CRIMINAL JUSTICE STAKEHOLDER TOOL

For Identifying and Responding to Sex Trafficking Victim-Offender Intersectionality

PURPOSE

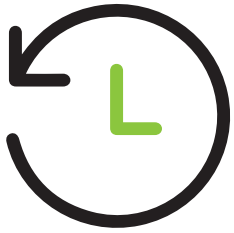
The Criminal Justice Stakeholder Tool examines some of the common factors in cases involving sex trafficking victim-offender intersectionality (ST-VOI) and applies a trafficking-informed lens to promote identification of victim-offender (VO) status and more fair and just responses once ST-VOI is identified.

The tool also identifies concrete steps that can be taken to avoid or mitigate potential injustice for VOs in the criminal justice system. For example, prosecutors can mitigate harm by exercising their discretion to not prosecute or electing to prosecute charges that do not carry serious collateral consequences in addition to lengthy sentences that include incarceration. In addition, prosecutors may decline to treat the VO as a co-conspirator, including not charging the VO alongside the trafficker as a co-defendant. The tool can also be employed by criminal defense attorneys who play a critical role in advocating for a fair process through mounting defenses at trial, such as coercion or duress, or, if available, a trafficking-specific affirmative defense. Law enforcement can identify ST-VOI early on in the case and connect VOs with services, as opposed to arresting and charging them. Connecting VOs to services may facilitate their willingness to participate in the investigation and prosecution of their traffickers. If the VO is arrested, law enforcement can reduce harm by not targeting this population as traffickers or as co-conspirators to trafficking. Victim advocates, judges, probation officers and other criminal justice stakeholders who are trained on the nature of sex trafficking and ST-VOI can also influence the process by considering all of the facts and identifying evidence that the VO was acting under coercion and/or the influence of trauma resulting from trafficking victimization.

By considering the factors that often lie under the surface in these cases, criminal justice stakeholders can better identify solutions to the complexity inherent to cases involving ST-VOI. The Criminal Justice Stakeholder Tool examines common factors that fall under the following categories:

CONSIDERATIONS PERTAINING TO CURRENT SEX TRAFFICKING CONDUCT

This section addresses the complex intersection between a VO's own victimization and the sex trafficking conduct that the VO engaged in themselves. These considerations are critical to (1) identifying when an individual charged with trafficking may themselves be a victim of sex trafficking and (2) understanding how a VO's conduct is impacted by their current victimization, their trauma response and the unique operation of control and coercion that exists within sex trafficking victimization.



CONSIDERATIONS PERTAINING TO PAST SEX TRAFFICKING VICTIMIZATION

This section addresses the factors indicating that an individual charged with sex trafficking-related offenses may also be a victim of past sex trafficking and how that victimization may shape a VO's current behavior. These considerations are critical to (1) identifying when an individual charged with trafficking may have a history of sex trafficking victimization and (2) understanding whether the charged conduct was the result of the victim-offender's own history of sex trafficking victimization.

CONSIDERATIONS PERTAINING TO HISTORY AND OTHER RELATED FACTORS

This section addresses the non-trafficking related history of an individual that may influence vulnerability to trafficking exploitation as well as susceptibility to coercion that could impact their likelihood of engaging in related criminal conduct as a result of trafficking victimization, including conduct that violates the trafficking law.

CASE CONSIDERATIONS OVERVIEW

CONSIDERATIONS PERTAINING TO CURRENT SEX TRAFFICKING CONDUCT

Trafficker's Use of Harm or Threats of Harm as a Form of Control

- Did the VO come under the control of their trafficker through violence or threats of violence?
- Did the trafficker use violence or threats of violence to control the VO and/or other victims?
- Did the trafficker use or threaten to use other forms of harm to control the VO and/or other victims?
- Were the VO and/or the other victims afraid of the trafficker?
- Did the trafficker isolate the VO from other victims by punishing the other victims if the VO violated the trafficker's rules?
- Did the VO avoid harm by engaging in criminal conduct directed by the trafficker?
- Did the trafficker initiate or exploit the VO's substance use disorder as part of their trafficking?

Impact of Trauma and Trauma-Bonding

- Has the VO attempted to protect their trafficker in the criminal investigation or prosecution?
- Is/was the VO afraid to testify against their trafficker or participate in the investigation?
- Was the VO under the control of the trafficker for a longer period of time than the trafficker's other victims?
- Is the VO emotionally bonded to the trafficker?

Role of Relationship with the Trafficker

- Is the VO's trafficker a family member?
- Does the VO perceive a romantic relationship with their trafficker?
- Does the VO have a child with the trafficker?
- Has the VO's child or another close relative been used as leverage to control the VO?
- Was the VO a minor at the time of their alleged trafficking conduct or at the time their trafficker began trafficking them?

VO's Conduct Toward Other Victims--Holistic Assessment

- If the VO directed the trafficking related activities of other victims, did the VO also have to engage in commercial sex?
- If the VO used violence against, or otherwise exerted control over, other victims, was the VO instructed to do so by the trafficker?
- If the VO recruited other victims, did that allow the VO to avoid or limit their own exposure to violence, exploitation or other abuse by the trafficker?
- Did the VO attempt to help other victims or try to reduce the harm they suffered? If so, how?

VO's Apparent or Actual Autonomy--Holistic Assessment

- What degree of autonomy did the VO have in relation to other victims?
- If the VO had autonomy or access to a phone/car, was it monitored, limited or restricted by the trafficker?
- If the VO collected money from other victims, did the VO turn over all or the majority of the money collected from other victims to the trafficker?
- If the VO helped "run the business," did the VO avoid or limit their exposure to violence, exploitation or other abuse by assisting the trafficker?

CONSIDERATIONS PERTAINING TO PAST SEX TRAFFICKING VICTIMIZATION

History of Sex Trafficking Victimization as a Child

- Does the VO have a juvenile history of homelessness, running away or being forced to leave their home or placement?
- Has the VO engaged in survival sex (trading sex to meet basic needs, such as shelter, food or clothing) as a minor?
- Was the VO trafficked as a minor by a third party, regardless of force, fraud or coercion?

Context of Past Sex Trafficking Victimization

- Did a previous trafficker use violence or threats of violence to control the VO?
- Was the VO isolated from the community and/or moved too often to develop connections with anyone outside of their trafficking situation?
- Was the VO trauma-bonded to their trafficker as a result of abuse and/or untreated trauma?
- Has the VO had an opportunity to address, receive support for or heal from the trauma that resulted from their trafficking victimization?
- Did the trafficker exploit the VO's drug use/addiction as part of their trafficking?
- Has the VO experienced more than one trafficking situation? If so, did the VO's traffickers know one another, work together in a larger operation, or have gang affiliation?

CONSIDERATIONS PERTAINING TO HISTORY AND OTHER RELATED FACTORS

History of Abuse and Child Welfare Involvement

- Does the VO have a history of physical, emotional, psychological or sexual abuse or neglect?
- Was the VO involved in the child welfare system as a child?
- Did the VO's child welfare system involvement reduce or increase the VO's exposure to abuse/neglect?
- Did the VO's familial background involve intergenerational trauma and abuse? If so, did the VO's familial background include intergenerational trafficking?

History of Mental Illness and Intellectual/Developmental Disabilities

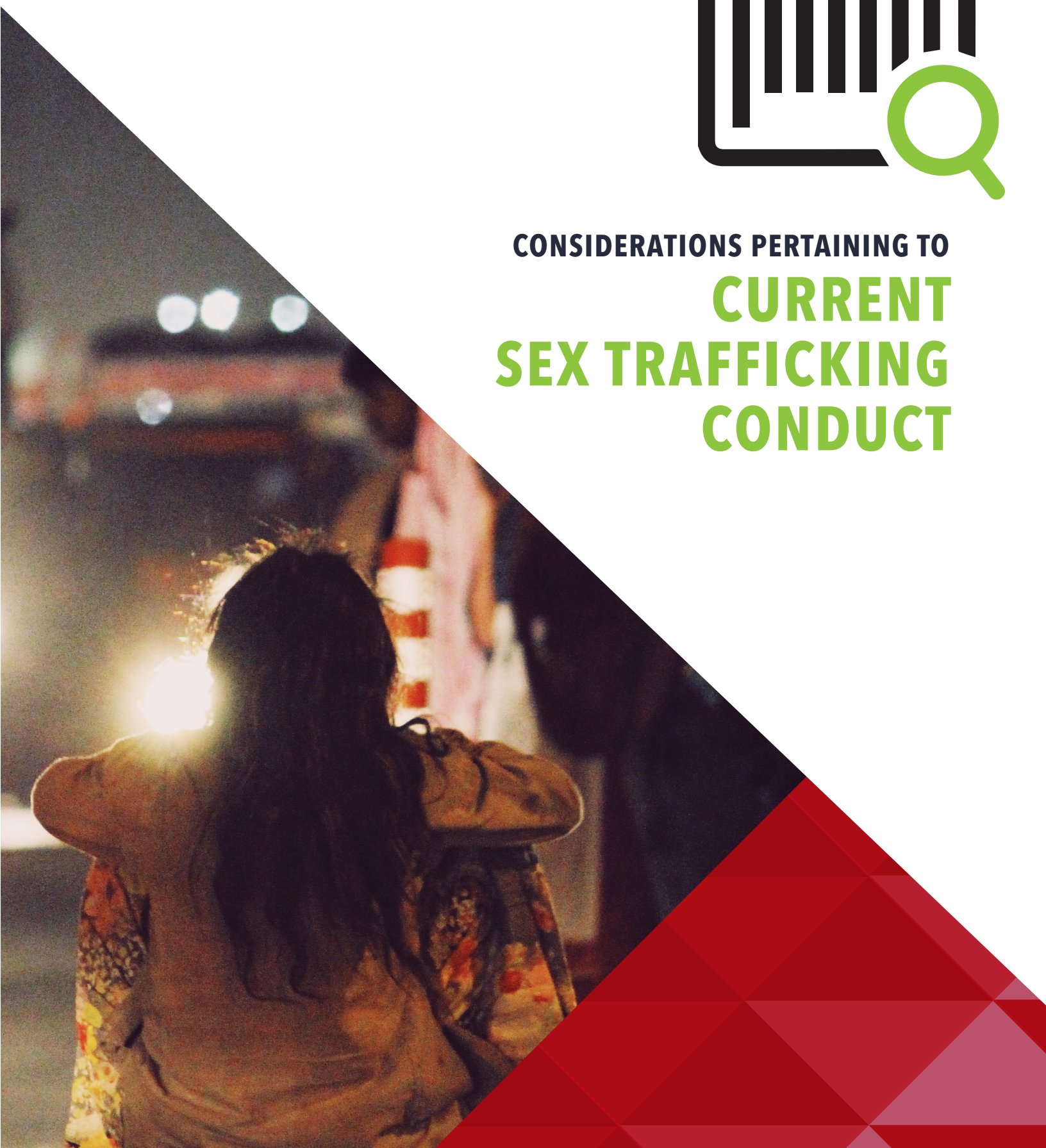
- Does the VO have any vulnerabilities related to intellectual/developmental disabilities?
- Does the VO currently have, or have they in the past suffered from, mental illness?
- Did the VO have access to and/or receive treatment for mental illness/accommodations for intellectual/developmental disabilities?

Role of Substance Use and Addiction

- Does the VO have a history of or are they currently using drugs or other substances?
- Does the VO have a history of or are they currently dealing with addiction or other substance abuse issues?
- Did the VO's substance abuse play a role in their trafficking victimization?

Intersectional Background Factors Influencing Risk for Exploitation

- Did the VO's socio-economic background impact their risk for exploitation, victimization or post-exploitation conduct?
- Did the VO's racial, ethnic or cultural background impact their risk for exploitation, victimization or post-exploitation conduct?
- Did the VO's educational background impact their risk for exploitation, victimization or post-exploitation conduct?
- Did the VO's gender identity and/or sexual orientation impact their risk for exploitation, victimization or post-exploitation conduct?



CONSIDERATIONS PERTAINING TO

CURRENT SEX TRAFFICKING CONDUCT

Trafficker's Use of Harm or Threats of Harm as a Form of Control

- Did the VO come under the control of their trafficker through violence?
- Did the trafficker use violence or threats of violence to control the VO and/or other victims?
- Did the trafficker use or threaten to use other forms of harm to control the VO and/or other victims?
- Were the VO and/or the other victims afraid of the trafficker?
- Did the trafficker isolate the VO from other victims by punishing the other victims if the VO violated the trafficker's rules?
- Did the VO avoid harm by engaging in criminal conduct directed by the trafficker?
- Did the trafficker initiate or exploit the VO's substance use disorder as part of their trafficking?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

These factual inquiries are important for understanding the extent to which a VO's actions were coerced and controlled by a trafficker and the extent to which the VO perceived any degree of choice in engaging in the trafficking conduct.

How can the criminal justice system provide a just response?

IDENTIFICATION:

Use or threat of violence or exposure to harm by the trafficker to control the VO and other victims could indicate that the VO's trafficking conduct arose from self-preservation. It is important to consider the circumstances of control that may have caused the VO's conduct and consider how complex trauma and ongoing abuse may simultaneously impact the VO's conduct. For example, control may be clear if the victim committed an act of violence against another person while a gun was held to their own head, but the trauma of continued exposure to violence can also influence a VO's perception of control in ways that are not as easily identifiable. A critical inquiry is whether the trafficker created an atmosphere of fear that led the VO to believe they had no other choice but to offend.

RESPONSE:

Any form of force, fraud or coercion resulting in sex trafficking violations needs to be considered immediately to determine the appropriateness of arresting and pressing charges and, subsequently, pursuing charges. If charges are violent felonies and no concurrent force, fraud or coercion can be determined, then arrest and prosecution may be appropriate, but current trafficking victimization must still be considered as a mitigating factor. Also be aware of the potential for re-traumatizing a VO by charging them alongside their exploiter as a co-conspirator, and do not interview the VO in front of traffickers or other possible victims.

Impact of Trauma and Trauma-Bonding

- Has the VO attempted to protect their trafficker in the investigation or prosecution?
- Is/was the VO afraid to testify against their trafficker or participate in the investigation?
- Was the VO under the control of the trafficker for a longer period of time than the trafficker's other victims?
- Is the VO emotionally bonded to the trafficker?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

These inquiries relate to how a VO acting under the effects of trauma can give the impression of acting willingly even though the VO does not perceive a choice.

How can the criminal justice system provide a just response?

IDENTIFICATION:

Trauma, both past and concurrent, can have a dramatic impact on how a VO responds to an investigation. Failure to cooperate with an investigation should not be treated as an indication of guilt but instead should be explored and recognized as a red flag for potential exploitation, fear of retaliatory harm or trauma bonding. The VO may have a sense of obligation to comply with demands to hold up their half of the relationship. All of this is magnified if the victim is young and/or does not understand the dynamics of a healthy relationship or if the trafficker is a family member or perceived romantic partner and those relationships have been used to facilitate the trauma-bond.

RESPONSE:

When there is suspicion that someone may be a VO, efforts should be made to immediately include a victim advocate who has experience with trafficking cases. If the VO does not initially identify a trafficker, law enforcement should still consider that the VO may be a victim and protecting a trafficker. A VO can be a victim and also be reluctant to self-identify and/or testify against a trafficker due to variety of factors, including trauma bonding or fear of reprisal against self or family. A VO who acts to protect their trafficker may be operating under the dynamics of abuse, trauma and potentially intimate partner violence. Since trauma may cause a VO to feel reticent to trust others, this can make it difficult to build rapport with law enforcement and prosecutors, especially if the VO is not receiving appropriate services and care. Without such care, a VO is likely to remain in survival mode, so stakeholders should prioritize access to services.

Role of Relationship with the Trafficker

- Is the VO's trafficker a family member?
- Does the VO perceive a romantic relationship with their trafficker?
- Does the VO have a child with the trafficker?
- Has the VO's child or another close relative been used as leverage to control the VO?
- Was the VO a minor at the time of their alleged trafficking conduct or at the time their trafficker began trafficking them?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

A VO's relationship with their trafficker is critical to understanding the level of loyalty, obligation or indebtedness a VO may feel towards the trafficker. A VO's sense of loyalty, obligation or indebtedness may be particularly strong if the trafficker is a family member or the VO had a personal relationship with the trafficker prior to their trafficking victimization. Similar to the harm experienced by victims of intimate partner violence or child abuse, a VO may be more inclined to engage in conduct that rises to exploitation of others if they believe that doing so will please or strengthen their relationship with their trafficker.

How can the criminal justice system provide a just response?

IDENTIFICATION:

The relationship between the VO and their trafficker, and the VO's relationship with other victims, may provide critical details that distinguish the VO's conduct from their trafficker and demonstrate how control and coercion that may not be immediately apparent were driving the VO's conduct. When the VO believes they are in a romantic relationship with their trafficker, many of the VO's behaviors may mirror those of intimate partner violence, including the frequency with which the victim returns to and the sense of loyalty they may feel towards their perpetrator. Similarly, if their trafficker is a family member, that may further increase the VO's sense of loyalty and the trafficker's ability to manipulate behavior. It is important to consider the past and concurrent dynamics of a VO's relationship to the trafficker in order to understand why the VO may appear more compliant with a trafficker's instructions or requests.

RESPONSE:

Applying research and practices similar to those used in intimate partner violence and child abuse cases can provide guidance in these cases. This is true not only when the trafficker is a romantic partner or family member but also when the trafficker manipulates a VO's familial relationships, such as with their child, a parent or a younger sibling, as part of their victimization. Increased sensitivity is required during interviews and criminal justice processes in order to assess the underlying dynamics of the trafficker-VO relationship and determine how this relationship may have caused a VO to act for the benefit of the trafficker. With an understanding of these factors in place, the VO's conduct may appear much less culpable and intentional than when viewed without consideration of these factors.

VO's Conduct Toward Other Victims–Holistic Assessment

- If the VO directed the trafficking related activities of other victims, did the VO also have to engage in commercial sex?
- If the VO used violence against, or otherwise exerted control over, other victims, was the VO instructed to do so by the trafficker?
- If the VO recruited other victims, did that allow the VO to avoid or limit their own exposure to violence, exploitation or abuse by the trafficker?
- Did the VO attempt to help other victims or reduce the harm they suffered? If so, how?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

It is important to consider a VO's conduct towards other victims in order to holistically understand the VO's role in the trafficking crime, the extent to which the VO was acting under coercion or duress, and whether the VO made any attempts to mitigate harm to other victims.

How can the criminal justice system provide a just response?

IDENTIFICATION:

Seeking information regarding why a potential VO engaged in harmful conduct toward other victims is critical to early identification of ST-VOI. This information can also shed light regarding whether the harmful conduct engaged in by the VO was committed as a result of coercion. Recognizing the role of ST-VOI and possible coercion is essential to determining the extent of a VO's culpability in resulting criminal activities. This information is critical and can shift the trajectory of the case from the beginning, potentially avoiding arrest, or arrest on serious charges like trafficking or trafficking conspiracy.

RESPONSE:

Law enforcement should consider inquiring about a VO's conduct towards other victims at the outset of an investigation, as it can improve law enforcement's rapport with the VO, which in turn may lead the VO to be more cooperative. Building rapport with a VO may help mitigate the risk of retraumatization throughout the criminal justice process and may be more effective in soliciting information from a VO than coercive tactics, such as leveraging charges against a VO to gain cooperation in the prosecution of the trafficker. If a VO is charged, defense attorneys can leverage this information to raise an affirmative defense or seek to have charges dismissed based on lack of criminal intent. Victim advocates can also use this information to help to ensure that the VO receives needed trauma treatment and services because the coercion to engage in offending conduct can have serious trauma consequences that require specialized treatment in addition to the trauma caused by the underlying trafficking victimization.

VO's Apparent or Actual Autonomy–Holistic Assessment

- What degree of autonomy did the VO have in relation to other victims?
- If the VO had autonomy or access to a phone/car, was it monitored, limited or restricted by the trafficker?
- If the VO collected money from other victims, did the VO turn over all or the majority of the money collected from other victims to the trafficker?
- If the VO helped "run the business," did the VO avoid or limit their exposure to violence, exploitation or other abuse by assisting the trafficker?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

Questions related to a VO's apparent and actual autonomy are important because, even when conduct on the part of the VO may appear autonomous, the VO may not perceive that they had a choice due to their underlying trauma or their trafficker's control. It is critical to consider the VO's apparent and actual autonomy together with indicators of coercion and control in order to accurately understand the VO's actual role in the trafficking of other victims.

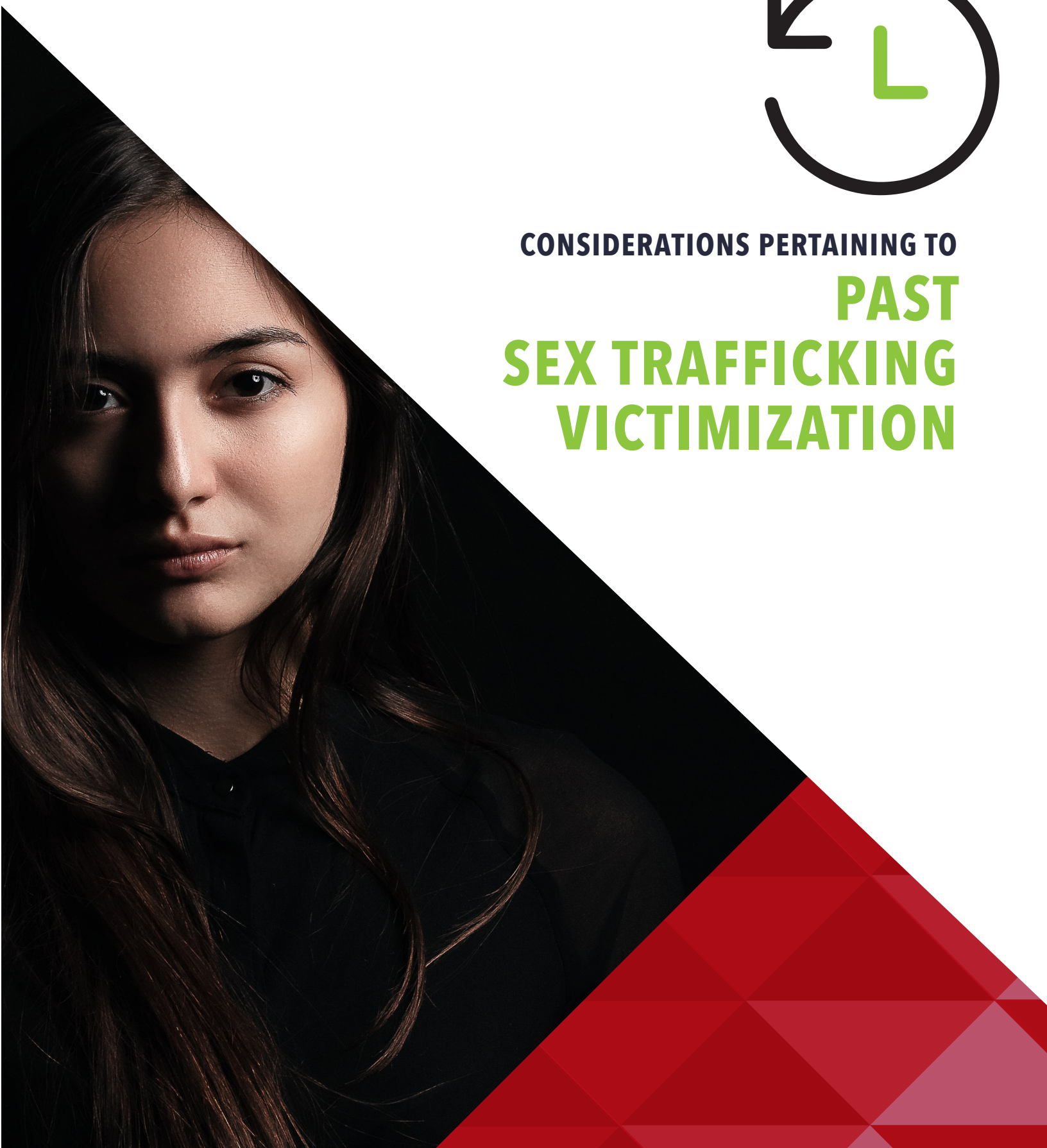
How can the criminal justice system provide a just response?

IDENTIFICATION:

To distinguish between VO and trafficker conduct, the degree of autonomy will have to be seen through the lens of the VO and the dynamics of power and control. The degree of actual autonomy may not equal the level of autonomy the VO appeared to have or even the level of autonomy the VO might claim to have had.

RESPONSE:

Upon initial assessment, it may appear that a VO acted autonomously (e.g., they had access to a cell phone or car); however, further investigation may uncover that the VO's behaviors were monitored or that their trafficker was controlling them through threats (e.g., harm to a family member). It is critical that law enforcement work to differentiate what actions the VO engaged in on behalf of the trafficker to support the business and/or enforce the trafficker's demands and rules versus what, if any, actions they engaged in completely independently. When assessing autonomy, the effects of long-term trauma on the brain and learned helplessness must be considered. This is especially important when choosing whether to charge a VO, especially on charges of trafficking or as a co-conspirator. Relatedly, if during the course of an investigation it becomes clear that a VO did not have significant autonomy and was operating under direction and control of a trafficker, consider working with the VO to bring that evidence of control into the prosecution of the trafficker, rather than bringing charges against the VO.



CONSIDERATIONS PERTAINING TO

PAST SEX TRAFFICKING VICTIMIZATION

History of Sex Trafficking Victimization as a Child

- Does the VO have a juvenile history of homelessness, running away or being forced to leave their home or placement?
- Has the VO been in a trafficking situation that didn't involve a 3rd party exploiter (i.e., exploitation by sex buyers in exchange for basic needs, such as shelter, food or clothing) as a minor?
- Was the VO trafficked as a minor by a third party, regardless of force, fraud or coercion?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

Trafficking victimization that occurred during childhood, critical years of brain development, can significantly affect a VO's current functioning, vulnerability and victimization, and can increase their susceptibility to coercion and control. It is important to recognize that VOs may not perceive, and some criminal justice personnel may not initially recognize, past victimization and sex trafficking. This is especially true for VOs with a history of homelessness, housing insecurity or related vulnerabilities who were exploited through exchanging sex acts to survive. These VOs may not have had, or may not be able to identify, a third-party exploiter; however, they are nonetheless victims of child sex trafficking.

How can the criminal justice system provide a just response?

IDENTIFICATION:

The impact of past trafficking victimization can create the same susceptibility to coercion and control as concurrent victimization, especially when the trafficking occurred as a minor. Individuals who were trafficked as children may be at increased vulnerability for becoming a VO later in life for a variety of reasons. For example, they may lack education and job/skills training and, as a result, may become an offender as a method of survival. For other VOs, their prior trafficking victimization may have normalized commercial sexual exploitation to the point that they cannot connect with the idea of the harm they cause when recruiting and/or exploiting others. It could even go so far as the VO thinking they are actually helping someone who is homeless, a runaway or in other difficult situations by exposing them to commercial sex. This is particularly true if the VO perceives their own history of exploitation as the means that met their basic needs by providing access to food, shelter and a perceived sense of security or protection from other forms of harm.

RESPONSE:

Screening for previous trafficking victimization is essential. Equally important is training all criminal justice stakeholders to identify trafficking "red flags," such as a juvenile record, current or past homelessness or a history of running away, which could indicate potential trafficking. If screening leads to a finding of past victimization, this must be considered at all stages of the criminal justice process. Additionally, victim advocates should ensure that VOs who have a history of child sex trafficking victimization are provided specialized services to address the prior victimization and that VOs who have a history of homelessness or housing insecurity are provided housing specific services.

Context of Past Sex Trafficking Victimization

- Did a previous trafficker use violence or threats of violence to control the VO?
- Was the VO isolated from the community and/or moved too often to develop connections with anyone outside of their trafficking situation?
- Was the VO trauma-bonded to their trafficker as a result of abuse and/or untreated trauma?
- Has the VO had an opportunity to address, receive support for or heal from the trauma that resulted from their trafficking victimization?
- Did the trafficker require or exploit the VO's drug use and/or addiction as part of their trafficking?
- Has the VO experienced more than one trafficking situation? If so, did the VO's traffickers know one another, work together in a larger operation, or have gang affiliation?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

The trauma of a VO's past trafficking experiences can impact how susceptible they may be to re-exploitation, coercion and control. The context of this past trafficking victimization (e.g., the VO's relationship to their previous trafficker, the violence they experienced, etc.) can also impact how a VO may respond to later trafficking situations. For example, control and violence at the hands of a previous trafficker may increase their susceptibility to control exerted by a later trafficker and impact their perceived or actual degree of choice in engaging in trafficking conduct.

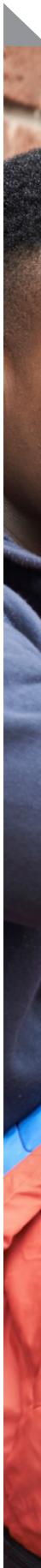
How can the criminal justice system provide a just response?

IDENTIFICATION:

The context of past trafficking victimization should always be considered when assessing the autonomy of a VO engaging in trafficking conduct. Past victimization can significantly impact a VO's perception of human trafficking, especially if they view commercial sexual exploitation as a survival strategy or a situation from which they cannot escape. A VO's perception regarding human trafficking may not be apparent or fully conscious. Since the effect of trauma on the brain and learned helplessness can contribute to a VO's trafficking violations, it is critical to investigate whether an individual charged with trafficking has a history of trafficking victimization.

RESPONSE:

When a VO engages in trafficking conduct that victimizes others as a result of their own victimization, they may suffer severe feelings of shame, guilt, self-loathing and severe identity confusion and require specialized counseling for that unique trauma. A criminal response can often impede access to these needed services and compound the trauma. For this reason, as soon as trafficking victimization is suspected and/or confirmed, a VO should be connected with a victim advocate or specialist who can connect them with needed support and services. A VO who has access to services and trauma-informed care is also more likely to be willing and able to participate in the criminal process against their trafficker and is more likely to be an effective witness. Past trafficking victimization should also be considered when making charging decisions. For example, a VO may not have perceived that they had any choice when carrying out the demands of their trafficker; therefore, it would not be advised to charge them as a co-conspirator alongside their trafficker. In addition, learning about the circumstances and impact of past trafficking victimization is particularly important for defense attorneys. Understanding this history can help demonstrate a pattern of conduct showing control by the trafficker, rather than intentional conduct by the VO.



CONSIDERATIONS PERTAINING TO

HISTORY AND OTHER RELATED FACTORS

History of Abuse and Child Welfare Involvement

- Does the VO have a history of physical, emotional, psychological or sexual abuse or neglect?
- Was the VO involved in the child welfare system as a child?
- Did the VO's child welfare system involvement reduce or increase the VO's exposure to abuse/neglect?
- Did the VO's familial background involve intergenerational trauma and abuse? If so, did the VO's familial background include intergenerational trafficking?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

It is important to inquire about a VO's history of abuse/neglect and child welfare involvement because these factors can impact a VO's susceptibility to trafficking victimization as well as their susceptibility to offending under the trafficking law. Complex trauma, which is often experienced by victims of human trafficking, impacts decision-making capacity. Instability and insecurity, especially at a young age, can impact susceptibility to trauma bonding. The combined impact of childhood trauma and sex trafficking victimization can substantially influence a VO's understanding of right and wrong as well as their perception of choice and susceptibility to control by a trafficker.

How can the criminal justice system provide a just response?

IDENTIFICATION:

Trauma from childhood abuse/neglect can alter neurological brain development and result in a victim's decision-making capacity being much younger than their biological age. Childhood sexual abuse, in particular, could also mean the VO was conditioned at an early age to being sexualized and learned survival through exploitation. Abuse/neglect and involvement in the child welfare system could significantly increase a VO's susceptibility to the coercion and control often exhibited by traffickers.

RESPONSE:

It is critical for law enforcement to understand whether a VO had a history of childhood abuse and child welfare involvement in order for them to contextualize the underlying factors that may make a VO susceptible to the coercion and control of a trafficker. Defense attorneys can also raise these issues in their defense of the VO's conduct, noting their increased susceptibility to the coercion of the trafficker. Victim advocates working with VOs with a significant history of child welfare involvement should ensure that VOs receive appropriate services, not only for their current victimization but also for any childhood victimization that may have gone untreated.

History of Mental Illness and Intellectual/Developmental Disabilities

- Does the VO have any vulnerabilities related to intellectual/developmental disabilities?
- Does the VO currently have, or have they in the past suffered from, mental illness?
- Did the VO have access to and/or receive treatment for mental illness/accommodations for intellectual/developmental disabilities?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

Inquiring about mental illness and intellectual/developmental disabilities is important because it relates to the VO's susceptibility to coercion and control as well as their ability to understand what constitutes illegal behavior. Traffickers often identify and exploit these conditions in a VO, use them to manipulate a VO's perception of right and wrong and create dependence.

How can the criminal justice system provide a just response?

IDENTIFICATION:

An essential component of distinguishing a VO from a trafficker is recognizing whether the conduct was voluntary and autonomous and whether the VO truly understood the nature of their conduct. Underlying mental illness and/or intellectual/developmental disabilities can make a VO more susceptible to coercion by a trafficker and impact whether a VO truly understood the nature of their conduct.

RESPONSE:

Untreated mental illness and/or intellectual/developmental disabilities can compound complex trauma and complicate recovery. In deciding whether to charge or which charges to bring, law enforcement and prosecutors should consider the extent to which the VO understood the impact of their conduct. The criminal justice process can compound a VO's trauma and have a more serious impact due to underlying mental illness and/or intellectual/developmental disabilities. Therefore, it is critical that VOs with mental illness and/or intellectual/developmental disabilities have access to all necessary and appropriate services. If the VO is expected to participate as a victim witness, consider alternative means for delivering testimony that could reduce the potential for serious harm during the process. Additionally, depending on the severity of a VO's disability, they may need an assessment and/or representation to ensure they fully understand what is being communicated to them by law enforcement, prosecutors and others in the criminal justice process.

Role of Substance Use and Addiction

- Does the VO have a history of, or are they currently using, drugs or other substances?
- Does the VO have a history of, or are they currently dealing with, addiction or other substance abuse issues?
- Did the VO's substance abuse play a role in their trafficking victimization?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

Investigating a VO's substance use disorder/addiction is critical because substance use and addiction can increase a VO's overall vulnerability to victimization and potentially increase a trafficker's ability to manipulate and influence a VO's behavior. Traffickers often encourage drug use to bring potential victims under their control and then exploit or force addiction to maintain that control.

How can the criminal justice system provide a just response?

IDENTIFICATION:

Substance use disorder/addiction is an important consideration and could be an indicator of potential trafficking victimization. A trafficker may use drugs to create dependency or exploit a pre-existing addiction in an effort to control a VO. Not only do traffickers exploit victims' substance use to coerce their engagement in commercial sex, but traffickers may also exploit a VO's substance use disorder to coerce the VO to commit acts that assist the trafficker and violate the trafficking law.

RESPONSE:

Understanding addiction and how it may be exploited to cause a VO to engage in acts that constitute trafficking can help distinguish the role of a trafficker from the role of a VO. Additionally, identifying substance use/addiction issues will help victim advocates more effectively address the service needs of a VO, including potentially facilitating access to needed substance use disorder treatment through a diversionary process.

Intersectional Background Factors Influencing Risk for Exploitation

- Did the VO's socio-economic background impact their risk for exploitation, victimization or post-exploitation conduct?
- Did the VO's racial, ethnic or cultural background impact their risk for exploitation, victimization or post-exploitation conduct?
- Did the VO's educational background impact their risk for exploitation, victimization or post-exploitation conduct?
- Did the VO's gender identity and/or sexual orientation impact their risk for exploitation, victimization or post-exploitation conduct?

Why is this important to ask? How does this uniquely impact sex trafficking victims and/or their likelihood to offend?

A person's socio-economic, racial, ethnic, cultural and educational background, as well as their gender identity, sexual orientation and the intersectionality of these identities, can greatly increase an individual's vulnerability to human trafficking victimization, as well as their susceptibility to becoming a VO. Marginalized communities and systemic discrimination can increase a person's likelihood for being targeted by a trafficker to commit offenses and can reduce the likelihood that they will be perceived as victims rather than criminals.

How can the criminal justice system provide a just response?

IDENTIFICATION:

Individuals who identify as LGBTQI+, people of color and people from lower socio-economic backgrounds are overrepresented among human trafficking victims.[45] Understanding a VO's unique background may shed light on the VO's access to support systems and on whether the VO perceived real alternatives for creating a sustainable life, free from exploitation and, eventually, avoiding becoming a VO.

RESPONSE:

A VO's background, the intersectionality of their multiple identities and their own and their peers' prior experience with the criminal justice system can greatly impact a VO's perception of their victimization, trafficking conduct and the availability of alternative choices. This information should be gathered and considered as early as possible, starting with identification and investigation and continuing into the prosecutorial process, if the VO is prosecuted. Information about the VO's background is also critical for victim advocates so that they are able to ensure that the VO receives appropriate, culturally responsive services.