

Give Way to Freedom



Give Way to Freedom is a private operating foundation that creates and supports targeted, culturally relevant projects aimed at providing care and empowerment to survivors of Human Trafficking, as well as those vulnerable to trafficking.



Equality Now is an international organization that has worked to eradicate sex trafficking, sex tourism and the demand for prostitution. Equality Now is a founding member of the NYS Anti-Trafficking Coalition and was instrumental in the passage of federal and state anti-trafficking laws.

Overview

- Human Trafficking Defined
- Human Trafficking Facts and Statistics
- Red Flags and Indicators
- NY State Human Trafficking Laws
- Case Examples
- The Victim's Experience & The Trafficker
- Addressing Human Trafficking

Human Trafficking Defined

“The action of recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force, coercion, abduction, fraud, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim for the purposes of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices, and the removal of organs. Consent of the victim is irrelevant where illicit means are established.” United Nations, 2000

US Federal Definition

- ❖ 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.
- ❖ 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 has not attained 18 years of age.
- ❖ Trafficking victims in the U.S. can be divided into three populations:
 - ❖ Minors (under age 18) involved in commercial sex
 - ❖ Those age 18 or over involved in commercial sex via force, fraud, or coercion
 - ❖ Children and adults forced to perform labor and/or services in conditions of involuntary servitude, peonage, debt bondage, or slavery, via force, fraud, or coercion

Human Trafficking Definition

ACTION

Recruiting

Harboring

Moving

Obtaining

(How did the person
get into the
situation?)

MEANS

Force

Fraud

Coercion

(How was the person
kept in the
situation?)

PURPOSE = Exploitation

**Involuntary
Servitude**

Debt Bondage

Slavery

Sex trade

(For what purpose was
the person brought in
and kept in the
situation?)

Slavery Today

What do you see
when you look at
your fellow man?



some people see a profit.

**Help Stop Human
Trafficking Now.**

There are more people being bought and sold at
this moment, than in the entire 300-year his-
tory of the Atlantic Slave Trade.

Universal Declaration of Human Rights (1948)

Article 1: All humans are born free and equal in dignity and rights

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms

Article 13: Everyone has the right to freedom of movement and residence within the borders of each state

Article 23: Everyone has the right to the free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Human Trafficking Facts

- ❖ Human trafficking is a \$32,000,000,000 per year industry and is tied with drugs for the most profitable criminal endeavor, having passed illegal weapons. - International Labor Organization (ILO), A global alliance against forced labor: 2005
- ❖ At least 20.9 million people are victims of slavery/forced labor around the world – ILO, 2012
- ❖ 800,000 people trafficked across international borders every year. –United States Department of State
- ❖ 1,000,000 children exploited by the international sex trade. - U.S. Department of State, The Facts About Child Sex Tourism: 2005
- ❖ On any given night in NY State, more than 4,000 underage youth are the victims of sex trafficking. – Equality Now
- ❖ 70% of female victims are trafficked into the sex trade. 30% into forced labor. U.S. Department of Justice, Assessment of U.S. Government Activities to Combat Trafficking in Persons: 2004.

Domestic Minor Sex Trafficking

- ❖ There are 100,000 to 300,000 underage girls being sold for sex in America.
- ❖ The average age of entry into prostitution is 12-14 years old.
- ❖ 1 out of every 3 teens on the street will be lured toward prostitution within 48 hours of running away from home.
- ❖ Minor victims were sold an average of 10-15 times a day, 6 days a week.
- ❖ 1 out of 5 pornographic images is of a child.
- ❖ Over 100,000 websites offer child pornography.
- ❖ 55 percent of internet child pornography comes from the United States.

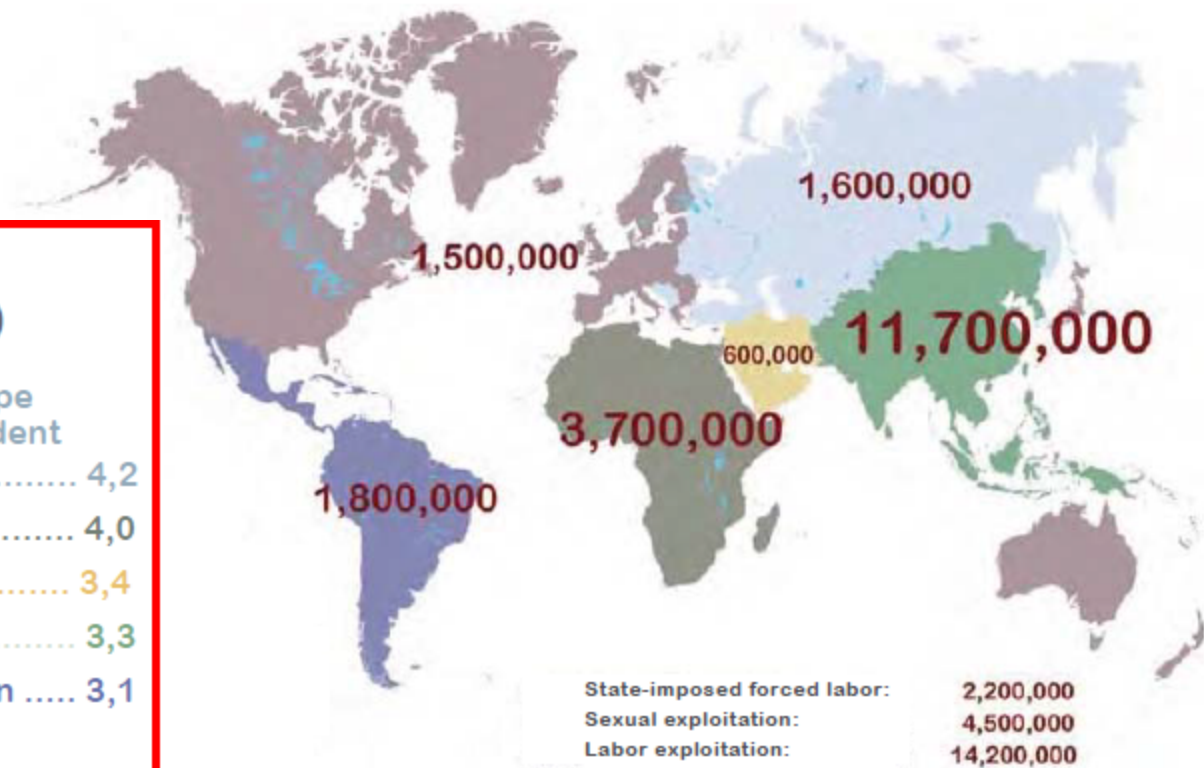
-National Center for Missing and Exploited Children, Estes, Richard J. and Neil A. Weiner. The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico. The University of Pennsylvania School of Social Work: 2001, & [Washington State Office of the Attorney General](#)

Facts:

Worldwide estimated 20.9 victims of slavery/forced labor

Regional Figures

Persons in Forced Labor



Prevalence

(per 1,000 inhabitants)

Central & South Eastern Europe & Commonwealth of Independent States	4,2
Africa	4,0
Middle East	3,4
Asia and the Pacific	3,3
Latin America & the Caribbean	3,1
Developed Economies & European Union	1,5



20,900,000

The infographic features a light blue background with stylized human figures in green and blue. At the top, a large family unit (two adults and two children) is shown. Below this, on the left, is a couple, and on the right, a smaller couple. At the bottom, on the left, is a woman and child, and on the right, a man and child. The numbers are displayed in a large, bold, dark red font.

15,400,000

5,500,000

11,400,000

9,500,000

Trafficking in Persons

Labor Trafficking...

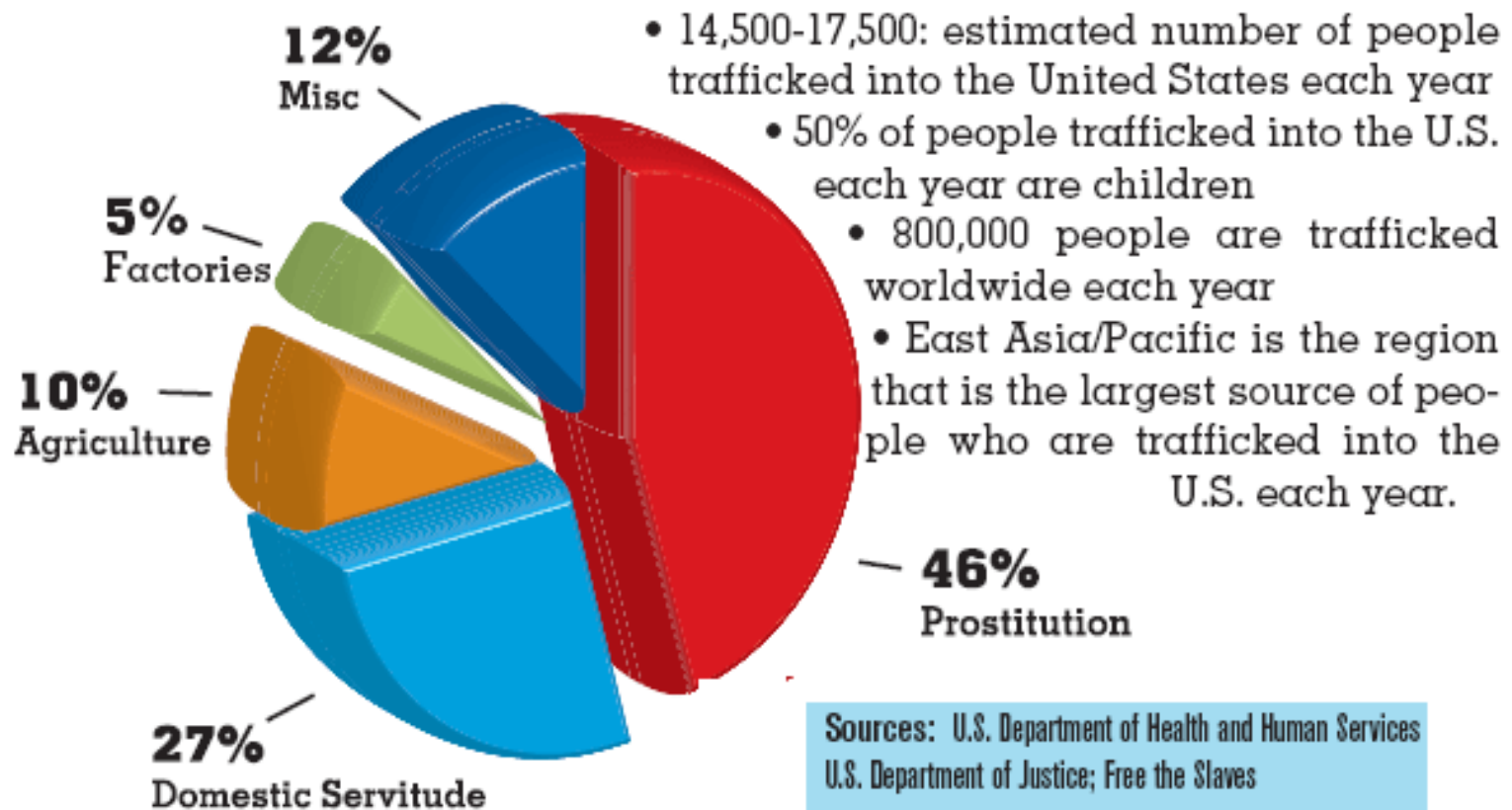
- domestic servitude
- construction
- sales/begging
- agriculture
- restaurants
- forestry
- hair/nail salons
- hotels/cruises
- factories

Trafficking in Persons

Sex Trafficking....

- domestic brothels
- massage parlors
- dancing/strip clubs
- escort services
- pimp controlled prostitution
- street & truck stop prostitution
- pornography
- online /Backpage.com

Human trafficking is the 2nd largest criminal enterprise worldwide, generating \$35 billion annually.



Important things to remember

- ❖ International and Domestic
- ❖ No movement is necessary for trafficking to take place
- ❖ No force, fraud, or coercion necessary to constitute sex trafficking for victims under the age of 18
- ❖ Trafficking ≠ Smuggling

Indicators & Red Flags

Recruitment

- ❖ Misleading information was given by the recruiter/ employer
- ❖ A person is in debt to their recruiter/employer

Personal Documents and Belongings

- ❖ A third party arranged the travel and work documents
- ❖ A person's passport or other documentation was taken from him/her
- ❖ A person has false documentation
- ❖ A person has no or few personal belongings or is inappropriately dressed for the weather

Indicators & Red Flags

Freedom of Movement / Living Conditions

- ❖ A person is physically confined
- ❖ A person cannot choose his/her own residence
- ❖ A person's communications and movement are restricted and controlled
- ❖ A third party insists on being present for conversations
- ❖ A person is rarely seen
- ❖ A person seems confused about where they are/lack of knowledge of whereabouts

Indicators/Red Flags

Threat or Reality of Violence

- ❖ A person shows signs of physical abuse or drug consumption
- ❖ A person is fearful and/or shows signs of depression
- ❖ Several inconsistencies in story
- ❖ A person has been sexually abused
- ❖ A person and/or their loved ones have been threatened with or have been physically and/or psychologically abuse

Working Conditions

- ❖ A person is performing tasks for which he or she was not originally recruited
- ❖ A person is working excessive and/or irregular hours
- ❖ A person is exposed to risks that compromise health and safety
- ❖ A person is not paid, underpaid, or has wages taken from him/her

Indicators specific to sex trafficking (often of DMST)

- ❖ Tattoos, brands, signs of “ownership”
- ❖ Frequent runaway, unexplained absences
- ❖ Truancy from school
- ❖ Inappropriate clothing for setting or weather
- ❖ Older boyfriend/close companion
- ❖ New, unexplained possessions - clothing, phone, jewelry
- ❖ Excessive, almost pathological attachment to cell phone
- ❖ Age-inappropriate sexual behavior
- ❖ Sexually transmitted infections

Be Aware That:

1. Victims will include U.S. citizens in addition to foreign born
2. Movement of the victim isn't required
3. The trafficking victim won't always be the object of the prohibited method
4. Where prostitution is tolerated trafficking flourishes
5. Monitor the internet, and print advertisements and social media
6. Coordination between social service providers and law enforcement will ideally begin before arrests are made



- The TVPA defines a “severe form of trafficking in persons” as
 - (A) sex trafficking in which a commercial sex act is induced by **force, fraud, or coercion**, or in which the person induced to perform such act has not attained 18 years of age (22 U.S.C. 7102 8(A)); 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. (22.U.S.C. 7102 8(B))



The TVPA defines sex trafficking as the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102 (9))

Commercial sex act means any sex act on account of which anything of value is given to or received by any person (22 U.S.C. 7102 1.A(3))

Sex Trafficking – New York

Penal Law §230.34

- **Class B Non Violent Felony**
- **Extension of Promoting Prostitution offenses (or “aggravated promoting prostitution”)**
- **The specified prohibited means contained in Penal Law §230.34 are common methods used by pimps to obtain and then maintain control of their victims**

Labor Trafficking – New York

Penal Law §135.35

- Class D Nonviolent Felony
- Penal Law §135.35 does not require that:
 - The victim of labor trafficking be compelled or induced to perform labor for a minimum period of time;
 - That the compelled or induced labor be for financial or material gain; or
 - That the labor is performed for the benefit of the trafficker
- Therefore PL §135.35 can be applied to a variety of situations that might not be customarily thought of as slavery

Sex Trafficking & Labor Trafficking

- **Sex Trafficking**

- **NY PL §230.34**
- Intentionally advances or profits from prostitution by:
 1. Providing a drug to impair a person's judgment
 2. Using false statements
 3. Withholding or destroying ID
 4. Debt bondage
 5. Using force or scheme, plan or pattern to instill a fear of:
 - a. Physical Injury/Death
 - b. Property Damage
 - c. Other Felony or Unlawful Imprisonment
 - d. Accuse of a Crime or Cause Charges/Deportation
 - e. Expose Secret/Publicize Causing Hatred, Contempt or Ridicule
 - f. Testify, Provide or Withhold Information regarding a Legal Claim/Defense
 - g. Public Servant – Abuse or Refuse to Perform
 - h. Act Calculated to Harm Health/Safety/Immigration

- **Labor Trafficking**

- **NY PL §135.35**
- Compels or induces another to engage in labor...by means of intentionally:
 1. Providing a controlled substance to impair a person's judgment
 2. Debt Bondage
 3. Withholding or destroying ID
 4. Using force or scheme, plan or pattern to instill a fear of:
 - a. Physical Injury/Death
 - b. Property Damage
 - c. Other Felony or Unlawful Imprisonment
 - d. Accuse of a Crime or Cause Charges/Deportation
 - e. Expose Secret/Publicize Causing Hatred, Contempt or Ridicule
 - f. Testify, Provide or Withhold Information regarding a Legal Claim/Defense
 - g. Public Servant – Abuse or Refuse to Perform

TVPA & N.Y. Trafficking Statutes


- The various trafficking means set forth in New York Penal Law §230.34 and §135.35 generally fall within the TVPA means of force, fraud and coercion.
- The most important distinction between the TVPA and New York statutes is the sex trafficking of persons less than 18 years of age. The TVPA does not require that force, fraud or coercion be proved when the commercial sex act is performed by a minor. New York Penal Law §230.34 requires proof that at least one of the means prohibited by that statute was used by the trafficker.

CASES

- In May 2013, **3 Tlaxcala sex traffickers pled guilty**, in the Eastern District of New York, following extradition from Mexico in United States v. Lopez-Perez, another one of a series of Tlaxcala-based sex trafficking cases prosecuted in the Eastern District of New York. Also in May 2013, **3 more Tlaxcala sex traffickers were indicted** in Atlanta, Georgia in United States v. Rojas-Coyotl, one of a series of Tlaxcala-based sex trafficking cases prosecuted in Atlanta.

U.S. v. Carreto

- The Carreto crime family trafficked women from Mexico into the New York area where they were forced into prostitution. This crime group operated for 13 years. The defendants gained their victims compliance by physically assaulting them, causing serious bodily injuries.

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- While material misstatements or omissions are often used to initially gain compliance of the victims traffickers regularly resort to assault and rape to maintain control of their victims. It is not unusual to see both material misstatements and force directed toward the same victim.
 - N.Y – Penal Law §230.34(5)(a)
 - U.S. - Force


Case U.S. v. Naughton

- Defendant coerced one of his many victims into prostitution by snapping the neck of her dog with his bare hands.
- N.Y. – Penal Law §230.34
- U.S. - Coercion

Case

U.S. v. Jones

- Defendant represented himself as a successful modeling and casting agent, enticing young women with promises of modeling contracts. He first persuaded the victims to work in strip clubs and ultimately forced them into prostitution. Among the numerous methods that Jones used to control his victims were threats to expose sexually explicit videotapes.
- N.Y. Penal Law §230.34(5)(e)
- U.S. – Force, Fraud, Coercion

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- NOTE: This can be an effective method of obtaining or controlling victims. A woman who has been in prostitution may not be accepted back into many societies. Also, the ease with which any activity can be recorded and placed on the internet and social media makes such threats real and easily achieved.

Case

U.S. v. Kim and Svoronos

- Law enforcement officers were accused of providing protection to a brothel in Flushing Queens that exploited Korean women. In addition to failing to take action against the brothel they were protecting and receiving bribes from the owners they were also accused of conducting raids of competing brothels.
- Note that the broad language of this section will expose virtually all public officials who cooperate in sex trafficking to a B felony charge.
- N.Y. – Penal Law §230.34(5)(g)
- U.S. - Coercion

Case

U.S. v. Chang

- Defendant required Korean women to work as hostesses at his Karaoke bar. Chang told the victims that they couldn't leave until his smuggling debts were paid off. Chang charged the women varying amounts of money for food and lodging with those amounts added to the victims overall debt.
- N.Y. Penal Law §135.35 (2)
- U.S. – Coercion, Fraud

Case U.S. v. Ortiz

- Young women from Honduras were charged smuggling fees of up to \$25,000 and were then forced to work in bars to repay their debts. The women were required to wear provocative clothing, and act seductively around the male patrons to entice the men to buy drinks.
- N.Y. – Penal Law §135.35(2)
- U.S. – Coercion, Fraud

Case

U.S. v. Afolabi

- Defendants, originally from Togo were convicted of trafficking girls and young women from that country into the United States to work without pay at hair braiding salons. Defendants took the victims travel documents and would beat them if they complained.
- N.Y. – Penal Law §135.35(3)
- U.S. – Force, Fraud

Case

U.S. v. Mubang

- Defendant convinced the relatives of her 11 year old victim to send the child from her home in Cameroon to the United States. Defendant assured the victim's family that she would be cared for as if she was the defendant's own daughter. Instead, the defendant forced the victim to cook, clean and care for the defendant's real children 24 hours a day, seven days per week. The victim was isolated from anyone outside defendant's family and was beaten with high heeled shoes, cable cords and metal broom handles. Defendant also trafficked a 10 year old girl from Cameroon using the same false representations. Very similar to the Odogwu case in New York where a young girl from Nigeria was trafficked with the same false promises for the same domestic servitude purpose.
- N.Y. Penal Law §135.35(4)(a)
- U.S. Force, Fraud

Case

U.S. v. Frosty Treats

- Defendants recruited eight Russian students to work in the United States through a student work program. The victims were told they could earn up to \$10,000 over the summer months. Instead they worked 13 hour days, seven days a week driving ice cream trucks. The victims all lived together and were kept under surveillance. Defendants told the victims their movements were being tracked by a global positioning system device.
- N.Y. Penal Law §135.35(4)(c)
- U.S. Fraud, Coercion

Anyone Can be a Victim- Key is Vulnerability

Contributing Factors: **Push / Pull**

❖ **Push Factors**

- ❖ Poverty, lack of financial security
- ❖ History of child sexual abuse
- ❖ Early exposure to violence
- ❖ Family dysfunction (DV, mental illness, drugs)
- ❖ Runaway or throwaway episodes, homelessness
- ❖ Lack of education

❖ **Pull Factors**

- ❖ Promises of economic opportunities
- ❖ Offering of love & affection
- ❖ Offering of basic needs: food, shelter.... for self and/or loved ones

Exacerbating factors = **Globalization, Technology**

The Victim's Experience

- ❖ Physical and/or sexual abuse
- ❖ Confinement
- ❖ Frequent if not constant accompaniment
- ❖ Withholding of food
- ❖ Withholding of medical care
- ❖ Intimidation/ threat of violence
- ❖ Sleep deprivation

The Victim's Experience cont.

- ❖ Language and social barriers
- ❖ Distrust of law enforcement and/or service providers
- ❖ Lack of awareness of available resources
- ❖ Facilitated drug addiction
- ❖ Frequent movement
- ❖ Fear of physical retaliation, death, harm to loved ones

Trafficking & Domestic Violence

❖ **Trafficking victims are subject to the same kinds of abuse:**

- ❖ Physical and/or sexual violence
- ❖ Fostering of substance dependencies
- ❖ Psychological trauma
- ❖ Threats and intimidation
- ❖ Isolation from family, friends, or other support networks
- ❖ Restriction on freedom of movement
- ❖ Financial control

❖ **In addition, trafficking victims:**

- ❖ May be physically isolated from the public (confinement)
- ❖ May not know the local language
- ❖ May not be connected to any support network
- ❖ May not understand their legal rights (prostitution, deportation)
- ❖ May not trust the police
- ❖ May not have any recoverable identification documents

Trafficking & Torture

Parallels have been drawn between the tactics used to control trafficked women & girls and the characteristics of abuse described in literature on torture.

- ❖ Like with torture victims, trafficking victims have little ability to predict or manage events that affect their health and safety.
- ❖ Unpredictability and Uncontrollability.

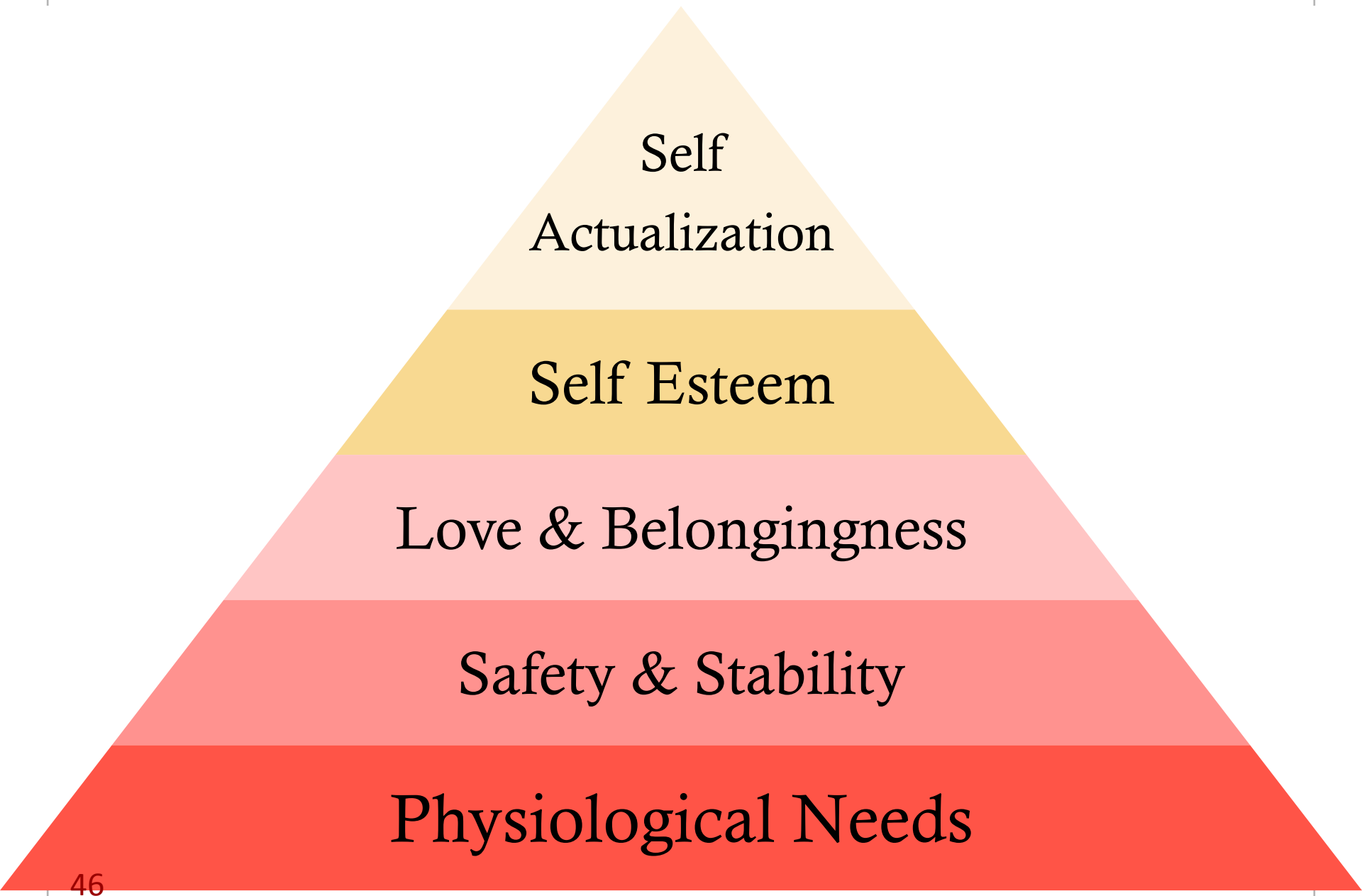
Hossain et. al., American Journal of Public Health, Dec. 2010, Vol. 100, No. 12

Health & Safety

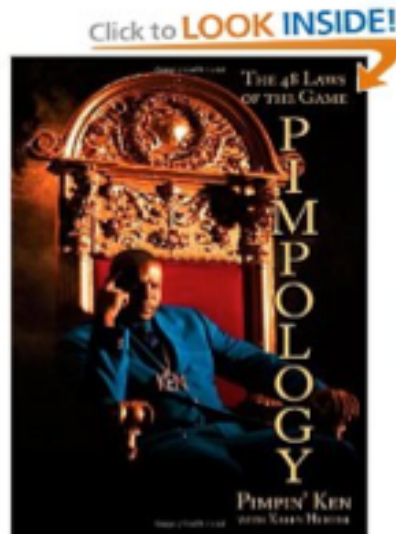
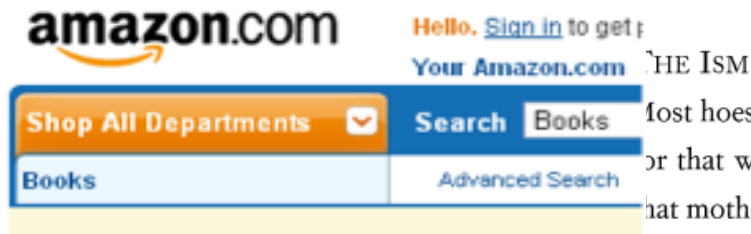
Risks	Potential Consequences
Physical Abuse, deprivation	Physical health problems: cuts, burns, broken bones, headaches, fatigue
Threats, Intimidation, Abuse	Mental Health Problems: depression, anxiety, disassociation, fearfulness, nightmares, flashbacks, hostility/anger, PTSD
Sexual Abuse	STDs, pelvic inflammatory disease, infertility, unwanted pregnancy, forced abortion
Substance Misuse (D&A)	Overdose, D&A addiction

Health & Safety

Health Risks	Potential Consequences
Economic Exploitation – debt bondage	Insufficient food/drink, poor hygiene, risk-taking to repay debts
Legal Insecurity – forced illegal activities, confiscation of personal documents	Hesitancy to access services
Social Restriction/Marginalization	Inability to access care, unattended injuries and infections



Mindset of a trafficker



THE ISM

Most hoes have low self-esteem for a reason. A pimp looks for that weakness, and if it isn't on the surface, he brings that motherfucker out of them. It doesn't matter to a pimp what hoes' weaknesses are, so long as they have them. Then he uses those weaknesses to his advantage.

Weakness is the best trait a person can find in someone they want to control. If you can't find a weakness, you have to create one. You have to tear someone's ego down to nothing before they will start looking to you for salvation. Then you have a chance to build them back up, showing them that it's your program that takes them from darkness to hope. While you want them to feel good about themselves eventually, you want them to feel that it's because of *you*. They begin to see you as their champion, their hero—even if the weakness you rescue them from is one you created.

Challenges to identifying & assisting victims

- ❖ Most victims do not self-identify as trafficking victims
- ❖ Misidentification/ Social Barriers
- ❖ Effects of Trauma (trauma symptoms & triggers)
 - ❖ Somatic, Cognitive, Emotional, Behavioral
 - ✧ Distrust, trauma bonding, PTSD, substance abuse
- ❖ Fear of retaliation (threats to self or loved ones)
- ❖ Isolation/Dependency
- ❖ Defense Mechanisms

Challenges to identifying & assisting victims

- ❖ Distrust of law enforcement and/or service providers
 - ❖ Immigration concerns
- ❖ Lack of awareness of available resources
- ❖ Facilitated drug addiction
- ❖ Frequent movement of victims
- ❖ Victims may be trained to tell lies
- ❖ A belief that no one can help them – hopelessness & resignation



Addressing Human Trafficking

Prevention

Prosecution

Protection

Partnership

Prevention

- ❖ Research, information and mass media campaigns
- ❖ Prevention training, workshops, conferences
 - ❖ Healthcare professionals, victim service professionals, police, parole officers.....
- ❖ Prevent re-victimization
 - ❖ Trauma informed care



We want you to be safe. You are not alone.

NO ONE HAS THE RIGHT TO:

- Force you to work against your will
- Collect a debt by using threats or force
- Threaten you or a loved one
- Force or coerce you into sex work
- Take away your personal documents
(identification, birth certificate, passport)

BY CALLING, YOU MAY RECEIVE:

- Medical assistance
- Food and shelter
- Interpreters, translation services
- Counseling
- Legal assistance
- Ability to stay in the US, depending on your
situation through: T Visa, U Visa, S Visa, Asylum
- Ability to go back to your home country safely



If you suspect Human Trafficking
or you think you are in a
human trafficking situation
please dial:

211

If you want help from law enforcement

1-888-98Human



Are you safe?



Some

anyv

everyv

Does someone take the
money you earn?

☐ Yes☐ No

Do you owe any money to
anyone related to your
current situation?

☐ Yes☐ No

Are you being asked or forced to
do things you don't want to do?

☐ Yes☐ No

There are many ways we
can help, even if you are
not a U.S. citizen.

Please contact:

Vermont 211

Dial 211

**National Human Trafficking
Resource Center
1.888.373.7888**

**If you want help from the police:
Vermont Law Enforcement Hotline
1-888-98HUMAN**

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

- Social Services Law 483-cc (a) Confirmation as a victim of human trafficking
 - As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency or a district attorney's office to be a human trafficking victim, that agency or office shall notify the Office of Temporary and Disability Assistance (OTDA) and the Division of Criminal Justice Services (DCJS) that such person may be eligible for services under this article.

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

- NOTE: A referral form has been created for use by law enforcement agencies in making this referral.
- NOTE: The notification to OTDA and DCJS as soon as practicable “after a first encounter” means that the notice can be provided during the investigation stage if the evidence warrants.

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

- NOTE: The “reasonably appears to be a trafficking victim” standard that triggers the notification requirement is a minimal standard.
- NOTE: Early cooperation with social service providers will be of invaluable assistance to law enforcement personnel in both enhancing the likelihood of victim cooperation and in the victim referral process. We strongly urge these collaborations. This is best achieved through on-going partnerships such as regional task forces.

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

Social Services Law 483-cc (b)

- If the referral process determines that the victim is eligible for benefits OTDA will report that finding to the victim and to the referring law enforcement agency.

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

Social Services Law 483-cc(a) – services for victims of human trafficking include, but are not limited to:

- Case management
- Emergency temporary housing
- Health care
- Mental health counseling



- Drug addiction screening and treatment
- English language instruction
- Job training and placement assistance
- Language interpretation and translation services
- Post employment services for job retention
- Assistance in establishing permanent residence

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

Social Services Law 483-dd, Law enforcement assistance with respect to immigration

- If requested by a human trafficking victim or their representative the referring law enforcement agency shall provide the victim with the United States Citizenship and Immigration Service (USCIS) Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

- NOTE that social service providers often have access to specialists in immigration law that will be available to assist in the completion of Form I-914 Supplement B. We strongly urge that you avail yourselves of their assistance.

NEW YORK SERVICES FOR TRAFFICKING VICTIMS

- The referring law enforcement agency when completing the Form I-914 Supplement B must contain a description of the victimization including the date the trafficking occurred and whether the victim had been recruited, harbored, transported, provided or obtained for either labor or sex trafficking.
- NOTE: When completing the Form I-914 Supplement B you should be as precise as possible in listing all the methods used against the victims. In cases of sex trafficking the age of the victim should also be included.

VACATING CONVICTIONS OF VICTIMS

- New York Criminal Procedure Law §440.10(1)(i) provides that any conviction where the arresting charge was loitering for the purposes of prostitution or prostitution if the victims participation was a result of being a victim of trafficking as defined by state or federal law may be vacated
- Motion to vacate the judgment must be made with due diligence after the victim ceased to be a trafficking victim or has sought services for trafficking victims
- Leeway for time to make the motion is allowed where the victim has reasonable safety concerns
- Presumption of sex trafficking exists where there is documentation from a local, state or federal government agency that the victim was a victim of trafficking at the time of the offense.

NEW YORK VACATUR CASE

NEW YORK v. G.M., 32 Misc. 2d 274

- Victim was trafficked from the Dominican Republic and was forced into prostitution by force, threats of force and threats against her children
- In a five month span the victim was arrested twice each for prostitution, criminal trespass, and drug possession. She pled guilty in every case.
- Victim became free of trafficking years later and received a T Visa. The Court then vacated all of the convictions, not just the two for prostitution.
- The Court held that although only the prostitution convictions were technically covered by the statute, the statute “allows the Court to take such additional action as is appropriate in the circumstances.

CIVIL ACTIONS

- 18 U.S.C. §1595 provides that a trafficking victim may bring an action against the perpetrator and those who financially benefit from the trafficking.
- Statute of limitations is 10 years after the cause of action arose
- New York law does not create a private right of action for trafficking victims. However, a civil action for damages can be maintained for traditional torts such as, assault, battery, unlawful imprisonment and defamation.

NEW YORK SAFE HARBOUR FOR EXPOITED CHILDREN ACT

Social Services Law §447-a and §447-b


- Creates a presumption that anyone under the age of 18 arrested for prostitution related crimes is a trafficking victim and is diverted away from Criminal Court and towards Family Court and specialized services.
- Four exceptions:
 - ❖ Child does not meet the definition of a victim of a severe form of trafficking
 - ❖ Has previously been found to have committed a prostitution offense
 - ❖ Child was previously adjudicated as a person in need of supervision
 - ❖ Child expresses unwillingness to cooperate with specialized services for sexually exploited youth

CERTIFICATION FOR ADULT VICTIMS OF TRAFFICKING

Certification allows adult victims of trafficking who are not United States (U.S.) citizens or Lawful Permanent Residents (LPRs) to be eligible to receive benefits and services under any Federal or state program or activity to the same extent as a refugee. Victims of trafficking who are U.S. citizens or LPRs do not need certification to receive benefits because they may already be eligible for many benefits.

To receive certification, a person who is 18 years of age or older must:

- Be a victim of a severe form of trafficking as defined by the TVPA;
- Be willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking or be unable to cooperate due to physical or psychological trauma; and
- Have made a bona fide application for a T visa that has not been denied; or
- Have received Continued Presence (CP) from the Department of Homeland Security (DHS) in order to contribute to the prosecution of traffickers in persons.



Once a person has met the requirements listed above, he or she can receive a Certification Letter from the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). The certification process typically takes only a few days after ORR is notified by the DHS that a person has made a bona fide application for a T visa or has been granted CP. Certification Letters do not expire but many benefits are time-limited.

Foreign child victims of trafficking (under the age of 18) ***do not*** need to be certified to receive benefits and services. OPR will instead issue a letter stating that a child is a victim of a severe form of trafficking and is eligible for benefits and services. (See *Rescue & Restore* Fact Sheet on Child Victims and ORR State Letter #10-05 for more information.)

T Visa

The applicant must be physically present in the United States due to human trafficking in order to apply

- U.S. embassies and consulates abroad may issue derivative T Visas to the family members of human trafficking victims.

Applicants for a T Visa must show:

- Applicant is victim of *a severe form of human trafficking* as defined by the Trafficking Victims Protection Act;

T Visa

- Applicant must comply with any reasonable request for assistance in the investigation or prosecution of human trafficking however if the applicant is under the age of 18 or unable to cooperate due to physical or psychological trauma this requirement will be deemed satisfied;
- Demonstrate that they would suffer extreme hardship involving unusual and severe harm if removed from the United States;
- Must show a “likelihood” of serious physical or psychological harm. More than a possibility. The serious harm must be probable.

T-Visa Benefits if Certified

- Automatic employment authorization
- Temporary Assistance for needy families
- Food stamp program
- Supplemental security income
- Medicaid
- Refugee cash and medical assistance if ineligible for TANF, SSI and Medicaid.



- Cash and medical assistance for eight months
- Health Care
- Torture treatment program
- State children's health insurance program
- Public housing assistance
- State specific programs

Derivative T-Visa

- T-Visa status available for certain family member of a T Visa applicant
- If T-Visa applicant is under 21 years of age:
 - Spouse
 - Unmarried children under 21 years of age
 - Parents and/or
 - Unmarried siblings less than 18 years of age
 - If T visa applicant is over 21 years of age:
 - Spouse and/or
 - Unmarried children under 21 years of age

Need not wait until T-Vvisa applicant is approved. Can file for family members simultaneous with T-Visa application or thereafter

Permanent Resident Status

- T Visa lasts four years. May be extended if assistance an ongoing investigation or between third and fourth year if permanent resident status already granted.
- Permanent resident status requirements:
- Must continually be in the U.S.A for three years after T Visa granted; or
- A continuous period during the investigation/prosecution of trafficking or one it is completed
- Good Moral character since receiving T-Visa and defined in INA Section 101(f)
- Complied with reasonable requests in investigation/prosecution of trafficking, or;
- Would suffer extreme hardship if removed from the U.S., or;
- Is less than 18 years of age
- Not inadmissible for any reason listed in INA Section 212.

Partnership

- ❖ Human Trafficking Taskforces
- ❖ Coordination and cooperation between different agencies