When Survival Becomes a Crime: The Intersection of Domestic Violence, Sex Trafficking, and Survivor Justice

I. Introduction

Domestic violence and sex trafficking are distinct forms of victimization, but their overlapping dynamics of coercion, control, exploitation, and trauma can create similar pathways into the criminal legal system. Survivors may be criminalized for conduct compelled by an abuser or trafficker, for acts taken to survive, or for actions shaped by the lasting effects of trauma and abuse. Yet criminal legal systems have historically struggled to account for these circumstances, often treating the offense as separate from the victimization that contributed to it. A survivor-centered approach requires recognizing this intersection and developing legal and policy responses that prevent unnecessary criminalization while providing meaningful avenues for relief when it occurs.

II. Intersection of Domestic Violence and Sex Trafficking

Although domestic violence and sex trafficking are legally distinct phenomena, both involve similar dynamics of power and control and often co-occur. Domestic violence is defined as a pattern of abusive behavior in a relationship used by one partner to gain or maintain power and control over another intimate partner.[1] Importantly, abuse is not always physical, and can be emotional, psychological, economic, and/or sexual, and include actions "that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone."[2] While sex trafficking[3] may involve exploitation by strangers or acquaintances, the two can overlap when traffickers are intimate partners and/or use abusive tactics to control their victims.[4] Indeed, it is common for a trafficker to be the intimate

[1] Katie Henneke, *Understanding the Nexus Between Human Trafficking and Domestic Violence*, 25 Geo. J. Gender & L. (2024), https://www.law.georgetown.edu/gender-journal/online/volume-xxv-online/understanding-the-nexus-between-human-trafficking-and-domestic-violence/.
[2] *Id.*
[3] Sex trafficking is defined as recruiting, enticing, harboring, transporting, providing, obtaining, adverting, maintaining, patronizing, or soliciting by means of force, threats of force, fraud, coercion or any combination of such means to cause the person to engage in a commercial sex act; or if that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act. *See* 18 U.S. Code § 1591.
[4] *Supra* note 1.

partner or spouse of their victim. Additionally, domestic violence survivors may face an increased risk of being trafficked and exploited due to vulnerabilities such as housing or economic instability upon leaving an abusive partner.

However, the intersection between domestic violence and sex trafficking is most evident in the shared tactics of coercion and control. Both involve the use of physical violence, threats, emotional manipulation, isolation, and economic abuse to dominate the victim. Additionally, both domestic violence and trafficking often involve a calculated grooming process, during which the abuser/trafficker wins over a victim's affection and trust through fulfilling their physio- and psychological needs; this often begins the process of abuse and manipulation. The repeated use of these coercive behaviors, with or without accompanying physical abuse and/or various forced behaviors, ultimately causing social isolation, erosion of the victim's self-worth and dependency on and fearfulness of their abuser/trafficker.[5]

Lastly, identifying cases of both domestic violence and sex trafficking is challenging given the often-hidden nature of the abuses. This is further complicated by the fact that many victims may not self-identify as abused and/or trafficked, fear retaliation, or lack awareness of supportive services and legal rights.[6] Differing legal definitions and responses also contribute to complicating efforts to provide appropriate remedies.[7]

III. When Survival is Criminalized

[5] Shared Hope's Victim Offender Intersectionality report reviewed case studies of trafficking victims in federal cases to provide a picture of the various uses of force, fraud, and coercion to compel victims to commit crimes. For example, Emma was physically and mentally abused by her foster family as a child. At 16, Emma was living alone and being exploited by sex buyers in exchange for meeting her basic needs. Her trafficker took advantage of this by offering to meet those needs permanently in exchange for commercial sex. He further isolated her by refusing to let her finish high school and convinced Emma that she would never be good at anything else. If Emma did something the trafficker didn't like, he would assault her, once hitting her with a car. Emma relied on him for shelter, food, and income yet this was often paired with mental and physical abuse. Shared Hope Int'l., *Victim Offender Intersectionality: Case Studies*, (last visited Sept. 6, 2022), https://sharedhope.org/wp-content/uploads/2020/10/CaseStudies-voi.pdf.

[6] *Supra* note 1.

[7] *Id.*

For survivors of both human trafficking and domestic violence, victimization can become intertwined with criminal legal system involvement. Survivors may be criminalized for conduct they were coerced to commit, for acts taken to survive or protect themselves or others, or for conduct shaped by the lasting effects of trauma. In each of these circumstances, conduct that may appear criminal when viewed in isolation can look markedly different when understood in the context of the abuse and exploitation.

Sex trafficking is deeply intertwined with forced criminality—circumstances in which trafficking victims commit crimes while under the control of their trafficker.[8] While prostitution-related offenses are the most obvious example, forced criminality can encompass virtually any crime, including shoplifting, theft, robbery, financial crimes, selling illicit drugs or stolen items, assault, or recruiting or trafficking other victims.[9] The U.S. Department of State has described forced criminality as an under-identified method used by traffickers to retain victims and as a distinct characteristic of some trafficking situations.[10]

Traffickers may use forced criminality as an additional mechanism of control, creating fear that a victim who leaves will be exposed for having broken the law or forcing the victim to demonstrate loyalty to the trafficker.[11] Survivors regularly describe serious consequences for refusing to participate in criminal activity, including physical and sexual violence.[12] Thus, conduct that appears voluntary when viewed without context may in fact have been committed through force, fraud, or coercion.

Statistics illustrate the extent to which criminal legal system involvement can become a consequence of trafficking victimization. A 2016 survey conducted by the National Survivor Network found that 90.8% of trafficking survivor respondents reported having been arrested, while 60% reported being arrested for

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[8] Dominique Roe-Sepowitz, et. al. *Trick Roll Study: Forced Criminality in Sex Trafficking Situations*, ASU OFFICE OF SEX TRAFFICKING INTERVENTION RESEARCH (Jan. 2020), https://socialwork.asu.edu/sites/default/files/stir/asu_lvmpd_amber_alert_trick_roll_report_january_2020-reduced.pdf.
[9] *Id.*
[10] U.S. Dep't. of State, *The Use of Forced Criminality: Victims Hidden Behind the Crime* (June 20, 2014), https://2009-2017.state.gov/documents/organization/233938.pdf.
[11] Dominique Roe-Sepowitz, *Child Sex Trafficking Survivor Roundtable*, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS AMBER ALERT TRAINING AND TECHNICAL ASSISTANCE PROGRAM (March 30, 2019), https://socialwork.asu.edu/sites/default/files/stir/2019_aattap_cst_roundtable_final_report.pdf.
[12] *Id.*

crimes other than prostitution-related offenses.[13] More than half reported that they believed all of their arrests, charges, and convictions were directly related to their trafficking experience.[14]

Domestic violence survivors likewise experience multiple pathways from victimization to criminalization. Survivors may be forced or coerced by an abusive partner or family member into participating in criminal conduct; they may commit offenses to meet basic needs after abuse has destabilized their housing, income, or financial security. or they may be arrested for defending themselves or another person from violence.[15] Trauma associated with abuse may also contribute to substance use and other circumstances that result in criminal legal system involvement.[16] These pathways frequently overlap and the criminal legal system often fails to account for the relationship between a survivor's victimization and the offense for which they are punished.[17]

The prevalence of abuse histories among incarcerated women underscores the scope of this problem. One study found that 86% of incarcerated women reported experiencing sexual violence during their lifetime, 77% reported partner violence, and 60% reported caregiver violence.[18] Although not every person with a history of abuse will have committed an offense as a result of that victimization, these figures demonstrate the significant overlap between histories of abuse and incarceration. They also illustrate why criminal conduct cannot always be meaningfully understood without examining the circumstances of victimization that preceded it.

The parallels between trafficking and domestic violence are particularly evident in the role of coercion and control. In both contexts, an abuser or trafficker may use physical violence, threats, psychological manipulation, isolation, economic abuse, or threats against loved ones to constrain or

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[13] Beth Jacobs, National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking (2016), https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf.
[14] *Id*.
[15] Liz Komar, Clarissa Gonzalez, Elizabeth Isaacs, Kate Mogulescu & Monica Szlekovics, *Sentencing Reform for Criminalized Survivors: Learning from New York's Domestic Violence Survivors Justice Act* (The Sent'g Project & Survivors Just. Project Apr. 19, 2023).
[16] *Id.* at 7
[17] *Id.*
[18] *Id.* at 5.

influence a survivor's choices. A survivor may therefore appear to be exercising agency while acting under circumstances in which meaningful alternatives have been severely constrained. As with trafficking, the person exerting control need not be physically present when the survivor commits the offense. Threats of future harm, retaliation, or exposure can continue to shape a survivor's conduct even outside the immediate presence of an abuser or trafficker.

Trauma further complicates the relationship between victimization and criminal conduct. Survivors of trafficking and domestic violence may experience prolonged and repeated trauma that affects how they perceive their circumstances, assess risk, and respond to threats.[19] A survivor may come to view conduct that violates criminal law as the only available means of meeting basic needs, protecting themselves or another person, or avoiding more serious harm. These circumstances do not mean that every offense committed by a survivor was compelled or justified by victimization. They do, however, demonstrate why an assessment of culpability that considers only the underlying criminal conduct may fail to account for the circumstances in which that conduct occurred.

Despite growing recognition that survivors can become involved in the criminal legal system as a consequence of their victimization, criminalized survivors continue to encounter significant barriers to having that victimization recognized. Survivors may not disclose abuse to law enforcement or defense counsel, may fear retaliation against themselves or their families, may remain economically or psychologically dependent on their abuser, or may lack access to records or other evidence documenting their victimization.[20] Trauma and the passage of time can further complicate a survivor's ability to articulate the relationship between abuse and an offense.

For this reason, the issue is not simply whether a survivor committed a crime, but whether the criminal legal system adequately accounts for the circumstances that contributed to that conduct. When viewed through a trauma-informed lens, acts that appear to demonstrate agency and autonomy may reveal the effects of coercion, control, exploitation, survival needs, or trauma. The failure to recognize these

[19] *Supra* note 15, at 7.
[20] *Id.*

circumstances can result in survivors being punished for conduct that was deeply intertwined with their victimization.

IV. Advancing Survivor Justice: Solutions to Criminalized Survivors

Recognizing these dynamics, meaningful survivor justice requires more than creating a pathway to clear a conviction after the fact. The criminal legal system must be equipped to identify victimization and account for its impact at every stage of a case—from the initial interaction with law enforcement through charging, plea negotiations, sentencing, incarceration, and post-conviction review. Where those interventions fail to prevent unjust criminalization, survivors must have meaningful opportunities to obtain relief from sentences and convictions that arose from their victimization.

a. *Preventing Criminalization Through a Victim-Offender Intersectionality Approach*

One of the most effective ways to address the criminalization of survivors is to prevent it before it occurs. Shared Hope's *Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders*[21] ("VOI"), provides a framework for doing so. Importantly, the report recognizes that survivor justice cannot begin at sentencing. Victimization may be relevant at every stage of the criminal legal process. At arrest and investigation, law enforcement should be trained to identify indicators of trafficking and consider whether apparent criminal conduct may have occurred within a coercive or exploitative relationship. At charging, prosecutors should assess the relationship between the alleged offense and the survivor's victimization and consider alternatives to criminal prosecution where appropriate. During plea negotiations and sentencing, courts and counsel should consider the coercion, control, trauma, and other circumstances that may have influenced the survivor's conduct.

The VOI report ultimately calls for a continuum of responses, including opportunities to prevent criminalization at the outset of a case and avenues for survivors who have already been convicted to seek

[21] *See supra* note 5.

relief from the long-term consequences of that conviction. This approach provides a framework that can be applied not only to trafficking-specific offenses, but more broadly to survivors whose criminal legal involvement is connected to domestic violence, exploitation, or other forms of abuse. Considering victimization at the earliest possible stage can prevent unnecessary criminalization, while ensuring that it remains relevant throughout the criminal legal process can mitigate the consequences when prosecution does occur.

b. *Survivor Justice Acts, Sentencing Reform, and Post-Conviction Relief*

In addition to improving identification and decision-making at the front end of the criminal legal process, some survivors will continue to be prosecuted and convicted. Legislatures therefore should create mechanisms that allow courts to account for victimization at sentencing and, where appropriate, revisit sentences imposed without consideration of that victimization.

"Survivor Justice Acts,"[22] enacted in jurisdictions such as New York[23] and Georgia,[24] provide courts with the authority to impose reduced sentences where a defendant's criminal conduct was a direct result of, or substantially influenced by, their experience of abuse, trafficking or exploitation. These statutes recognize that traditional sentencing frameworks often fail to account for coercion, trauma, and the constrained autonomy of survivors. Critically, Survivor Justice Acts not only apply prospectively at the time of sentencing, but in some jurisdictions also create mechanisms for resentencing. This allows survivors who were previously sentenced without consideration of their victimization to petition the court for a reduced sentence, aligning their punishment with their diminished culpability. By authorizing courts to revisit prior sentences, these laws acknowledge that evolving understanding of trauma, abuse, and exploitation should have retroactive effect in the interest of justice.

[22] *See generally* Survivor Justice Act, American Legislative Exchange Council (January 6, 2026), https://alec.org/model-policy/survivor-justice-act/.
[23] *See* NY Penal L § 60.12 (2025), and NY Crim Pro L § 440.47 (2025)
[24] *See* Georgia Survivor Justice Act, H.B. 582, 2025-2026 Gen. Assemb. (Georgia) (2025).

These reforms reflect an important shift in understanding survivor culpability. Traditional sentencing frameworks generally focus on the offense and the offender's conduct without adequately accounting for the coercion, trauma, economic dependence, threats, and constrained choices that may have shaped that conduct. Survivor-centered sentencing reforms allow courts to consider the full circumstances of an offense rather than treating victimization as unrelated background information.

Legislatures should also ensure that survivor justice includes meaningful record relief, including vacatur and other post-conviction remedies that address the lasting consequences of a conviction. Such relief can be incorporated into Survivor Justice Acts or added to existing vacatur statutes that currently limit eligibility to trafficking survivors. States should consider expanding these laws to include individuals whose criminalization was connected to domestic violence, sexual assault, or other forms of gender-based abuse and exploitation. Doing so would recognize that trafficking is not the only form of victimization that can lead to criminalized survival and would ensure that survivors are not denied relief simply because their victimization falls outside a trafficking-specific statutory framework.

c. *The Incarcerated Survivors Project: Finding Survivors Who Were Missed*

For survivors who are already incarcerated, legal remedies are meaningful only if survivors can access them. Yet many incarcerated survivors remain unidentified, and traditional post-conviction systems generally place the burden on individuals to recognize their own victimization, locate counsel, gather evidence, and identify an available legal remedy.

Shared Hope's “Incarcerated Survivors Project” seeks to address this gap by taking a proactive, system-wide approach to identifying trafficking survivors within prison populations and connecting them with appropriate legal remedies. The project has two central goals: identification and relief. It seeks to systematically survey incarcerated populations to identify individuals whose criminalization may have resulted from trafficking victimization and then pursue appropriate legal pathways to mitigate the consequences of that criminalization.

The Incarcerated Survivors Project calls on states to move beyond reliance on individual self-identification and post-conviction petitions by conducting targeted, trauma-informed screening within correctional facilities. Correctional systems can partner with trafficking experts, survivor advocates, attorneys, and legal service organizations to identify potential survivors and review whether their convictions or sentences may be connected to their victimization. Identification, however, is only the first step. Once a survivor is identified, states should pursue the legal mechanism best suited to the individual's circumstances.

No single remedy will address every survivor's circumstances. Resentencing may provide a pathway out of prison while leaving the conviction intact. A commutation may shorten a sentence without eliminating the underlying conviction. Vacatur may provide broader relief but may be unavailable for the particular offense or because of procedural barriers. A comprehensive survivor justice framework therefore requires states to develop multiple avenues of relief and, critically, to ensure that survivors have access to counsel capable of identifying which remedy is appropriate.

V. Conclusion

Survivor justice requires a criminal legal system capable of seeing the circumstances behind an offense rather than viewing criminal conduct in isolation. Preventing criminalization through early identification of victimization, incorporating coercion and trauma into charging and sentencing decisions, and creating meaningful pathways to resentencing and record relief are complementary components of that approach. For survivors who were missed at earlier stages, states must also make relief accessible through proactive identification and connections to legal services. Together, these reforms can move the criminal legal system toward a more accurate and just understanding of survivor culpability—one that recognizes the ways abuse, exploitation, and constrained choices can shape a person’s involvement in criminalized conduct.