

LOTUS
Legal Clinic
Legal Options for Trafficked and Underserved Survivors

Victim Centered not Victim Built: Representing Victims of Sex Trafficking in the Criminal Justice System

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WHO WE ARE

- ▶ LOTUS serves victims of **sexual violence and human trafficking** through trauma-informed legal advocacy, policy, education, and survivor empowerment.
- ▶ We provide services to victims of all forms of human trafficking, which includes sex and labor.
- ▶ **FREE** for anyone
- ▶ Nationwide, with Wisconsin nexus



Roadmap

- Definition of Commercial Sexual Exploitation of Children
- Sexually Exploited Youth as Defendant: Advocacy
- Sexually Exploited Youth as Victim of Crime: Enforcement of Rights
- Sexually Exploited Youth as Witness
- The Importance of Rights Based Representation of Sexually Exploited Youth and Best Practices

What Does Commercial Sexual Exploitation of Children (CSEC) mean?

- ▶ a range of crimes and activities involving the **sexual abuse or exploitation of a child** for the **financial benefit** of any person or in **exchange for anything of value** (monetary and nonmonetary)
Examples include:
 - ▶ Child sex trafficking
 - ▶ The commercial production of child pornography
 - ▶ The online transmission of live video of a child engaged in sexual activity in exchange for anything of value
 - ▶ Source: Office of Juvenile Justice and Delinquency Prevention

What is the definition of sex trafficking?

TRAFFICKING VICTIMS PROTECTION ACT (2000, 2003, 2005, 2008, 2013)

Severe Forms of Trafficking in Persons

SEX TRAFFICKING:

- ▶ the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by **force, fraud, or coercion** OR in which the person induced to perform such acts has not attained 18 years of age.

Why language matters when working with sexually exploited youth

- | | |
|--|--|
| <ul style="list-style-type: none"> ▶ Adult language <ul style="list-style-type: none"> ▶ Sex trafficking ▶ Trafficker ▶ Pimp ▶ Victim ▶ Coerced | <ul style="list-style-type: none"> ▶ Youth language (varies based on age and geography) <ul style="list-style-type: none"> ▶ "doing what I have to do" ▶ "getting money" ▶ "helping my family out" ▶ Busting moves ▶ "working for my Daddy" ▶ "busting moves for my man" |
|--|--|

“

Young people are disclosing, but they are not using adult/clinical language”

QUOTE FROM A YOUTH OUTREACH WORKER IN THE MILWAUKEE AREA

TIP: Know the language and culture of the youth you serve
This will help identify victims of sex trafficking, and more broadly, childhood sexual exploitation.
.....Otherwise, you may miss what they are trying to tell you.

Sexually exploited youth involved in the criminal system

- ▶ Victim/Witness
 - ▶ Cooperating
 - ▶ Involuntary
- ▶ Defendants
 - ▶ Unidentified victims



How and Why Victims become Defendants

- ▶ Force, fraud or coercion to commit crimes for the trafficker's profit.
- ▶ Theft
- ▶ Drugs
- ▶ Recruitment/Advertising
- ▶ Prostitution



Theft Scenarios

Required to steal items of value from "Johns",

or to steal or commit armed robbery for the financial gain of the trafficker

Drug-related Scenarios

- ▶ victim becomes addicted to drugs in order to cope with the trauma
- ▶ victim was first addicted to drugs and then becomes victim of sex trafficking.

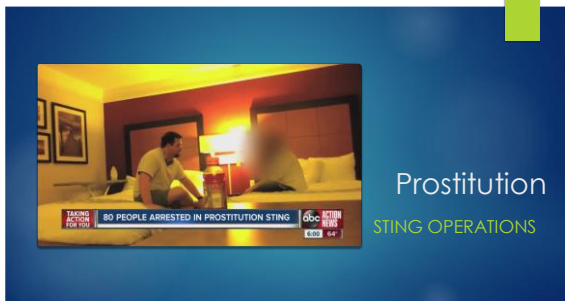


Recruitment/Advertising Scenarios

victim is required to transport a minor across state lines for sexual exploitation;

victim is required to create online ads for sexual acts/services of fellow trafficking victims;

Victim is forced to assist in smuggling other victims into the United States.



Tools for identification as CSEC when victim does not self-identify

1

Ask the right questions

- Remember: **language matters!**
- Use and invest in cross discipline screening tools

2

Partner with others that specialize in serving sexually exploited youth (diverse populations)

3

Train court professionals:

- Judges
- Prosecutors
- Law enforcement

Tools continued:

Provide the defense bar with tools for effective advocacy:

- Training: Indicators of child sex trafficking
- Awareness:
 - affirmative defenses for victims of human trafficking
 - the availability and use of experts
 - victim intimidation and its impact on guilty pleas
 - privacy issues: advocating for the sealing of identifying information on public records in order for victim to feel safe enough to disclose



Wisconsin SPD's conversation with Prosecutor, NE Wisconsin County, 2017: 25 year old woman charged with drug possession

Same immunity applies

Fri, Jul 28, 7:44 PM

Just so you know I'll be dismissing Tracy's case as soon as I get a chance next week. So long as she continues to cooperate and show up for testimony she will not have a conviction from this.

And yes, you were right.

The last part is beautiful. I may frame it. Thanks for working with me on this. Have a good weekend.

You too.

Preventing/Mitigating Criminal Charges

- ▶ **Initial Interviews** with law enforcement: **the right to an attorney**
- ▶ **No troubling (criminal) facts?** a victims rights attorney may be the best option.
- ▶ **Some troubling facts?** and prosecution is more interested in the trafficker and the potential defendant wants justice against the trafficker? May only need an agreement to not prosecute/immunity. Formality of process varies.
- ▶ **Bad facts/criminal liability?** and the victim does not want justice against trafficker at the present moment? Refer to criminal defense attorney.



MITIGATING CRIMINAL CONVICTIONS

- ▶ Age matters: 17 year old will be charged as an adult; resulting criminal convictions create barriers to employment and education.
 - ▶ Deferred prosecution agreements
 - ▶ Requesting Expungement (varies by state)
 - ▶ Vacatur Petitions
 - ▶ Complete relief
 - ▶ Varies by state which crimes are covered
 - ▶ In Wisconsin only state prostitution convictions are eligible for vacatur. See Wis. Stat. § 973.015(2m)

Safe Harbor laws: Decriminalization



Identified victim in a sex trafficking prosecution

Jurisdiction of
investigation/Prosecution
Where are you?



What is the knowledge of the
prosecutor and law enforcement?

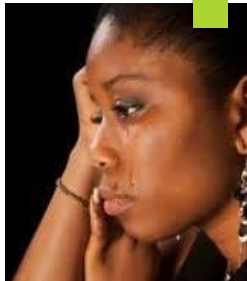
Explain Role as a
Victim Rights Attorney

Provide culturally
sensitive context of
your client

Justice at a high price

"They hurt us over and over again in this process: its almost worse than my trafficker, what he did to me. I feel just as powerless now. The system is so unfair to victims."

—K., victim/witness in a trafficking case



Providing victims' rights representation in human trafficking cases

Standing to Assert Rights of Crime Victims **Wis. Stat. § 950.105**

A crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim Constitution.

Standing to Assert Rights of Victims **Crime Victims' Right Act 18 U.S.C. § 3771**

The crime victim's lawful representative, and the attorney for the Government may assert the [victim's] rights. (Subsection (d)(1) of the CVRA)

Rights **shall** be asserted in the district court in which the defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred." (Subsection (d)(3) of the CVRA)

THREE OBJECTIVES OF THE TRAFFICKING VICTIMS PROTECTION ACT

ONE: prevention of human trafficking

TWO: prosecution of the traffickers

THREE: **PROTECTION OF THE VICTIMS**

Protection and Enforce of Rights for Youth Victims of Sex Trafficking

► Courtroom accommodations

► Statutory right to accommodations may be stronger for youth based on your jurisdiction.

► *Maryland v. Craig*, 497 U.S. 836 (1990); 18 U.S.C. § 3509

► Is testimony of the child-victim by closed circuit television "necessary"

► Fight for **privacy**: using pseudonyms starting with charging documents

► Connection to State Crime Victim Compensation Program

► **Safety**: civil restraining orders; address confidentiality; housing

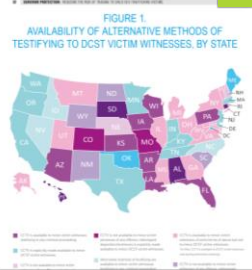
► **THESE ARE THE BIG ONES – BUT THERE ARE MORE.**

Protection for Foreign National Victims

- ▶ Working with noncitizen victims of human trafficking
 - ▶ Protection and assistance
 - ▶ **Continued Presence:** temporary legal status for identified victims who presence is necessary for law enforcement, eligibility for **federal benefits** same as refugees, including work authorization. *****DHS MUST CERTIFY**
 - ▶ **T-Visa:**
 - ▶ Temporary US Residency
 - ▶ Potential for Permanent Residency after 3 years
 - ▶ Immediate family eligible

Give prosecutors tools

- ▶ **Survival Protection:** Reducing the Risk of Reversal to Child Sex Trafficking Victims January 2018 Report by Rights4Girls



Restitution: Empowers and Acknowledges the Cost of Human Exploitation.



FEDERAL LAW

18 U.S.C. § 1593 **requires the court to order restitution** for any offense of human trafficking and to "direct the defendant to pay the victim . . . **the full amount of the victim's losses.**"

= either offender's ill-gotten gains or value of the victim's labor as guaranteed under the Fair Labor Standards Act **whichever is greater.**

State Restitution Laws

Victim Impact Statements

CIVIL CAUSE OF ACTION: TVPA

- ▶ Victims' recovery of *compensatory and punitive damages* against traffickers and any anyone else who benefited from the traffickers' actions
- ▶ **Best practices:** talk with victims early on in the criminal case about restitution and how to request,
- ▶ work with the prosecutor to make sure this right does not get over looked.



VICTIM AS WITNESS

SAFETY: attached to "V" status

Danger of not being protected during the trial if not included as a victim in the court case.

Advocate for victim with law enforcement and prosecutors

Is the **victim's testimony** **really necessary** to the prosecution of the trafficker?

TOOL: Ask to **amend the complaint**

Advocate for **immunity** or a **no charge letter** if necessary in order to make the victim feel safe

RIGHTS BASED REPRESENTATION OF YOUTH

Build Relationships with KEY
STAKEHOLDERS TO SUPPORT
AND STABILIZE VICTIMS

Do this BEFORE, DURING AND
AFTER investigations and
prosecutions



Working with Survivors of trauma

**Trauma Impacts Memory & Impairs
Memory Consolidation**
• Story seems "sketchy" or fragmented

Best Practice: Do
not misinterpret as
evasiveness or
lying BUT be
honest with client
& confront gaps
later.

Details may
come out much
later



Survivors struggle
with chronology

Expect
"inconsistencies"
across interviews






Minimize Confusion


Coordination of services


- Who are the contact points for TVAP and OVC?
- Housing Resources
- CSEC outreach specialists




Addressing civil legal needs of youth: a pathway to recovery

 Education issues

 Family reunification/stabilization

 Immigration benefits

 Public benefits

 Housing needs

 Employability

Criminal background records (Expungement and Vacatur)
Warrants for failure to pay fines
Obtaining a valid driver's license or other identification

01

Building trust with organizations that serve youth who are at risk of sexual exploitation

02

Use "warm" referrals
Use child friendly forms that explain confidentiality, privileges, etc.

03

Put 75% effort into the relationship and 25% into the pathways at first. There will be evolution.

BEST PRACTICES

QUESTIONS/DISCUSSION

► What are you seeing?

► What is working?



QUESTIONS?

THANK YOU!

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