

The Courts and Human Trafficking



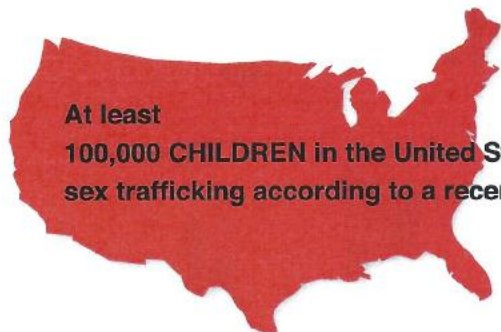
Trudy Gregorie
Senior Director
Justice Solutions
Washington, D.C.

Workshop Objectives



- ❑ Identify at least three challenges of working with human trafficking victims in the court process.
- ❑ Discuss some of the difficulties of prosecuting a human trafficking case.
- ❑ Identify the types of information prosecutors require to adequately investigate and prove a human trafficking case.
- ❑ Identify at least five best practices for working with victims and other agencies to conduct a trauma-informed prosecution.

Child sex trafficking is a missing child issue.



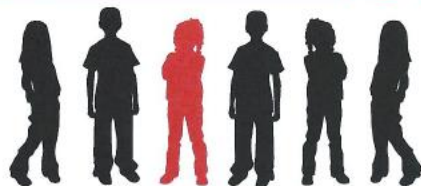
At least 100,000 CHILDREN in the United States are at risk of child sex trafficking according to a recent study.

CRISIS ON THE RISE



PTSD

Post-Traumatic Stress Disorder is very common among children exploited through sex trafficking.



1 in 6 endangered runaways reported to the National Center for Missing & Exploited Children in 2014 were likely sex trafficking victims.

81%

of kids reported missing to NCMEC are endangered runaways.

68%

of these likely sex trafficking victims were in the care of social services or foster care when they ran.



10,000+

Number of reports of child sex trafficking we received last year to our CyberTipline.

Child sex trafficking victims are:

TARGETED

Pimps are predators who seek out vulnerable victims, particularly runaways, homeless youth or children experiencing trouble at home.

They know these children have emotional and physical needs they perceive are not being met and use this to their advantage. Pimps find victims at a variety of venues such as in social networking websites, shopping malls and schools; on local streets; or at bus stations. While pimps often target children outside of their family, a family member may also exploit a child.

TRICKED

Pimps are willing to invest a great deal of time and effort in their victim to break down a victim's natural resistance and suspicion.

Buying them gifts, providing a place to stay, promising a loving relationship before revealing their true intent.

Frequently victims do not realize the deceptive nature of their trafficker's interest in them, viewing their pimp as a caretaker and/or boyfriend.

TRAUMATIZED

A pimp's use of psychological manipulation (causing the child to truly believe the pimp loves and cares for his or her well-being) coupled with physical control (threats, violence or drug addiction) can make a victim feel trapped and powerless. This "trauma bond" is difficult to break and long-term treatment and counseling for victims is required.

Prosecutor Challenges



- ❑ Ending CSEC/juvenile trafficking cannot be accomplished simply by providing services for victimized juveniles
- ❑ Offenders must be held accountable, and prosecutors play a special role in providing that accountability
- ❑ The prosecution of CSEC/juvenile trafficking poses unique challenges for prosecutors

Prosecutor Challenges



- Prosecutors must do more than produce evidence of trafficking. They must also produce evidence that will:
 - Dispel harmful myths about juveniles involved in prostitution
 - Corroborate juvenile victim's testimony and bolster credibility
 - Establish the elements of crimes charged against the defendant

Prosecution Difficulties



- Nature of trafficking cases require prosecutors to work with numerous other agencies (within and outside the legal system)
- Navigating this multiagency, multi-jurisdictional system and achieving effective collaboration can be challenging

Additional Challenges



- ❑ Length of investigations
- ❑ Lack of knowledge about trafficking issues
- ❑ Lack of victim cooperation/unavailability of victims and witnesses
- ❑ Lack of collaboration
- ❑ Lack of institutional support/funding
- ❑ Lack of precedent on human trafficking case law

Creative Strategies



- Seek to admit evidence of the victim’s prior testimony in lieu of having the victim testify by establishing “forfeiture by wrongdoing”
- Introduce any available evidence that shows overt or subtle intimidation used by the defendant to explain why the victim is absent, unwilling to testify or testifying for defendant
- Introduce expert testimony to explain victim behavior

Creative Strategies



- Use technology and private sector to assist in gathering and presenting evidence of money laundering, to mine cell phone data and identify “financial footprint” to corroborate victim’s testimony/indicate criminal behavior
- Seek forfeiture of assets gained by offender
- Pursue restitution orders to make offenders pay for victim services

Gathering Evidence



- ❑ Much of the information needs to be gathered from juvenile victim. Interviewing child victims in CSEC/ trafficking cases can be particularly challenging.
- ❑ Ideally, interviews should be conducted by specially-trained forensic interviewers or police officers in a child advocacy center as these interviews differ in significant ways from traditional sexual abuse
- ❑ As a result, interviewers may need to deviate from the traditional forensic model, and prosecutors must be prepared to defend these deviations in court

Gathering Evidence



- ❑ Victims in these cases are usually dependent on the defendant. Some face criminal charges themselves.
- ❑ Typically reluctant to testify and only provide information gradually over time
- ❑ While prosecutor must strive to minimize the child's trauma and avoid contaminating testimony, may sometimes be necessary conduct more than one interview or ask direct, as well as open-ended, questions

Corroborating Evidence



- ❑ Not uncommon for jurors to view juveniles victimized by prostitution as unreliable and unsympathetic witnesses
- ❑ Consequently, important that prosecutors seek evidence that bolsters the victim's credibility and corroborates their testimony
- ❑ The testimony of other victims is often essential, particularly when the victim is uncooperative or medical evidence is lacking
- ❑ Real and documentary evidence is also powerful

Physical Evidence



- ❑ Medical records and related documents signed by the defendant, such as consent or release forms
- ❑ Newspapers/magazines that contain personal/ erotic services ads featuring the child
- ❑ Ledgers or other business records of the defendant
- ❑ Pornography or prostitution training tapes
- ❑ Photos of the child or other victims in the presence of the defendant or other men
- ❑ Hotel bills and rewards
- ❑ Gas station receipts
- ❑ Street clothes belonging to the victim or clothing belonging to the defendant
- ❑ Drugs and drug paraphernalia
- ❑ False forms of identification, such as driver's licenses/passports
- ❑ Large amounts of cash
- ❑ Child diaries
- ❑ Bail records linking the defendant to the child
- ❑ Transcripts of jail calls

Electronic Evidence



- Phone numbers and records for the phones, cell phones, and PDAs belonging to the victim and defendant
- Address books and contact lists
- Photos and videos of the child and others involved in the defendant's business
- Social networking pages
- Personal ads on Craigslist, Backpage or other online classified websites
- IP addresses of computers used to post online ads and internet activity logs
- Pornography stored on the computer
- Google searches and browsing history
- MapQuest requests
- Text messages, call records, photos, videos, emails stored on phones and PDAs
- Location of cell towers used to relay messages

Other Corroborating Evidence



- Look at the victim's juvenile records as an additional source of information. The victim's pimp/fellow CSEC victim may have been involved as co-defendant or witness to past charges (e.g., shoplifting or trespassing) for which victim was prosecuted in juvenile court
- Many jurisdictions have school resource officers, assigned to both middle and high schools, who can be a great resource for knowledge of what's going on with some of the more troubled students (often includes CSEC victims)

Prosecutors



“Police and prosecutors are increasingly attempting to employ a philosophy of presenting ‘**victim-centered, not victim-built**’ cases by corroborating victims’ testimony with other evidence.”

Victim-Centered Approach



- ❑ Places equal value on the identification and stabilization of victims, as well as the investigation and prosecution of traffickers
- ❑ A victim-centered approach to prosecution is essential to accomplishing your mission
- ❑ Victims who can tell their story and testify as a witness are key to successful human trafficking prosecutions
- ❑ When encountering a potential victim, remember victims may not be comfortable coming forward and working with prosecutors They need help to feel stable, safe and secure.

Victim-Centered Approach



- Trafficking victims may:
 - Fear law enforcement
 - Not identify themselves as a victim
 - Not tell a complete story, or use rehearsed responses
 - Identify with the trafficker (trauma bonding/Stockholm syndrome)
- Crucial to understand these behaviors are indicative of the level of control traffickers exert over victims
- Victims need support and understanding in order to help make prosecution of the perpetrator a success

Victim-Centered Approach



- Critical to begin to develop rapport and establish trust with victim by:
 - Immediately connect victim to a victim specialist who can connect them to support services—emphasize that assistance is available regardless of the outcome of the prosecution
 - Take time to explain who you are, answer questions they might have, and acknowledge and address their fears
 - Be sensitive to cultural differences and language barriers (use an interpreter when needed)
 - Conduct interviews in a neutral location, only after the victim's needs have been assessed and any urgent needs have been met
 - Be patient and give the victim time to stabilize and begin their recovery process

Prosecutor Tools for Bringing A Victim-Centered Case



- Unlike other prosecutions, human trafficking prosecutions are governed by a “best interests of the child” standard
- Prosecutors *must* pay special attention to the victims’ needs and take steps throughout the proceedings to protect their welfare:
- Give primary consideration to the best interests of the child.
 - Most juvenile victims have suffered severe abuse
 - Participating in a prosecution can be painful, scary, humiliating, and re-traumatizing
 - Prosecutors have a *legal duty* to manage the proceedings to avoid causing juvenile victims further harm and to protect their privacy, safety, and well-being

Prosecutor Tools for Bringing A Victim-Centered Case



- Speed the child’s recovery from abuse.
 - Link the juvenile victim to the treatment and services needed to help begin recovery while the prosecution proceeds
- Provide child with an advocate or guardian ad litem for guidance and support.
 - Each child should be assigned a child advocate from the local child advocacy center or victim assistance office
 - An advocate can be instrumental in establishing trust and serve as a bridge between the child and prosecutor
 - When a child’s parent or guardian is absent or implicated in the abuse, prosecutors may also wish to request the court appoint a GAL

Prosecutor Tools for Bringing A Victim-Centered Case



- Notify child victim of legal rights in age-appropriate language.
 - Victims have certain legal rights in state prosecutions, such as the right to be notified of all court dates; give opinions about the defendant's release; confer with the prosecution
 - Prosecutors should be sure to explain these rights to juvenile victims in age-appropriate language and confirm they have understood them

Prosecutor Tools for Bringing A Victim-Centered Case



- Preserve the child's safety.
 - Juvenile victims are particularly vulnerable to harassment, intimidation and violence by defendants
 - To protect the juvenile, prosecutors should:
 - Argue against the defendant's release on bail
 - Ensure that any defendant released on bail is subject to restrictive conditions that protect the victim from harm, such as no-contact orders and electronic monitoring
 - Provide a separate, secure waiting area for the victim during trial
 - Where there is evidence of harassment, immediately seek a protective order and consider witness tampering and obstruction charges

Prosecutor Tools for Bringing A Victim-Centered Case



- Invoke the protection of rape shield laws where possible.
 - Juveniles who have been exploited through prostitution often feel a great deal of shame
 - Rape shield protection is not limited to cases of rape
 - Rape shield laws may be available to protect victims from harmful, irrelevant questions about their sexual past—but their application can be complicated and contentious

Prosecutor Tools for Bringing A Victim-Centered Case



- Prosecutors may wish to consider the following:
 - Certain exceptions to rape shield laws are inapplicable to CSEC cases, *U.S. v. Elbert*, 561 F.3d 771(8th Cir. 2009): e.g., evidence used to show victim consented to sex is generally inadmissible as most CSEC victims are below legal age of consent. Evidence that someone other than defendant engaged in sex with victim inadmissible when defendant charged with sex trafficking, rather than sexual assault.
 - Rape shield laws apply to the prosecution *and* the defense
 - May prefer to wait until it becomes clear the defense intends to use the child's sexual past inappropriately

Prosecutor Tools for Bringing A Victim-Centered Case



- Make the courtroom experience less intimidating.
 - The courtroom experience can be frightening and overwhelming to victims, particularly if very young
 - Prosecutors can take simple steps to lessen intimidation:
 - Familiarize victim with the courtroom before trial
 - If very young, provide child-sized chair during the trial and rearrange the courtroom furniture to make the child more comfortable
 - During victim's testimony, use a partial barrier/turn chair to block view of the defendant
 - Ensure victim has an advocate at court proceedings for emotional support

Prosecutor Tools for Bringing A Victim-Centered Case



- Explore alternatives to live testimony.
 - Some victims may be too young, fragile, or fearful of the defendant to testify effectively in open court
 - Use closed circuit television to take the child's testimony
 - Provide testimony through a videotaped deposition
- Use hearsay evidence of child's abuse where appropriate.
 - Reduce trauma victims feel when testifying about their abuse by telling their story through hearsay testimony
 - Some hearsay evidence, such as a child's statements to police and forensic interviewers, is admissible only if the child is available for cross-examination

Prosecutor Tools for Bringing A Victim-Centered Case



- When deciding whether to use hearsay evidence, prosecutors should:
 - Explore full range of hearsay exceptions under state law (e.g., “excited utterance” during an assault or statements to a nurse when seeking medical help are admissible hearsay)
 - Determine if victim is available to testify when admitting statements to investigators or using exceptions that require availability (to be available, the victim must be a competent witness and must be present at court)
 - Weigh the benefits of using hearsay evidence against the jury’s tendency to discount it as “second-hand”

Educating Jurors



- Prosecutors can strengthen their case by maximizing opportunities to educate jurors
- Critical part of the prosecutor’s job is to educate jurors about realities of CSEC and dispel commonly-held myths, including:
 - Belief that prostitution is a victimless crime
 - Belief that most people freely choose prostitution
 - Belief that prostitution is an “easy” way for a juvenile to gain wealth and independence

Realities That Must Be Explained To Jurors



- ❑ Most CSEC victims are fleeing abusive, neglectful homes—including sexual abuse
- ❑ Average age a juvenile first falls victim to CSEC is 13 or 14
- ❑ Typically, an older man wins the victim's trust by showering attention, offering food, shelter, and often drugs, and initiating a sexual relationship
- ❑ Physical and verbal abuse is used to break the victim's will and force them into prostitution
- ❑ Juveniles become trapped in modern slavery, prevented from leaving by their dependence on the pimp, their isolation from the community, and their own complex feelings of love, fear, hopelessness, and shame

Use *Voir Dire* as Tool



- ❑ Importance of jury selection should not be ignored
- ❑ *Voir dire* provides a process in which a prosecutor can weed out jurors who are more likely to lack empathy for juveniles who are prostituted and are thus less likely to see them as victims
- ❑ *Voir dire* also provides a prosecutor with the opportunity to educate jurors about the law and correct misconceptions about CSEC and juvenile trafficking

Use *Voir Dire* As Tool



- An ideal juror in CSEC cases is a juror who:
 - Empathizes with children, including teenagers
 - Feels comfortable with hearing and believing the testimony of a child
 - Holds adults accountable for their actions
 - Has some awareness of the type of abuse in question
 - Is committed to the rule of law
- Prosecutor should construct questions that detects *that* juror.
- Some CSEC experts recommend submitting these questions in writing as a questionnaire, prior to *voir dire*, which allows a juror to be more forthcoming and honest
- A juror questionnaire also reduces time it would take to ascertain individualized responses to the same questions

Use Expert Testimony as Tool



- ❑ Expert opinion testimony serves to assist jurors in these cases since jurors, as laypersons, would not otherwise understand the behaviors and characteristics of CSEC victims without it.
- ❑ Call subject matter experts as first witnesses to layout the background and explain issues
- ❑ Make sure to lay foundation for qualification

Types of Expert Testimony



- Child Sexual Abuse Accommodation Syndrome (CSAAS) in child sexual abuse cases is an accepted subject for expert testimony since characteristics of CSAAS (secrecy, helplessness, accommodation, delayed disclosure, and recantation) is consistent with CSEC victims. The CSAAS expert (e.g., psychologist or social worker) would be called to educate the jury about these counterintuitive aspects of a juvenile victim's behavior.
- Other experts might include law enforcement (as expert in field of juvenile human trafficking and prostituted children) and/or offender typologists (as expert in profiles of exploiters, how they select their victims, etc.)

Critical Collaborative Prosecutor Partnerships



- ❑ Multidisciplinary teams (MDT) and approaches
- ❑ Information sharing and confidentiality
- ❑ Decision making and authority
- ❑ Building “non-traditional” partnerships
- ❑ Anticipating, managing and resolving conflict or divergent opinions about specific decisions or the trajectory of a case
- ❑ Crisis management/responses and leverage

“See the highway, but stay in your own lane”

Identify Community Services for Juvenile Trafficking Victims



- ❑ Advocacy/case management
- ❑ Street outreach or Drop-in services
- ❑ Housing (emergency shelter, long term, treatment)
- ❑ Medical care
- ❑ Legal advocacy/ medical advocacy
- ❑ Clinical services (mental health, substance abuse)
- ❑ Education
- ❑ Employment
- ❑ Peer/mentorship
- ❑ Family support

Conclusion



- ❑ Prosecutors' ongoing need to apply trauma-informed practices spans the case's progress through the justice system.
- ❑ Responding in a trauma-informed manner minimizes impact of juvenile victims' past harms while consciously avoiding causing additional trauma, and allows prosecutors to simultaneously focus on some of the most dangerous offenders.
- ❑ Supporting victims is a moral and professional responsibility, and leads to better prosecution and, thus improved community safety.

For More Information:



Trudy Gregorie
Senior Director,
Justice Solutions



tgregorie@justicesolutions.org