



# Responding to Sex Trafficking

## Victim-Offender Intersectionality

A Guide for Criminal Justice Stakeholders



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COMMERCIAL SEXUAL EXPLOITATION

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*This field guidance is a joint report by Shared Hope International and Villanova Law Institute to Address Commercial Sexual Exploitation and was informed by Shared Hope's JuST Response Council. It follows three years of collaborative research on sex trafficking victim-offender intersectionality—the phenomenon of sex trafficking survivors who are alleged to have engaged in sex trafficking conduct.*

**Shared Hope International's JuST Response Council** represents some of the most innovative and informed experts in the country. These members help assure that JuST Response products are informed by diverse perspectives and experiences. Council members share the goals of preventing juveniles from becoming sex trafficking victims and ensuring that youth who have been trafficked have access to the tools and support necessary to heal from the trauma they have endured and the skills to create and sustain a life away from trafficking. Members include policy advocates, government officials, medical professionals, law enforcement, prosecutors, judges, academics and service providers, many of whom are themselves survivors of juvenile sex trafficking, and hail from diverse geographic areas of the nation.

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# **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 system 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 address 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 process. 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.

## NEXT STEPS RECOMMENDATIONS

One of the primary goals of this field guidance is to bring attention to ST-VOI and start a dialogue about how this challenging issue can be addressed in a way that balances potentially competing priorities of victim-centered justice, victims' rights, and public safety concerns. The JuST Response Council also recognizes that this field guidance will not address every circumstance of ST-VOI. More research and learning are needed to identify comprehensive solutions, both in policy and practice, for responding in a fair and just way to ST-VOI. To encourage that ongoing process, this report recommends the following next steps for the field:



**Provide broad-based training for criminal justice stakeholders on identifying and responding to ST-VOI.**



**Consider impact of, and potential alternatives to, coercive tactics to gain victim cooperation and testimony. Research can help identify strategies for improving trafficking investigations and prosecutions that reduce or eliminate reliance on victim-witness testimony.**



**Ensure that there is a strong service-based component embedded within the criminal justice response to sex trafficking. Strong partnerships with service providers can help break the cycle of exploitation and address the vulnerabilities of trafficking victims before they potentially lead to later offending.**



**Conduct in-depth research on treatment approaches for sex trafficking victim-offenders, including how to provide specialized trauma-informed services to sex trafficking victim-offenders without risk to non-offending victims.**



**Conduct further research on what causes ST-VOI, how ST-VOI impacts a victim-offender, how those harmed by sex trafficking victim-offenders are impacted, and what resilience and protective factors could help prevent ST-VOI and coercion to commit other offenses.**



**Engage in an ongoing dialogue with a diverse range of stakeholders on how to balance competing priorities of victim-centered justice, victims' rights and public safety concerns.**



**Seek and incorporate survivor engagement in development of responses, protocols, research strategies, and any next steps toward understanding and improving responses to ST-VOI.**



**Explore legal and practical alternatives to implementing a traditional criminal justice response in ST-VOI cases, including opportunities to prevent criminalization at the outset of the case.**



**Open avenues for sex trafficking victim-offenders who have been convicted of crimes related to their trafficking victimization to seek relief from the long-term consequences of those convictions.**





# INTRODUCTION

*Lurking at the edges of almost two decades of progress in combatting sex trafficking in the United States is the problem of victim-offender intersectionality (ST-VOI). Indeed, the phenomenon of trafficking victims committing criminal acts is largely unavoidable in the sex trafficking victimization process. Consensus has grown within the anti-trafficking movement that charging sex trafficking victims with prostitution can be harmful and retraumatizing, giving rise to specialized human trafficking courts, diversion programs, and “safe harbor”<sup>1</sup> and vacatur laws that seek to mitigate the harm caused by criminalizing sex trafficking victims.*

However, the field is increasingly seeing that the nature of sex trafficking victimization and the control and coercion exerted by those who profit from the exploitation of sex trafficking victims, means that prostitution is not the only crime that trafficking victims may be charged and prosecuted for in the course of their victimization. Increasingly, law enforcement, prosecutors, judges and victim advocates are being confronted with the complex question of whether a sex trafficking victim should be charged as an offender when that victim engages in conduct that violates the sex trafficking law.

This question does not have clear or easy answers. As the circumstances vary widely from case to case, outcomes in these cases also vary widely, with the victim-offender’s trafficking victimization often being excluded from consideration as they proceed through the criminal justice process.

Over three years ago, the JuST Response Council began to discuss the issue of ST-VOI. Given the complexity of these cases, the Council recognized the injustice inherent in charging sex trafficking victims as offenders without consideration for their own victimization. Victim-offenders not only deserve, but require, a just, trauma-informed, and victim-centered response. The Council also understood that when the intersection of victimization and trafficking conduct brings a victim-offender into the criminal justice process, a just response can be achieved if the relevant stakeholders in the process are informed about the phenomenon of ST-VOI and commit to both identifying victimization and responding holistically once it has been identified.

Acknowledging the need to improve awareness and response to ST-VOI, the Council developed this field guidance. This field guidance seeks to provide criminal justice stakeholders with resources and a guide to promoting more just and victim-centered approaches when they encounter the intersection of sex trafficking crimes that are alleged to have been committed by sex trafficking victims. The guide is designed to foster a case-by-case approach that considers the unique circumstances of the charged conduct alongside the circumstances of the offender’s trafficking victimization and how that victimization may have influenced the offending conduct.

## NOTE ON FOCUS OF THIS FIELD GUIDANCE

***While the Council recognizes that victim-offender intersectionality has an impact on access to services, housing and therapeutic treatment, this field guidance focuses on the criminal justice response to VOI for several reasons.*** Not only does an uninformed criminal justice response to VOI create serious barriers for victim-offenders to access needed services, but it also poses urgent questions of fairness in the enforcement of criminal laws to address trafficking. As a result, inappropriate responses to VOI can undermine larger efforts to strengthen anti-trafficking policy. Further, the complexity of addressing this issue in the criminal justice system warranted focused attention in order to address the issue more broadly.

# GUIDING PRINCIPLES

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 rarely easy 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. Social factors that make an individual vulnerable to trafficking can also make them vulnerable to being coerced into committing trafficking offenses; however, despite similarity in underlying vulnerabilities, evidence that victim-offenders were subjected to trafficking victimization may not be as easy to identify as the victimization of individuals who are not also charged with offending conduct. Therefore, 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 identified, 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 to determine the impact that the victimization had on the victim-offender's ability (or perceived ability) to choose to act otherwise. The existence of trafficking victimization, concurrent or otherwise, is a crucial starting point for distinguishing intentional conduct from conduct that lacked choice. Since trauma response is not limited to immediate responses to trauma, the impact of trauma must be considered at all stages of the criminal justice process. For example, ST-VOI should be considered in 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 sex trafficking victim may look different than coercion of other types of crime victims.** Sex 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.

## METHODOLOGY

The process of developing this field guidance spanned three years of work by the JuST Response Council and was guided by the knowledge and expertise of the Council members.<sup>2</sup> The collective professional and lived expertise of the Council members ensured that this field guidance was informed by the perspectives of criminal justice stakeholders, including prosecution, law enforcement, probation, judiciary, victim advocates, and sex trafficking survivors. The Council developed this field guidance following extensive discussion and debate, legal and scholarly research, review of over 150 federal case records, and analysis of state and federal laws impacting sex trafficking survivors. Throughout this process, the Council identified the overarching need to change how the criminal justice system responds to ST-VOI and identified the specific goal of supporting criminal justice stakeholders in making a systemic shift from a narrow, retributive response to a holistic approach.

Given the impact of language on perceptions and cultural attitudes, part of shifting the criminal justice response also necessitates a shift in language. For this reason, the Council concluded that it was necessary to reject use of the term “bottom” and its other iterations as an appropriate way to define or describe a sex trafficking survivor alleged to have committed a sex trafficking offense. The term “sex trafficking victim-offender intersectionality” reflects the broader criminal justice concept of victim-offender overlap<sup>3</sup> while limiting it to the context of sex trafficking cases. Additionally, use of the term “intersectionality” in lieu of “overlap” was important because temporal overlap does not accurately reflect the nexus of victimization and alleged offending that may occur in sex trafficking cases. Instead, these cases require a holistic understanding of a broad range of factors in order to accurately understand the circumstances that led to ST-VOI and enable a just response.

Thus, in order to support criminal justice stakeholders in shifting the response to ST-VOI, this field guidance encourages stakeholders to apply a sex trafficking-informed lens to cases involving ST-VOI, enabling consideration of the facts and circumstances of these cases through that lens. Recognizing the real challenges that criminal justice stakeholders encounter, the Council chose to focus its efforts on developing tools and resources that would support criminal justice stakeholders who are on the front lines of tackling this challenging issue.

The resources and tools in this field guidance were developed to support criminal justice stakeholders with achieving 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-informed lens**
- 3 Identify alternative responses to victim-offenders that account for 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:

## **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 those factors can appropriately be 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 have potentially 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.<sup>4</sup> 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.

None of the case studies involve a minor charged with sex trafficking or prosecution under state law. Cases involving minors were not included because of the confidential nature of juvenile court records and because many of the cases involving minors charged as adults have been publicized, making it difficult to effectively anonymize the cases. State cases were not included because the differences in law, procedure and practice vary considerably from state to state, making it difficult to accurately assess the factors that influenced the outcomes in the cases. Federal cases were more suitable for purposes of comparison because of the consistency in laws and procedures applied in these cases. Thus, the fact that state cases and cases involving minors were not included as case studies should not be interpreted as a finding that these cases do not exist or are more limited. Indeed, news reports of minors charged with serious offenses alongside their traffickers are increasingly prevalent, and many of these cases are being charged at the state level.<sup>5</sup>

## **Legal and Scholarly Resources Related to Victim-Offender Intersectionality**

This collection of scholarship is a review of court opinions and scholarly articles addressing 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 the criminal justice process for several reasons. The failure to identify ST-VOI in the criminal justice process 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 process 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.



# DEFINITIONS

## **VICTIM-OFFENDER INTERSECTIONALITY (VOI):**

For purposes of this report, this term refers to the phenomenon of sex trafficking victims alleged to have engaged in conduct that violates the federal definition of sex trafficking under 22 U.S.C. 7102 (Definitions).<sup>6</sup> Under this definition, the trafficking violation could involve a broad range of conduct, including recruitment, transportation, advertising, and harboring, and could involve trafficking of adults by means of force, fraud or coercion or children without regard to whether force, fraud or coercion was involved.

## **VICTIM-OFFENDER (VO):**

For purposes of this report, victim-offender, or VO, is used to refer to an individual who has experienced, or is currently experiencing, sex trafficking victimization and is alleged to have engaged in conduct that violates the federal sex trafficking law. As previously discussed, while all of the cases identified for this 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.

## **SEX TRAFFICKING VICTIM/SURVIVOR:**

A sex trafficking victim/survivor is any person who has been victimized by/survived victimization of conduct that violates the federal sex trafficking law. This report uses “victim” and “survivor” interchangeably to provide consistency and align with statutory language and cross-agency terminology. The Council recognizes that individuals who have experienced trafficking are survivors at all stages of their abuse and recovery and are not defined by their victimization. The Council also recognizes that people with lived experience with trafficking may refer to themselves in many ways, which may or may not include the terms “victim” and/or “survivor.”

## **CRIMINAL JUSTICE STAKEHOLDER:**

This term refers to any professional or volunteer participating in the criminal justice system in a manner that involves interaction with individuals who are or could be charged with a crime.

## **NOTE ON LANGUAGE**

*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 examines how the term “bottom” has been used in legal and scholarly contexts.

# TRAUMA IMPACT ON THE SEX TRAFFICKING VICTIM-OFFENDER

*It is essential to view the actions and behaviors of sex trafficking victim-offenders through the lens of trauma. Though an “ideal victim is expected to react to their aggressors and to their [victimization] in socially accepted ways,” such traditional notions of victimhood “do[] not account for the coping techniques that trafficked [persons] may have adopted in order to survive their ordeal” or for their potentially “unconventional reactions to their victimization.”<sup>7</sup> Therefore, understanding trauma and how trauma can affect sex trafficking victim-offenders will shed light on how and why victims may transform into victim-offenders.*

## WHAT IS TRAUMA?

Trauma is the unique individual experience of an event or enduring condition in which either the individual's ability to integrate his or her emotions are overwhelmed or the individual experiences a threat to his or her life, bodily integrity, or sanity.<sup>8</sup> Trauma can be either a singular event, such as a rape, or chronic events, like sex trafficking.<sup>9</sup>

## THE BIOLOGICAL IMPACT OF TRAUMA

The toxic stress associated with traumatic events has far reaching effects. Studies have revealed that the brains of people who have been victims of trauma are different when compared with the brains of people who have not experienced trauma.<sup>10</sup> Anytime that an individual experiences a traumatic event, the body's stress response system is activated.<sup>11</sup> Overactivity of that system (primarily the amygdala, prefrontal cortex, and hippocampus) can influence not only the physiological makeup of those areas of the brain but, through that, the individual's behavior and decision-making abilities.<sup>12</sup> Research has consistently shown that victims of trauma have smaller amygdalae, which can result in hypersensitivity.<sup>13</sup> When the amygdala is engaged it sends a signal to speed heart rate, raise blood pressure, and release hormones such as adrenaline and cortisol.<sup>14</sup> The engagement of the amygdala also inhibits the prefrontal cortex, which controls judgment and impulse control, and the hippocampus, which aids in effective recollection of events.<sup>15</sup> An individual attempting to recollect their trauma may only have access to it in fragmented, non-sequential memories.<sup>16</sup> Without buffers from healthy social relationships and/or stable environments, these changes may lead to short and long-term difficulties in physical and mental health.<sup>17</sup>

In addition to the impact on neurological functioning, trauma has a powerful and long-term impact on physiological functioning and physical health. Toxic stress, which is experienced by repeated heightened stress responses, can impair the nervous, cardiac, endocrine, and immune systems, increasing the likelihood of chronic health conditions.<sup>18</sup> It is important to note, however, that many of these negative changes are reversible with proper physical and mental health care, nutrition, and supportive relationships, thus highlighting the need for service-based, rather than punitive responses.<sup>19</sup>

## THE PSYCHOLOGICAL IMPACT OF TRAUMA

The psychological impact of the trauma one endures from being sex trafficked depends on the individual and their subjective experience of the traumatic event.<sup>20</sup> For some, trauma may lead to a sense of hopelessness, anger, inability to recall, loss

of sleep, distrustfulness, disassociation, or difficulty concentrating.<sup>21</sup> For others, trauma may lead to an exaggerated startle response, hypervigilance, efforts to avoid any reminders of the traumatic event, self-mutilation, suicidal behaviors, or increased risk taking.<sup>22</sup>

Sex trafficking victim-offenders are at a high risk for experiencing multiple mental health and behavioral problems because of the nature of their trauma.<sup>23</sup> A 2010 study, which interviewed 204 trafficked girls and women in seven post-trafficking service settings, revealed that 57% of participants were comorbid for three mental health outcomes: depression, anxiety, and Post-Traumatic Stress Disorder (“PTSD”).<sup>24</sup> Additionally, 55% of the study’s participants met the criteria for high levels of depression, 48% met the criteria for high levels of anxiety, and 77% met the criteria for PTSD.<sup>25</sup> Those three mental health diagnoses are not comprehensive though; victim-offenders may also suffer from panic disorder, substance abuse, and eating disorders as well.<sup>26</sup> Co-occurring substance use issues are especially common among those who have experienced sex trafficking because these substances may be used as a coping mechanism, as a method of dissociation, or may have been used as a means of coercion by traffickers or buyers.<sup>27</sup>

### **THE IMPACT OF COMPLEX TRAUMA**

Children and adolescents exposed to multiple traumatic events experience a unique form of trauma known as “complex trauma.”<sup>28</sup> The term “complex trauma” also refers to the immediate and long-term consequences of these traumatic experiences.<sup>29</sup> “Children exposed to complex trauma often experience lifelong problems that place them at risk for additional trauma exposure and other difficulties, including psychiatric and addictive disorders, chronic mental illness, and legal, vocational, and family problems. These difficulties may extend from childhood through adolescence and into adulthood.”<sup>30</sup>

Additionally, research indicates that complex trauma is not isolated to childhood traumatic experiences. Instances of community violence (i.e. domestic violence, interpersonal violence, sexual exploitation/trafficking, refugee/asylee trauma and family violence) all categorize as complex due to the prolonged and repetitive nature of the trauma.<sup>31</sup> Complex trauma is typically interpersonal and involves circumstances that seem inescapable to the victim.<sup>32</sup> While childhood trauma can be indicative of an individual’s likelihood to experience complex trauma in adulthood, it is not a requirement.<sup>33</sup> These traumatic experiences are most often found in circumstances that involve severe exploitation, direct harm, or maltreatment.<sup>34</sup> For individuals with adult complex trauma, these events typically occur in positions of disempowerment or dependency.<sup>35</sup>

### **THE TRAUMA-RESPONSE OF A SEX TRAFFICKING VICTIM-OFFENDER**

Scholars describe a crime victim’s reaction to a crime as “the crisis reaction.”<sup>36</sup> Depending on a victim’s “level of personal violation they experience and their state of equilibrium at the time of victimization,” victims will have different crisis reactions.<sup>37</sup> Many sex trafficking victims have experienced violence and trauma in the past, prior to their sex trafficking victimization. Therefore, they may already have an altered state of equilibrium at the time of their sex trafficking victimization. This, along with the nature of the offense, may lead to a seemingly unconventional crisis reaction, which involves a victim engaging in behaviors that may violate the law or lead to criminal justice system contact.

For some people who have experienced trauma, behaviors that were protective during the trauma become the default and can be maladaptive or damaging when displayed in other situations. For example, a 2012 study, which surveyed 217 trauma-exposed female undergraduate students, revealed that “high levels of trauma exposure corresponded with anger as well as both verbal and physical aggression.”<sup>38</sup> The study revealed that trauma was a significant predictor of verbal and

physical aggression with individuals who experienced more trauma exhibiting higher levels of such aggression.<sup>39</sup> Also, the study showed “a significant total effect of cumulative trauma on anger with higher cumulative trauma predicting greater anger.”<sup>40</sup>

Furthermore, there is a link between unresolved trauma and criminal behavior.<sup>41</sup> Chronic trauma may evolve into a “dysfunctional routine,” creating a link between experiences of trauma as a victim and later experiences of trauma as perpetrators.<sup>42</sup> Trauma may actually “urge individuals to engage in greater risk taking behavior or in seeking out dangerous and sensational situations as part of compulsive re-exposure to trauma and as an attempt to heal unresolved traumatization through re-enactments of their early experiences.”<sup>43</sup> Such re-enactments of trauma are “mirrored [in] . . . ‘acting out’ behaviours [sic], such as harm to others and criminal activity” and that phenomenon is known as “compulsion to the trauma.”<sup>44</sup>

Trauma can also lead trafficking victims to engage in behaviors that violate the law for other reasons. As discussed in the “Legal and Scholarly Resources” section below, people who have experienced trafficking often feel trauma bonds with their traffickers wherein they develop positive, loving or loyal feelings toward the very people who are hurting and exploiting them. Especially for individuals who have had past experiences of trauma, abuse or neglect, they may view the trafficker as the only person who has cared for them and loved them. Such a relationship can lead a victim to engage in criminal behavior out of loyalty or through emotional coercion from their trafficker. In other situations, victims may determine that engaging in criminal behavior is actually protective for them—the better of two evils. For example, if they recruit or force others to engage in trafficking, they may avoid violence from a trafficker, or have a lower quota themselves, meaning that they may be prostituted less and, therefore, face less exposure to disease and violence.





# 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 process. 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

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### 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

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### 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 family 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

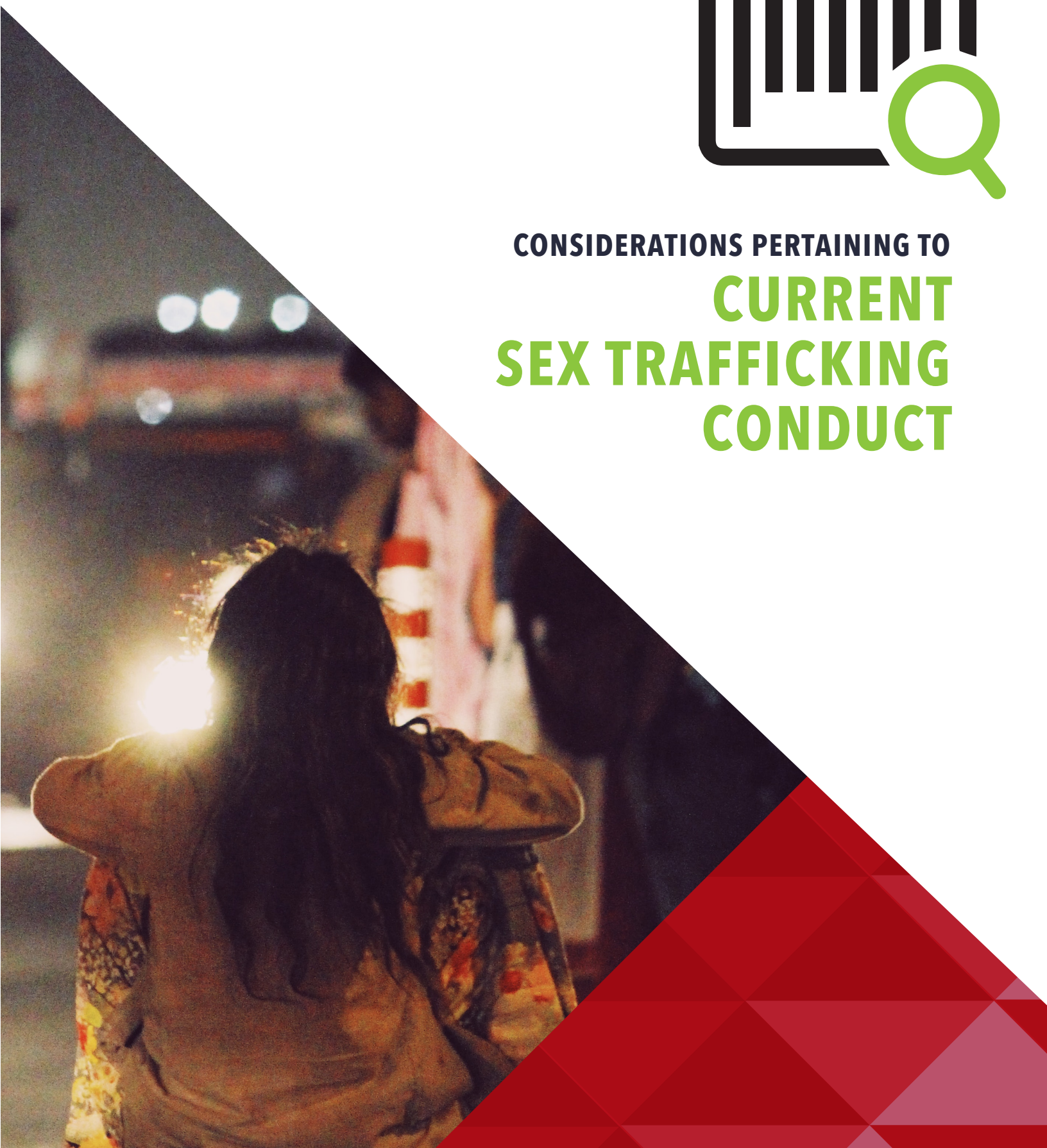
- Does the VO have a history of or are they currently using drugs or other substances?
- Does the VO have a history of or are they currently dealing with addiction or other substance abuse issues?
- Did the VO's substance abuse play a role in their trafficking victimization?

### 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.

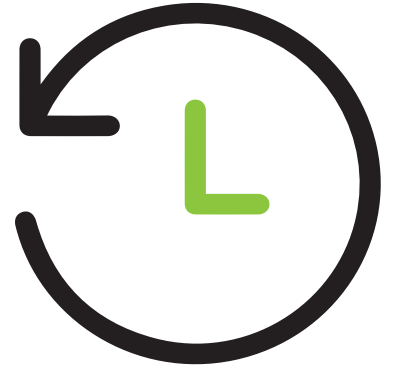
## How can the criminal justice system provide a **just response**? ▼

### 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 family 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.<sup>45</sup> 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.

# KEY STAGES OF THE CRIMINAL JUSTICE PROCESS

The factors in the Criminal Justice Stakeholder Tool can impact the response to VOI at various stages of the criminal justice process. For example, law enforcement can shift the response in the investigation phase in determining whether to arrest and, if arresting, considering the nature of the charges, such as not charging as a co-conspirator alongside the trafficker. Prosecutors also have the opportunity to decide whether to proceed with a prosecution, divert away from the criminal justice process or transfer into a specialized human trafficking court. Defense attorneys can seek to avoid criminalization at the outset, relying on non-criminalization provisions or affirmative defenses, or through post-conviction relief by relying on vacatur laws. Judges and magistrates are positioned to decide what types of evidence are admissible for purposes of demonstrating trafficking victimization, both during a prosecution of a VO and in subsequent hearings to determine appropriate post-conviction remedies.

**The following graphic depicts some of the ways that a more just response may be achieved in cases involving VOI; however, many of these remedies may not be specifically available to trafficking survivors under existing law.**





## STAGES OF THE CRIMINAL JUSTICE PROCESS

## OPPORTUNITIES FOR JUST RESPONSE

TO VICTIM-OFFENDER INTERSECTIONALITY



### INVESTIGATION



### ARREST



### CHARGES FILED (Either adult or juvenile proceeding)



### TRIAL



### CONVICTION



### SENTENCING



### POST-CONVICTION RELIEF

- ✓ Avoid interviewing potential victim-offender with trafficker or other victims
- ✓ Identify VOI early in process to ensure access to victim-witness protections
- ✓ Laws prohibiting prosecution of trafficking victims for trafficking conduct—available in 4 states:<sup>46</sup>
  - Mississippi (minors only)
  - South Carolina (minors only)
  - New Mexico (prohibits accessory charges only)
  - Wyoming
- ✓ Avoid coercive charging and/or arrest; build rapport to encourage victim cooperation
- ✓ Pre-trial diversion
- ✓ Referral to human trafficking court or specialized docket
- ✓ Avoid prosecuting victim-offender as co-conspirator alongside their trafficker
- ✓ Do not prosecute child sex trafficking victims as adults
- ✓ Laws allowing affirmative defense for trafficking offenses: available in 12 states<sup>47</sup>
- ✓ Allow expert witness testimony on impact of trafficking victimization
- ✓ Alternatives to conviction (judicial diversion, deferred sentence)
- ✓ Avoid convictions on trafficking and other charges with serious collateral consequences:
  - 45 states require sex offender registration as a result of certain trafficking convictions<sup>48</sup>
  - 36 states permit a court to terminate parental rights based on a trafficking conviction<sup>49</sup>
- ✓ Mitigation in sentencing
- ✓ Alternatives to incarceration (probation, community service)
- ✓ Sealing
- ✓ Expungement
- ✓ Vacatur—available for trafficking offenses in 12 states<sup>50</sup>







# CASE STUDIES

*The following case studies provide a picture of how ST-VOL cases have been approached within the criminal justice system and some of the potentially negative consequences that victim-offenders experience as a result of their criminalization and the general lack of consideration of their underlying victimization. Each case study examines the circumstances under which the victim-offender was arrested (to the extent this information was available in the court record), the charges brought against the victim-offender, and the outcome of the case. Within this framework, the case studies also look at whether the victimization suffered by the victim-offender was at issue during the prosecution or during sentencing and any impact the victimization had on the outcome of the case.*

All of the case studies are based on federal cases from the past 12 years involving adult defendants who were prosecuted as a co-defendant alongside their trafficker. In each of the reviewed cases, the defendant was charged with sex trafficking under either the federal sex trafficking law, 18 U.S.C. § 1591, or under 18 U.S.C. § 1594 for conspiracy to violate 18 U.S.C. § 1591, and information in the court record indicated that the defendant had also experienced sex trafficking victimization, either as an adult or as a minor. Given the evidence that each defendant experienced trafficking victimization, identifying details in the case records, including names, were removed to protect the identity of the defendant.



## "ADELE"

**Trafficking victimization as a minor was not considered at trial or during sentencing.**

**Initial Charges:** 1 count of Conspiracy to Commit Sex Trafficking (18 USC § 1594) and 5 counts of Sex Trafficking (18 USC § 1591)

**Convicted Counts:** 1 count of Conspiracy to Commit Sex Trafficking (18 USC § 1594) and 5 counts of Sex Trafficking (18 USC § 1591)

**Sentence:** 72 months on each count running concurrently followed by 10 years of supervised release

**Sex Offender Registration Required:** Yes



### DEFENDANT'S BACKGROUND

Adele grew up in an intact immigrant family. At age fifteen, Adele was trafficked by her first trafficker. During this victimization, her parents repeatedly filed missing person reports with the police in an attempt to locate their daughter. On a couple of occasions, her parents found that Adele had been trafficked several states away from their family home.

### EVIDENCE OF DEFENDANT'S TRAFFICKING VICTIMIZATION

Subsequent to her initial trafficking victimization as a minor, Adele met her second trafficker, the co-defendant in this case, when she was 19 years old. At the time, she was working as a hotel receptionist in a hotel where the co-defendant trafficked some of his underage victims. Adele's mother, worried about her safety, filed police reports for her daughter at the onset of Adele's relationship with the second trafficker. That trafficker subjected her to physical, psychological and emotional abuse.

### TREATMENT OR SERVICES PROVIDED (IF ANY)

Adele did not receive any counseling or mental health treatment in connection with either trafficking victimization prior to her incarceration on trafficking charges. During that period of confinement, Adele received treatment for post-traumatic stress disorder (PTSD).

### ROLE IN TRAFFICKING ENTERPRISE

Adele's role included taking pictures of the minor victims, posting the ads online, transporting victims, and collecting money from the victims to give to her trafficker. All of the money collected from the minor victims was given to trafficker. The minor victims made reference to Adele as "the bottom," and the trafficker identified her as his, "main girl." In this role, Adele was no longer required to engage in commercial sex as long as she recruited other victims. The trafficker had a history of using coercion to recruit and control the minor victims. In one instance, he forced a victim to perform a commercial sex act by threatening to leave the victim stranded if she declined. Adele voiced concern about the ages of the minor victims and expressed her desire to stop recruiting and exploiting minor victims. Adele also intervened in some circumstances when her trafficker coerced other minor victims, trying to stop or mitigate the abuse they experienced. However, her trafficker continued to traffic minors and expected Adele to maintain her role in his operation, which continued until he and Adele were arrested.

According to the prosecution, at the time of her arrest Adele and a minor victim were driving together when they recruited another minor victim. Adele was charged as co-conspirator with her trafficker. The prosecution argued that Adele's recruitment of the minor victim was not done under the direct instruction of the trafficker.

### COOPERATION WITH THE PROSECUTION

Rather than go to trial, Adele pled guilty to the charges. Unfortunately, despite the fact that she provided material assistance to the prosecution, the prosecution disregarded her assistance in its sentencing memorandum and argued that a long sentence was necessary to make an example of Adele. The prosecution claimed in its sentencing memorandum that because Adele was "raised in a loving, two-parent household, where values including faith and education were paramount," there was "simply no justification for [her] abhorrent conduct." According to the plea agreement, she was given the benefit of taking responsibility in her sentencing guidelines; however, there was no accounting for her victimization, either as a minor or as an adult, in the court record. Adele was sentenced to 72 months of incarceration on each count to run concurrently and 10 years of supervised release.

# APPLICATION OF THE CRIMINAL JUSTICE STAKEHOLDER TOOL



## HOW USING THE TOOL TO EVALUATE THE CASE COULD IMPACT IDENTIFICATION OF THE DEFENDANT'S UNDERLYING TRAFFICKING VICTIMIZATION

Consideration should have been given to the fact that Adele was from an immigrant family, an intersectional factor that could have increased her vulnerability to exploitation due to language and cultural differences. The facts that her trafficking victimization began when she was 15 and that she was frequently moved around by her trafficker indicate she had additional vulnerabilities to future trafficking and would have struggled to develop relationships outside of her trafficking situation. Furthermore, the fact she stated she "loved" her trafficker, combined with abuse she faced, indicates Adele may have suffered from similar effects to intimate partner violence, making her susceptible to pressure and manipulation in her actions. Based on the court record, it appears that Adele never received services to address her initial trafficking victimization as a minor; therefore, she likely never addressed her initial trauma and her later actions should be viewed through a trauma responsive lens.

An important factor demonstrating that she was acting under the control of, and on the behalf of, her trafficker is that all the money she collected went to her trafficker. She did not have to engage in commercial sex when she was able to recruit other victims, reflecting that this behavior was motivated by self-protection. Finally, she clearly struggled with her dual role since she expressed concern about the minor's ages and expressed a desire to stop recruiting and exploiting minors. All of these facts indicate that she was not operating as an equal associate in the trafficker's treatment of other victims since she took particular steps to stop or mitigate the trafficker's abuse of other victims.

## HOW USING THE TOOL TO EVALUATE THE CASE COULD HAVE IMPACTED THE CRIMINAL JUSTICE RESPONSE

Recognizing Adele's past victimization and how it made her more susceptible to coercion and control could have shed light on potential alternative motivations for her actions, including self-preservation due to the years of commercial sexual exploitation that she endured, as well as trauma-bonding due to the "love" she believed she had for her trafficker. The fact that Adele intervened to ask the trafficker to stop his abusive conduct toward other victims was also not taken as evidence against her complicity.

A more just response would have considered whether any of these factors were mitigating, and would have actively sought to provide counseling for the trauma bonding and past victimization that occurred. Considering these factors could have resulted in a very different approach to Adele's case ranging from the decision to charge her, which charges to prosecute, mitigation during sentencing, to access to post-conviction relief.

## RELEVANT FACTORS TO CONSIDER

- Trafficker's Use of Harm or Threats of Harm as a Form of Control: physical abuse
- History of Control and Coercion in the Context of Past Sex Trafficking Victimization: minor during first victimization; was moved around a lot; isolated from family supports
- Role of Relationship with the Trafficker: Adele believed she was in a romantic relationship with her trafficker
- Holistically Assessing the VO's Apparent or Actual Autonomy: gave all money to the trafficker
- Holistically Assessing the VO's Conduct Toward Other Victims: she did not act coercively and wanted her trafficker to stop trafficking minor victims
- Intersectional Background Factors Influencing Risk for Exploitation: cultural background; family's immigration status

## "BRITTANY"

**Identified intellectual disability should have been a "red flag" for coercion.**

**Initial Charges:** 1 count of Conspiracy to Commit Sex Trafficking (18 USC § 1594); 1 count of Conspiracy to Distribute Cocaine & Cocaine Base in the Form of Crack (21 USC §§ 841(a)(1)); 1 count of Possession w/ Intent to Distribute Cocaine (21 USC §§ 841(a)(1) & 841(b)(1)(C)); 1 count of Possession w/ Intent to Distribute Cocaine Base in the Form of Crack (21 USC §§ 841(a)(1) & 841(b)(1)(B)); and 1 count of Possession of a Firearm in Furtherance of a Drug Trafficking Offense (18 USC § 924(c))

**Convicted Counts:** Mispriison of felony (18 USC § 4)

**Sentence:** Time served

**Sex Offender Registration Required:** No



### DEFENDANT'S BACKGROUND

Brittany was seventeen when she first met her trafficker through a friend. After meeting her trafficker, she ran away from her mother's home and was trafficked by him for 2 years until they were both arrested. Brittany had been diagnosed as having developmental delays.

### EVIDENCE OF DEFENDANT'S TRAFFICKING VICTIMIZATION

Another underage victim of the trafficker recruited Brittany. The trafficker lured Brittany into a sexual relationship, which led to Brittany's misguided belief that he loved her. The trafficker often used romance as a form of manipulation with Brittany as well as with other minor victims. Brittany did not keep any proceeds from her commercial sex acts and all proceeds went to the trafficker. The trafficker also operated a drug trafficking enterprise and he introduced Brittany to cocaine, crack, and ecstasy. If Brittany violated one of the trafficker's rules, he would violently assault her. In one instance, Brittany used cocaine after the trafficker told her to refrain. As a punishment for Brittany and to frighten another victim who was present at the time, he took Brittany into the hotel bathroom and severely beat her. The other victim reported hearing Brittany plead for her trafficker to stop assaulting her.

### TREATMENT OR SERVICES PROVIDED (IF ANY)

The prosecution's sentencing memorandum recommended that Brittany be connected to services and placed in a residential program for homeless youth upon her release. Similarly, the defense's sentencing memorandum requested assistance from probation with ensuring she was able to access appropriate services following her release.

### ROLE IN TRAFFICKING ENTERPRISE

Despite being charged with conspiracy to commit sex trafficking in a superceding indictment, the indictment cites no overt acts by Brittany in furtherance of the sex trafficking charge, such as allegations that Brittany recruited other victims or managed any aspects of her trafficker's trafficking enterprise. Instead, the indictments allege conduct by Brittany in connection with the firearm and drug charges for which she was also charged as a co-conspirator. Additionally, the sentencing memorandum in her trafficker's case includes Brittany among his minor victims. However, unlike the other victims discussed in the sentencing memo, Brittany was no longer a minor when her trafficker was arrested.

### COOPERATION WITH THE PROSECUTION

Brittany was charged with five separate felonies. Initially, she refused to cooperate with the government but she later agreed to assist the prosecution after being arrested for a pretrial release violation. The prosecution cited her cooperation in its sentencing memorandum recommending a downward departure and also acknowledged that Brittany had a diagnosed learning disability and that she had been "victimized and controlled" by her trafficker. Because of this she plead guilty to a reduced charge and was sentenced to time served.

# APPLICATION OF THE CRIMINAL JUSTICE STAKEHOLDER TOOL



## HOW USING THE TOOL TO EVALUATE THE CASE COULD IMPACT IDENTIFICATION OF THE DEFENDANT'S UNDERLYING TRAFFICKING VICTIMIZATION

Brittany was a minor with an identified intellectual disability when she was initially trafficked, making her highly susceptible to coercion and manipulation. Her vulnerabilities were exacerbated by the "love" that her trafficker convinced her they shared, a technique he had frequently used with other victims to control their behaviors. Her trafficker created further dependence through the use of drugs. In addition to fostering emotional and physical dependence on him, her trafficker further fostered Brittany's dependence on him by making her turn over to him all of the money she earned through commercial sex acts in exchange for housing and food. The brutal assaults she endured for disobeying her trafficker also demonstrate the violent coercion that motivated her compliance with her trafficker's demands. This fear combined with her dependence on him likely motivated her to protect him.

## HOW USING THE TOOL TO EVALUATE THE CASE COULD HAVE IMPACTED THE CRIMINAL JUSTICE RESPONSE

Brittany's young age, past victimization, and intellectual disability all impacted her perception of choice in any of her actions while under the control of her trafficker. Far from acting in agreement with her trafficker to exploit other victims, the record demonstrates that she was equally victimized and controlled and points to no facts indicating that she carried out acts in violation of the trafficking law. This is further demonstrated in the sentencing memorandum in her trafficker's case which identifies her as among the trafficker's victims.

A more just response would have considered the fact that Brittany, who was initially trafficked as a minor and had a diagnosed developmental disability, lacked the criminal intent required to be a co-conspirator in this case. Approaching Brittany as a victim rather than a criminal and taking a trauma-informed approach in this case could have resulted in a very different outcome for Brittany, including access to specialized services and a victim-witness advocate throughout the criminal justice process. These measures may have enabled Brittany to cooperate in the prosecution without the re-traumatizing experience she endured as a result of her criminalization in this case.

## RELEVANT FACTORS TO CONSIDER

- Role of Relationship to the Trafficker: believed she was in a romantic relationship with her trafficker
- Holistically Assessing the VO's Conduct Toward Other Victims: there was no indication she recruited other victims
- Role of Substance Use and Addiction: trafficker introduced her to and supported drug use
- Trafficker's Use of Harm or Threats of Harm as a Form of Control: severe physical assault
- History of Mental Illness and Intellectual/Developmental Disabilities: intellectual disability
- Impact of Past Trafficking Situations involving a Third Party Trafficker: Was a minor when she met her trafficker

## "CECILIA"

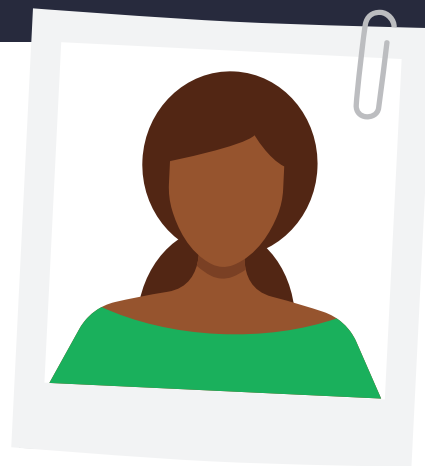
**Tried as co-defendant on all counts despite evidence of coercion and control.**

**Initial Charges:** 4 counts of Sex Trafficking (18 USC § 1591); and 1 count of Conspiracy to Commit Sex Trafficking and to Distribute Heroin and Cocaine (18 USC § 371)

**Convicted Counts:** 1 count of Conspiracy to Commit Sex Trafficking and to Distribute Heroin and Cocaine (18 USC § 371)

**Sentence:** 30 Months

**Sex Offender Registration Required:** No



### DEFENDANT'S BACKGROUND

Cecilia's parents divorced when she was seven, and her father died of a heroin overdose when she was seventeen years old. Cecilia had a very difficult time coping with her father's death and spent some time receiving behavioral healthcare services. While she was in high school, she started to use marijuana, ecstasy, mushrooms, and cocaine. She gave birth to her first child when she was 18 years old and her second child at 20.

### EVIDENCE OF DEFENDANT'S TRAFFICKING VICTIMIZATION

Cecilia met her trafficker through her "best friend" who was also his niece. Her trafficker gave her cocaine at this first meeting and after that first meeting he continued to supply her cocaine. When Cecilia's car loan was two months overdue, she borrowed money from him. The trafficker then encouraged Cecilia to post advertisements of herself on known escort platforms to pay off her debts to him that had accrued from the cocaine that he was providing and the money she borrowed for her car. Because she was frightened by her trafficker's displays of angry outbursts and violence, which included hitting and strangling other women in front of her, she started engaging in commercial sex to pay off her debt to him and to continue receiving cocaine. However, despite engaging in commercial sex acts to pay her drug debt, the debt never actually decreased. Her trafficker simultaneously increased the amount of cocaine he supplied to her and consequently continued to increase the amount of money she owed to him. All of the proceeds from her commercial sex acts and her role in the enterprise went toward the "debt." Eventually her trafficker stopped forcing her to engage in commercial sex to repay her debt and instead forced her to manage aspects of the trafficking enterprise, such as posting ads and distributing drugs to other victims and tracking their "debt" to the trafficker. She was in this role when she was arrested along with her trafficker. In addition to exploiting her substance use disorder, her trafficker was violent and threatened her when she did not do something correctly. During her testimony at trial, she described being scared of him and was convinced he had become a different person because she had thought he cared for her.

### TREATMENT OR SERVICES PROVIDED (IF ANY)

She was ordered to engage in a drug treatment program as part of her supervised release.

### ROLE IN TRAFFICKING ENTERPRISE

According to the defense sentencing memorandum, there was no evidence that Cecilia recruited any victims to engage in commercial sex acts "or verbally or physically assaulted anyone to engage in commercial sex acts." Her trafficker recruited and coerced his victims by supplying drugs and exploiting his victims' drug dependence to control them through debt-bondage. This tactic generally involved providing victims with drugs for a period of time without requesting payment for the drugs and then coercing the victims to engage in commercial sex to pay off their drug debt. By controlling the "price" of the drugs he supplied, the amount of his victims' drug debt could also be controlled to ensure ongoing compliance. He also exploited his victims' dependence on the drugs he supplied by restricting the drug supply as a form of control. Several victims testified at trial that he would punish disobedience by forcing victims to go through painful withdrawal. Cecilia's role in the enterprise consisted of taking pictures of the victims, driving them to motels for commercial sex acts, and collecting the money they earned. Although Cecilia ostensibly received fifteen percent of the proceeds from the other victims, all of that money directly went to repay her ever increasing drug debt.

### COOPERATION WITH THE PROSECUTION

Cecilia provided the government help in prosecuting her trafficker by testifying against him. She received a six-level reduction under the sentencing guidelines because of her material assistance, as documented in her plea agreement. Cecilia received a 30-month sentence.



# APPLICATION OF THE CRIMINAL JUSTICE STAKEHOLDER TOOL



## HOW USING THE TOOL TO EVALUATE THE CASE COULD **IMPACT IDENTIFICATION OF THE DEFENDANT'S UNDERLYING TRAFFICKING VICTIMIZATION**

Cecilia experienced two significant adverse childhood experiences at a young age: the trauma of her parents' divorce and her father's death by drug overdose. These experiences, as well as having two children at a young age, made her vulnerable to coercion and control. Cecilia's trafficker applied a technique to entrap her that he had used before, supplying her drugs and paying for her car and then creating a "debt dependence," which he used to control her. She also witnessed violence towards other victims and experienced other forms of violence, making self-preservation a primary motivation for her actions. Furthermore, Cecilia's trafficker took her money, controlled the drug supply, and continually manipulated her debt to keep her under his control, demonstrating a relationship that was characterized by coercion.

## HOW USING THE TOOL TO EVALUATE THE CASE COULD HAVE **IMPACTED THE CRIMINAL JUSTICE RESPONSE**

Cecilia helped run the business but she does not appear to have been involved in recruiting other victims. Her role in running the business also seems to have been motivated by the same coercive control tactics that her trafficker initially used to coerce her into engaging in commercial sex, suggesting that she did not really perceive a choice in cooperating with her trafficker's demands, but instead was acting out of self-preservation and fear.

A more just response would have taken these factors into consideration when decisions were made regarding whether to prosecute and on what charges. Additional harm was caused by prosecuting her alongside her trafficker. In addition, Cecilia should have been provided with specialized services, including drug and trauma treatment, and a victim-witness advocate. Although treatment was ordered at sentencing, it should have begun once her trafficking victimization was suspected or identified.

## RELEVANT FACTORS TO CONSIDER

- Role of Substance Use and Addiction: history of using drugs, trafficker's use of drugs to create debt
- Trafficker's Use of Harm or Threats of Harm as a Form of Control: frequent displays of violence and threats of violence; use of debt scheme to require sex-acts
- Holistically Assessing VO's Conduct Towards Other Victims: Cecilia did not use violence or coercion toward other victims

### **Child Sex Trafficking Victim Who Just Turned 18 Demonstrated Heightened Dependence on Trafficker Due to Gang-controlled Sex Trafficking Victimization**

**Initial Charges:** 1 count of Conspiracy to Commit Sex Trafficking of a Child (18 USC § 1594), 4 counts of Aiding and Abetting Sex Trafficking of a Child (18 USC § 1591), 1 count of Sex Trafficking of a Child (18 USC § 1591) and 1 count of Use of Facilities in Interstate Commerce to Promote Prostitution (18 USC § 1592)

**Convicted Counts:** Conspiracy to Commit Sex Trafficking of a Child (18 USC § 1594)

**Sentence:** 100 months

**Sex Offender Registration Required:** Yes



#### **DEFENDANT'S BACKGROUND**

Dawn's parents separated when she was one year old. As a result, she went to live with her grandmother. This was untenable and after a period of time, Dawn and her siblings were placed in foster care. She was returned to her mother at the age of nine, where she suffered physical and emotional abuse that caused her to run away from home. At the age of 14, she began a relationship with an older boyfriend who was physically and sexually abusive. At 16 years of age, she entered the juvenile justice system. She used marijuana with regularity during her childhood as a coping mechanism, and at some point during her childhood, she was placed in a psychiatric facility for depression, anxiety and suicidal thoughts. She was reunited with her father when she was 17 years old.

#### **EVIDENCE OF DEFENDANT'S TRAFFICKING VICTIMIZATION**

Dawn was 17 when the trafficker, who was a gang member, recruited her. Dawn believed the two were romantically involved after they engaged in a sexual relationship. However, in court documents, the trafficker said he never considered Dawn to be his girlfriend, and instead he was committed to another "girlfriend" and their three children. Dawn had only turned 18 a few months prior to being charged. She is alleged to have recruited the minor victims in the case; however, according to court documents, the minors approached her to ask for assistance after they ran away from home, a situation very similar to her own.

#### **TREATMENT OR SERVICES PROVIDED (IF ANY)**

None

#### **ROLE IN TRAFFICKING ENTERPRISE**

Dawn was convicted based on her role in recruiting another victim for the gang. Dawn knew the minor victim from school and since the minor victim was in dire need of housing, she introduced her to the gang. However, the gang leader, Dawn's trafficker, was the person who recruited the minor victim to engage in commercial sex after Dawn introduced the two of them.

#### **COOPERATION WITH THE PROSECUTION**

Dawn cooperated with the prosecution after her arrest. She shared information with the prosecution, and pled guilty. Her cooperation helped the government avoid a lengthy trial. However, despite her cooperation she received a 100-month (8+ years) sentence.

# APPLICATION OF THE CRIMINAL JUSTICE STAKEHOLDER TOOL



## HOW USING THE TOOL TO EVALUATE THE CASE COULD IMPACT IDENTIFICATION OF THE DEFENDANT'S UNDERLYING TRAFFICKING VICTIMIZATION

Dawn's trafficking exploitation by her trafficker began when she was a minor and he emotionally manipulated her into believing they had a romantic relationship. Dawn's history of foster care and juvenile justice involvement, childhood abuse, intimate partner violence, drug use, mental illness, and running away, increased her vulnerability to this type of manipulation and trafficking victimization. Her significant history of adverse childhood experiences, compounded with the "romantic" nature of Dawn's relationship with her trafficker, put the trafficker in a position to manipulate and exploit her perception of right and wrong.

## HOW USING THE TOOL TO EVALUATE THE CASE COULD HAVE IMPACTED THE CRIMINAL JUSTICE RESPONSE

An important factor to consider in assessing Dawn's culpability is the fact that she did not recruit other victims until she encountered a friend who needed housing. Given that she was "in the life" for so long and the minor's situation mirrored her own, she may have seen her "recruitment" as something helpful for the minor victim. Her own victimization may have normalized "being in the life" to the extent she did not recognize the recruitment as a harmful act but that she was actually helping a homeless peer.

A more just response would have taken into account Dawn's exploitation as a minor, indicators of mental illness, and severe childhood trauma. Stakeholders could have considered these factors alongside the fact that Dawn did not have a history of recruitment in determining whether to prosecute and at a minimum, could have avoided trafficking-related charges. In addition, Dawn should have been provided access to mental health treatment, including trauma treatment, and been provided a victim-witness advocate.

## RELEVANT FACTORS TO CONSIDER

- History of Abuse and Child Welfare Involvement: physical and emotional abuse, intimate partner violence
- Impact of Substance Use and Addiction: used drugs to cope with childhood trauma
- Holistically Assessing the VO's Conduct toward Other Victims: circumstances indicate she did not recognize the harm of recruiting the homeless minor victim
- History of Mental Illness and Intellectual/Developmental Disabilities: placed in psychiatric facility

## "EMMA"

**History of homelessness and trafficking victimization as a child through "survival sex" reflected both vulnerability to trafficking and susceptibility to coercion.**



**Initial Charges:** Child Exploitation Enterprises (18 USC § 2252A(g)), Sexual Exploitation of Children (18 USC § 2251(a)), Distribution of Child Pornography (18 USC § 2252A(a)(2)), Transportation of Minors (18 USC § 1591(a)), Sex Trafficking of a Minor (18 USC § 1591), Transportation of an Individual (18 USC § 2421), and Interstate Travel or Transportation in Aid of Racketeering Enterprises (18 USC § 1952)

**Convicted Counts:** Distribution of Child Pornography (18 USC § 2252A)

**Sentence:** 120 months incarceration followed by 5 years of supervised release

**Sex Offender Registration Required:** Yes

### DEFENDANT'S BACKGROUND

Emma was adopted as an infant, and never knew her biological parents. Her adoptive mother passed away when she was six years old. Subsequently, Emma was physically and mentally abused by the foster care family she was placed with, even being denied food and clothing. She became a ward of the state at 15 years of age, and was placed in several other foster care facilities before she ran away at age 17. At the time of her arrest, Emma had a limited criminal history that included a retail theft and carrying a concealed weapon.

### EVIDENCE OF DEFENDANT'S TRAFFICKING VICTIMIZATION

Emma was first trafficked at age 16 when she was living alone and exploited by sex buyers in exchange for meeting her basic needs (e.g., food). The trafficker recruited Emma to work for him after he posed as a buyer and took her back to his apartment for oral sex. Emma had an interest in and tried to finish high school to have a better life, but her trafficker forbade her to go to school. When she tried to leave, the trafficker convinced her she would never be good at anything else. The trafficker was violent with Emma when she did something he did not like, once hitting Emma with his car during an argument. She was hospitalized as a result.

### TREATMENT OR SERVICES PROVIDED (IF ANY)

None

### ROLE IN TRAFFICKING ENTERPRISE

Emma considered herself the "bottom" in the trafficking organization. She took pictures of victims and posted them on websites. She collected the money from the other women and girls working for the trafficker. She would also train the others how to speak to buyers and protect themselves.

### COOPERATION WITH THE PROSECUTION

Emma cooperated with the prosecutors in the case against her trafficker. She gave a statement to the prosecution on several occasions, and testified against her trafficker at his trial. Despite her cooperation, she received a ten-year sentence of incarceration.

# APPLICATION OF THE CRIMINAL JUSTICE STAKEHOLDER TOOL



## HOW USING THE TOOL TO EVALUATE THE CASE COULD IMPACT IDENTIFICATION OF THE DEFENDANT'S UNDERLYING TRAFFICKING VICTIMIZATION

Emma experienced abuse from a young age and had little social stability or support, factors that increased her vulnerability to trafficking. As a minor unable to meet her basic needs, Emma was exploited by sex buyers which led to her meeting her first trafficker which further normalized commercial sex as a means of self-preservation. Her dependence on her trafficker was exacerbated when her trafficker isolated her by refusing to let her attend school, and telling her she would never be good at anything other than commercial sex.

## HOW USING THE TOOL TO EVALUATE THE CASE COULD HAVE IMPACTED THE CRIMINAL JUSTICE RESPONSE

Despite having a well-documented history of abuse and experiencing violent acts perpetrated by her trafficker, Emma was sentenced to 10 years of incarceration.

A just response would have considered her significant history of abuse, and recognized that she perceived little choice in her circumstances and was motivated by self-preservation. In addition to mitigating her sentence, and also choosing to not charge her alongside her trafficker, Emma should have received trauma-informed counseling and support, as well as a victim-witness advocate to represent her needs in the court.

## RELEVANT FACTORS TO CONSIDER

- History of Sex Trafficking Victimization as a Child: initially trafficked as a minor; history of exploitation by sex buyers in exchange for basic needs
- History of Control and Coercion in the Context of Past Sex Trafficking Victimization: isolation from normal activities (e.g., attending school)
- History of Abuse and Child Welfare Involvement: adopted as an infant; abused in foster care; denied basic needs (e.g., food); frequently moved
- Role of Relationship to Trafficker: trafficker convinced her she could not do anything else
- Trafficker's Use of Harm or Threats of Harm as a Form of Control: She wanted to leave the trafficking situation but was not allowed; trafficker was violent to the point she was hospitalized for her injuries
- Holistically Assessing VO's Conduct Towards Other Victims: no violence or coercion of other victims

## "FAITH"

### **Violent acts towards other victims while under control of extremely violent trafficker and effects of intimate partner violence.**

**Initial Charges:** 1 count of Conspiracy to Commit Sex Trafficking (18 USC § 371), 2 counts of Peonage: Obstructing Enforcement (18:1581(a)), 2 counts of Forced Labor (18 USC § 1589(1)), 2 counts of Trafficking In Peonage, Slavery, Involuntary Servitude, Forced Labor (18 USC § 1590), 2 counts of Sex Trafficking Of Children Or By Force, Fraud, Or Coercion (18 USC § 1591)

**Convicted Counts:** 1 count of Conspiracy to Commit Sex Trafficking (18 USC § 371)

**Sentence:** 34 months followed by 3 years supervised release

**Sex Offender Registration Required:** No



### **DEFENDANT'S BACKGROUND**

Faith met her trafficker in 1998. During the next 3 years, she worked in his wrestling business. In 2001, she learned of his prostitution business and was forced to recruit other women under the auspice of becoming female wrestlers.

### **EVIDENCE OF DEFENDANT'S TRAFFICKING VICTIMIZATION**

Faith was one of a few victims designated by the trafficker as a "team leader." While the prosecution's trial brief claimed that the "team leaders" were women who "worked voluntarily" for the trafficker, the brief goes on to describe the physical assaults and strict rules that applied to "team leaders," including not being allowed to leave his home without permission, prohibiting them from dating or maintaining any other employment, as well as prohibiting them from "accessing the money they made from dancing and as prostitutes." Additionally, "team leaders" were coached to lie to law enforcement about their involvement in prostitution. Faith's trafficker continued to pressure the "team leaders" to lie to law enforcement and in court after he was indicted in this case. This pattern of control was also confirmed by a psychiatrist who completed Faith's presentence evaluation and found that her trafficker psychologically manipulated her into believing she had a special status but her trafficker "determined the full range of her activities."

### **TREATMENT OR SERVICES PROVIDED (IF ANY)**

Faith was court ordered into mental health treatment as a condition of her sentencing.

### **ROLE IN TRAFFICKING ENTERPRISE**

The trafficker treated Faith differently than the other "team leaders." He allowed her to have a cell phone and a vehicle. She recruited victims into his trafficking organization under the false premise that they would be working as female wrestlers. At her trafficker's direction, Faith assaulted other women to induce them to perform commercial sex acts. On at least one occasion, she sexually assaulted a victim after she refused to participate in a "cutting party." The trafficker used cutting parties to groom victims from his wrestling business into his prostitution business. Faith seemed to feel extremely loyal to her trafficker and disclosed information to him when other women were not in compliance with rules or tried to escape.

### **COOPERATION WITH THE PROSECUTION**

Faith produced evidence and testified against her trafficker.



# APPLICATION OF THE CRIMINAL JUSTICE STAKEHOLDER TOOL



## HOW USING THE TOOL TO EVALUATE THE CASE COULD IMPACT IDENTIFICATION OF THE DEFENDANT'S UNDERLYING TRAFFICKING VICTIMIZATION

Faith did not know she was entering a prostitution business and was lured into both the wrestling business and a romantic relationship with her trafficker. This was the trafficker's pattern of psychological manipulation of his victims. Faith also gave all of her money to her trafficker, who then forced her to recruit others by creating an atmosphere of violence and coercion. Her trafficker's use of violence created an atmosphere of fear that enabled him to control his victims, such that the mere threat of physical assault was enough to coerce his victims to follow his rules.

## HOW USING THE TOOL TO EVALUATE THE CASE COULD HAVE IMPACTED THE CRIMINAL JUSTICE RESPONSE

Despite having a "special" status in her trafficker's enterprise, Faith's relationship with her trafficker was still defined by deception and manipulation. The trafficker's use of violence also created an atmosphere of fear that appears to have manipulated Faith's sense of right and wrong and may provide some context for understanding her role in coercing and recruiting other victims.

Recognizing the severity of Faith's violent acts toward other victims, a just response should nevertheless have considered the influence of the trafficker's violence and psychological control over Faith, despite her role as "team lead." This critical consideration could have informed whether to treat Faith as a co-conspirator despite the evidence that she was acting under her trafficker's control. Faith's perceived freedoms and apparent autonomy in having access to a phone and car should also be viewed holistically. Given the atmosphere of fear created by her trafficker's violence, her apparent autonomy did not necessarily provide her with actual freedom or choice. Additionally, once it was recognized that she had also experienced victimization by the trafficker, Faith should have been provided mental health treatment, including trauma treatment, as well as a victim-witness advocate to support her in the process of testifying against her trafficker.

## RELEVANT FACTORS TO CONSIDER

- Role of Relationship with the Trafficker: trafficker used romantic relationship to lure her into the trafficking situation
- Holistically Assessing the VO's Apparent or Actual Autonomy: even though Faith was allowed a phone and car, she remained under threat of violence if she did not follow the trafficker's rules
- Trafficker's Use of Harm or Threats of Harm as a Form of Control: violence and threats of violence created atmosphere of fear
- Holistically Assessing the VO's Conduct Toward Other Victims: Faith used violence to coerce victims at the behest of her trafficker, raising challenging issues for prosecutors in determining appropriate charges, making it critical to fully understand the case in order to understand Faith's motivations in engaging in the alleged conduct

# RECOMMENDATIONS FOR NEXT STEPS

- ▶▶ Provide broad-based training for criminal justice stakeholders on identifying and responding to ST-VOI.
- ▶▶ Consider the impact of, and potential alternatives to, coercive tactics to gain a sex trafficking victim-offender's cooperation and testimony. Research can help identify strategies for improving trafficking investigations and prosecutions that reduce or eliminate reliance on victim-witness testimony.
- ▶▶ Ensure that there is a strong service-based component embedded within the criminal justice response to sex trafficking. Strong partnerships with service providers, especially those working with particularly vulnerable and/or marginalized communities, can help break the cycle of exploitation and address the vulnerabilities of trafficking victims before they potentially lead to later offending.
- ▶▶ Conduct in-depth research on treatment approaches for sex trafficking victim-offenders, including how to provide specialized trauma-informed services to sex trafficking victim-offenders without risk to non-offending victims.
- ▶▶ Conduct further research on what causes ST-VOI, how ST-VOI impacts a victim-offender, how those harmed by a sex trafficking victim-offender are impacted, and what resilience and protective factors could help prevent ST-VOI and coercion to commit other offenses.
- ▶▶ Engage in an ongoing dialogue with a diverse range of criminal justice stakeholders on how to balance competing priorities of victim-centered justice, victims' rights and public safety concerns.
- ▶▶ Seek out and incorporate survivor engagement in development of responses, protocols, research strategies and any next steps on understanding and improving responses to ST-VOI.
- ▶▶ Explore legal and practical alternatives to implementing a traditional criminal justice response in ST-VOI cases, including opportunities to prevent criminalization at the outset of the case.
- ▶▶ Open avenues for sex trafficking victim-offenders who have been convicted of crimes related to their trafficking victimization to seek post-conviction relief from the long-term consequences of those convictions.



# LEGAL AND SCHOLARLY RESOURCES RELATED TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY

Though criminal justice stakeholders are increasingly, albeit oftentimes unknowingly, confronted with the complex issue of ST-VOI, little has been written to explain this phenomenon.<sup>51</sup> Accordingly, this section analyzes court opinions and scholarly articles that are directly related to this issue. It also provides an analysis of related criminological theories that are potentially applicable in the ST-VOI context.

## "BOTTOM"

**The terms "Bottom" and "stable" are street terms used by pimps and traffickers to describe the players in their internal hierarchies, typically established as a means to control their victims.** As the Eleventh Circuit's definition of the term "Bottom" indicates, this term remains misunderstood and is focused on the offending conduct while failing to acknowledge the coercion and control that may have led a sex trafficking victim to engage in this conduct. For that reason, this report does not seek to define "Bottom." Rather, this section examines some of the circumstances in which the term has been applied to sex trafficking victims. This review of the term "Bottom" seeks to provide context for why this term is not used in this field guidance to describe a sex trafficking victim who commits acts of sex trafficking. Instead of relying on an ill-defined and often derogatory term, this field guidance utilizes the term sex trafficking victim-offender intersectionality, or ST-VOI.

### I. WHAT IS A VICTIM-OFFENDER IN THE SEX TRAFFICKING CONTEXT?

As defined in this field guidance, a sex trafficking victim-offender is a sex trafficking victim who is alleged to have committed acts of sex trafficking. In this context, victim-offenders are commonly referred to as a "bottom." However, since the term "bottom" is a street term that pimps and traffickers use to establish hierarchy among their victims, this field guidance does not use the term "bottom" to describe sex trafficking victims who allegedly commit acts of sex trafficking. Nevertheless, given the prevalence of the term "bottom," its use and application to ST-VOI are briefly discussed here to provide context for eschewing the term in identifying and responding to victim-offenders.

Although the term "Bottom" seems to suggest that the individual is the least important person in a trafficker's "stable," or group of prostituted persons,<sup>52</sup> the "Bottom" is oftentimes the most important. The "Bottom" keeps the other prostituted persons compliant with the trafficker's demands and serves as a "buffer[], intended to protect the real criminals from prosecution."<sup>53</sup>

As defined by the Eleventh Circuit in *United States v. Pipkins*, a "Bottom" is "a trusted and experienced prostitute" whose place is "[a]t the top of the pimp's organization."<sup>54</sup> This definition, although illustrative of the "Bottom's" place in the hierarchy, is somewhat misleading; it solely focuses on the role the "Bottom" plays for the trafficker and fails to acknowledge that the "Bottom" is also a victim of trafficking.<sup>55</sup> In fact, sex trafficking victim-offenders are often "trafficked in the same way as every other victim" in that they are "recruited and groomed" and "promise[d] . . . love and a better life."<sup>56</sup> Victim-offenders also experience abuse and degradation by the trafficker, as all victims do, and oftentimes, their psychological and physical abuse is even more severe. Further, traffickers



may use the hierarchy created by the position of the victim-offender to manipulate victims by forcing them to compete against each other for the status of “Bottom” and, likewise, for the trafficker’s affection. A trafficker may use this as a type of reward system, “demot[ing] and promot[ing] different girls to punish or reward them” for certain behavior.<sup>57</sup>

Upon “promotion” to this new position, the victim-offender takes on a role that looks less like that of a victim of trafficking and more like that of a trafficker. “Bottoms,” generally, are responsible for handling the trafficker’s affairs, maintaining order, collecting money from other victims and recruiting new victims into the criminal enterprise.<sup>58</sup> Thus, despite their own victimization, victim-offenders may commit criminal offenses resembling those committed by the trafficker.<sup>59</sup>

Indeed, the victim-offender’s position and conduct present a significant challenge for prosecutors seeking appropriate charges.<sup>60</sup> Should a victim-offender, themselves a victim of commercial sexual exploitation, be prosecuted as an offender for the acts they committed, seemingly, of their own volition? As one author explained,

*United States law states that victims of human trafficking should not be “inappropriately” penalized for acts committed “as a direct result of being trafficked,” but does not offer further guidance. When exactly, then is penalization appropriate? Is some criminal conduct so severe that it cannot be excused? And what does the term “direct” mean? How close must the cause-and-effect between victimization and the victim’s criminal conduct be to meet this standard?*<sup>61</sup>

This author acknowledges the complexity of cases involving a victim-offender who harms a third party and urges prosecutors to “carefully consider the circumstances underlying any crime committed by a trafficking victim prior to bringing charges against such victim in order to ensure that the victim is not inappropriately penalized for acts committed pursuant to their victimization.”<sup>62</sup>

Another author argues that only some victim-offenders “deserve leniency” while “others are no less autonomous and culpable than traffickers who entered the trade voluntarily.”<sup>63</sup> This author also suggests that prosecution in a criminal court is the appropriate forum for determining which victim-offenders “deserve” such leniency and which “deserve” to be convicted of trafficking others.<sup>64</sup> To aid criminal justice stakeholders in determining the appropriateness of charges, the following sections of this review focus on why a sex trafficking victim may engage in conduct that violates the sex trafficking law.

## **II. EXAMINING THE RELATIONSHIP BETWEEN VICTIMIZATION AND OFFENDING**

### ***A. The “Victim-Offender Overlap,” Generally***

One means of assessing the criminal culpability of sex trafficking victim-offenders is by examining their role in the trafficking organization through the lens of the “victim-offender overlap,” a criminological term that refers to the relationship between the victimization and offending patterns of individuals.<sup>65</sup> This framework recognizes the existence of different roles in the commission of an offense: “victims” (those upon whom the crime is committed), “offenders” (those who commit the crimes), and “victim-offenders” (individuals who have been both victims and perpetrators of crimes).<sup>66</sup> Furthermore, there is a sliding scale of innocence and blame in the perception of criminal acts, and, especially in victim-offender scenarios involving crimes of inter-personal and/or sexual violence, the offender and the victim may swap roles or be simultaneously both a victim and a criminal.<sup>67</sup>

Notably, a 2012 literature review found that while a “rather strong overlap” exists between offenders and victims, the relationship is moderated by various risk factors.<sup>68</sup> The study found that some types of offenses created stronger relationships between victimization and offending than others.<sup>69</sup> Furthermore, as another study noted, “[t]he victim-offender relationship is robust, having been found in the United States as well as other countries, over time, across various contexts, and within various demographic subgroups.”<sup>70</sup> While research on the victim-offender overlap in the context of sex trafficking is sparse, existing research on victim-offenders generally may be applied analogously to better understand the phenomenon of victim-offender intersectionality in the sex trafficking context.

### ***B. Criminological Theories Purporting to Explain the “Victim-Offender Overlap”***

Although the exact cause of the victim-offender overlap is unknown, social scientists theorize that the phenomenon can be partially explained by two criminological theories: the “cycle of violence theory” and the “routine activities theory.” Both incorporate aspects of “social learning,” or the concept that individuals learn behaviors by observing others engaging in those same behaviors.<sup>71</sup> Social learning theory “suggests that violent, deviant, and other criminal behaviors are learned by the child from their parents (or other relatives)” and that these behaviors are repeated through imitation.<sup>72</sup> The two theories discussed below use the social learning theory in different ways to explain the victim-offender overlap.

#### **The “Cycle of Violence Theory”**

The “cycle of violence theory” rests on the idea of “violence breeding violence,” or, more specifically, “abuse breeding abuse.”<sup>73</sup> In a literature review examining the impact of children’s exposure to domestic violence, researchers noted, “[C]hildren may be significantly affected by the experience of domestic violence in their lives, the impact of which may resonate intergenerationally with their own involvement in adult violence.”<sup>74</sup>

Although the “cycle of violence theory” generally applies to familial relationships, this theory can be used to understand non-familial sex trafficker-sex trafficking victim relationships as well. First, trafficking victims, including sex trafficking victim-offenders, oftentimes have a history of childhood abuse, which may perpetuate the cycle of violence in their lives. Additionally, even if a sex trafficking victim-offender and their trafficker are not biologically related, there oftentimes exists a “family” dynamic and intimate relationship between them.<sup>75</sup> Therefore, the “cycle of violence” can manifest in this relationship as well, with the trafficker first abusing the sex trafficking victim-offender and the victim-offender eventually exploiting other sex trafficking victims in return. This may be further exacerbated by the fact that childhood abuse, along with other factors such as young age, limited brain development, and a lack of knowledge and experiences, often “contribute to a victim’s obliviousness that the trafficker is victimizing and exploiting [them].”<sup>76</sup> Accordingly, sex trafficked youth may normalize negative relationships with their traffickers, which may affect their relationships with others.<sup>77</sup>

Notably, research “cautions, however, that there is rarely a direct causal pathway leading to a particular outcome.”<sup>78</sup> Thus, although the “cycle of violence theory” fails to fully explain the phenomenon of ST-VOI or to account for stranger-on-stranger crime, it can be used to understand the position of a sex trafficking victim-offender as both the abused and the abuser.

#### **The “Routine Activities Theory”**

In addition to the “cycle of violence theory,” the “routine activities theory” can serve to partially explain the behavior of a sex trafficking victim-offender and inform why a victim-offender should not simply be viewed as a trafficker. This theory posits that criminal behaviors are not static; instead, they vary by situation.<sup>79</sup> As noted in one study, “routine activities theory” “focuses on the circumstances in which crime is committed rather than the characteristics of those who commit it.”<sup>80</sup> To discern the circumstances prompting a criminal offense, proponents of the “routine activities theory” examine whether there is “(a) a motivated individual, (b) a suitable target, and (c) the absence of a capable guardian.”<sup>81</sup> This theory is context- and environment-specific; therefore, “even behaviors relating to sexual offending can be highly variable from one situation to another.”<sup>82</sup>

In the 2012 literature review discussed supra in Part II.A, the researchers examined the “routine activities theory” in the context of the victim-offender overlap. Those researchers found that, according to this theory, the association with delinquent peers in the absence of adult supervision can increase the likelihood of both victimization and offending.<sup>83</sup> This study also concluded that, “[d]elinquent peers can function as agents that provide an individual with tangible and intangible rewards for delinquent/criminal behavior.”<sup>84</sup>

Based on this theory, the actions of a sex trafficking victim-offender are distinguishable from those of a trafficker because the victim-offender’s environment differs completely from that of the trafficker. A trafficker never loses autonomy and is responsible for creating an environment of control and coercion. Conversely, a victim-offender is subject to psychological



and physical abuse, manipulation and control.<sup>85</sup> This type of environment can affect “the way people treat each other, leading to the normalization of negative and abusive relationships.”<sup>86</sup> Thus, the victim-offender’s environmental circumstances may lead to committing acts of trafficking.

### III. LEARNING BY ANALOGY: COMPARING SEX TRAFFICKING VICTIM-OFFENDERS TO VICTIM-OFFENDERS IN INTIMATE PARTNER VIOLENCE

Currently, no empirical studies have analyzed the victim-offender overlap in the context of commercial sexual exploitation. However, studies on Intimate Partner Violence (“IPV”) may be instructive in applying the victim-offender framework to better understand sex trafficking victim-offenders.<sup>87</sup> The Centers for Disease Control and Prevention defines IPV as “physical violence, sexual violence, stalking and psychological aggression (including coercive tactics) by a current or former intimate partner.”<sup>88</sup> Studies of IPV can be informative when applied to trafficker-victim relationships because of the similar dynamics between some trafficking relationships and IPV relationships: both types of relationships commonly involve “violence between two individuals who are in a relationship and interact on a routine basis . . . [which] repeatedly brings potential victims and perpetrators in close proximity to one another.”<sup>89</sup> Furthermore, as in relationships where IPV occurs, in trafficker-victim offender relationships, “the violence itself can increase the likelihood of additional violence. The intimate crime event . . . has the potential to create motivation and opportunity for subsequent violence, either during the same incident or in future fights.”<sup>90</sup>

Other similarities between these two contexts exist as well. A study, conducted in 2016, examined the victim-offender overlap in relationships where IPV occurs and found that “substance use, negative temperament, living with non-spousal partner, and feeling isolated” are all positively associated with being both a victim and a perpetrator of IPV.<sup>91</sup> If generalizable to a sex trafficking victim-offender context, this finding is particularly significant: sex trafficking victim-offenders, by the very nature of their position, face social isolation.<sup>92</sup>

Although similar in many ways, there is however, a notable difference between IPV victim-offenders and victim-offenders in the sex trafficking context: in relationships where IPV occurs, the violence is directed from one partner to the other and is often committed in either self-defense or retaliation. In contrast, sex trafficking victim-offenders commit offenses against other exploited individuals. How, then, can a sex trafficking victim-offender’s conduct also be explained as an act of self-defense? As one author wrote, sex trafficking victims may have “unconventional reactions to their victimization.”<sup>93</sup>

*The ideal victim is expected to react to their aggressors and to their [victimization] in socially accepted ways. This condition of achieving ideal victim status does not account for the coping techniques that trafficked [persons] may have adopted in order to survive their ordeal. Traffickers often break [victims] in prostitution using rape, torture, and abuse. Tactics of intimidation, threats, lies, deception, and emotional manipulation are used by traffickers to engender psychological control over a victim and to destroy [their] physical and psychological [defenses]. Additionally, a trafficked [person] may form a personal relationship with [their] attacker as [they] become[] dependent on them for survival. A captor’s bursts of abuse and torture may be punctuated by moments of kindness or generosity, causing the trafficked [person] to develop feelings of closeness or reliance on them.*<sup>94</sup>

In addition to these abusive and coercive tactics, traffickers prey on their victims’ psychological and emotional vulnerabilities,<sup>95</sup> forcing their victims to compete for the trafficker’s affection through a hierarchy-based rewards system.<sup>96</sup> Upon promoting a victim to the top of the hierarchy, a trafficker may promise the victim, among other things, that they will no longer have to engage in commercial sex. In return, the victim must supervise the others and commit acts that violate the sex trafficking law.<sup>97</sup> Accordingly, the sex trafficking victim-offender often does not commit such acts because they genuinely want to hurt those individuals; instead, the sex trafficking victim-offender may perceive no choice but to engage in such behavior.<sup>98</sup> In other words, the acts committed against other victims may be done out of self-defense to avoid abuse by the trafficker or to escape their own sexual exploitation.

Sex trafficking victim-offenders may also differ from IPV victim-offenders because a sex trafficking victim-offender's trafficking conduct is not necessarily violent. Many acts of sex trafficking committed by sex trafficking victim-offenders are actually absent of physical violence, including recruitment, harboring, advertising and economic or emotional control or coercion. However, recruitment may also be a form of self-defense or self-protection because it is a way for the victim-offender to reduce the degree of their own exploitation.<sup>99</sup>

In summary, although victims of IPV and sex trafficking victim-offenders can have distinct experiences, the similarities between these populations seem to indicate that the victim-offender framework can help lawyers, advocates, and social scientists to better understand sex trafficking victim-offenders. Both groups are victims of abuse and trauma, which influences behavior and can lead to the commission of offenses as a method of self-defense or self-preservation. Similarly, in both IPV and sex trafficking victim-offender circumstances, someone with whom the individual has close, oftentimes daily, contact caused the abuse and trauma.<sup>100</sup> Based on these similarities, one can extrapolate that sex trafficking victim-offenders, like many victim-offenders in IPV, become victim-offenders not because they want to engage in crime, but because they can perceive few alternatives.

#### **IV. PERCEPTIONS OF AGENCY, CONTROL AND AUTONOMY IN THE SEX TRAFFICKING CONTEXT**

A pernicious problem in identifying and developing responses to ST-VOI is that the nature of traffickers' control over sex trafficking victims often perpetuates the perception that victims are acting with autonomy or possess a degree of agency that is inconsistent with their actual experience. Thus, while a sex trafficking-victim offender may appear to act with some degree of agency when engaging in conduct that violates the sex trafficking law, a deeper look at the victim-offender's experiences may contradict that notion of free will. Indeed, as one author wrote,

*[T]he fact that these [victims] have power and status within the [trafficking] organization is not incompatible with the notion that they are actually unable to leave; to the contrary, traffickers can seek to maintain control by strategically meting out power and status to those who are most submissive. Though the intuition may be that more participation in the enterprise means more actual agency[,] and thus more grounds for punishment[,] . . . the opposite is actually true.*<sup>101</sup>

In addition, traffickers use a number of means to assert and maintain control over their victims, including victim-offenders. Traffickers oftentimes engage in physical violence or threats of physical violence, which may be directed toward the victim or the family of the victim, including the victim's children.<sup>102</sup> "Traffickers have [also] been known to use public displays of violence against one victim to keep others in line." Further, control can be "much more subtle and psychological . . . The trauma they experience may depend upon the age at which the victim was trafficked, the nature of the exploitation, the length of time the victim was exploited, the degree of violence to which the victim was exposed, and the degree of stigma which the victim faces upon return to his or her home."<sup>103</sup>

"Relationships built on traumatic bonds possess an intense level of loyalty or attachment."<sup>104</sup> One researcher described a process akin to "brainwashing," "the deliberate creation of culture shock through isolation, alienation, and intimidation in order to weaken a person's ego strengths. By this means, the person becomes vulnerable to alien ideas and behaviors that would usually be rejected."<sup>105</sup>

As another author explained,

*There is a growing body of research about the effects of trauma that is sustained over time, such as in human trafficking . . . Over time, these victims lose not only a sense of control over their "self," but also lose a sense of "self" altogether. The abuser's logic becomes their logic. The abuser's decisions and directions take over, and they lose capacity for independent decision-making. Their perception of reality is altered. They may believe that the abuser treats them well even in the face of facts clearly demonstrating that the abuser has regularly threatened them with physical and other harm and invaded their bodily integrity. Scientists do not yet fully understand how this process, known as traumatic bonding or trauma-coerced attachment,*

*plays out inside of the brain. However, its presence has been regularly observed as a normal human response to sustained abuse and control over time.*

*When deciding when to prosecute trafficking victims for crimes induced by their perpetrators, the potential impact of traumatic bonding is relevant to criminal intent. Prosecutors must consider whether it is in the interest of justice to prosecute a person for conduct that was a normal human response to abusive control over time, rather than an independently developed desire or intent to do harm.*<sup>106</sup>

In addition, trauma bonding may impact a victim-offender's attitude, which in turn may affect whether those in the criminal justice system perceive the victim-offender to have acted of their own volition. As one author stated,

*The [victim-offender] may display belligerence, coldness, evasiveness, or nonchalance. When victims act that way, even experienced law enforcement officials may be more likely to think of the victims as criminals or as being disrespectful of law enforcement. In truth, the victims may display those attitudes as a result of psychological and neurobiological processes . . . These behaviors may be the result of fear or trauma and, in some cases, of the victim's "traumatic bonding" or "trauma-coerced attachment" to the trafficker.*<sup>107</sup>

Further, traffickers may create or exploit other vulnerabilities, such as isolation, lack of social networks, lack of education or substance use disorders, to maintain control.<sup>108</sup> The trafficker's "complete domination strip[s] away the [sex trafficking victim-offender's] agency: although [they] commit offenses against other victims, they do so at the command of or for the sake of the [person] trafficking [them] and the other victims."<sup>109</sup>

Accordingly, understanding how a sex trafficking victim-offender's experiences and vulnerabilities affect their perceived autonomy and motivation when allegedly engaging in conduct that violates the sex trafficking law is an essential part of responding fairly to these cases. In fact,

*The Ninth Circuit has held that an expert's testimony about the role of a [sex trafficking victim-offender] may have "helped the jury evaluate [her] testimony that she was acting at [her trafficker's] direction, not on her own accord." In other cases, experts have testified that traffickers exert "total control" over their victims and can force them to victimize other victims at their behest. When subject to such total control, trafficking victims, including [sex trafficking victim-offenders], are not exercising agency to freely decide to engage in trafficking offenses against other victims, but are acting out of a need to protect themselves and please their trafficker.*<sup>110</sup>

The issue may also be framed as one of agency theory.<sup>111</sup> As one author emphasizes, it is important not to "view [sex trafficking victim-offenders'] offenses in isolation," because "[a]lthough [sex trafficking victim-offenders] commit offenses against other victims, they do so either at the command of or for the sake of the [person] trafficking [them] and the other victims."<sup>112</sup>

Finally, analyzing sex trafficking victim-offenders in light of intersectionality is also important, because, as another author argues, without it, "victim blaming is all that is left. The absence of intersectionality in sex trafficking cases results in pathologizing of victims,"<sup>113</sup> while also failing to acknowledge that the vulnerabilities of victims, created by their intersecting identities, is "the lynchpin [sic] of [their] exploitation."<sup>114</sup> Therefore, it is important to understand, through these theories of agency and intersectionality, that sex trafficking victim-offenders likely "perpetrate these offenses not of their own volition, but because of their own victimization."<sup>115</sup>

## END NOTES

- <sup>1</sup>Christine Raino & Eliza Reock, *What's in a Name?: Lack of Consistency in Child Sex Trafficking Laws May Hurt Our Children*, SHARED HOPE INT'L (Feb. 21, 2017), <https://sharedhope.org/2017/02/21/whats-in-a-name>.
- <sup>2</sup>See page 57 for list of JuST Response Council members.
- <sup>3</sup>See page 48 for a discussion of existing research on victim-offender overlap.
- <sup>4</sup>18 U.S.C. § 1591 (2012) (defining the crime of sex trafficking and the required punishment if convicted).
- <sup>5</sup>Christine Raino, *When Difficult News is the Most Important News*, SHARED HOPE INT'L (Dec. 20, 2019), <https://sharedhope.org/2019/12/20/when-difficult-news-is-the-most-important-news/>.
- <sup>6</sup>22 U.S.C. § 7102(12) provides, "[t]he term 'sex trafficking' means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." Pursuant to 22 U.S.C. § 7102(4), "[t]he term 'commercial sex act' means any sex act on account of which anything of value is given to or received by any person." 22 U.S.C. § 7102(11)(A) defines "severe forms of trafficking in persons" as "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."
- <sup>7</sup>See Marinella Marmo & Nerida Chazal, *The Trafficked Woman: Ideal or Blameworthy Victim?*, in 7 ADVANCES IN SOCIOLOGY RESEARCH, 125-140, 133 (Jaworski, J. ed., 2010) (citations omitted).
- <sup>8</sup>See LAURIE ANNE PEARLMAN & KAREN W. SAAKVITNE, *TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS* (1995).
- <sup>9</sup>See *id.*; see also JON G. ALLEN, *COPING WITH TRAUMA: A GUIDE TO SELF-UNDERSTANDING* 227 (1995).
- <sup>10</sup>See Eldra P. Solomon & Kathleen M. Heide, *The Biology of Trauma: Implications for Treatment*, 20 J. INTERPERSONAL VIOLENCE 51, 53 (2005) (explaining how stress affects the brain, which causes physical differences in the brains of those who have experienced trauma).
- <sup>11</sup>*Hearing on Trauma-Informed Care in Schools Before the H. Comm. on Educ. & Labor*, 166th Cong. (2019) [hereinafter *Hearing on Trauma-Informed Care*] (statement of Dr. Nadine Burke Harris, Surgeon General of California).
- <sup>12</sup>*Id.*
- <sup>13</sup>See Heather B. MacIntosh & Valerie E. Whiffen, *Twenty Years of Progress in the Study of Trauma*, 20 J. INTERPERSONAL VIOLENCE 488, 489 (2005); see also RONALD T. POTTER-EFRON, *HANDBOOK OF ANGER MANAGEMENT: INDIVIDUAL, COUPLE, FAMILY, AND GROUP APPROACHES* 229 (2005).
- <sup>14</sup>J. Douglas Bremner, M.D., *Traumatic Stress: Effects on the Brain*, 8 DIALOGUES IN CLINICAL NEUROSCIENCE 445 (2006).
- <sup>15</sup>*Id.*
- <sup>16</sup>*Id.*
- <sup>17</sup>See *Hearing on Trauma-Informed Care*, *supra* note 11.
- <sup>18</sup>Hans-Peter Kapfhammer, *Acute and Long-term Mental and Physical Sequelae in the Aftermath of Traumatic Exposure: Some Remarks on "The Body Keeps the Score"*, 30 PSYCHIATRIA DANUBINA, 254, 256 (2018).
- <sup>19</sup>*Id.* at 269.
- <sup>20</sup>See ALLEN, *supra* note 9.
- <sup>21</sup>See Claudia Peña, *Trauma Abounds: A Case for Trauma-Informed Practices*, 26 UCLA WOMEN'S L.J. 7, 7-12 (2019).
- <sup>22</sup>See *id.*; see also HEATHER J. CLAWSON ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., *TREATING THE HIDDEN WOUNDS: TRAUMA TREATMENT AND MENTAL HEALTH RECOVERY FOR VICTIMS OF HUMAN TRAFFICKING* (2008).
- <sup>23</sup>See Kristin A. Hom & Stephanie J. Woods, *Trauma and Its Aftermath for Commercially Sexually Exploited Women as Told by Front-Line Service Providers*, 34 ISSUES MENTAL HEALTH NURSING 75 (2013).
- <sup>24</sup>See Mazedra Hossain et al., *The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women*, 100 AM. J. PUB. HEALTH 2442 (2010).
- <sup>25</sup>See *id.*
- <sup>26</sup>See CLAWSON ET AL., *supra* note 22.
- <sup>27</sup>Hanni Stoklosa et al., *Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing*, 19 AMA J. ETHICS 23, 25-26 (2017).
- <sup>28</sup>See Alexandra Cook et al., *Complex Trauma in Children and Adolescents*, 21 FOCAL POINT 4, 4 (Winter 2007).
- <sup>29</sup>See *id.*
- <sup>30</sup>*Id.*
- <sup>31</sup>Georgina Clifford et al., *Developing an Emotion- and Memory-Processing Group Intervention for PTSD with Complex Features: A Group Case Series with Survivors of Repeated Interpersonal Trauma*, 9 EUR. J. OF PSYCHOTRAUMATOLOGY 1, 6 (2018), <https://doi.org/10.1080/2008198.2018.1495980>.
- <sup>32</sup>See *What is C-PTSD?*, BEAUTY AFTER BRUISES, <https://www.beautyafterbruises.org/what-is-cptsd> (last visited Jan. 16, 2020).
- <sup>33</sup>*What is Complex Trauma?*, BLUE KNOT FOUND., <https://www.blueknot.org.au/Resources/Information/Understanding-abuse-and-trauma/What-is-complex-trauma> (last visited Jan. 16, 2020).
- <sup>34</sup>See *id.*
- <sup>35</sup>*Id.*
- <sup>36</sup>See MORTON BARD & DAWN SANGREY, *THE CRIME VICTIM'S BOOK* (1986).
- <sup>37</sup>See *id.*
- <sup>38</sup>See Rachel Wamser-Nanney et al., *Trauma Exposure, Posttraumatic Stress Disorder, and Aggression Among Civilian Females*, J. INTERPERSONAL VIOLENCE 1 (2019), <https://doi.org/10.1177/0886260519860894>.
- <sup>39</sup>See *id.*
- <sup>40</sup>See Wamser-Nanney et al., *supra* note 38.
- <sup>41</sup>See Vittoria Ardino, *Offending Behaviour: The Role of Trauma and PTSD*, 3 EUR. J. PSYCHOTRAUMATOLOGY (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3402156/pdf/EJPT-3-18968.pdf>.
- <sup>42</sup>See *id.* at 1.
- <sup>43</sup>*Id.* at 2.
- <sup>44</sup>*Id.*
- <sup>45</sup>See ANDREA J. NICHOLS ET AL., *SOCIAL WORK PRACTICE WITH SURVIVORS OF SEX TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION* 192-217 (2018); Cheryl Nelson-Butler, *The Racial Roots of Human Trafficking*, 62 UCLA L. REV 1464 (2015).
- <sup>46</sup>This statistic reflects legislation enacted as of August 1, 2018. Applicable statutes include: Miss. Code Ann. § 97-29-51(3); S.C. Code Ann. § 16-3-2020(G); N.M. Stat. Ann. § 30-52-1(E); Wyo. Stat. Ann. § 6-2-708(a).
- <sup>47</sup>Unless otherwise indicated, this statistic reflects legislation enacted as of August 1, 2018. Applicable statutes include: Colo. Rev. Stat. Ann. § 18-3-504(2.5) (affirmative defense for trafficking of a minor); Iowa Code § 710A.3; Kan. Stat. Ann. § 21-5426(c) (minors only); Ky. Rev. Stat. Ann. § 529.170 (as long as the trafficking act did not result in death or serious physical injury to the victim); Miss. Code Ann. § 97-3-54.1(5); Nev. Rev. Stat. Ann. § 201.303; N.J. Stat. Ann. § 2C:13-8(c); N.C. Gen. Stat. § 14-43.16(a); Okla. Stat. tit. 21, § 748(D); S.C. Code Ann. § 16-3-2020(F); Vt. Stat. Ann. tit. 13, § 2652(c)(B)(2); Wis. Stat. § 939.46(1m). Notably, Montana removed this protection during its 2019 legislative session. Mont. Code Ann. § 45-5-710 provides trafficking victims with an affirmative defense to charges for prostitution, promoting prostitution, and nonviolent offenses; however, Senate Bill 147, enacted May 8, 2019, amended the definition of "crime of violence" under Mont. Code Ann. § 46-18-104(2)(a) to now include trafficking offenses, rendering the affirmative defense law inapplicable to trafficking charges.

<sup>48</sup>This statistic reflects legislation enacted as of August 1, 2018. Applicable statutes include: Ala. Code § 15-20A-5(28)-(29); Alaska Stat. § 12.63.010(a); Ariz. Rev. Stat. Ann. § 13-3821(A)(11)-(12); Ark. Code Ann. § 12-12-903(12)(A)(i)(cc); Cal. Penal Code §290(c)(236.1)(c)-(d); Colo. Rev. Stat. Ann. §16-22-103(1)(a); Del. Code Ann. tit. 11, § 4120(b)(1); Fla. Stat. Ann. § 775.21(4)(a)(1)(b); Ga. Code Ann. § 42-1-12(a)(10)(B.3)(iii); Haw. Rev. Stat. Ann. § 846E-1(1); Idaho Code Ann. §18-8306(2)-(3); Ind. Code Ann. § 35-42-4-4(b)-(c); Iowa Code § 692A.103(1); Kan. Stat. Ann. § 22-4902(a)(1)-(2); Ky. Rev. Stat. Ann. § 17.500(5)(a)(5)-(6); La. Rev. Stat. Ann. § 15:542(A)(1); Me. Rev. Stat. Ann. tit. 17-A, § 255-A; Md. Code Ann., Crim. Proc. § 11-704(a); Mass. Gen. Laws ch. 6, § 178D; Mich. Comp. Laws Ann. § 28.723; Minn. Stat. Ann. § 243.166(1b)(a)(2)(iii); Miss. Code Ann. § 45-33-23(h); Mo. Rev. Stat. § 589.414(6)(1)(f)-(7)(w)(x)(y); Mont. Code Ann. § 46-23-502(10); Nev. Rev. Stat. Ann. § 179D.097(1)(q); N.H. Rev. Stat. Ann. § 651-B:2(I); N.Y. Correct. Law § 168-a(2)(a)(i); N.C. Gen. Stat. § 14-208.6(5); N.D. Cent. Code § 12.1-32-15(1)(g); Ohio Rev. Code Ann. § 2950.01(E)(1)(a), (F)(1)(a), (F)(1)(g); Okla. Stat. Ann. tit. 57, § 582(A); Or. Rev. Stat. §§ 163A.005–163A.235; 42 Pa. Cons. Stat. § 9799.13-.14; R.I. Gen. Laws Ann. § 11-37.1-3(a); S.C. Code Ann. § 23-3-430; S.D. Codified Laws § 22-24B1-2; Tenn. Code Ann. §§ 40-39-202(20), 40-39-212(a); Tex. Code Crim. Proc. Ann. arts. 62.051(a), 62.001(5)(B)-(B-1), (J)-(L); Utah Code Ann. §§ 77-41-102(11), 77-41-105; Vt. Stat. Ann. tit. 13, §§ 5402(a), 5407(a); Va. Code Ann. § 9.1-902(A)-(B); Wash. Rev. Code Ann. §§ 9A.44.128(10), 9A.44.130(1)(a); W. Va. Code Ann. § 15-12-2(b); Wis. Stat. § 301.45(1g)(a); Wyo. Stat. Ann. §§ 7-19-301(a)(viii), 7-19-302(a).

<sup>49</sup>This statistic reflects legislation enacted as of August 1, 2018. Applicable statutes include: Ala. Code § 12-15-319(a); Alaska Stat. § 47.10.088(a); Ariz. Rev. Stat. Ann. § 8-863(B)(2); Ark. Code Ann. § 9-27-341(b)(3)(ix); Cal. Penal Code §236.1(c); Colo. Rev. Stat. Ann. § 14-10-129(3)(b)(XI); Conn. Gen. Stat. § 45a-717(g)(B); Del. Code Ann. tit. 13, §1103(a)(4); Fla. Stat. Ann. § 39.01(71)(g); Ga. Code Ann. §15-11-310(a)(2); Haw. Rev. Stat. Ann. § 587A-4; 705 Ill. Comp. Stat. Ann. 405/2-21(5); Ind. Code Ann. § 31-34-1-3.5(a), 31-35-2-1; Iowa Code § 232.116(1)(o); Kan. Stat. Ann. §§ 38-2269(a), 38-2271(a)(7); Ky. Rev. Stat. Ann. § 625.090(2)(d)-(f); La. Child. Code Ann. art. 1015(l)-(m); Me. Rev. Stat. Ann. tit. 22, § 4055(1)(A)(B)(11); Md. Code Ann., Fam. Law § 5-323(d); Mass. Gen. Laws ch. 119 § 51A(a); Minn. Stat. Ann. § 260C.301(1); Miss. Code Ann. §93-15-121(h)(i)(4)-(7); Mo. Rev. Stat. §211.447(2)(4); Nev. Rev. Stat. Ann. § 432B.393(3)(a)-(g)-(h); N.C. Gen. Stat. §§ 7B-101(1)(d), 7B-111(1)(a); N.D. Cent. Code § 27-20-44(1); Ohio Admin. Code § 5101:2-42-95(A)(1)(a); Or. Rev. Stat. § 419B.502, B.504; S.C. Code Ann. § 63-7-2570(9); S.D. Codified Laws § 26-8A-26.1; Tenn. Code Ann. §§ 36-1-113(a), (c), 37-1-147; Tex. Fam. Code Ann. § 161.001(b)(1)(L)(xv)-(xvi); Utah Code Ann. §§ 62A-4a-203.5, 78A-6-507; Wash. Rev. Code Ann. §§ 13.34.132, 13.34.180; W. Va. Code Ann. § 49-1-201; Wis. Stat. § 48.415(9m); Wyo. Stat. Ann. § 14-2-309(a)(iv).

<sup>50</sup>This statistic reflects legislation enacted as of August 1, 2018 and includes vacatur laws that apply to convictions and/or delinquency adjudications for trafficking offenses. Applicable statutes include: Cal. Penal Code § 236.14(a); Fla. Stat. Ann. § 943.0583(3); Ind. Code Ann. § 31-37-22-11(b) (delinquency adjudications only); Idaho Code Ann. § 67-3014(1)-(2); Ky. Rev. Stat. Ann. § 529.160(1); Miss. Code Ann. § 97-3-54.6(5); Neb. Rev. Stat. Ann. § 29-3005(2); N.M. Stat. Ann. § 32A-3B-21 (delinquency adjudications only); S.C. Code Ann. § 16-3-2020(F); S.D. Codified Laws § 26-7A-115.1 (delinquency adjudications only); Tex. Fam. Code Ann. § 54.04012 (delinquency adjudications only) Wyo. Stat. Ann. § 6-2-708(c). Notably, Montana removed this protection during its 2019 legislative session. Mont. Code Ann. § 46-18-608 allows trafficking victims to vacate convictions for prostitution, promoting prostitution, and nonviolent offenses; however, Senate Bill 147, enacted May 8, 2019, amended the definition of “crime of violence” under Mont. Code Ann. § 46-18-104(2)(a) to now include trafficking offenses, rendering the vacatur law inapplicable to trafficking convictions.

<sup>51</sup>See, e.g., Sarah Crocker, *Stripping Agency from Top to Bottom: The Need for A Sentencing Guideline Safety Valve for Bottoms Prosecuted Under the Federal Sex Trafficking Statutes*, 111 NW. U. L. REV. 753, 774 (2017) (“Many scholarly articles have proposed legal solutions for dealing with prostitutes and trafficking victims; nevertheless, most have ignored the problem raised when a victim—still victimized and controlled by her trafficker—perpetrates trafficking offenses against other trafficking victims.”). See generally Marianelli Agbulos, *Female Perpetrators of Human Trafficking: Overlooked in the United Nations’ Anti-Trafficking Framework* (2017), [https://www.academia.edu/36576018/Female\\_Perpetrators\\_of\\_Human\\_Trafficking\\_Overlooked\\_in\\_the\\_United\\_Nations\\_Anti-Trafficking\\_Framework](https://www.academia.edu/36576018/Female_Perpetrators_of_Human_Trafficking_Overlooked_in_the_United_Nations_Anti-Trafficking_Framework) (discussing the need for comprehensive research examining a victim-offender’s motives, activities, and behavior).

<sup>52</sup>See *Prostitution Terminology & Slang*, GENDERBERG, <http://genderberg.com/boards/viewtopic.php?f=10&t=1244> (last visited Oct. 12, 2017) (defining “stable” as the “group of people under the control of a single pimp,” and noting that “[t]he choice of a farming word is not accidental. Pimps consider their victims to be no better than animals.”).

<sup>53</sup>Isabella Blizard, *Chapter 636: Catching Those Who Fall, an Affirmative Defense for Human Trafficking Victims*, 48 UNIVERSITY PACIFIC L. REV. 631, 639 (2016).

<sup>54</sup>378 F.3d 1281, 1285 (11th Cir. 2004), *vacated*, 544 U.S. 902 (2005), *judgment reinstated*, 412 F.3d 1251 (11th Cir. 2005); see also *United States v. Daniels*, 685 F.3d 1237, 1242 (11th Cir. 2012) (describing a conversation where a victim-offender “briefed [another victim] on necessary hygiene, the appropriate prices to charge for certain services, and ‘just how to act with a trick’”); *United States v. Brooks*, 610 F.3d 1186, 1196 (9th Cir. 2010) (“[Bottom Girls are a] pimp’s most senior prostitute, who often trains new prostitutes and collects their earnings until they can be trusted”).

<sup>55</sup>See Blizard, *supra* note 53, at 639 (“Bottom girls may actually be the most victimized out of all of the prostitutes working for a particular trafficker—they are in the position of bottom girl because they are the most submissive, and the traffickers maintain control over them by delegating power.”); see also Jessica Emerson & Alison Aminzadeh, *Left Behind: How the Absence of Federal Vacatur Law Disadvantages Survivors of Human Trafficking*, 16 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 239, 247-48 (2016) (sharing story of Shamere McKenzie, who was federally prosecuted as a co-conspirator in trafficking).

<sup>56</sup>See Crocker, *supra* note 51, at 771.

<sup>57</sup>*Id.*

<sup>58</sup>See Blizard, *supra* note 53, at 639; Crocker, *supra* note 51, at 774-75 (discussing the responsibilities of a “bottom”).

<sup>59</sup>See Crocker, *supra* note 51, at 775 (“Although bottoms perform different roles for different traffickers, many participate in recruitment of new victims and management of other prostitutes—thereby meeting § 1591(a)(1)’s element of recruiting or maintaining a person.”); see also Krystle M. Fernandez, *Victims or Criminals? The Intricacies of Dealing with Juvenile Victims of Sex Trafficking and Why the Distinction Matters*, 45 ARIZ. ST. L.J. 859, 885 (2013) (arguing that a sexually exploited teen may “[choose] to play the role of a ‘bottom girl’ as a means of protection”).

<sup>60</sup>In fact, the issue of charging sex trafficking victim-offenders has sparked international attention:

The United Nations (Working Group on Trafficking in Persons, 2010) urges the non-punishment and non-prosecution of trafficked persons who may have committed offenses while trafficked victims. If crimes have been perpetrated under duress or force, Member States are urged to establish the principle of non-liability of the illegal acts committed by trafficked victims through a duress-based provision (a trafficked person is compelled to commit the offense) or through a causation-based provision (the offense committed by the trafficked person is directly related to the trafficking). The first provision would apply to those who are coerced into working for the criminal organization – such as recruiting new victims, working as drivers, money collectors or guards.

The duress and causation-based provisions would apply to victims who are in the country illegally, those forced to work in prostitution (in countries where prostitution is illegal), or forced to beg, steal or commit other offenses. Rather than viewing trafficked persons as criminals, they should be viewed through the lens of a human rights-based approach – and protected.

ALEXIS A. ARONOWITZ, INT’L STUDIES CTR., VICTIMS OF HUMAN TRAFFICKING: A COMPLEX ISSUE 12 (2015).

<sup>61</sup>Jeffrey H. Zeeman & Karen Stauss, *Criminal Conduct of Victims: Policy Considerations*, 65 U.S. ATT’YS BULL. 139, 139 (2017); see also Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. §§ 7101-14 (2012).

<sup>62</sup>Zeeman & Stauss, *supra* note 61, at 140-41.

<sup>63</sup>Alexandra F. Levy, *Innocent Traffickers, Guilty Victims: The Case for Prosecuting So-Called “Bottom Girls” in the United States*, 6 ANTI-TRAFFICKING REV. 130, 133 (2016).

<sup>64</sup>*Id.* (“A criminal action, with its procedural safeguards and fact-sensitive inquiry, is the appropriate context within which to make a determination of culpability.”).

<sup>65</sup>See generally Wesley G. Jennings et al., *On the Overlap Between Victimization and Offending: A Review of the Literature*, 17 J. AGGRESSION & VIOLENT BEHAVIOR 16 (2012) (reviewing theoretical, analytical, and historical approaches to the victim-offender overlap).

<sup>66</sup>See Lisa R. Muftic et al., *The Victim-Offender Overlap, Intimate Partner Violence, and Sex: Assessing Differences Among Victims, Offenders, and Victim-Offenders*, 61 CRIME & DELINQ. 899, 900 (2015).

<sup>67</sup>See Blanche Bong Cook, *Stop Traffic: Using Expert Witnesses to Disrupt Intersectional Vulnerability in Sex Trafficking Prosecutions*, 24 BERKELEY J. CRIM. L. 147, 157 (2019).

<sup>68</sup>See Jennings et al., *supra* note 65, at 24 (examining 37 different studies and finding that 31 of these studies revealed evidence of the victim-offender overlap).

<sup>69</sup>*Id.*

<sup>70</sup>Marie Skubak Tillyer & Emily M. Wright, *Intimate Partner Violence and the Victim-Offender Overlap*, 51 J. RES. CRIME & DELINQ. 29, 34 (2014).

<sup>71</sup>See Wesley G. Jennings et al., *An Empirical Assessment of the Overlap Between Sexual Victimization and Sex Offending*, 58 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 1466, 1468 (2014).

<sup>72</sup>*Id.* (citation omitted).

<sup>73</sup>See generally Cathy S. Wisdom, *Does Violence Beget Violence? A Critical Examination of the Literature*, 106 PSYCHOL. BULL. 3 (1989) (conducting a literature review of empirical studies examining the relationship between violent victimization as a child and later criminal offending).



- <sup>74</sup>Stephanie Holt et al., *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature*, 32 INT'L J. CHILD ABUSE & NEGLECT 797, 807 (2008).
- <sup>75</sup>See Crocker, *supra* note 51, at 771-74 (discussing the role of the bottom girl in sex trafficking and the relationship between the bottom girl, other prostituted persons, and the trafficker).
- <sup>76</sup>*Id.* at 768; see LINDA A. SMITH ET AL., SHARED HOPE INT'L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING 31-32 (2009) (finding that different studies have found between 70-95% of commercially sexually exploited children had been abused prior to being trafficked).
- <sup>77</sup>See GLOB. FAMILY CARE NETWORK, IN-SERVICE TRAINING: IDENTIFICATION, INTERVENTION, AND PREVENTION OF HUMAN TRAFFICKING FOR PROFESSIONALS 17 (2018).
- <sup>78</sup>Holt et al., *supra* note 74, at 807.
- <sup>79</sup>See Mark Farmer et al., *Sex Offending and Situational Motivation: Findings from a Qualitative Analysis of Desistance from Sexual Offending*, 60 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 1756, 1758 (2016) (citing R. Wortley & S. W. Smallbone, *Applying Situational Principles to Sexual Offenses Against Children*, in SITUATIONAL PREVENTION OF CHILD SEXUAL ABUSE 7 (R. K. Wortley & S. W. Smallbone eds., 2006)).
- <sup>80</sup>*Id.*
- <sup>81</sup>*Id.* (citations omitted) (noting that "from a strong situationist perspective, motivation is also thought to be driven by environmental factors").
- <sup>82</sup>*Id.*
- <sup>83</sup>See Jennings et al., *supra* note 71, at 17.
- <sup>84</sup>*Id.*
- <sup>85</sup>See *supra* Part I of this review.
- <sup>86</sup>GLOB. FAMILY CARE NETWORK, *supra* note 77, at 17.
- <sup>87</sup>See generally Muftic et al., *supra* note 66; Tara N. Richards et al., *The Cycle of Violence Revisited: Distinguishing Intimate Partner Violence Offenders Only, Victims Only, and Victim-Offenders*, 31 VIOLENCE & VICTIMS 573 (2016); Tillyer & Wright, *supra* note 70.
- <sup>88</sup>MATTHEW J. BRIEDING ET AL., CTNS. FOR DISEASE CONTROL & PREVENTION, INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS, VERSION 2.0 11 (2015).
- <sup>89</sup>Tillyer & Wright, *supra* note 70, at 36.
- <sup>90</sup>*Id.*
- <sup>91</sup>*Id.* at 45.
- <sup>92</sup>See Amy Farrell et al., *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME, L. & SOC. CHANGE 139, 163 (2014) ("Social isolation and marginalization are common among all types of trafficking victims.").
- <sup>93</sup>Marmo & Chazal, *supra* note 7, at 133 (citations omitted).
- <sup>94</sup>*Id.*
- <sup>95</sup>See Susie B. Baldwin et al., *Psychological Coercion in Human Trafficking: An Application of Biderman's Framework*, 25 QUALITATIVE HEALTH RES. 1171, 1173-77 (2015) (describing the ways in which traffickers exercised control over their victims).
- <sup>96</sup>See Crocker, *supra* note 51, at 771-72.
- <sup>97</sup>*Id.*
- <sup>98</sup>Several sources have discussed the bottom girl's lack of agency. See, e.g., Crocker, *supra* note 51, at 773 ("The traffickers' physical abuse and complete domination [over bottom girls] strip away the bottoms' agency: although bottoms commit offenses against other victims, they do so either at the command of or for the sake of the man trafficking the bottom and the other victims.").
- <sup>99</sup>See *id.* at 771-72 ("Because many traffickers set quotas for their victims as a collective, it is logical but naïve for victims, including bottoms, to seek more victims for their stable in the hope that the trafficker will allow each victim to engage in fewer sex acts.").
- <sup>100</sup>See Tillyer & Wright, *supra* note 70, at 31.
- <sup>101</sup>See Levy, *supra* note 63, at 132.
- <sup>102</sup>See ARONOWITZ, *supra* note 60, at 10.
- <sup>103</sup>*Id.* at 11.
- <sup>104</sup>Joan A. Reid & Shayne Jones, *Exploited Vulnerability: Legal and Psychological Perspectives on Child Sex Trafficking Victims*, 6 VICTIMS & OFFENDERS 207, 219 (2011).
- <sup>105</sup>*Id.* at 220; see GLOB. FAMILY CARE NETWORK, *supra* note 78, at 17 (describing how trauma bonds can result in the "normalization of negative and abusive relationships").
- <sup>106</sup>Zeeman & Strauss, *supra* note 61, at 143. Notably, the authors do suggest that there are circumstances when "it may be appropriate to charge adult sex trafficking victims who willingly assist the [trafficker] in recruiting [and otherwise managing] other sex trafficking victims, particularly when those additional victims include minors, persons with developmental disabilities, or other especially vulnerable individuals." *Id.* at 145. Even in such cases, however, the authors note that the interests of sex trafficking victim-offenders must be considered and balanced against the interests of those the victim-offender exploited. *Id.*
- <sup>107</sup>*Id.* at 140, 142.
- <sup>108</sup>See ARONOWITZ, *supra* note 60, at 10; Crocker, *supra* note 51, at 768; Francisco Zornosa, *Protecting Human Trafficking Victims from Punishment and Promoting Their Rehabilitation: The Need for an Affirmative Defense* 22 WASH. & LEE. J. C.R. & SOC. JUST. 177, 188 (2016); see also Agbulos, *supra* note 51, at 7 ("Female perpetrators are caught in a never-ending cycle of victimization and victimizing. Most of them have little or no education, which limits their employment options. They also know that their involvement in sex work, whether it began voluntarily or involuntarily, has made them tainted outcasts who cannot return to the community from which they came . . . . (Ironically, being part of this group of perpetrators may give them the only sense of community now available to them.) And while it may seem heartless for someone who was a victim-turned-perpetrator to put another woman through the same experience, financial security, plus the accompanying feeling of empowerment, keep female perpetrators in their role: wealth and economic benefits outweigh traditional social values and traditional religious morals in which sex is valued as an act of procreation alone. To maintain her position, the female perpetrator must meet her recruitment quota, which means she must continue the cycle of enslavement.").
- <sup>109</sup>Crocker, *supra* note 51, at 773.
- <sup>110</sup>*Id.* at 774.
- <sup>111</sup>See *id.* at 756 n.21 (quoting *Agency*, OXFORD ENGLISH DICTIONARY (3d ed. 2012)). *Agency* can be defined as the "[a]bility or capacity to act or exert power" independently. *Id.*
- <sup>112</sup>Crocker, *supra* note 51, at 773-75.
- <sup>113</sup>Cook, *supra* note 67, at 158.
- <sup>114</sup>*Id.* at 171-73.
- <sup>115</sup>Crocker, *supra* note 51, at 775.



# SHARED HOPE INTERNATIONAL'S JUST RESPONSE COUNCIL MEMBERS

*Shared Hope International's JuST Response Council represents some of the most innovative and informed experts in the country. These members help ensure JuST Response products are informed by diverse perspectives and experiences. Council members share the goals of preventing juveniles from becoming sex trafficking victims and ensuring that youth who have been trafficked have access to the tools and support necessary to heal from the trauma they have endured and the skills to create and sustain a life away from trafficking. Members include policy advocates, government officials, medical professionals, law enforcement, judges, academics and service providers, many of whom are themselves survivors of juvenile sex trafficking, from diverse geographic areas.*

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