Slavery Inside America

- In 1865, Slavery was legally banned through the 13th Amendment to the United States Constitution … “neither slavery nor involuntary servitude … shall exist within the United States.”
- President Barack H. Obama at the Clinton Global Initiative, September 25, 2012
  - “It ought to concern every person, because it’s a debasement of our common humanity. It ought to concern every community, because it tears at the social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I’m talking about the injustice, the outrage, of human trafficking, which must be called by its true name – modern slavery.”
Practical Guidance for Asserting Crime Victims Rights for Survivors of Human Trafficking
CAST is a multi-ethnic, multi-lingual human rights organization located in Los Angeles that has been nationally and internationally recognized for its dedication to the identification of trafficking survivors, the mobilization of all sectors of the community to identify and advocate against trafficking, and the provision of direct services for victims.

CAST serves all survivors of human trafficking (from 59 countries including the US), whether foreign national or U.S. citizen, regardless of gender or sexual orientation and both adults and minors. We provide comprehensive long-term services through a three-pronged empowerment approach which includes Social Services, Legal Services, and Outreach and Training. We place the survivor at the center and infuse all of our services with a trauma-informed, survivor-empowerment model.
CAST Services for Trafficking Survivors

- **Housing/Basic Necessities**—emergency/transitional housing, affordable housing for independent living, tenants’ rights education, utilities information, food, clothing

- **Medical**—immediate screening for injury/illness, and follow-up health care, vaccinations/TB/STD/HIV tests, chronic illness care, OB/GYN, dental, vision, documentation of injuries/scars, nutrition assessment

- **Education/Employment**—literacy, ESL/GED/vocational training, labor law education, career planning, job search

- **Life Skills**—cross-cultural education, transportation, signage, training to prevent exploitation, banking, financial budgeting

- **Legal Services**—Immigration relief, victims-witness advocacy, civil case referrals, Long-term, comprehensive support for continuing legal needs
Snap Shot of Human Trafficking

Clients

- All genders: male, female, transgender, etc.
- All ages: 2 to 75
- Foreign nationals, US Citizens, Legal Permanent Residents, documented & undocumented …
- Countries of origin span the world
  - Top 3: Philippines, Mexico, United States
- Forced labor, sex trafficking, combination of both
- Representation sometimes 5 years or more
OVERVIEW OF TRAINING

1. Identifying Victims of Human Trafficking and Understanding the Legal Framework
2. Asserting crime victims rights for trafficking survivors
National Scope of Human Trafficking

- Human Trafficking is an estimated $150 billion-a-year global industry. Second to drug trafficking.

- United States - #1 destination for human trafficking

- 14,500 - 17,500 women, men and children are trafficked into the US annually. Not updated since 2006.

- No annual count ever provided by US government to estimate the number of victims of trafficking within the US or in modern day slavery during any year within the US.

- Unreliable estimates of the number of children involved in sex trafficking or labor trafficking cases in the United States

- CAST has handled cases of both sex and labor trafficking foreign national and US citizens. This is consistent with experience of service providers nationally who serve all victims

Department of Justice, California Attorney General, Human Trafficking Report 2012
Data on Labor & Sex Trafficking

- Most information on Child Sex trafficking
  - Example: West Coast Children’s Clinic study
    - 113 sex trafficked children, average age 16
    - Age Range 11-20
    - 63% run away often or at every opportunity
    - 66 %Made concerted efforts to hide and resist return if they are found

- No good numbers on labor trafficking
  - Example Ohio Prevalence Report on Human Trafficking
    - Estimate:
      - 2879 US Citizen children at risk of sex trafficking and 1078 US citizen child trafficking victims
      - 3437 Foreign born at risk of sex or labor trafficking and 783 in sex or labor trafficking

- No numbers at all on US Adult Labor or Sex trafficking
Labor Trafficking

*Often forgotten but widespread*

- Industries
  - Domestic Servitude/ Au Pairs
  - Restaurant Work
  - Hair Braiding Salons
  - Scientologists
  - Magazine crews
  - Forced to sell or cultivate drugs
  - Forced peddling
  - Agricultural work
As global demand for labor increases, labor brokers act as the middlemen, facilitating a connection between potential workers and their eventual employers.

System of labor brokerage is not transparent, often corrupt and lacks in accountability.

Labor brokers range from substantial well-organized companies to smaller, informal operations.

In all cases, use of labor brokers increases vulnerability of migrant workers to various forms of forced labor once on the job.
Unaccompanied Alien Children

- Fleeing violence, gang recruitment and trafficking

- May be trafficked:
  - In home country
  - En-route to the United States
  - At the US border
  - Once in the United States

- Need for increased protections
Labor Trafficking Cases

**Tara**, an 19 year old, freed herself by running away from her labor traffickers after she was forced to work for no pay selling magazine subscriptions. When she asked to leave, they smashed her cell phone. She ran away and arrived a local police station. She was transported from Tennessee to California.

**Arnold** was 32 years old and from the Philippines. He was promised a good job in the US and secured a lawful visa to come to the US through a recruitment agency. He went into about 5000 debt to come to the United States. Once in the United States he lived in a house with 20 other workers, slept on the floor and often worked 18-20 hours a day at various hotels. He and the other workers in the house were told if they left the employer they could be arrested by the police. When one worker left, the employer posted a wanted sign in the house of this person.

**Jax** and **Lori** (22 and 23) were on the run after coming out to their families in Florida. They answered an ad in California for a nanny service, but was not paid and groped. One time, their drinks were drugged, and they luckily locked their bedroom door. They escaped when a third young woman, **Cara**, (32) also answered the same nanny service ad, who had a car, help them run away and contact local police.
Maggie, a deaf woman from Mexico was promised a good job in a florist shop when she agreed to come to the United States. Once in the United States she was forced to peddle trinkets on the street, sexually assaulted and threatened by who trafficker if she did not make her daily quota.

Maya was 15 years of age, when two men kidnapped her and kept her in a locked box. They sexually assaulted her repeatedly and physically harmed her. When she was not forced inside the locked box, these men would force her to cultivate marijuana without pay.

Flor was recruited in Mexico by an acquaintance to work as a seamstress in Los Angeles. When she arrived, she was locked in the factory and forced to sew day and night to meet her quota. She did not get paid for her work. She was hit and pinched by her employer.
Sex Trafficking Cases

- **Angela**, a 15 year old from Los Angeles, starting running away from home at the age of 13 because of sexual abuse at home. She had contact with the Child Dependency system at least 11 separate times. At the age of 13 she was introduced by a friend to a Pimp and he forced her to engage in prostitution through beatings and other abuse. Angela was arrested by the police for prostitution two separate times at the age of 14 and 15. She has currently disappeared from the system.

- **Jasmine** was promised a good job as a masseuse when she came to the United States from Korea. Instead when she arrived she was told she owed 20,000 debt and that she had to pay this off working as a prostitute. She was forced to see up to 20 customers a day and knew her traffickers had connections to criminal gangs.
Johnny knew he was gay at an early age. At, 14 years old, after suffering constant bullying at school and the pressure to conform at home, he runs away. While seeking shelter, he gets raped and pretty soon, he is selling his body to make money for someone else to survive on the streets.

Julie was 29 years old and already left an abusive relationship. Then she met Keith who was aggressive about asking her out on dates and buying her gifts. When she refused, he kidnapped her and forced her to prostitute herself so that he could pay off a debt.

Mary came to the United States from Mexico when she was 15 years old. She thought she would be working as a nanny. Instead she was forced into street prostitution. Her traffickers paid the local gangs to keep and eye on her and sold her to the gang to pay for this service.
Video Clip

The Making of a Girl

GEMS
Human Trafficking is a Modern Day Form of Slavery

- Victims trafficked for:
  - **Forced labor:**
    Examples: restaurant work, agricultural work, domestic work, factory work, or illegal enterprises such as selling drugs and serving as decoys in smuggling cases.
  - **Sexual exploitation:**
    Examples: prostitution, use in pornography
US Federal Response to Trafficking: Trafficking Victims Protection Act (TVPA)

- New crimes of trafficking and forced labor defined
- Protection provided to trafficked persons through immigration relief and other benefits
- Funding for international efforts focused on prevention
The term "severe forms of trafficking in persons" means:

- (A) sex trafficking in which a commercial sex act is induced by \textit{force, fraud, or coercion}, or in which the person induced to perform such act \textit{has not attained 18 years of age}; or

- (B) 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.

\textit{(Victims of Trafficking and Violence Prevention Act of 2000)}
Elements of Trafficking

1. PROCESS
   Recruiting OR Harboring OR Moving OR Obtaining a person

2. MEANS
   by Force OR Fraud OR Coercion

3. END
   For the purposes of Involuntary Servitude OR Debt Bondage OR Slavery OR Sex Trade

   For the purposes of Commercial Sex Act

Inducing Minor (under 18 yo)

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Common Misconceptions

- Trafficking requires the crossing of national or international borders
- Trafficking only involves foreign nationals, not US citizens
- You can consent to being trafficked
- Individuals cannot be paid for work
TRAFFICKING:

- Contains the element of coercion (cannot consent to enslavement)
- Subsequent exploitation and/or forced labor
- Those trafficked are seen as victims by the law

SMUGGLING:

- No coercion
- Unauthorized crossing of borders
- Those smuggled are seen as criminals by the law
Labor Exploitation

Actions taken in the work place that violate labor law

For example sweatshops involve:

- Extreme exploitation, including the absence of a living wage or long work hours,
- Poor working conditions, such as health and safety hazards,
- Arbitrary discipline, such as verbal or physical abuse, or
- Fear and intimidation when they speak out, organize, or attempt to form a union.
What Constitutes Coercion?

22 U.S.C. § 7102 Coercion. The term "coercion" means--

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.
Abuse Defined
TVPRA of 2008 Section 221

- The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services/commercial sexual activity in order to avoid incurring that harm.
What Are The Options For Relief And Recovery?

- Criminal Prosecution
- Civil Law Remedies
- Repatriation or Immigration
Repatriation and Reintegration Assistance

- Obtain identification and travel documentation
- Link up with NGO in country of repatriation to assess family situation, safety, available services, accompany client through immigration, etc.
- Arrange for safe travel and re-entry
- Follow-up with client as appropriate
- For assistance arranging travel, purchasing air tickets, and linking client to local resources contact
  - International Office of Migration “IOM”
  - Emmanuel Martinez, emartinez@iom.int, 202- 862-1826, ext. 242
Immigration

- Provided by the TVPA

- Must assist with criminal investigation and/or prosecution

- Forms of Relief specific for Human Trafficking Victims:
  - Temporary relief through Continued Presence
  - Possibility to adjust status to become a legal permanent resident through T-Visa
Immediately seek an attorney's assistance:

- Victim may have been arrested and/or have open matters or warrants due to crimes the trafficker forced them to commit.
- Victim may need to talk about acts that expose her to criminal liability, i.e. prostitution, drugs, document fraud etc.
  - Screen for criminal liability

Inform and advocate for client during the criminal process/ Assert Crime Victims Rights
Civil Litigation

- May be the only means by which victims of trafficking may be “made whole”
  - Life-changing
  - Law enforcement declines to prosecute
  - Discourages would-be-traffickers and employers exploiting trafficked labor
Federal Criminal Prosecution: A Stair Step Approach

Forced labor
Trafficking into servitude
Involuntary servitude
Sex trafficking
  - Kidnapping
  - Hostage Taking
  - Extortion
  - Mann Act
  - Document Fraud
  - Alien Smuggling
  - Harboring
  - Criminal Labor Violations
Federal Crimes

- 118 U.S.C. § 1581 Peonage (Debt Bondage)
- 18 U.S.C. § 1583 Enticement into slavery
- 18 U.S.C. § 1584 Sale into Involuntary Servitude
- 8 U.S.C. § 1589 Forced Labor
- 18 U.S.C. § 1590 Trafficking Into Servitude
- 18 U.S.C. § 1591 Sex Trafficking
- 18 U.S.C. § 1351 Fraud in Foreign Labor Contracting
State Responses to Human Trafficking

- To date, all 50 states have passed Criminal Anti-Trafficking Laws, the last state being Wyoming – February 2012.

- Most state laws do not offer comprehensive protections like the TVPA

*U.S Policy Alert, Polaris Project available at: www.polarisproject.org
Child sex trafficking is still criminalized in most states where children cannot legally consent to sex until the age of 16 years or older.

Recent Texas Supreme Court Case
the Court concluded that “Because a thirteen-year-old-child cannot consent to sex as a matter of law, we conclude that B.W. cannot be prosecuted as a prostitute...”
Understanding the Dynamics of CSEC, Trafficking & Abuse

ABUSE
- Assault
- Kidnapping
- DV
- Rape

TRAFFICKING
- Labor
- Sex

CSEC

Diagram showing the relationship between abuse, trafficking, and CSEC.
IDENTIFYING HUMAN TRAFFICKING SURVIVORS
The Factual Assessment of HT

- Based on federal and state laws, determine whether the individual is a human trafficking victim.
Importance of Language

Child Prostitute
Illegal Alien
Teen Prostitute
Prostitute/Ho
Criminals
Drug Dealer
Thief
Runaways
Poor
Delinquents
Throwaways
Homeless
Addict
Gang Member
Thief

Human trafficking victim
CSEC Commercial sexual exploitation of children
DMST Domestic minor sex trafficking
Undocumented immigrant
Child labor trafficking
Missing person
Victim
Slavery/slave
Vulnerable migrant
Did you ever work or do an illegal act, and someone else received money for your work/act?
- Yes
- No

If yes, how many days/months did you do this?

If yes, what type of work/illegal act did you have to do?

Tip: Labor trafficking cases can be complex to identify. However, if question #1 is answered in the affirmative, it provides sufficient information to raise red flags to know that a more detailed screening is needed and that this child could be a potential labor trafficking case. It’s a good idea after more trust is built to conduct full legal screening on this topic.
Basic Intake Questions-Sex Trafficking

- **Have you had sex for money or a place to stay, food, or anything of value?**
  - Yes
  - No

- **If yes, what age did you first start having sex for money or in exchange for help?**

- **Did someone else receive money or anything of value when you had sex?**
  - Yes
  - No

**Tip:** Many youth may be hesitant to disclose engaging in commercial sex. Asking question #1 in a nonjudgmental way and also showing that this happens to others can help youth truthfully answer this question. For example, you can say “it is common that many people have to do things to survive. We hear from many youth that they have had to have sex for money, did you ever have to do this? Did you ever have sex for a bed or food?”

**Tip:** Many trafficked youth feel like they are bonded to their trafficker and may often not see them as an abuser or pimp but as a boyfriend or family. Ask question three in a neutral way.

**Tip:** If youth answer affirmatively to questions 1 and/or 3: After additional trust is built ask additional information about the trafficking including: length of time, number of traffickers, states where trafficking took place, and types
Modern-Day Slavery: A Prison Without Walls

Along with:
physical/psychological/ sexual abuse/ physical threats

Look for:
☐ Long hours
☐ Little/No pay
☐ Withholding documents
☐ Threats of deportation
☐ Threats to family members in home country
☐ Isolation
☐ Inhumane Living Conditions
☐ Having to work when sick
☐ Not able to refuse customer requests
Key Questions To Keep in Mind

- Was the person recruited? What were they promised?
- Were passports or other documents taken?
- Was the person paid? How much? How many hours a day did the person work?
- What were the working conditions in the U.S.?
- Was the person coerced
  - Force, Physical Threats, Legal threats, Plan to control
- Did the person try to leave? Could they stop working if they wanted to?
- Is the person afraid of his/her employer? Why?
Questions to Ask Sex Trafficking

- How do you pay for things?
- Do you have any tattoos? Tell me about them?
- Have you runaway from home?
- Do you have other names?
- Tell me about your day? Do you go to work?
- Do you have a boyfriend? Does he pay for things?
- Was your ID taken away?
- Have you ever had sex for money or other support?
- Did you have to share the money with anyone?
- Did anyone ever tell you that if you loved them you would have sex for money?
- Did anyone ever tell you what to say if you were arrested by the police?
- Did anyone every hurt you or tell you things that made you afraid and feel like you had to have sex for money?

Question to Ask Labor Trafficking

- How did you make money? How did your employer make money?
- How did you hear about the job?
- Tell me about your day? How many hours a day did you work?
- Did you have debt? Do you owe money to anyone? How much?
- Do you have your identity documents?
- Did you ever have to work when you were sick?
- Did anyone ever tell you things that made you afraid not to work?
- Did you try to leave?
- Were you able to talk with your friends and family?
- Did anyone ever tell you what to say if you saw the police?
- Are you afraid of your employer?
**Additional Questions to Ask Child Victims?**

- How many placements?
- How many times have you runaway?
- Do you go to school? How many schools have you gone to?
- Did someone else give you a cell phone?
- Who pays for your nails, hair, clothes?
- Did someone make you an identity document/false id?
- Did someone say you should work instead of going to school?
- Do you clean? Do you get paid?
- Why are you so tired?
- What other DOB’s did you have to use or other names?
Initial Contact With Potentially Trafficked Persons

- Victims might often lie about their present circumstances and be defensive
- Establish that you:
  - Do not work for the government or police
  - Have no power to order the person deported
  - Will not take any action without the client’s consent
  - Represent their interests and no one else’s
- Always use an interpreter even if some English is spoken
  - Ask if there is a gender preference
- Be careful not to impose values or ideas
- Be knowledgeable and aware of position of power in society
- Find out if other victims are being held
- Be suspicious of private attorneys paid for by trafficker
Why Victims May Not Appear to Want Help

- Captivity, confinement and isolation
- Use and threat of violence
- Fear, shame, self-blame and hopelessness
- Dependency
- Distrust of law enforcement
- Debt bondage
- Misinformation/false promises
- Lack of knowledge of social systems
- Non-identification as a victim
- Stockholm Syndrome
PART II

Asserting Crime Victims Rights for Trafficking Survivors
Overview of Criminal Advocacy

- Criminal – Victim Advocacy
  - Screening for criminal liability: criminal background
  - Reporting to Law Enforcement
  - Information and advocacy for client in criminal process
  - Asserting Crime Victims Rights for Victim/Witnesses

- Criminal – Defense Advocacy
  - Bench Warrants
  - Expungements
  - Sealing of Records
Advising Clients in Reporting to Law Enforcement

What a client should consider…..

- **BENEFITS**
  - Potentially dismissing their criminal case they are facing as a result of their trafficking
  - Immunity: transactional and use
    - Victim Restitution/VOCA
  - Justice for Victim(s)
  - Empowerment
  - Preventing others from harm
  - Telling Their Story

- **POTENTIAL CHALLENGES**
  - Length of the criminal justice process
  - Potential for increased threats to survivors and especially survivors family in home country
  - Trial is generally open to the public if an adult
  - Once start the process US government is in control of the case NOT the victim: no control over charges filed.
  - No prosecution or watered down charges
  - Not be seen as a victim
  - Potential further criminal liability
Security Issues to Consider with Client

- Gang Affiliation of the Pimp/Trafficker: green light, further violence
- Other Vulnerable Family Members & Friends
- Housing/Placement
- Parent/Guardian
- Neighborhood
- No Criminal Relocation Program
- Child/Custody Issues
- Financial Security
- Emotional State
- Does Client wish to return to home country/home state
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Criminal History of Human Trafficking Victims

- Open bench warrants on cases pre-plea
- Post conviction open warrants
- Misdemeanor and felony criminal convictions related to trafficking like prostitution, loitering, drug trafficking, grand theft auto, petty theft, robbery
- Traffic Tickets/Violations: FTA failures to appear, suspended licenses
- Truancy Tickets
- Juvenile/Delinquency offenses
- Immigration consequences
Confidentiality When Working With Human Trafficking Victims

- Trafficking survivors interface with many attorneys, many social workers, and law enforcement agencies – importance of confidentiality
  - A Variety of Pushes and Pulls

- Information can and may be subpoenaed. Protect Privileges in how you share information
  - Rule of thumb: Need to know
    - Caseworkers should keep careful case notes
    - NOTE: THIS APPLIES TO SOCIAL WORKERS, ADVOCATES, MEDICAL PERSONNEL ETC
  - Advise client how disclosing confidential information may be used now as well as in the future.

- RED FLAGS: Mandatory reporting obligations (in some jurisdictions): identify mandatory reporters and advise the child-victim client.
Medial Exposure

- CAST Policy: if clients have active or potentially active legal matters, our policy is to recommend avoid speaking to the media.
  - We advise all clients as to all consequences stemming from disclosure of their exploitation.
  - We advise minors not consent to media exposure.

- If media does contact you, please direct all requests to a pre-designated individual
What to Advise with Media Exposure

- Note: clients are often at different stages of their healing process and often there is pressure for clients to “tell their stories”, but discuss with your client that after sharing their story they may not feel “cathartic, but rather shame, embarrassment, or reliving of their trauma etc.

- Advise client to immediately contact that attorney before speaking with the media.

- Remind client that any information provided to the media can be used against your client by the trafficker’s attorney or an open criminal matter. This includes information shared on social media sites such as Facebook.

- Warn client as to the safety risks in disclosing sensitive information used by the trafficker, which can also be used to harass, threaten, or annoy the client, client’s family or friends.
  - Attorneys that speak with the media without safety protocols may compromise staff as well as client safety.

- Should client still want to talk with media, provide the consent form, but also advise client that they have no control over how their information will be used or how their story will be told.
**Enrolling Human Trafficking Survivors in Victims Compensation Program**

*WHAT can one be compensated for?*

If you are a victim of a violent crime or next of kin of a victim who has died as the result of a criminal act, the Crime Victim Compensation Board may help recover certain expenses including:

- Medical or Dental Expenses
- Mental Health Counseling
- Funeral and Burial Costs
- Lost Wages / Loss of Support
- Crime Scene Clean Up
- Some Transportation/Relocation Costs

*Initial Screening*

- **Timing:** assess for adults and minors
- **Location:** Victims often flee the place where the HT occurred so must apply for compensation out of state
- **What could be potentially covered?**
  - A lot of times it is only for reimbursement
Barriers for Human Trafficking Victims Receiving Victims Compensation

- If reported federally barrier often of not having police report
- Barrier of not being identified as the victim in the police/crime report
- Often could be an issue if all types of HT are considered “violent crimes”
- Issue of involvement in the criminal offense-prostitution drugs, gangs
- Issue of documentation for lost wages
Declaration Under Penalty of Perjury

I __________________________ Name of Declarant, Title, Name of Organization of Declarant

Hereby declare that I am a Case Worker for victims of human trafficking, as defined by California Evidence Code § 1038.2(b):

CASEWORKER TYPE 1

(1) An employee or volunteer working with an organization that meets all the basic services required for DV shelter based programs including:
   a. providing shelter 24 hours a day, seven days a week;
   b. 24 hours a day, seven days a week telephone hotline;
   c. temporary housing and food facilities;
   d. psychological support;
   e. referral's in the community;
   f. drop in center;
   g. arrangements for school age children to continue their education; and
   h. emergency transportation

AND

(2) Who meets one of the following requirements
   a. is a psychotherapist OR
   b. has a master's degree in counseling or a related field; OR
   c. has one year of counseling experience, at least six months of which is in the counseling of human trafficking victims OR
   d. has 40 or more hours of training and is supervised by a counselor who meets the criteria in subsection (b) or (c)

(3) The 40 training hours must include:
   a. history of human trafficking;
   b. civil and criminal law as it relates to human trafficking;
   c. societal attitudes towards human trafficking;
   d. peer counseling techniques;
   e. housing;
   f. public assistance and other financial resources available; referral services available; and privileged communications

OR

CASEWORKER TYPE 2

(1) An employee or volunteer working for an organization that provides victim and witness assistance to human trafficking victims including:
   a. providing comprehensive services to crime victims;
   b. is recognized by the board of supervisors as a major provider of comprehensive services to crime victims; and
   c. is selected by the board to receive funds

AND

(2) Who meets one of the following requirements:
   a. is a psychotherapist OR
   b. has a master's degree in counseling or a related field OR
I declare that __________ Name of Victim ___________ was subjected to one of the following:

1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or

2) 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 subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

I declare under penalty of perjury that the foregoing statement is true and correct, and I am aware that if I present any material matter as true which I know to be false, I may be subjected to penalties prescribed for perjury under the Penal Code of the State of California in accordance with Section 11054 of the Welfare and Institutions Code.

Executed ________________ California, this ___ day of _____________.

City ____________ Day ________ Month ________ Year

Declarant’s Signature ____________________________
Asserting HT Survivors Right to Income Lost—Barriers Continued

- **In CA can be reimbursed up to 62,000**

- **How does one show income or support loss?**
  - V must have been employed at time of the crime (there must be evidence; see below)
  - No payment if Derivative V had only a job offer and had not begun working at time of crime
  - Reimbursement and cash payments for income or support loss must be as direct result of the crime
  - *Income loss includes:* Time lost from work for medical/mental health appointments necessitated by the crime
  - *Evidence for income or support loss if V or Derivative is self-employed:* Currently, the Board will only consider state tax documents, documents generated from EDD or Social Security, or Board of Equalization Statements.
  - Treating health care provider may verify disability within scope of his or her licensure (including social workers for emotional injuries)

- **Required documentation for income or support loss:** The regulations state that only the abovementioned specific documentation (i.e., tax statements, Board of Equalization statements) is sufficient to prove loss of income or support. Since human trafficking victims are specifically eligible for compensation under CalVCP,

- CAST believes that the Victim Compensation Board should adopt the more flexible standard of Penal Code Section 1202.4(g) in making this determination. This would allow a trafficking victim to base the valuation of his or her services or labor upon the comparable value of such services in the marketplace. That standard also includes using the equivalent of what is guaranteed under California law, or the equivalent of what the actual income the trafficker received for the trafficking victim’s services or labor.
Federal Crime Victims’ Rights Act (CVRA)

  - Signed into law October 2004

- Provides measures for crime victims to assert standing and vindicate their rights
  - “[t]he crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights described in subsection (a) [of the CVRA].” 18 U.S.C. 3771(d)(1)

- Expedited appeal if rights denied § 3771(d)(3)
Definition of Crime Victim

“Person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia”

- If a defendant is convicted of multiple offenses under both federal and state law, only those harmed by the federal law will be considered under this section

- Victim’s family can also assert rights afforded under this Act

- All trafficking victims meet this definition even if crime charged is not human trafficking
An eligible victim under this act or their attorney can assert their rights in the *District Court* in which the assailant is being prosecuted, or in the District Court of the location of the crime.

If the District Court denies the victim’s motion then the victim can file for a writ of mandamus in the Court of Appeals.

If awarded, the writ of mandamus from the Court of Appeals to comply with the right.

This writ must be decided upon within 72 hours of the filing and any denial must have written explanation.
Specific Rights Under the CVRA

§ 3771. Crime victims' rights

(a) Rights of crime victims. A crime victim has the following rights:

(1) The right to be reasonably protected from the accused

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law

(7) The right to proceedings free from unreasonable delay

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy
General Notes on Advocating for Trafficking Survivors in Court

- Generally HT survivors have greater protections offered when acknowledged but not all systems may regard client as “victim.”

- Not all court dates require your client’s appearance and will only require your presence as her attorney.

- Not well known understood by judges/prosecutors
  - Think about strategic advocacy
    - Education about trafficker controlled child sex trafficking
    - Education about child sex trafficking without third-party control
    - Education about child labor trafficking
    - Education about adult sex and labor trafficking
Notice of Appearance

- File an NOA and Assertion of rights in the criminal case!

- CAST experience is that unless formal appearance in state or federal court—often victim is left out of the process
  - 1) as their attorney you absolutely should accompany them

Right to Privacy

“The right to be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771 (a)(8).

For Human Trafficking Victims

- close court room
- protect identities/ protect location home and work/ and families as well
- Use pseudonyms in all pleadings and ask for court order
- Move to seal all records
- protect past sexual history
- Media exposure

The AUSA is required to confer with victim and victim’s counsel on plea deals

Often times the government will drop the human trafficking charges, good to speak with client and know position on this

CRVA says need to confer with the victim BEFORE charging, plea, & sentencing
Right to Speedy Disposition


- Often times Defense uses this as tactic in hopes victims will disappear. Assert right to speedy trial on behalf of human trafficking victims
“The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.” 18 U.S.C. § 3771(a) (4).

Client often want to have attorney read statement and this is possible. Notify court in advance.
Right to Restitution

- Majority of state laws allow restitution for HT survivors

- More complicated when not charged with Human Trafficking, but still worth it to assert
Right to Restitution

“The right to full and timely restitution as provided by law.” 18 U.S.C. § 3771(a)(6).

ALSO

- Victim Witness Protection Act (VWPA), 18 U.S.C. § 3663
  - Stating that the court “may order . . . that the defendant make restitution to any victim” of listed offenses.

- Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3663A
  - “[T]he court shall order . . . that the defendant make restitution to the victim” of certain offenses.

- Trafficking Victims Protection Act (TVPA), 18 U.S.C. § 1593
  - Notwithstanding 18 U.S.C. §§ 3663, 3663A, “the court shall order restitution for any offense under this chapter.”
Restitution in Prostitution-Related Offenses

- Federal Courts Have Ordered Restitution to Victims in Sex Trafficking Cases:
  - United States v. Mendez, 362 Fed. Appx. 484 (6th Cir. 2010) ($40,000 in restitution was ordered to one of defendant's victims and $60,000 was ordered to the other victim by the trial court)
  - United States v. Chang Da Liu, 538 F.3d 1078 (9th Cir. 2008) (rejecting defendant's argument that restitution was improper and affirming restitution orders to two victims of defendant's sex trafficking).
Calculating Restitution

- Determine the time period of work, the hours worked per week, & the days worked in a week.
- A standard back wage computation model used by the Department of Labor’s Wage and Hour Division was used to compute the restitution amount.
- Figures have been computed in a conservative fashion using minimum wage standards.
- A standard back wage calculation would typically use the prevailing wage rather than minimum wage.
- Overtime was calculated for weeks in which a victim indicated they worked over forty (40) hours.
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