

An Overview of Forms, Dynamics, Scope and Challenges of Cases Involving Human Trafficking Victims in State Courts

Miriam Goodman and Steven Weller

Grand Rapids, MI

October 29, 2015



Learning Objectives

- **Discuss stereotypes of commercial sexual exploitation and trafficking**
- **Define CSEC, trafficking, and trauma**
- **Describe the impact of trauma on CSEC**
- **Identify first steps in responding to CSEC**

The State Justice Institute Supported Human Trafficking and the State Courts Collaborative

- **History**

- **Purpose and Priorities**

- increase understanding and awareness about the challenges faced by state courts in dealing with cases involving trafficking victims and their families;
- develop and test state and local approaches for assessing and addressing the impact of human trafficking victims and defendants on the state courts;
- enhance state and local court capacity to improve court services impacted by human trafficking-related case processing demands; and, build effective national, state, and local partnerships for addressing the impacts of human trafficking case processing in the state courts.

Why Human Trafficking is Important for the State Courts

- There are numerous human trafficking victims and traffickers in the US.
- Great deal of activity by federal and state law enforcement and by national interest groups but topic is newer for the courts.
- Increased attention directed at state laws.
- Recognition that human trafficking can be present in a variety of state court cases such as prostitution, drug sales by individuals who may be trafficking victims, child thieves, and abused and neglected children.

Human Trafficking Scope, Types, and Dynamics

Human trafficking occurs when an individual or an organization induces or recruits or harbors or transports or provides or obtains a person by force or fraud or coercion for the purposes of involuntary servitude or peonage or debt bondage or slavery or a commercial sex act.

- **Commercial Sex Acts** such as pimp controlled prostitution, escort services, residential and underground brothels, pornography production and cyber-pornography, or cantina, karaoke and other types of bars or clubs.
- **Labor or Services including:**
 - **Involuntary Servitude, Peonage, and Slavery** – people fear physical, emotional, and/or legal consequences if they attempt to escape their conditions.
 - **Debt Bondage** – labor is demanded as a means of loan or service repayment but terms and conditions have not been defined or the value of the victim’s service has not been reasonably assessed or is not applied to the liquidation of the debt.

What's in a word?

Prostitute

What's in a word?

Prostitute

**Trafficking
Victim**

What's in a word?

Prostitute

**Trafficking
Victim**

**Commercially
Sexually
Exploited**

-
- 1) Who's responsible?
 - 2) What's the response?

Definition: Trafficking Victim

Trafficking Victim:

- ▶ Many states have their own specific trafficking legislation, the Trafficking Victims Protection Act of 2000 (TVPA) defines trafficking as:
 - The recruitment, harboring, transportation, provision, or obtaining of a person for 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; or
 - labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - Coercion includes threats of physical or psychological harm to children and/or their families. Any child (under the age of 18) engaged in commercial sex is a victim of trafficking.

Definition: CSEC: Commercial Sexual Exploitation of Children

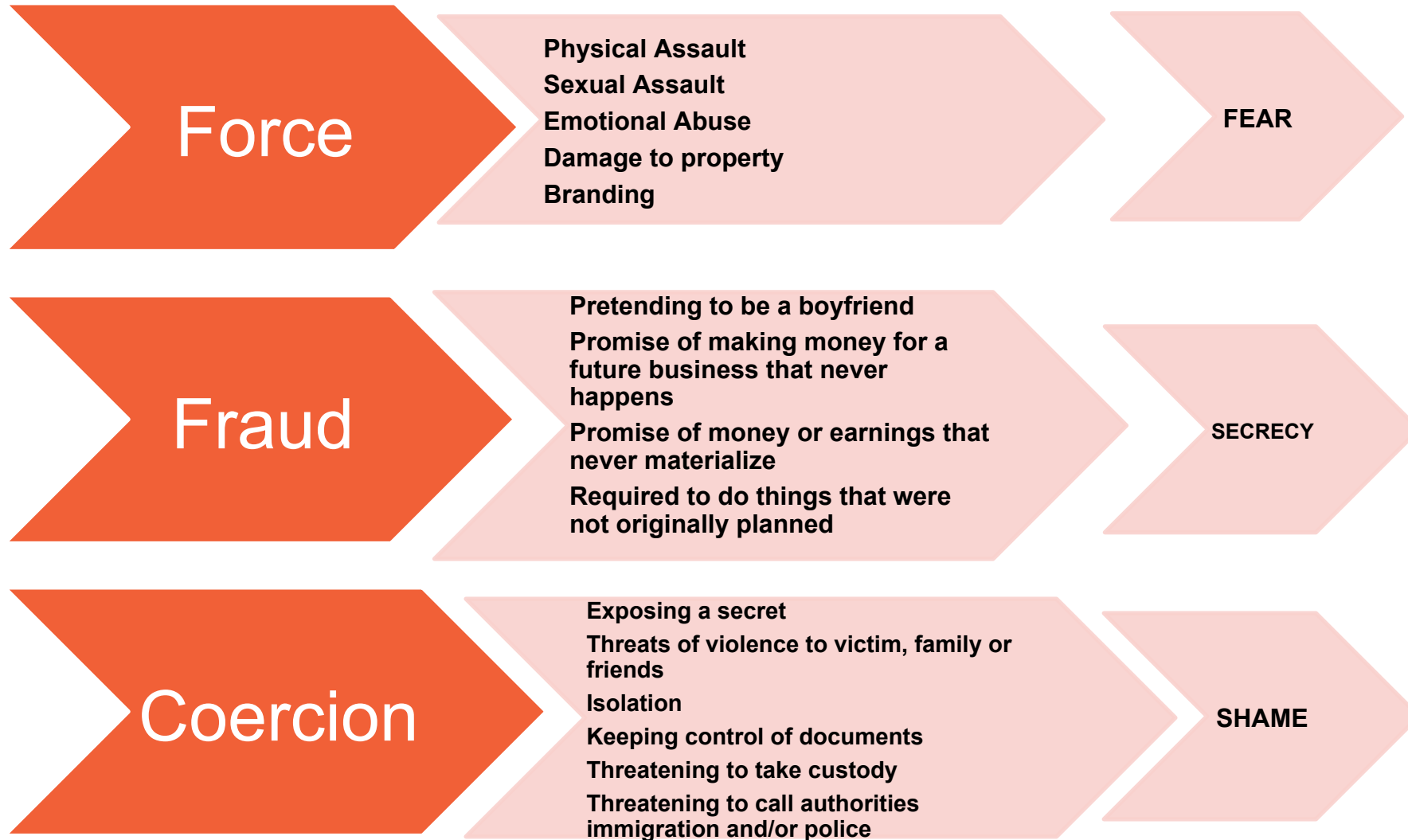
CSEC:

- Sexual activity involving a child in exchange for something of value, or promise thereof, to the child or another person (GEMS)

Safe Harbor legislation

- Created in 2008 to protect sexually exploited children from being charged with a juvenile delinquency offense
 - ▶ Victims not offenders
 - ▶ Connect to services
 - ▶ 16 and under
- January law changed to include 16 and 17 year olds

Three Key Elements



Examples of interpersonal and systemic trauma and oppression

Interpersonal

- Childhood sexual abuse
- Childhood physical abuse
- Verbal/emotional abuse
- Domestic/sexual violence
- Rape
- Neglect

Systemic

- Court
- Foster care
- Education
- Incarceration
- Police/law enforcement
- Health care

Structural

- Racism
- Poverty
- Sexism
- Homophobia
- All other -isms

Potential Risk Factors

- Poverty
- Wanting to improve family economic status (send money home)
- Violence in home countries
- Damage to property
- History of abuse
- Homelessness
- Undocumented
- About 50-80 % of trafficking victims involved with CPS
- Minimal social support
- Limited education
- Lack of work opportunities
- Runaway, homeless youth
- History of previous sexual abuse
- Drug or alcohol addiction
- History of trauma
- History of truancy
- Mental or behavioral health issues

Context of Trauma Histories/ Complexity of Choice



Court Challenges in Processing Juvenile Court Cases Involving Human Trafficking Victims

Human Trafficking Challenges For the State Courts

- **Prosecution of human trafficking under state trafficking laws rather than other criminal violations.**
- **Determining how human trafficking might appear in the state courts.**
- **Linking trafficking victims with appropriate resources.**
- **Using federal protections for immigrant victims where appropriate.**

Human Trafficking Challenges For the State Courts – Cont.

- **How far can retooling existing resources, concepts, facilities go? For example, what is the desirability and feasibility of redesigning facilities and programs for juvenile trafficking victims that incorporate available space in juvenile detention facilities?**
- **Court focused human trafficking identification and needs triage and assessment tools and how they can be used appropriately when and by whom.**
- **Crossover and interplay among different types of labor and sex trafficking.**

Human Trafficking Challenges For the State Courts – Cont.

- **Gang involvement in trafficking.**
- **The intersections between the work of the state courts and potentially HT involved cases or incidents that might appear in employment, housing, health, safety, licensing, liquor, and other boards and commissions.**
- **How to identify HT vulnerable populations and prevent involvement in human trafficking, including unaccompanied minors and other immigrant populations.**

Human Trafficking Challenges For the State Courts – Cont.

- **The intersections among language, culture, and human trafficking.**
- **Challenges that lesbian, gay, bisexual, and transgender victims of trafficking face.**
- **Becoming trauma informed and oriented.**

Types of Juvenile Court Dockets in Which Trafficking Victims May Appear

- **Dependency Docket:** In some states child sex trafficking victims may be designated as sexually exploited children rather than delinquents, so they can be treated in the courts as children in need of protection or services.
- **Delinquency docket:** Child trafficking victims may commit a variety of offenses as a result of their victimization that could result in a delinquency conviction.
- **Designated Juvenile Human Trafficking Docket:** Some courts have formed designated juvenile human trafficking dockets as a separate docket within the court.
- **Human Trafficking Specialty Court:** Specialized courts typically have a designated judge and a dedicated prosecutor and defense attorney who handled most of the cases.

**** What Other Dockets Can You Add?**

- **Discuss the types of dockets or case types you have in the work of your agency in which trafficking victims may appear**

An Example: New York Human Trafficking Intervention Courts

- **Eleven adult HT intervention courts have been formed across the state:**
 - 1.** Brooklyn Borough
 - 2.** Queens Borough
 - 3.** Manhattan Borough
 - 4.** Bronx Borough
 - 5.** Staten Island Borough
 - 6.** City of Syracuse
 - 7.** City of Rochester
 - 8.** City of Buffalo
 - 9.** City of Yonkers
 - 10.** Nassau County
 - 11.** Suffolk County
- **Called AP8 in NYC**
- **Model: Dedicated judge, defense, prosecutors, providers**



Human Trafficking Intervention Courts Overview

- **Goal:**
 - connect victims and potential victims of trafficking to services
 - offer better legal dispositions to help reduce the number of criminal convictions and criminal records
 - Dismissals
 - 440 motions/vacating records
 - Safe Harbor
- **Design**
 - Short term (proportional) mandates
 - General offers: 5-10 sessions
 - Engage and connect
- **Challenges**
 - Victim/Defendant
 - Victims don't identify as victims
 - Victims of crime and oppression without being victims of trafficking
 - Politics
 - Resources
 - Stigma

**** Discussion: What Other Effects of Trauma Can You Add?**

- **Discuss the effects of trauma on your work with trafficking victims**

Human Trafficking Challenges For the State Courts: At Risk Juveniles

Gang involvement in trafficking.

- Gangs may traffic both girls and boys
- Gangs will usually be involved in a variety of illegal activities
- A gang may serve as a surrogate family, so victim may feel loyalty to the gang
- Immigrants may be particularly susceptible to trafficking by gangs

How to identify HT vulnerable populations and prevent involvement in human trafficking

- Juvenile runaways and truants are a high risk population
- Immigrants are especially vulnerable in situations where they may be kept isolated

**** Discussion: What Other At-Risk Issues Can You Add?**

- **Discuss the challenges in your work in identifying juveniles who are not trafficking victims yet but are highly vulnerable to becoming victims and determining how to reduce the risk.**

Human Trafficking Challenges For the State Courts: Becoming Trauma Oriented

- You are working with complicated humans – teens!
- Shifting from punitive to supportive
- Focus: what does the young person need AND want?
 - Collaboration means including the young person!
- The DA and PD may need to become more collaborative
- Cannot judge behavior alone – context of traumatic experiences
- Changes to policy and practice
 - Expectations of behavior (e.g. AWOLs) may need to change – e.g. in licensing shelters

PAUSE!! Before any investigation consider the following:

- **Is the young person safe?**
 - Physically?
 - Emotionally?
- **Are basic needs met?**
 - Shelter
 - Food
 - Money
 - LOVE and SUPPORT?
- **Do they have a contact person?**
- **Has a safety plan been made?**
 - Consider a harm reduction approach: What if s/he returns to trafficker?
- **Is it in the best interest of the child to proceed with an investigation?**
- **Are there ways information can be used without the young person testifying?**

Challenges at Case Initiation

- **Law Enforcement may have options for differential treatment of child trafficking victims at the point of initial contact.**
- **Probation and Child Welfare may have to collaborate and share information to identify the trafficking victim, and this may require finding solutions to confidentiality restrictions.**
- **For dependency cases involving child trafficking victims, Child Welfare may have limited investigative capabilities to look into suspected trafficking situations.**

Other Issues

- **Probation and Child Welfare may have to collaborate and share information to identify the trauma victim, and this may require finding solutions to confidentiality restrictions. Probation normally will not have access to Child Welfare reports, so the probation officer may not know much of the child's background and may not have information that might alert the officer to possible sources of trauma for the child. Further, the Child Welfare reports may just have the filing and outcome, but not the details of the abuse or neglect.**
- **For dependency cases involving CSEC victims, Child Welfare may have to expand its investigative capabilities. The law does not authorize CW to file against a parent who is raising an issue of inability to control a child. CW will thus have to investigate the relationship between the child and a third party, the trafficker, and this is likely to require additional infrastructure and experienced staff. Even identifying the trafficker may be difficult, especially if the victim refuses to cooperate with CW.**

Challenges at Trial

- **Trafficking victims must develop enough trust to participate in the justice system and work with service providers.**
- **Defense attorneys may have to take on the role of guardian ad litem (GAL) as well as adversary counsel.**
- **District attorneys may have to seek solutions for the best interest of the child rather than adopting a pure prosecutorial role in a criminal proceeding.**
- **The prosecutor and public defender may need to work together to reach an outcome that is in the best interest of the child.**
- **Judges may have to set probation conditions that take into account the effects of trafficking victimization.**
- **Probation may have to rethink what constitutes a probation violation and how to deal with violations.**

**** Discussion: What Challenges at Trial Can You Add?**

- **Discuss what challenges you face when you have to develop evidence for a trial or present evidence for the trial of a case involving a human trafficking victim that you are working on**

Challenges at Disposition

- In making decisions about the use of secure detention for child trafficking victims, judges need to balance public safety and the safety of the children with the need to treat human trafficking victims with compassion.
- Judges need to recognize the possibility that trafficked juveniles will use group homes to recruit new victims for their traffickers.
- The options available to the judge in a delinquency case are different from those available in a dependency case. The judge has jurisdiction over the parents in a dependency case but not in a delinquency case.
- judges may need to have strategies for dealing with the interactions between the trafficking victims and their siblings in the context of the dependency proceedings.

**** Discussion: What Challenges at Disposition Can You Add?**

- **Discuss challenges you face in making recommendations for the disposition of a court case involving a trafficking victim**

Resource and Facilities Challenges

- **The behavioral expectations imposed by county licensing boards for group homes and foster parents may have to be adjusted for trafficking victims to account for AWOLs and other common problems arising with trafficking victims.**
- **There is a need for specialized services for trafficking victims.**
- **Child trafficking victims who are LGBTQ (lesbian, gay bisexual, transsexual, or questioning) may need specialized services and placement options that are supportive of their needs.**
- **Coordination between courts will be an issue with delinquency cases where a case is adjudicated in one county and then transferred to another county for disposition.**
- **There may be an issue of maintaining continuity of approach when one or more of the key actors change, such as the judge, district attorney, public defender, or probation officers.**

**** Discussion: What Resource Challenges Can You Add?**

- **Discuss resource and facilities challenges for dealing with trafficking victims in your agency**

Executive Leadership for Effective Responses to Human Trafficking

- Establish vision and long-term strategic direction for court, justice system, and community.
- Develop long-term multi-system and community capacity to provide services.
- Establish and monitor inter-agency, and system infrastructure for supporting services.
- Assure that effective inter-agency work processes are established and maintained.
- Monitor system performance.
- Work cooperatively and collectively to establish a strong fiscal foundation for on-going service delivery.

**** Discussion: What Roles Can You Play?**

- **Discuss what leadership roles might you or your agency might play in developing responses to the needs of trafficking victims**

Contact Information

Human Trafficking and the State Courts Collaborative Website

- www.htcourts.org

Steven Weller

Center for Public Policy Studies

- sweller@indra.com

Miriam Goodman

Center for Court Innovation

- mgoodman@nycourts.gov