

EXECUTIVE SUMMARY



Over three years ago, the JuST Response Council began to discuss an emerging issue that was challenging the field: sex trafficking victim-offender intersectionality (hereafter ST-VOI) – the phenomenon of sex trafficking victims facing sex trafficking charges. The response to this issue has varied greatly among jurisdictions, influencing how and when sex trafficking survivors are treated as victims of a crime and when they are treated as equal offenders alongside their exploiter without recognition of their own victimization.

It has also been increasingly impacting human trafficking policy development. While there is a spectrum of possible responses to this complex issue, many cases involving ST-VOI have resulted in trafficking victims being charged with trafficking offenses. This approach reflects a narrow appreciation of the complex nature of ST-VOI, where past trafficking victimization is not considered or loses its relevance once a trafficking survivor has engaged in behavior that could fall under anti-trafficking statutes. The Council recognized the injustice inherent in this response; it is inconsistent with the actual dynamics of how trafficking occurs, the nature and extent of control exerted by sex traffickers, and the influence of trauma on the decision-making process and behavior of sex trafficking survivors. This demonstrated trend of charging sex trafficking victims as offenders without considering their underlying victimization as well as requests from the criminal justice system to provide guidance motivated the development of this resource. It is the Council's hope that this guide will support criminal justice stakeholders to improve their identification of ST-VOI and promote a more fair and just response once ST-VOI is identified.

PURPOSE, GOALS & PARAMETERS OF THIS FIELD GUIDANCE

The purpose of this field guidance is to support a shift in the criminal justice response to ST-VOI. The goal is to move away from a narrow, retributive approach and toward a holistic approach. This field guidance encourages stakeholders to consider and apply a sex trafficking-informed lens to cases involving ST-VOI. To accomplish that goal, the resources and tools in this field guidance were developed with three primary objectives:

- 1 Improve identification of sex trafficking victim-offenders who have come into contact with the criminal justice system at any stage of the process**
- 2 Enhance understanding of victim-offenders' conduct through a sex trafficking- and trauma-informed lens**
- 3 Identify alternative responses to victim-offenders that take into account the impact of their own victimization on their potential involvement in sex trafficking conduct**

With these objectives in mind, the following resources were developed for criminal justice stakeholders, which include anyone involved in the criminal justice process, ranging from law enforcement and prosecutors to judges to criminal defense attorneys to probation officers to victim-witness advocates:

A Criminal Justice Stakeholder Tool

This tool is meant to be a practical resource for anyone interacting with a sex trafficking victim-offender who intersects with, or is proceeding through, the criminal justice system. It is designed to help criminal justice stakeholders identify the multitude of factors that commonly arise in ST-VOI cases and provide guidance on how these factors can be appropriately taken into consideration as these cases proceed through the criminal justice system.

Case Studies

Six anonymized case studies are reviewed using the Criminal Justice Stakeholder Tool in order to demonstrate how application of the tool could potentially have shifted the response to cases with ST-VOI. The case studies are drawn from federal criminal cases involving an adult charged with sex trafficking under 18 U.S.C. § 1591. The court records in these cases contained information indicating that the defendant had experienced sex trafficking victimization. While all of the cases identified for purposes of the report involved female victim-offenders, this should not be interpreted as a finding that male and gender-nonconforming cases do not exist. Instead, this reflects the ongoing need to improve identification of male and gender-nonconforming sex trafficking victims and ensure the criminal justice process is informed and equipped to recognize and respond to sex trafficking victims regardless of their gender identity.

Legal and Scholarly Resources Related to Victim-Offender Intersectionality

This collection of scholarship is a review of court opinions and scholarly articles that highlights some current literature on the phenomenon of ST-VOI. It also provides an analysis of related criminological theories that may be applicable in the ST-VOI context.

While this field guidance was designed for criminal justice stakeholders, it has relevance for anyone working with sex trafficking victim-offenders. Similarly, the resources provided in this field guidance may also have application to cases involving trafficking victims charged with other serious crimes that are not trafficking but are nevertheless related to trafficking victimization.

The JuST Response Council recognizes that service providers also face challenges as a result of ST-VOI; however, this field guidance focuses on informing criminal justice stakeholders for several reasons.

THE IMPORTANCE OF MOVING AWAY FROM THE TERM "BOTTOM"

This field guidance report addresses the intersection of sex trafficking victimization and criminalization of sex trafficking victims under sex trafficking laws without relying on derogatory labels that are sometimes used to describe sex trafficking victims who have been charged with sex trafficking offenses. While the term "bottom," and similar iterations, are often used in this context, the term "bottom" has been created and perpetuated by the traffickers who exploit victim-offenders. Due to this genesis of the term, this report uses the term "victim-offender" or "victim-offender intersectionality," with the exception of the legal and scholarly resources section, which addresses how the term "bottom" has been defined by the courts.

The failure to identify ST-VOI in the criminal justice system can interrupt avenues to needed services that would address a victim-offender's trauma, and failure to recognize and respond to ST-VOI in the criminal justice system perpetuates the perception that victim-offenders are not entitled to a service-based response, regardless of whether they enter the criminal or juvenile justice system. An uninformed criminal justice response to ST-VOI can create serious barriers for victim-offenders to access needed services. It also poses urgent questions of fairness in the enforcement of criminal laws to address trafficking and can undermine larger efforts to strengthen anti-trafficking policy. As a result, this field guidance was developed to begin to provide the issue of ST-VOI the focused attention it requires.

GUIDING PRINCIPLES & RECOMMENDATIONS FOR THE FIELD

The resources compiled in this field guidance are informed by three guiding principles identified by the JuST Response Council as broadly applicable to responding to ST-VOI:

- 1 Proactive identification is key.**

Trafficking victimization is often challenging to identify. As such, proactive steps should be taken throughout the criminal justice process to identify evidence that an individual suspected of or charged with trafficking has experienced, or is currently experiencing, trafficking victimization. Close assessment and quick identification of ST-VOI can help distinguish the role of a victim-offender from the role of a trafficker. Once ST-VOI is suspected, it is imperative that stakeholders adopt a trauma-informed response.
- 2 Trauma response to trafficking victimization is a critical factor at all stages of the criminal justice process.**

Either past or concurrent trafficking victimization can lead to a trauma response that influences a victim-offender's alleged involvement in trafficking conduct. The impact of past and/or concurrent trafficking victimization on a victim-offender's understanding of, and response to, their circumstances should be considered throughout the criminal justice process. For example, ST-VOI should be considered in the decisions of whether to arrest and charge, whether to prosecute and on what charges and whether to convict. If convicted, ST-VOI should be considered in determining what sentence is appropriate, including how the sentence could be mitigated to reflect the impact of sex trafficking victimization on the defendant's conduct.
- 3 Coercion of a trafficking victim may look different than coercion of other types of crime victims.**

Trafficking victimization and the resulting trauma response can uniquely impact a victim's susceptibility to coercion, not only in the context of being coerced into commercial sex, but also in the context of being coerced to commit other crimes. Consistent with general principles of criminal law and justice, acts committed under coercion or duress are not as culpable as acts committed willingly or knowingly in the absence of coercion or duress. Understanding the nature and power of the coercion that traffickers exert over victims to cause them to engage in trafficking conduct is fundamentally important and must be considered at every stage of the criminal justice process.