruising around her neck and a bloodied face. She is scantily dressed and you can see that she has several tattoos on the back of her neck and what looks like a recent cigarette burn on her calf. There is also a significantly older male in the room who is cooperating with authorities and answering all questions, claiming that his 20 year old girlfriend is high on crack cocaine and that the girlfriend started hitting him for no reason and that she should be locked up for hitting him. Inside the motel room is video and camera equipment and there are numerous female bathing suits and sleeveless mini dresses on the floor and on the bed.

- What additional information might you need?



Legal Forms of Relief ***Immigration Relief***

- **Continued Presence**
 - Provides temporary immigration relief to potential witnesses who are victims of severe forms of trafficking
 - Grants work authorization
 - Good for 1 year, but can be extended
 - Federal benefits for 8 months
 - Federal law enforcement agents only

Legal Forms of Relief ***Immigration Relief***

- **T – Visa**
 - Enables certain victims of human trafficking to live and work in U.S. for four years
 - Children can petition to bring parents and unmarried siblings under the age of 21 to the U.S.
 - Can receive government benefits, including cash assistance for 8 months
 - Can apply for Green Card after three years

Other Forms of Immigration Relief

- U Visa
 - Victims of certain criminal activity who suffered substantial physical or mental abuse
- Asylum
 - For persons who have suffered or fear persecution based on race, religion, nationality, political opinion or membership in a particular social group in country of origin
- Special Immigrant Juvenile Status
 - Children eligible for long-term foster care due to abuse, neglect or abandonment when return to home country not a viable option
- Violence Against Women Act
 - Allows certain battered immigrants to file for immigration relief without abuser's assistance or knowledge

Factors to Consider Regarding Immigration Relief

- Survivors of trafficking may not have chosen to leave their situation
- Collaboration with law enforcement is basically mandatory for survivors seeking immigration relief (exceptions may apply i.e. servile marriage, age, VAWA)
- Survivors who collaborate with law enforcement and are not eligible or are denied continued presence are ineligible to get a legal job while they wait for their certification letter and work permit.
- Limited benefits are available to refugees and other "qualified" immigrants under federal welfare law (WIC, TANF, SSI, Medicaid)
- Current trend – survivors choosing not to seek immigration relief due out of fear of NTA/deportation proceedings

Test Your Knowledge Activity

- Mary, lived in Peru, 15 years old. A family friend offered her work in a Peruvian restaurant in the U.S. working 4 hours a day after school and earning \$10.00 per hour.
- **FORCE:** Mary's passport was confiscated. Under constant surveillance, can only leave when told she can leave. She was beaten when she complained. She was raped and became pregnant by the family friend.
- **FRAUD:** Promises were false; Mary forced to sell magazines door to door for 4 hours per day on school days and 10 hours per day on weekends.
- **COERCION:** Mary was threatened with deportation and harm to her family if she didn't stay and pay off her debt she now owes for her travel and rent. When she gave birth to the baby, she was threatened that the child would be separated from/taken away/adopted when she was deported.

What are Mary's Forms of Relief?

- **T Visa – best form of relief**

- Physically present in the US on account of trafficking and no requirement to report to LE because minor

- **Special Considerations** Her child is a US citizen

Other Legal Forms of Relief

- **Criminal Prosecution**

- Dismissal and Post Conviction Relief

- **Crime Victims' Rights**

- **Civil Law Remedies**

Post Conviction Relief

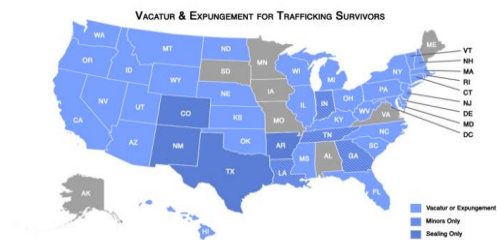
National Survivor Network 2015 Survey revealed

- 90% of respondents reported being arrested at least once
- **50% arrested as minors**
- Over 25% arrested 10-20 times

Why are post-conviction laws important?

- Remedy past injustice
- Empowerment
- Survivor controlled
- Opportunity to reclaim space/tell story
- Impact on criminal justice system stakeholders (judges, prosecutors, court personnel)

ABA Survivor Reentry Project 2018 Map



The Federal Crime Victims' Rights Act 18 U.S.C. § 3771

Guarantees Crime Victims Rights To...

- Be reasonably protected from the accused
- Reasonable, accurate & timely notice of public court proceedings
- Not be excluded
- Be reasonably heard at any public proceeding
- Confer with the attorney for the government
- Full and timely restitution
- Proceedings free from unreasonable delay
- Be treated with fairness and with respect for their dignity and privacy
- Be timely informed plea bargain or deferred prosecution
- Be informed of these rights.

As of 2017, more than 30 states have constitutional victims' rights provisions



Why Is Legal Representation Important for CSEC & TAY?

- Average age of entry for boys is 11 to 13 and for girls is 12 to 14 years; Most have already been sexually abused or neglected (80 - 95%); Exposure to the child welfare system (80 - 95%); Addiction or Substance abuse (85%); Homeless or runaways; Poverty
- **Why are these factors relevant?** They are already vulnerable and want to avoid the youth from being re-victimized and traumatized.

Test Your Knowledge Activity

When John was five years old he had been sold for sex by his mother so she could feed her drug addiction. John's mother's parental rights were severed and he entered the foster care system at age 8 and then he began bouncing in & out of foster care. He would often run from placement to placement to avoid further abuse. John learned quickly that in order to survive he could trade sex for food, shelter and sometimes drugs. When he was 16 years old John entered into a relationship with a 25 year old man, who convinced John to move in with him, promised John his own car and to get John enrolled in high school and later pay for college if John regularly sold himself for sex. John was later placed in juvenile hall for solicitation, loitering, and drug and weapon possession, and his older adult boyfriend was arrested for pimping and pandering but not trafficking.

- **Does John have any legal forms of relief?**

Additional Legal Needs

- Unlawful use of image or testimony
- Landlord tenant
- Health Care and other benefits
- Intellectual property infringement
- Consult with immigration attorney for foreign national clients
- Consult with benefits care specialist for clients under the age of 21 currently receiving extended foster care benefits.

Anticipate Client Concerns & Questions

- How long will this take?
- I thought the prosecutor was my attorney...
- Will I have to appear in court/testify?
- Who is going to protect me? Can I go into witness protection?
- Is my information public?
- Will anyone know I filed this motion?
- What happens if we win? What happens if we lose?



Factoring in Culture and Understanding the Role of Trauma & the Stages of Change

- Recognize and begin to factor in **Culture**
 - Culture impacts how people perceive their choices, responsibilities and their entitlement to feelings, rights, resources and their legal recourses
- Recognize and begin to understand the effects of **Trauma**
 - Primary; Secondary/Vicarious; Post-Traumatic Stress Disorder; Community / Social; Intergenerational / Historical
 - Trauma Bonding / Stockholm Syndrome
- Recognize and begin to understand the **Stages of Change**
 - Pre-contemplation; Contemplation; Preparation' Action; Maintenance; Relapse, Learn and repeat

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Cultural differences can be used to

- Victim blame and shame
- Intensify isolation
- Threaten expulsion from marginalized community
- Ensure lack of acculturation for foreign born victim
- Damage relationships that matter to the victim
- Create or intensify immigration vulnerabilities
- Decrease victim awareness about systems and rights
- Intimidate people from participation in public systems
- Ensure that victims not make necessary reports in ways that later criminalize victims' actions

Culture, Historical Trauma & the Justice System

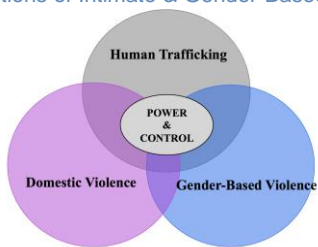
- Some communities live in conditions of chronic stress
- Some communities are historically primed to experience trauma symptoms when accessing U.S. criminal and legal systems
- Legal disempowerment can re-traumatize people escaping power and control in domestic and family violence
- Cultural and historical trauma, unattended, inhibit access to justice system

The Role of Trauma and Understanding Complex Traumatic Stress

- Most Victims of Human Trafficking (whether sex or labor trafficked) have been **exposed to multiple types of violence, crime and abuse**, including but not limited to:
 - Child Abuse, abandonment and or Neglect
 - Domestic Violence
 - Gender Based Violence
 - Assault

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Power and Oppression Intersections of Intimate & Gender-Based Violence



Power and Oppression Intersections of Intimate & Gender-Based Violence

- May be multiple perpetrators involved, multiple people using violence
- Life outside of the trafficking situation might be (or seem to be) more frightening and unpredictable than life inside the trafficking situation.
- Survivors may have emotional ties or feelings of obligation to their traffickers/abusers; Survivors experience stigma and self-blame.
- Survivors may choose not to collaborate with law enforcement, or are deemed uncooperative, or otherwise live as an undocumented person.
- The safety and lives of people overseas may be playing a huge role in the situation.

Complex Trauma and Re-traumatization

- Exposure to repeated or prolonged instances or multiple forms of interpersonal trauma, often reoccurring in situations where there is an imbalance of power, as well as physical, emotional, developmental and family/environmental or social constraints.
- Child sexual abuse or in combination with child physical, emotional abuse and neglect puts survivors at greater than average risk for re-victimization.
- The victim is not at fault for the re-abuse but blames him or herself.
- Child sexual abuse history also correlates with later risk taking behaviors.

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Working with survivors of trauma

Trauma Impacts Memory & Impairs Memory Consolidation

- Testimony may seem “sketchy” or fragmented
- Survivors may struggle with chronology
- Expect “inconsistencies” across interviews
- Details may come out much later
- Best Practice: Do not misinterpret as evasiveness or lying BUT be honest with client & confront gaps later.

Working with survivors of trauma

- Active listening
- Validate & acknowledge client’s emotional experiences
- Provide decision-making power
- Make a concrete plan, be clear on next steps, communicate all developments
- Bring in support services at beginning of process

Test Your Knowledge Activity

What would you do to support your client?

- During the interview with federal law enforcement, you see your client become pale and her eyes glazed. She looks distracted and or withdrawn. Law enforcement is talking louder in response to get her attention.
 - What can you do?

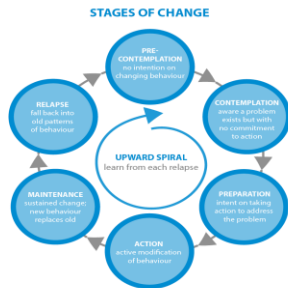
Test Your Knowledge Activity

What would you do to support your client?

- Your client is being interviewed by federal investigators for continued presence.
- His story was all over the place and does not resemble information he shared with you previously.
- At the break, his Spanish speaking advocate tells you that the legal interpreter had interpreted his statement incorrectly: "He dragged me out of the bathroom and raped me," as stated as "we exited the bathroom and then we had sex."
 - What can you do?

Stages of Change and Sex Trafficking Victims

- There are approximately 6 stages of change for those victims that have been sexually exploited (GEMS Training 2014 & 2017).
- It will be useful to become familiar with these stages to better understand and support these clients/victims/survivors.



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Stages of Change & Pre-Contemplation

Denies being sexually exploited. Is defensive and does not want to cooperate.

- **Sounds like:** "I don't need to leave... I am not a victim." Not ready to talk and will defend or protect the abuser.
- **Goals:** Working with a victim during this stage can be problematic. Encourage self-exploration, assess for healthcare or mental needs.

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Stages of Change & Contemplation

Thinking & talking about change but not yet ready to leave.

- **Sounds like:** "I always wanted to finish high school...but I need to save some money first." May be hiding money and not always responding when the trafficker calls.
- **Goals:** Victim/Survivor/Client relationship is stable and opportunity to meet regularly. Create a safety plan, and validate fear of change.

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Stages of Change & Preparation

The victim has made a commitment to leave (could take 4-6 months). Asserting independence.

- **Sounds like:** "I want to get out of the life but I don't know how...if I leave he will hunt me down and kill me."
Considering leaving but fearful of the consequences.
- **Goals:** Encourage self-reflection and help identify and connect to resources, create a safety plan.

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Stages of Change & Action

At this stage the client is leaving the life of exploitation.

- **Sounds like:** "I hated that SOB, I am so glad I left! I wonder if he is looking for me. I wish I did not miss him."
Will cut off contact with the exploiters and purchasers and may start residential or day support program.
- **Goals:** Safety is of utmost priority, it is important to discuss self-care, review safety plan, and create short-term plans about attorney-client meetings.

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Stages of Change & Maintenance

The survivor/client remains out of the exploitation and develops new skills for a new life.

- **Sounds like:** "I could never go back to the life...I wish he would change so we could get back together."
- **Goals:** Recognize stability and the progress and validate strengths. Let Victim/Survivor/Client know what to expect from the legal justice system at this stage.

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Stages of Change & Relapse

This stage is inevitable – and may occur several times.

- **Sounds like:** "This life is too hard, I can't do it...I have always been like this...I can't change." Will likely run away from residential program and or start seeing some purchasers (aka Johns) for "fun."
- **Goals:** The service provider should be understanding and patient when/if the Victim/Survivor/Client reconnects. Be mindful of triggers if she/he is sharing testimony for legal purposes.

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Empowering and Rights-Based Advocacy

- Develop a relationship that is Client centered
- Create language accessibility
- Be respectful and understanding
- Convey an attitude of openness
- Question in a nonjudgmental and supportively neutral position
- Stop your questioning if client becomes symptomatic
- Be culturally-responsive and trauma-informed
- Approach is empowerment based - no terms of "saving" or "being rescued"
- Holistic approach that includes wrap around support services
- Legal and social teamwork
- The "how" is just as important as the "what"

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Empowering and Rights-Based Advocacy

Make sure to:

- Recognize symptoms of trauma
- Help create inter-agency relationships to meet client's needs
- Motivational interviewing
- Think outside the box

Never:

- Judge
- React with disgust or shock
- Switch between treating client as offender and victim
- Question facts or comment on motivation
- Expect client to identify as exploited or victim
- Try to meet every need of client

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Be Part of a Legal Network



Subject Matter Experts

- **US Advisory Council on Human Trafficking** <https://www.state.gov/j/tip/263099.htm>
- **Rebecca Bender Initiative** <https://rebeccabender.org>
- **Nola Brantley Speaks** <http://www.nolabrantleyspeaks.org>
- **Girls Educational & Mentoring Services** <http://www.gems-girls.org>
- **Stacy Jewell** <http://www.whoisstolen.com>
- **National Survivor Network** <https://nationalsurvivornetwork.org>
- **The Office for Victims of Crime Training and Technical Assistance Center** <https://www.ovcttac.gov/views/HowWeCanHelp/dspHumanTrafficking.cfm>
- **Carissa Phelps & Runaway Girl** <http://carissaphelps.com>
- **Savannah Sanders** <https://savannahsanders.wixsite.com/sextrafficking>
- **Survivors Healing, Advising and Dedicated to Empowerment (SHADE)** <https://www.shademovement.org>

National Legal Resources