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HUMAN TRAFFICKING CASES IN CALIFORNIA'S COURTS: SUCCESSFUL PRACTICES IN THE EMERGING FIELD OF HUMAN TRAFFICKING

An overview of what human trafficking is, how it presents in courts, and successful practices for identifying and addressing victims and offenders

ADMINISTRATIVE OFFICE OF THE COURTS
JUDICIAL AND COURT OPERATIONS SERVICES DIVISION
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> "The other girls and I were arrested over and over for prostitution. Never did the police or prosecutors ask us if we were trafficked. Never did they offer us help and protection."
>
> *Kikka Cerpa, Human Trafficking Survivor speaking at special United Nations event "Giving Voice to the Victims and Survivors of Human Trafficking"*[1]

INTRODUCTION

Human trafficking is a growing epidemic in all states across this country as well as around the world.[2,3] As with domestic violence, researchers and practitioners are examining encouraging practices for identifying and treating victims as well as for prosecuting trafficking cases. Researchers are eager to identify best practices or evidence-based practices in the area of human trafficking; however, labeling a practice as such requires carefully designed evaluations using rigorous scientific methods to measure outcomes after extended periods of time.[4] The issue of human trafficking is emerging and has only relatively recently been identified as an epidemic. Thus, best practices for identifying victims, for treating victims, and for prosecuting offenders are still being researched and discovered.

Similar to drug and gun traders, those involved in the human trafficking industry are motivated by profit.[5] In fact, many who previously trafficked guns and drugs have turned to trafficking humans due to the profit margin; guns and drugs can be sold only once while a person can be sold many times, earning a trafficker a much higher economic yield on a person than on another commodity. The financial benefits of trafficking people outweigh the risks since today's slavery is more hidden than it was in the past, so detection of abuse is difficult. It is also easy for traffickers to evade law enforcement since the victim often is in the open while the trafficker is hidden, and the risk of conviction is low; even if convicted, many traffickers face minimal sentencing.[6] In addition, traffickers are able to easily and inexpensively obtain victims. Today, a trafficker can buy a person for as little as a few hundred to a few thousand dollars, compared to the equivalent of up to $100,000 at the beginning of the 19th century, making people not only inexpensive to purchase, but also to replace.[7,8] A cost-benefit analysis showed that human trafficking profits have ranged between about $1 million and $8 million over a period of one

to six years,[9] not including other "fees" that traffickers may charge the victims, such as fees for transportation, room and board, or purchasing back passports for international victims.[10]

Because of this ease, affordability, and profitability, up to 800,000 people per year are estimated to be trafficked across international borders.[11,12,13] Although data are difficult to ascertain, at any given time approximately 12.2 million people are estimated to be victims of human trafficking around the world[14] and 50,000 people are estimated to be trafficked into the U.S. from other countries.[15] Within the U.S., up to 325,000 youth have been sold into sex slavery or are at risk for sexual exploitation,[16,17] and youth comprise 40 to 50 percent of the overall forced labor population.[18] Estimates of American trafficking victims within the U.S. are limited due to a dearth of research and data. Research on male and LGBT (lesbian, gay, bisexual, transgender) victims is particularly scarce.

Data on human trafficking have been difficult for researchers to collect because different agencies have different definitions of what constitutes victimization, as well as varying levels of data collection capacity. For example, local and state prosecutors may ultimately prosecute a sex trafficking case under a kidnapping, pimping, or other statute and the case would not necessarily be counted as a trafficking case. A recent increase in federal support will facilitate data collection efforts as well as awareness in the travel and tourism industries.[19] In terms of public awareness, advocacy, and treatment, human trafficking is where domestic violence was 30 years ago.[20] This is also the case in courtrooms.

Human trafficking cases present themselves in many complicated and unassuming ways in juvenile delinquency and criminal courtrooms. With state and federal trafficking laws being strengthened recently, more victims and offenders are appearing in court than ever before. Because of this, judicial officers, stakeholders in juvenile and criminal justice, law enforcement officials, and treatment providers have indicated that they would like more information about human trafficking. The AOC responded by establishing the Violence Against Women Education Project (VAWEP), an initiative funded by the California Emergency Management Agency and designed to provide state and tribal courts with information, equipment, technical assistance, educational materials, and programs on the role of the courts in responding to cases involving issues related to violence and exploitation, including trafficking.

This briefing is an in-depth response to specific questions about human trafficking. It discusses the definition and scope of human trafficking, risk factors for becoming a trafficking victim, the dynamics of how perpetrators maintain trafficking victims, and how trafficking cases present themselves in courtrooms.

Definition and Scope of Human Trafficking

Human trafficking is defined broadly as controlling a person through force, fraud, or psychological or physical coercion to use the person for forced labor or sexual exploitation.[21] The side box has examples of force, fraud, and coercion used to control victims.[22]

The first federal law dealing with human trafficking in the U.S. was passed in 2000 as the Trafficking Victims Protection Act of 2000 and defined human trafficking as

> sex trafficking [the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act] 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 the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[23]

The California Trafficking Victims Protection Act,[24] enacted in 2006, established human trafficking for forced labor or services as a felony crime in California for the first time and defined human trafficking as

> all acts involved in the recruitment, abduction, transport, harboring, transfer, sale, or receipt of persons, within national or across international borders, through force, coercion, fraud, or deception, to place persons in situations of slavery or slave-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor, or other debt bondage.[25]

Force

- Physical or corporal punishment, including hitting or beating with hands or objects
- Burning
- Sexual assault
- Rape and gang rape
- Confinement and physical restraint

Fraud

- False promises
- Deceitful, enticing, and affectionate behavior
- Lying about working conditions
- Lying about the promise of a better life

Coercion

- Threats of serious harm or restraint aimed at the victim or victim's family
- Intimidation and humiliation
- Creating a climate of fear
- Enforcement of trivial demands
- Intense manipulation
- Emotional abuse
- Isolation
- Creating dependency and fear of independence

Under these definitions, transportation or physical movement of the victim does not necessarily need to be present in order for trafficking to occur; it is the presence of exploitation (force, fraud, or coercion) that indicates whether trafficking has occurred. This represents the difference between trafficking and smuggling. Trafficking involves enslaving a person while smuggling involves facilitating transportation or transporting someone illegally across an international

border. Although there can be overlap—someone smuggled into the country could then become a victim of trafficking—they are not the same thing. At the root of human trafficking are the myriad forms of enslavement, not the activities involved in any transportation. However, because transportation "fees" are often used as a form of debt bondage, which is a form of human trafficking, the California legislature implemented a law in 2008 that voids any employment contract that deducts any pay from an employee's wages for the cost of transporting, or smuggling, that person into the country.*

Since the California Trafficking Victims Protection Act in 2006, several laws have been passed in California related to human trafficking. These laws are detailed in the appendix of this briefing. Despite the best efforts of lawmakers, judicial officers and other court stakeholders have indicated that the laws are complicated to utilize or have little teeth due to the difficulty in some of the requirements, such as obtaining victim cooperation.[26,27] The difficulty can vary depending on what type of trafficking was involved as well as whether the victim is international or domestic. One law that was designed to ease this difficulty was Assembly Bill 90 in 2011, which aligned California law with federal law, allowing prosecutors to try child trafficking cases without having to prove coercion and expanding the types of human trafficking crimes subject to asset forfeiture laws.

Trafficking Industries

There are many forms of human trafficking that occur around the world. The most common forms that occur in the U.S. are sex trafficking, domestic servitude, and forced labor.

Sex trafficking. The most widely discussed form of human trafficking is sex trafficking, in which someone is coerced, forced, or deceived into prostitution or maintained in prostitution through coercion, including by pimps. Victims of sex trafficking are often sold via the Internet, strip clubs, escort services, in brothels posing as massage parlors or other legitimate businesses, or on the street as prostitutes. The average age that girls are first exploited is 12 to 14 and the average age that boys and transgender youth are exploited is 11 to 13.[28] The U.S. State Department has estimated that about 70 percent of female international trafficking victims in the U.S. are trafficked in the sex industry.[29] Girls and young women comprise 98 percent of all sex trafficking victims.[30] There is limited information available about boys who are prostituted; the research

* All laws and legislative bills discussed throughout this document are detailed in the appendix.

that is available suggests that law enforcement more often arrests boys than girls for prostitution and that girls are more likely than boys to be characterized as victims rather than offenders.[31] Although several laws have been passed in California to increase penalties for pimping and procuring minors, to track convicted sex traffickers, and to criminalize providing fraudulent certificates for the California Massage Therapy Council, sex trafficking remains an epidemic.[32]

Domestic servitude. Domestic servitude is a common form of trafficking, although it is not as widely discussed as sex trafficking. Victims of domestic servitude are often in informal work environments, such as personal residences, and usually live and work in the same place, which isolates them and makes them more difficult to detect than other victims. This type of trafficking may involve confiscating travel documents, withholding wages, confining and isolating a person to one location, and threatening or imposing abuse or harm, including threatening arrest or deportation if the victim leaves. Researchers have estimated that about half of those trafficked into the U.S. from other countries enter into domestic servitude or forced labor.[33]

Forced labor. Forced labor can involve several industries, including restaurant work, nail salon work, janitorial work, sweatshop factory work, migrant agricultural work, construction, and peddling. In the U.S., immigrants are particularly vulnerable to forced labor; however, domestic victims are common, too.[34] Youth are often preferred to adults because they are less expensive, more easily controlled, and less likely to demand better working conditions than are adults.[35] In the U.S., girls and women make up about 56 percent of forced labor victims and boys and men constitute about 44 percent.[36] Forced labor is widespread outside of the U.S. as well, particularly in countries where a lot of manufacturing for American export is conducted. Because of this, California implemented the California Transparency in Supply Chains Act, which requires certain retailers and manufacturers doing business in California to disclose their policies for eliminating human trafficking from their supply chains. California also prohibits any company that is in violation of the Securities Exchange Act of 1934[†] from entering into a contract with a state agency for goods or services.

[†] The Securities Exchange Act, often referred to the Truth in Securities law, has two main objectives: 1) to require investors to receive financial and other information concerning securities being offered for public sale and 2) to prohibit deceit, misrepresentation, and other fraud in the sale of securities.

International versus Domestic

Victims of human trafficking in California come from a variety of different countries as well as from within the state or even within a county. Although international trafficking victims are widely discussed in the literature and the media, much trafficking is national or regional, done by those whose nationality is the same as their victims.[37] A recent California Child Welfare Council[38] fact sheet indicated that 72 percent of sex trafficking victims identified in California are from the United States.[39]

International victims tend to move from poorer countries to richer countries. International victims in the U.S. most commonly come from El Salvador, Thailand, Mexico, Russia, China, Vietnam, Philippines, Haiti, India, Guatemala, and former Soviet and Yugoslav countries, such as Ukraine and Moldova. The federal Trafficking Victims Protection Act created two visa programs for international trafficking victims: the T visa and the U visa. These visas allow, or certify, undocumented victims to remain the U.S. while their cases are adjudicated. The T visa is specifically for trafficking victims and the U visa is for victims of certain serious crimes who have suffered mental or physical abuse because of the crime. Both visas are contingent upon the victim's willingness to assist law enforcement in the investigation and prosecution of the crime. Because of this requirement, victims who may otherwise qualify may not apply out of fear for themselves or their families of retaliation by the trafficker.[40] Although there is an annual availability of 5,000 T visas, only a few hundred are issued each year.[41] California recognized that victims were not seeking or obtaining certification and implemented the California Trafficking and Crime Victims Assistance Program (TCVAP), which provides state-funded benefits and services such as food, shelter, and clothing to noncitizen victims of human trafficking and domestic violence who are not eligible to receive services from federal programs. Some trafficking victims may also be considered refugees, making them eligible for additional benefits and services. Counties that have been established as "refugee-impacted" receive additional funding and a broader range of services for refugees. Of California's 58 counties, 11 have been designated as refugee-impacted: Alameda, Fresno, Los Angeles, Merced, Orange, Sacramento, San Diego, San Francisco, San Joaquin, Santa Clara, and Stanislaus.[42]

Risk Factors for Human Trafficking

Trafficking victims have certain commonalities that make them vulnerable to exploitation. These commonalities include poverty, history of sexual or physical abuse, a lack of family or family support, young age, and limited education.

Poverty is one of the largest contributing risk factors for human trafficking.[43] International trafficking victims are often vulnerable to offers to move them from financially unstable living conditions to so-called opportunities and false promises for jobs and remittances in a more stable environment. International victims expecting jobs as nannies, restaurant workers, or housekeepers find themselves in an unexpected country with forged documents and all identifying information confiscated. Domestic victims are often recruited under the same false pretenses from homeless shelters, group homes, the street, bus stations, schools, or dysfunctional homes.[44]

A report on domestic minor sex trafficking showed that a history of involvement with child protective services (CPS) is also a risk factor for exploitation.[45] A history of abuse, particularly sexual abuse, is the most common risk factor among sex trafficking victims; up to 90 percent of sexually exploited girls have a history of sexual abuse.[46] In one study, 68 percent of young women arrested for prostitution had been sexually abused before the age of 10 and nearly half reported being raped before the age of 10.[47] Male victims also largely come from dysfunctional homes and have been a victim of some kind of abuse in the past.[48] There may be disproportionality in the effects of abuse on exploitation as well. One researcher found that minorities who have experienced abuse are at approximately twice as much risk for exploitation than are nonminorities.[49] Abuse in the home often leads youth to running away and homelessness.[50] This is true for both girls and boys. One researcher estimated that between 40 and 50 percent of boys exploited through prostitution had been thrown out of their homes due to sexual identity issues.[51] Once out of their homes, LGBT youth can experience additional antigay hostility, ridicule, and violence in foster care and homeless shelters, and may conclude they are safer living on the street and are then easily exploited.[52] Runaways, throwaways (those who have been kicked out of their homes), and foster youth are at particularly high risk due to their unique vulnerability related to a lack of family stability and support and often a lack of stable housing. There is also evidence that Native American girls are disproportionately vulnerable to common risk factors and particularly vulnerable to trafficking.[53]

Dynamics of Human Trafficking

Examples of traffickers include individual pimps, gangs and organized crime members, brothel and massage parlor owners and managers, growers and leaders in agriculture, labor brokers, child adoption brokers, employers of live-in domestic help, factory owners and managers, restaurant owners and managers, and other small or large business or corporation owners and managers.

Traffickers can be foreign nationals and U.S. citizens, males and females, family members, intimate partners, acquaintances, and strangers. Traffickers approach and obtain victims in many ways. Often, traffickers bait international victims or their families with false promises of a legitimate job or marriage opportunities in a wealthier country than their own. In some cases, victims may be kidnapped outright. Domestic victims of trafficking can also be initially lured by false promises of jobs; however, for many domestic victims, traffickers initially lure already vulnerable victims with flattery and a false sense of unconditional love that victims may crave. Once baited, traffickers create a dependent relationship with extreme power differentials in which the trafficker has economic and psychological power to keep the victim as a commodity and keep the profits.[54] A common method of exploitation is to prey on vulnerable girls and women using a mix of violence and tenderness to alternately degrade and elevate them. The result is a psychological connection to the trafficker that keeps victims from both self-identifying as a victim and from turning against the trafficker due to a psychological dependency that stems from fear and misplaced affection. An additional result is multiple layers of trauma that include "psychological damage from captivity and fear of reprisals if escape is contemplated, brainwashing, and for some, a long history of family, community, or national violence."[55]

In the early stages of victimization, traffickers may use forceful violence, including rape, beatings, and confinement, in order to break any resistance and make victims easier to control. This is often referred to as the "seasoning process,"[56] and is common in sex trafficking and with pimps. Experts have identified different types of pimps by the methods they use to obtain and maintain control over victims.[57] One type is knows as a "guerrilla pimp," who may simply grab a victim from the street and use brutal and violent tactics to break down the victim and to instill immediate fear of trying to escape. These types of pimps are also known for getting their victims addicted to drugs as a way of keeping them under their control. Another type is known as a "Romeo pimp," who provides compliments and promises love and affection to insecure, lonely, and vulnerable victims. While guerrilla pimps use physical coercion from the beginning, Romeo pimps use psychological coercion, giving victims attention, affection, and material things to convince them that theirs is a loving relationship. Romeo pimps then convince victims that their prostitution is their way of contributing to the relationship, even though the victims are not allowed to keep any money they receive. Victims often refer to Romeo pimps as their boyfriend, making law enforcement questioning and testimony difficult.

Although most pimps are male, they often use females as seconds in command, known as a "bottom girls." These women are typically victims who have been with the pimp the longest and serve as a midlevel controller to keep other victims in line. Since many victims have never experienced empowering and respectful relationship models, they are familiar with relating to others in a hierarchical structure that the pimp and bottom girl illustrate. Victims may strive to be the bottom girl because of not only the appearance of increased power that the bottom girl has, but also because of the appearance of the increased affection and love that the bottom girl receives from the pimp. As one police sergeant noted, "It's kind of a battered-child syndrome. It happened to them. They hated it. And then they do it to someone else."[58]

Similar patterns of force, fraud, and coercion are used in other forms of trafficking as well. Traffickers convince victims to distrust outsiders, particularly law enforcement, and victims are kept unaware of their rights. For example, any "contracts" or other documents signed by a victim may not be legally binding. For international victims, cultural beliefs may also be used to keep them in line, such as shame to their family if they leave. Regardless of the type of trafficking, similar trauma results for the victim.

Researchers recently identified five main themes that keep victims entrapped: fear (of violence, of retaliation, of deportation, of law enforcement, of family repercussions); lack of knowledge about alternatives (available services, victim rights); isolation (from transportation, language, lack of social support); confinement (physical, psychological); and shame.[59] These dynamics must be considered in court settings, such as when an alleged victim is testifying against an alleged trafficker.

Identifying Trafficking Victims

Despite common risk factors, it is often difficult to identify human trafficking victims. Some of the barriers to identifying victims include a lack of public awareness about trafficking, a lack of awareness and training among law enforcement and other professionals who may have direct contact with victims, difficulty in distinguishing between smuggling and trafficking, and insufficient resources to investigate potential trafficking cases. Isolation and other methods of force, fraud, and coercion may also hinder indentifying victims.[60]

Another reason it may be difficult to identify victims, particularly international victims, is their common distrust of people in seemingly powerful positions. In some countries from where vic-

tims originate, law enforcement officers may be the "clients" of sexually exploited girls and young women, creating mistrust of any law enforcement officer. In many countries police corruption has been reported as a key factor impeding efforts to combat human trafficking.[61] Cultural and language barriers may also impact the ability to identify and assist victims.

There are also difficulties in identifying victims for law enforcement officers, who are often trained to focus on perpetrators of crime. When trafficking victims are involved in illegal activities, such as prostitution, or are undocumented, it is often difficult to differentiate between being a criminal and being a victim. This differentiation is further discussed in the section below on criminalization of victims.

Once identified, it is also difficult for law enforcement and service providers to give assistance. Victims generally do not self-identify as such and are often reluctant to cooperate with either law enforcement or service providers. This is especially true of male victims, who are even less likely than girls to admit that they were held through threat or fear.[62] Victims of sex trafficking may show symptoms of Stockholm Syndrome, becoming enamored with their trafficker or pimp as their "boyfriend," identifying with him, and showing extreme gratitude for the smallest acts of kindness or mercy as a means of emotional and physical survival.[63] Trafficking victims may also fear for their own safety as well as the safety of their family. Traffickers often keep victims in fear by threatening to harm or kill their families, and victims sometimes see other victims harmed or killed when trying to escape.[64] These layers of traumatic events can cause victims to feel hopelessly connected or bonded to their traffickers, making identification difficult.

TRAFFICKING IDENTIFICATION RED FLAGS:

Situational Indicators

- Frequent movement
- Many people living together
- Living and working in same location

Story Indicators

- How person came to U.S.
- No access to documentation/ID
- No or little pay for work

Demeanor

- Fearful
- Evasive in responding to questions

Ways that victims can be identified are through social or medical interactions or employment dispute services. As mentioned, few people self-identify as victims; however, researchers have recognized red flags to look for: situational indicators such as frequent movement, many people

living together, and people living in the same location where they work; story indicators such as how people come to the U.S., whether they have a copy of their documentation, and whether they are paid for their work; and demeanor, such as whether a person seems fearful or answers questions evasively.[65]

Although sometimes difficult, identifying victims is important in settings such as court. Victims may go unnoticed in juvenile court, especially when cases may seem ordinary, such as drug running or solicitation. For this reason, it is important to screen or assess certain "offenders" for victimization. The California legislature passed Assembly Bill 2810 in 2008, requiring law enforcement agencies to assess whether a victim of domestic violence or rape or someone arrested for solicitation or prostitution is a victim of human trafficking. A screening tool for victimization is available for law enforcement, social service organizations, and health care providers and has been identified as a successful practice for identifying victims.[66]

Human Trafficking Cases in Juvenile Court

Human trafficking cases can present in many ways in juvenile court. Although dependent youth and foster youth are often at risk for victimization, many trafficking issues arise in delinquency court or as a crossover or dual status case (under jurisdiction of both delinquency and dependency courts). With the evidence of a history of CPS involvement among trafficking victims,[67] the child welfare system and dependency courts are also taking trafficking-related issues into consideration from a child welfare perspective, focusing on prevention as an equally important effort as intervention to stop exploitation and abuse.[68]

In the delinquency system, youth charged with prostitution or solicitation in California can easily be detected as trafficking cases since youth under 18 do not have the ability to consent to sex under any circumstances in the first place.[69] In addition, the definition of trafficking includes the premise that a victim's consent to circumstances that involve force, fraud, or coercion is irrelevant in the legal setting.[70] Those who are involved in the force, fraud, or coercion are often available to these youth as an "uncle" or other "guardian" present in the court or waiting for the victim upon release. Other cases may not be so clear. For example, the American Bar Association has noted that trafficking victims may be forced into theft, drug sales, fraud, or other crimes.[71]

Some have noted that the juvenile system is not set up to offer real protections to noncriminal youth, particularly runaways and throwaways. For example, the juvenile system often does not have the necessary trauma-based services for youth most at risk for trafficking. This inability to protect could facilitate the youth becoming further victimized. Since they are lured and coerced young, they may continue on a similar path for their lifespan, but any potential identification as victim is usually gone after they reach the age of 18 regardless of how old they were when initially lured.[72]

It is also often difficult to distinguish between victimization and criminalization, especially in sex trafficking cases. Police, prosecutors, and defense attorneys have difficult, sometimes confusing, decisions to make about boundaries in labeling people as defendants, witnesses, or victims, or all of the above. This issue and alternatives to incarceration for victims are discussed below.

Criminalization of Victims

Many international trafficking victims regardless of type have been viewed and treated simply as undocumented or "illegal" immigrants. And victims of sex trafficking have been viewed simply as perpetrators of solicitation or prostitution. This criminalization has created a challenge in identifying and assisting victims and in preventing revictimization.[73]

One of the most common methods of controlling victims is to convince them that law enforcement cannot be trusted or that they will receive harsh treatment from law enforcement. For international victims, the threat of harsh treatment and deportation by immigration officers is a real fear. Traffickers routinely tell victims that if they escape, the police will arrest and imprison them. This fear and mistrust of law enforcement is then reinforced when victims are, in fact, treated as criminals when arrested for documentation fraud or prostitution, for example. Many international victims fear shame, family rejection, or cultural stigmatization from the trafficking, and simple deportation can also lead to retrafficking due to their reluctance to return to their families for these reasons.

This treatment by law enforcement may stem from a lack of comprehensive training in identifying trafficking victims.[74] The final report of the California Alliance to Combat Trafficking and Slavery Task Force is one of several reports stating that one of the most critical issues in combating trafficking is adequate training for law enforcement, health and social service providers, labor agencies, and courts on how to recognize the signs of human trafficking and

assist victims.[75] California's Human Trafficking Collaboration and Training Act requires the Commission on Peace Officer Standards and Training to establish guidelines for law enforcement's response to human trafficking, and the recently enacted California Against Sexual Exploitation Act mandates training for law enforcement officers.

In the U.S., including in California, if a victim does not assist with the investigation or does not agree to testify against the trafficker, she or he may be denied services, jailed, or deported. Many have noted that recognizing trafficking victims' human rights and providing them with services as victims first would advance the legal responses to the crime of trafficking and that strengthening the laws to favor protection of victims is critical.[76] Although prosecuting the trafficker is a primary goal in trafficking cases, successful practices include restoring victims' human rights and dignity and providing culturally competent trauma-based and other necessary services as an equal and independent goal, according to researchers and victim advocates.

Alternatives to Incarceration for Victims

Collaborative approaches to treating victims as victims rather than as criminals have been identified as successful practices. For example, a pilot enacted by Assembly Bill 499 in 2008 (extended by Assembly Bill 799 in 2011) created a diversion program in Alameda County in which commercially sexually exploited minors are provided with extensive wrap-around services to address their physical, mental health, and survival needs rather than entering the justice system. Under this diversion program, arrested youth who qualify are released to foster care, group homes, or their parents instead of going to juvenile hall. The youth then report for classroom instruction and are enrolled in counseling and support services.

Although there is agreement that prosecution is a definitive end goal, many argue that restoring victims' basic human rights and protections should be a primary goal and adequate services and protections should be available to all survivors.[77] Victim-centered approaches to prosecution ensure that victims are treated as victims and not as criminals and that they have access to adequate services, assistance, and benefits. These victim-centered approaches are referred to as "safe harbor laws." As of this writing, Connecticut, Illinois, Massachusetts, Minnesota, Tennessee, Vermont, and Washington have safe harbor laws that divert victims from courtrooms into protective care and provide victims with services such as long-term housing, mental health counseling, and access to education.[78]

Assembly Bill 499 also facilitated the creation of the Alameda County H.E.A.T. Watch (Stop Human Exploitation and Trafficking), which brings together several collaborative strategies to combat trafficking, including engaging local businesses, training law enforcement officials, prosecuting offenders, advocating for tougher laws for traffickers, and providing comprehensive services for trafficked youth. One of these collaborative strategies is a girls' court where multiple agencies and organizations provide a consistent and empowering court environment for girls who have been identified as exploited, at risk for exploitation, or at risk for ongoing criminal activity related to being exploited. A similar pilot program was enacted in Los Angeles by Senate Bill 1279 in 2010. This Senate Bill provided statutory authority to the Los Angeles district attorney to engage with county departments to collaboratively address diversion and treatment of sexually exploited minors. Other counties, such as El Dorado and San Diego, are developing multidisciplinary trafficking response teams as well.

Some emerging best practices for law enforcement and attorneys in approaching trafficking victims include using planned raids rather than blind raids to plan for victims' needs and separating victims from alleged or suspected traffickers when interviewing.[79] In addition, all services should be provided in a culturally competent manner. Anecdotally, trafficking survivors have reported that the people who made a difference in their lives included "a nice judge" and others who listened to what they had to say.[80]

Attorneys and judicial officers have stated that sometimes incarceration may be the only alternative available to keep a youth safe. Since many young victims do not self-identify as a victim and have a sense of dependence on and even protection of the trafficker, some feel that a locked facility in which a victim can receive necessary services and guidance and, more importantly, be isolated from the trafficker, is the best option. Some practitioners have called detention the "best among worst choices" since young victims are often returned to the homes from which they fled or placed in nonsecure facilities, leading to increased risk of revictimization.[81]

Child welfare advocates are also studying approaches to prevent sexual exploitation and criminalization. As part of a project with the California Child Welfare Council, the National Center for Youth Law identified a comprehensive model for prevention, which includes 1) identifying children in the child welfare system who are at risk for commercial sexual exploitation through screenings or assessments, 2) implementing prevention measures to ensure those at risk do not fall prey to exploiters and pimps, 3) wrapping comprehensive, community-based services around

children who have been commercially sexually exploited, and 4) institutionalizing a data collection system to monitor the state's progress toward reducing the number of children who are commercially sexually exploited.[82]

Human Trafficking Cases in Criminal Court

Traffickers may be prosecuted in state or federal courts. Most of the trafficking-related cases that come before the state's criminal court are those to prosecute a trafficker rather than a victim. However, the charge is rarely brought under the California Penal Codes related to trafficking. Judicial officers and attorneys have noted several limitations and challenges to prosecuting under Penal Code 236.1 enacted under the Trafficking Victims Protection Act. As one example, it is difficult to convince victims to testify against their traffickers due to the dynamics described above. Because of these challenges, prosecutors and law enforcement have noted that the state trafficking laws "have no teeth."[83]

Because of the perceived lack of strength in the trafficking laws, prosecutors in California have successfully prosecuted traffickers using serious felony statutes such as kidnapping, extortion, and sexual assault statutes in addition to or in lieu of the trafficking statute. Prosecutors have also used the Racketeer Influenced and Corrupt Organizations Act (RICO) to prosecute trafficking cases with overlap in organized crime.[84] In addition to these crimes, traffickers may appear in criminal court for forgery, immigration law violations, money laundering, tax evasion, bribery, and other drug-related or gang-related crimes.[85] Some prosecutors and law enforcement officers have described how an increase in violence against trafficking victims is associated with drug dealers moving away from drugs to human beings for sexual exploitation in particular, but keeping the territorial brutality seen in gang and other organized crime members. One law enforcement official stated, "You look at the arrest records of the pimps involved in these cases and they'll have like 20 pages of arrests and it'll be all dope, dope, dope. Then all of a sudden you'll see a charge for human trafficking."[86] Due to trafficking cases being tried under other charges, researchers have been unable to collect accurate data on trafficking cases in California and around the country.

In federal cases, it is even more difficult to prosecute a trafficking case since the investigation and prosecution of these cases takes between eight months and three years to complete, during which time the victim often requires housing and other trauma-based assistance or may be forced to remain in trafficked situations out of fear. Since the victim is required to assist the

case (i.e., testify) in order to receive services, what makes for a good prosecution does not always serve the safety needs of the victim.[87] In federal trafficking cases, the average sentence faced by those found guilty is 9.3 years.[88]

Criminal cases may sometimes involve trafficking victims. For example, women age 18 and older may be prosecuted for prostitution. Although prostitution may be a valid charge, at least 70 percent of adult women involved in prostitution were introduced to the sex industry before turning 18, many as young as 11 to 14.[89] Researchers have also found that the median age of entry into prostitution for minority women is 2.5 years younger than for Caucasian women.[90] In addition, at least 75 percent of prostituted women are controlled by a pimp when entering the industry.[91] Some have noted that the passage of time alone does not turn a trafficking victim into a criminal prostitute, thus women over the age of 18 involved in prostitution should not necessarily be criminalized.[92,93,94]

CONCLUSION

Human trafficking has been referred to as the abolitionist movement of our time.[95] Advocates have stated, "It is not 'like' slavery; it 'is' slavery."[96] There are unique challenges to combating human trafficking, depending on the culture and geography of where it's occurring, but common characteristics of traffickers worldwide include recruiting people based on fraud, force, or coercion, which includes withholding visas and other identity documents; controlling and limiting movement; threatening deportation if the victim is international; threatening to harm the victim or the victim's family; and physically harming the victim.[97] Victims are not aware of their rights, nor do they know that any contracts they sign are neither legal nor binding. The motivation and drive behind human trafficking is financial, and, in addition to the financial motivation of the traffickers and the demand by the buyers, the industry is facilitated primarily by poverty, vulnerability, and inequality for women and girls and is maintained by inadequate laws and law enforcement.[98,99] Many factors keep victims from trying to escape, including fear, cultural norms, and physical confinement.

These dynamics are similar to those of domestic violence. As one prosecutor noted, "These victims are often emotionally and economically dependent upon their abusers, and remain silent as their worlds grow smaller and more dangerous."[100] In addition, victims of trafficking are subject to power and control tactics, often resulting in their denying abuse, concealing injuries, blaming

themselves, and staying with the perpetrator.[101] For these reasons, treatment for trafficking survivors has also been based on trauma-based methods similar to those used for domestic violence survivors.

As laws related to domestic violence have evolved over the last few decades, so are laws related to human trafficking. However, the current laws surrounding human trafficking have often criminalized and penalized victims while providing leniency for traffickers, who receive substantially greater penalties for trafficking guns and drugs than for humans. Many stakeholders have stated that attorneys must be able to prosecute trafficking cases without the necessity of victim cooperation, and that the trafficking laws should have a bigger impact on those convicted. Researchers and practitioners have also indicated that there should be a collaborative approach that limits criminalization of victims and provides the necessary trauma-informed services and treatment for victims of human trafficking.[102,103] The pilot program in Alameda County established by Assembly Bill 499 (and extended by Assembly Bill 799) has been highlighted as an encouraging and promising model as an alternative to incarceration for victims.[104]

There is a need for more information and study on this emerging topic. Several reports have noted a need for comprehensive data on trafficking cases; training and education for law enforcement, prosecutors, and judges on identifying trafficking victims and prosecuting or hearing trafficking cases; and increased public awareness in communities about trafficking.[105] These reports also call for strengthening the laws regarding human trafficking to give law enforcement and prosecutors more powerful tools to investigate and try trafficking cases, as well as prioritizing victims' rights and protections. Recent federal support for resources in the area of human trafficking aims to prohibit trafficking-related activities in all contracts, provide tools and training to identify and assist trafficking victims, strengthen services and resources for trafficking victims, increase awareness about trafficking, and facilitate multidisciplinary research in the area of trafficking.[106] Several agencies are also increasing funding opportunities for research, public awareness, and responses to human trafficking. As one example, the State Justice Institute recently awarded a Strategic Initiatives Grant to the Center for Public Policy Studies, the National Judicial College, and the Center for Court Innovation to form a Human Trafficking and State Courts Collaborative. Advocates and researchers are confident that as more research and public awareness campaigns about this epidemic are conducted, more encouraging practices can be identified to prevent victimization, treat victims, and appropriately address trafficking cases in our courts.

Appendix: Trafficking-Related Laws Passed Since California's First Trafficking Victims Protection Act in 2006

- The Human Trafficking Collaboration and Training Act, introduced as Senate Bill (SB) 180 and signed into law in 2006, requires the Commission on Peace Officer Standards and Training (POST) to establish a training course and guidelines for law enforcement in responding to human trafficking.

- An act to add Section 1670.7 to the Civil Code, and to add Section 784.8 to the Penal Code, was introduced in Assembly Bill (AB) 1278 and signed into law in 2008. This law voids any employment contract that deducts pay from an employee's wages for the cost of transporting that person to the U.S. It also requires that a local prosecutor to present evidence to the court and that the court hold a hearing to consider whether a matter involving human trafficking in multiple jurisdictions should proceed in the county of filing.

- An act to amend Section 6254 of the Government Code, to amend Section 293 of the Penal Code, and to amend, renumber, and add Section 236.2 of the Penal Code was introduced as AB 2810 and signed into law in 2008. This law requires that law enforcement agencies assess whether a victim of domestic violence or rape, or a person suspected of violating California's solicitation and prostitution laws, is also a victim of human trafficking. It also requires law enforcement agencies to inform victims that their name can be withheld from public record should they request it and requires identifying information be kept confidential regardless of citizenship except for agencies involved in investigating and prosecuting the case.

- An act to add and repeal Chapter 4.3 of Part 6 of Division 9 of the Welfare and Institutions Code was introduced as AB 499 and signed into law in 2008. This law established a pilot program in Alameda County for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors. This model directs minors away from criminal prosecution and provides them with fundamental recovery services through a diversion program. AB 799, passed in 2011, extended this pilot program to January 1, 2017.

- Amendments to the California Control of Profits of Organized Crime Act, amending Sections 186.2, 186.8, 266k, and 13837 of the Penal Code, were introduced as AB 17 and signed into law in 2009. This law increased the maximum penalties for the conviction of pimping, pandering, and procurement of minors from $5,000 to $20,000. It also added "abduction or procurement by fraudulent inducement for prostitution" to the definition of criminal profiteering, allowing law enforcement to seize property from convicted traffickers and help remove the profit motive for selling people.

- The California Transparency in Supply Chains Act was introduced as SB 657 and signed into law in 2010. This law requires retail sellers and manufacturers doing business in California with over $100 million in worldwide gross receipts to disclose the extent, if any, they have policies for eradicating human trafficking from their supply chains.

- "Chelsea's Law" was introduced as AB 1844 in 2010. This law was intended to track sex offenders and includes two provisions related to human trafficking: a fine of up to $100,000 for sex trafficking of minors and the direction of those funds to victim services.

- The Abolition of Child Commerce, Exploitation, and Sexual Slavery Act was introduced as AB 12 and signed into law in 2011. This law requires individuals convicted of procuring sexual services from a minor prostitute to pay an additional fine (up to $25,000) to fund programs for sexually exploited children.

- An act to align California trafficking laws with federal trafficking laws by allowing prosecutors to try child trafficking cases without having to prove coercion was introduced as AB 90 and signed into law in 2011. This law also expands the types of human trafficking crimes subject to the criminal profiteering asset forfeiture laws, allowing prosecutors to implement provisions passed in AB 17.

- An act to add Section 10490 to the Public Contract Code was introduced as SB 861 and signed into law in 2011. This law pertains to public contracts, contract eligibility, and conflict minerals (those mined to finance armed groups that use mass rape and other violent acts to intimidate and control local populations, mines, and trading routes) in the Democratic Republic of the Congo and prohibits any person or company in violation of the Securities Exchange Act of 1934 from entering into a contract with a state agency for goods or services.

- An act to add Chapter 1.3 to Title 15 of Part 1 of the Penal Code was introduced as SB 285 and signed into law in 2011. This law makes it a misdemeanor for any person to knowingly provide fraudulent certificates, transcripts, or diplomas to any person who has not completed proper training set forth in the transcripts as required by the California Massage Therapy Council or a local city.

- The California Against Sexual Exploitation Act[107] was enacted by voters in 2012. This Act imposes higher penalties and fines than currently mandated, uses fines to fund victim services, removes barriers to prosecute child sex traffickers, mandates training for law enforcement officers, requires convicted sex traffickers to register as sex offenders, requires all sex offenders to disclose Internet accounts, and protects victims in court proceedings.

NOTES

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This is one of several AOC Briefings on topics of interest to judicial officers and justice stakeholders, including a review of how practices and programs in juvenile justice become evidence based and an overview of evaluating risks and needs of youth in the juvenile justice system, which can be found at *www.courts.ca.gov/12891.htm.*

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