



Loyola Law School
Loyola Marymount University
Los Angeles



Human Trafficking for Forced Criminality/ CA P.C. 236.14 for Trafficking Victims

Stephanie Richard, Director
Sunita Jain Anti-Trafficking Initiative

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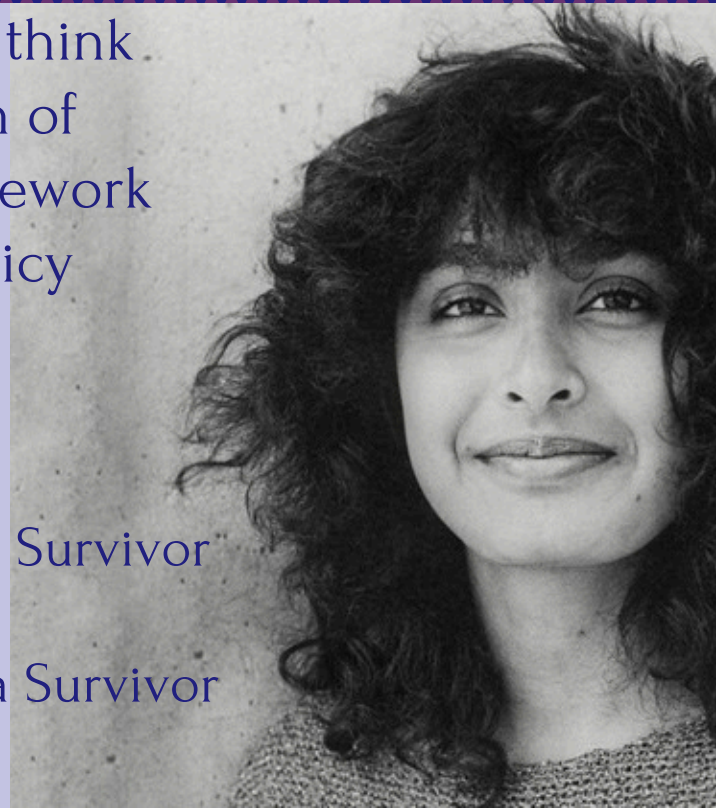


Sunita Jain Anti-Trafficking Initiative

We are an evidence-based, community-informed think tank that intentionally fills gaps in the prevention of human trafficking through an intersectional framework that fosters systemic change and progressive policy innovations.

Example of Policy Framework

- Non-Carceral Approach to Anti-Trafficking from a Survivor Perspective
- Intersectional Approach to Anti-Trafficking from a Survivor Perspective



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ANTI-TRAFFICKING
INITIATIVE

Stephanie Richard, Esq.

DIRECTOR SUNITA JAIN ANTI-TRAFFICKING /
VISITING FACULTY

- Emergency Response & on the ground legal representation to ensure victims' rights during the law enforcement agencies (LEA) raids/operations
- Direct Legal Services Representation of diverse clients and supervision of attorneys in immigration, civil, criminal re-entry & victim witness representation
- National Training & Technical Assistance Program
- Teacher Trainer in US Peace Corps on communicative models of teaching
- Systemic change at federal, state and county levels, including survivor leadership development
- Collaboration with Survivors, LEA, Social Services, Law Firms, Community Partners, Government Agencies, Funders, to offer comprehensive services for crime victims
- Nationally Recognized Expert In Human Trafficking





YES

Scan me!

No

1

Have you ever attended a training on human trafficking?

2

Have you ever provided direct legal services support to a trafficking survivor?

3

In one word how do you feel about this statement:
Child trafficking victims would be better off if their traffickers did not go to jail



Overview of Trafficking Legal Standards

Baseline: Human Trafficking

- Human trafficking at its core is about exploitation for commercial purposes.
- Individuals do not choose if they are sex or labor trafficked or both.
- The dynamics of why and how individuals are recruited into sex or labor trafficking is therefore strikingly similar as are the trauma bonds to the traffickers

Federal Response to Trafficking - TVPA

(Victims of Trafficking and Violence Prevention Act of 2000 can be found at <https://www.state.gov/j/tip/laws/61124.htm>)

TVPA

Created/Defined crimes of trafficking and forced labor

Protection to trafficked persons through immigration relief and other benefits

Created specialized funding for US service providers for first time

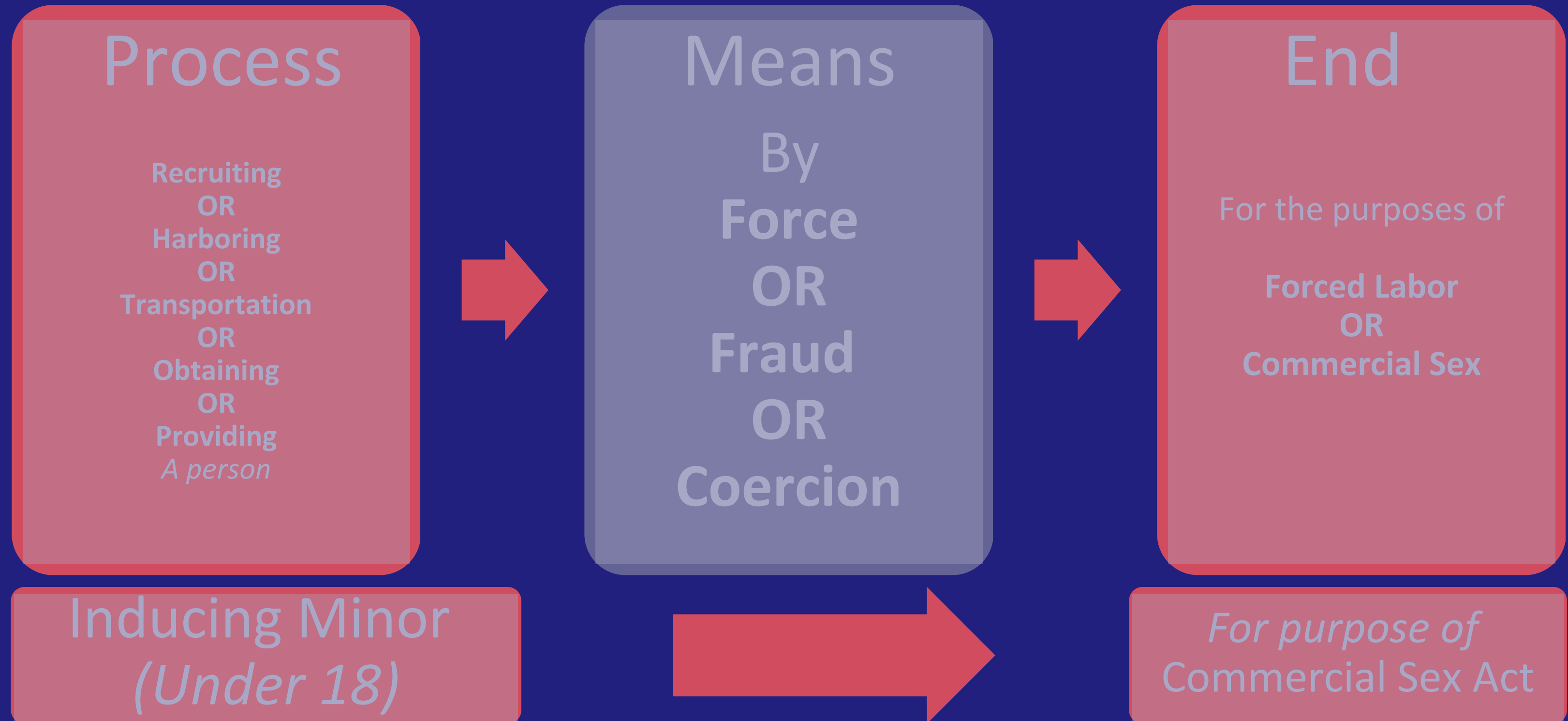
Reauthorized in 2003, 2005, 2008, 2013, 2017, 2018. 2022

Human Trafficking Defined – 22 USC § 7102(11)

The term “severe form of trafficking in persons” means:

- (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**; 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**.

3 Elements of Trafficking - 22 USC § 7102(11)



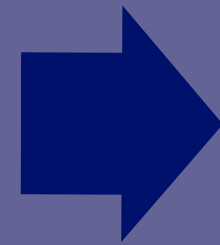
California State Law AB 22 – CA Trafficking Victim Protection Act (2005)

- **Penal Code § 236.1**
- **Prohibits Human Trafficking for**
 - **certain sex offenses**
 - **forced labor or services**



PROCESS

Deprive
or
Violate
the
personal
liberty of
another

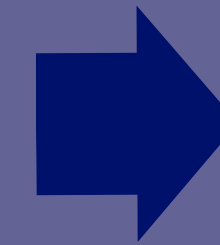


MEANS

THROUGH THE USE
OF

- FORCE
- FEAR
- FRAUD
- DECEIT
- COERCION
- VIOLENCE
- DURESS
- MENACE, OR
- THREAT OF
UNLAWFUL INJURY

*MEANS ARE ASSUMED FOR
MINORS ENGAGING IN
COMMERCIAL SEX



END

Labor
Services
and/or
Commerical
Sex

PROCESS: HOW DID THE SURVIVOR ENTER INTO THE SITUATION
MEANS: HOW WAS THE SURVIVOR KEPT IN THE SITUATION?
ENDS: FOR WHAT PURPOSE?



ENDS

- (1a) What labor or services was the victim made to perform?
- (1b) Describe the extent of the labor or services (e.g., hours/day, days/week, no breaks, etc.).
- (1c) For commercial sex cases only: what was the thing of value exchanged for the sex act (e.g., money, shelter, food, protection)?
- (1d) For debt bondage or peonage: Who controlled the victim's debt and how did that person decide whether the victim's labor or services reduced what was owed?

MEANS

- (3a - Force) What physical acts did the perpetrator do to make the victim perform the labor or services identified in the Ends (e.g., pushing, kicking, chaining or locking up the victim)?
- (3b - Coercion) What implicit or explicit threats did the perpetrator use to make the victim perform the labor or services identified in the Ends?
- (3c - Coercion) What perpetrator actions or behaviors created an environment that made the victim believe they would suffer serious harm if they didn't perform the labor or services identified in the Ends?
- (3d - Serious harm) What serious harm did the victim believe they would suffer if they didn't perform the labor or services identified in the Ends?
- (3e - Fraud*) What false promises or statements did the perpetrator make to encourage the victim to perform the labor or services identified in the Ends?

PROCESS

- (5) What intentional acts did the perpetrator do to put or keep the victim in the situation? What steps did the perpetrator take to make the victim perform the Ends?

INSTRUCTIONS:
Complete this worksheet in numerical order, as each step builds on the last to help you connect the facts to the legal definition. Begin with Questions 1a–1d (Ends) to identify the labor or services and related facts, then select the specific type of trafficking in Question 2 (on page 2). Next, answer Questions 3a–3e (Means) to analyze how the perpetrator caused the victim to perform the labor or services, and then select the corresponding Means in Question 4 (on page 2). Continue with Question 5 (Process) to identify the actions the perpetrator took to put or keep the victim in performing the labor or services, and then select the Process element in Question 6 (on page 2). Finally, use Question 7 (Summarize) to connect all the elements into a legal theory. If you identify gaps, use Question 8 (Follow-Up Questions) to develop targeted questions for further fact-gathering.

Available Here:
<https://castla.app.box.com/v/EMPWorksheet>

Coercion legally defined in CA Penal Code 236.1(h)(1) / 22 U.S.C. § 7102

Threat of serious
harm to or
physical restraint
against a person

Any scheme, plan, or
pattern intended to
cause a person to
believe that failure to
act would result in
serious harm or
physical restraint

Abuse or
threatened
abuse of
legal
process

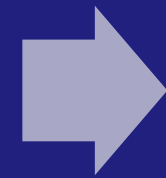
Catch-All

Abuse of Legal Process (TVPPRA 2008)

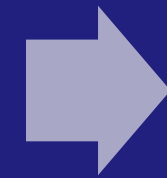
22 USC § 7102(1), 18 USC § 1589(c)(1) Forced Labor, 18 USC § 1591(e)(1) Sex Trafficking

Use or threatened use of a law or legal process

- Administrative
- Civil
- Criminal



In any manner or for any purpose for which the law was not designed



To exert pressure on another person to cause/Refrain them to take action

Serious Harm (TVPA 2008)

18 USC § 1589(c)(2) Forced Labor, 18 USC § 1591(e)(4) Sex Trafficking

- Any harm whether:
 - Physical
 - Psychological
 - Financial
 - Reputational harm
- That is sufficiently serious under all surrounding circumstances to compel a reasonable person of the *same background and same circumstances* to perform labor or commercial sex act to avoid harm.

Misconception #1:
Trafficking requires
transportation across
borders

Fact: No movement is
required

Process/Action

Recruiting; or

Harboring; or

Transportation; or

Obtaining; or

Providing



Misconception #2: You
can consent to human
trafficking

Fact: You can't consent
to an illegal act.

No "Means" necessary for
minors (under 18) induced
into commercial sex act

Means

Force; or

Fraud; or

Coercion



Misconception #3:
Individuals cannot be
paid for work

Fact: Lack of Payment is
NOT an element of
trafficking crime. Some
trafficking victims do
receive money

End/Purpose

Involuntary Servitude; or

Debt Bondage; or

Slavery; or

Sex Trafficking

Labor Exploitation

Actions in the work place that violate labor law.

Extreme exploitation absence of living wage or long work hours

Poor working conditions such as health and safety hazards

Arbitrary discipline, such as verbal or physical abuse

Fear and intimidation when they speak out, organize or attempt to form a union

Labor Exploitation

- “I don’t feel like I could find another job.”
- Child Labor
 - Minors under the legal working age

Human Trafficking

- “My employer said that if I didn’t do what I was told she would call police/deport/black list /hurt me or people I care about.”

Sex & Labor Trafficking Examples

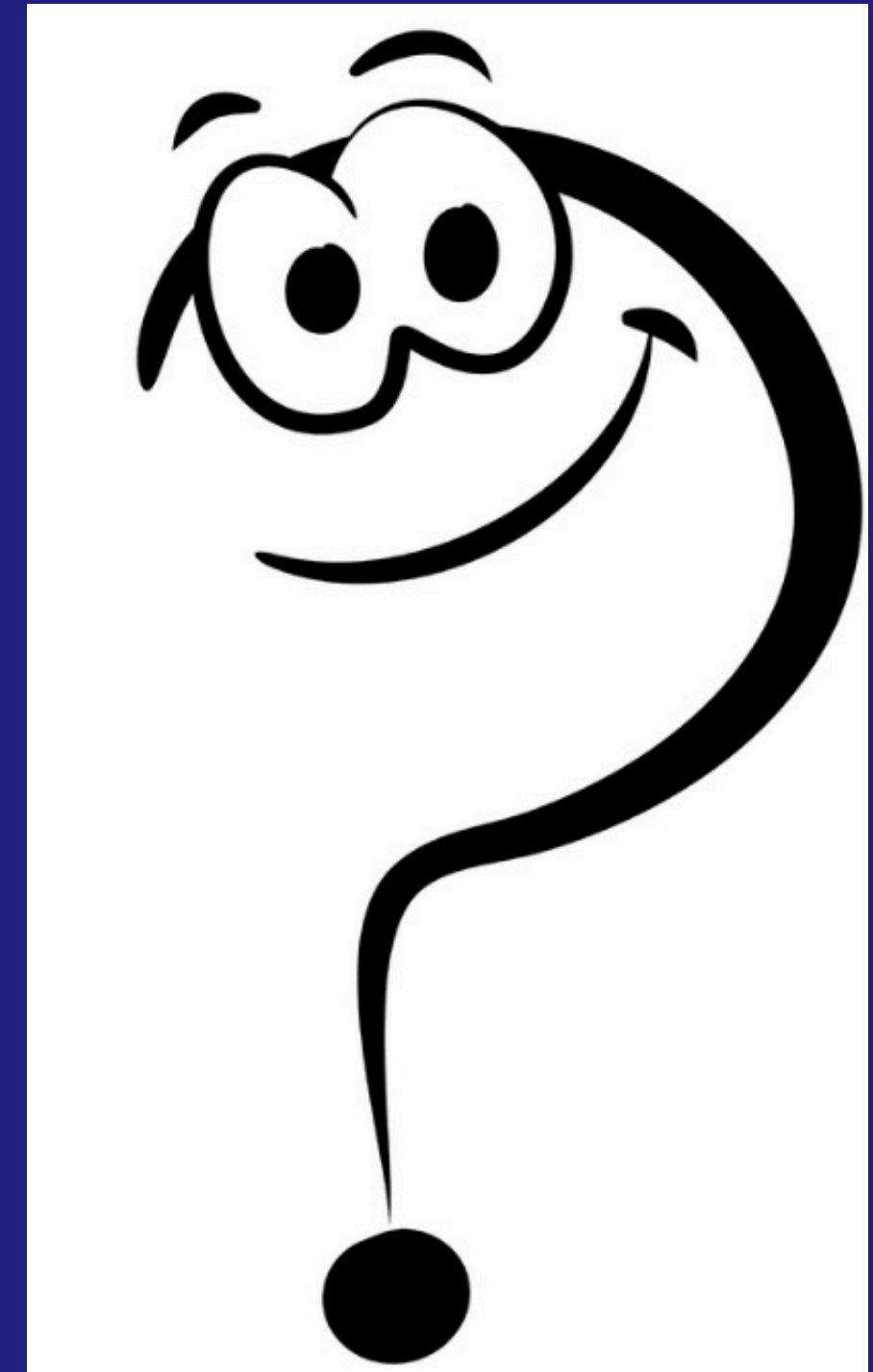
Maya (16, USA) was kidnapped by two men who kept her in a locked box. They sexually assaulted her and physically harmed her. When she was not forced inside the locked box, the men forced her to cultivate marijuana without pay. She was arrested on drug charges.

Angela (34, USA) started running away 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 man who forced her to engage in prostitution through beatings and other abuse. Angela was arrested two separate times for commercial sex and after years of abuse convicted of sex trafficking other minors

Alex (14 El Salvador) was recruited by gang members to steal gold necklaces. He was forced to remain away from home and sleep in stolen vehicles while working for the gang. When Alex was finally able to escape and return home his family called child welfare for help. They put Alex in a group home but never identified him as a victim of labor trafficking for forced criminality. At 16 Alex started stealing cars with a group of boys his own age and one brought a gun. He now faces felony larceny charges

Key Questions to Keep in Mind

- Was the person recruited? What were they promised?
- Were passports or other identity 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?
- Did someone have to do something illegal and someone else got money for it?
- Is the person afraid of his/her employer? Why?



Do not rule out ...

- Get to keep some money from the trafficking experience
 - Expresses that they are doing this for family or a loved one
 - Expresses that no one is making them do this
 - If they are under 18 and do not have trafficker/pimp
 - If they are rude/aggressive with LEA/Court
- ⋮
- Bank accounts/paystubs
 - Cell phones
 - Cars
 - Day off/some freedom movement
 - Return to work for same employer
 - Has stable housing
 - Lives at home

What industries are people trafficked into?

Commercial
Sex

Domestic
Service/ Au
Pairs

Restaurant
Work

Hair Braiding
Salons

Garment
Industry

Magazine crews

Illegal
Acts/Illegal
Services

Nail/Massage
Salons

Manufacturing
work

Home care/
Elder care

Construction

Hospitality

Housekeeping

Janitorial

Forced peddling

Agricultural
work

Cleaning
business

Marriage

Human Trafficking for Forced Criminality



- Commercial Sex
 - Recruiting/Trafficking Others
 - Smuggle, Sell, Cultivate, Use drugs
 - Theft – Property, Auto
 - Gang Activities
 - Scams; Stolen Checks
 - Identify Theft
 - Benefits fraud
 - Loitering for sales
 - Truancy
- ... Can be a form of forced labor or services!



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Human Trafficking- Forced Criminality

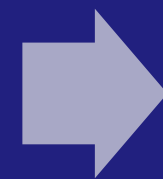
JIMMY LOPEZ
LIVED- EXPERIENCED EXPERT



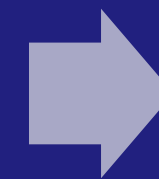
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Peer Recruitment, Teaching, Facilitating Trafficking

Is this labor trafficking for forced criminality?
Was Force, Fraud or Coercion Used by Third Party?

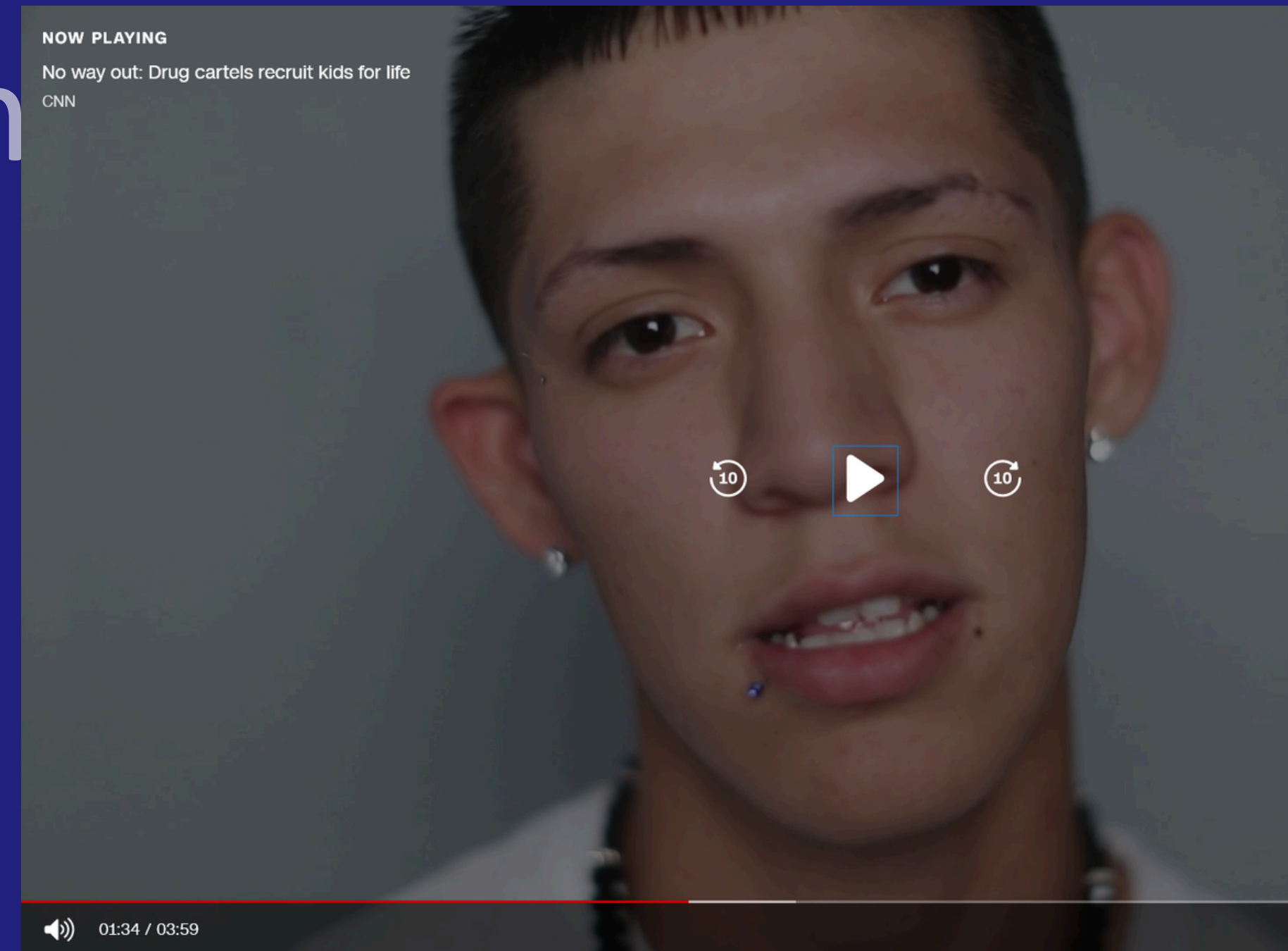
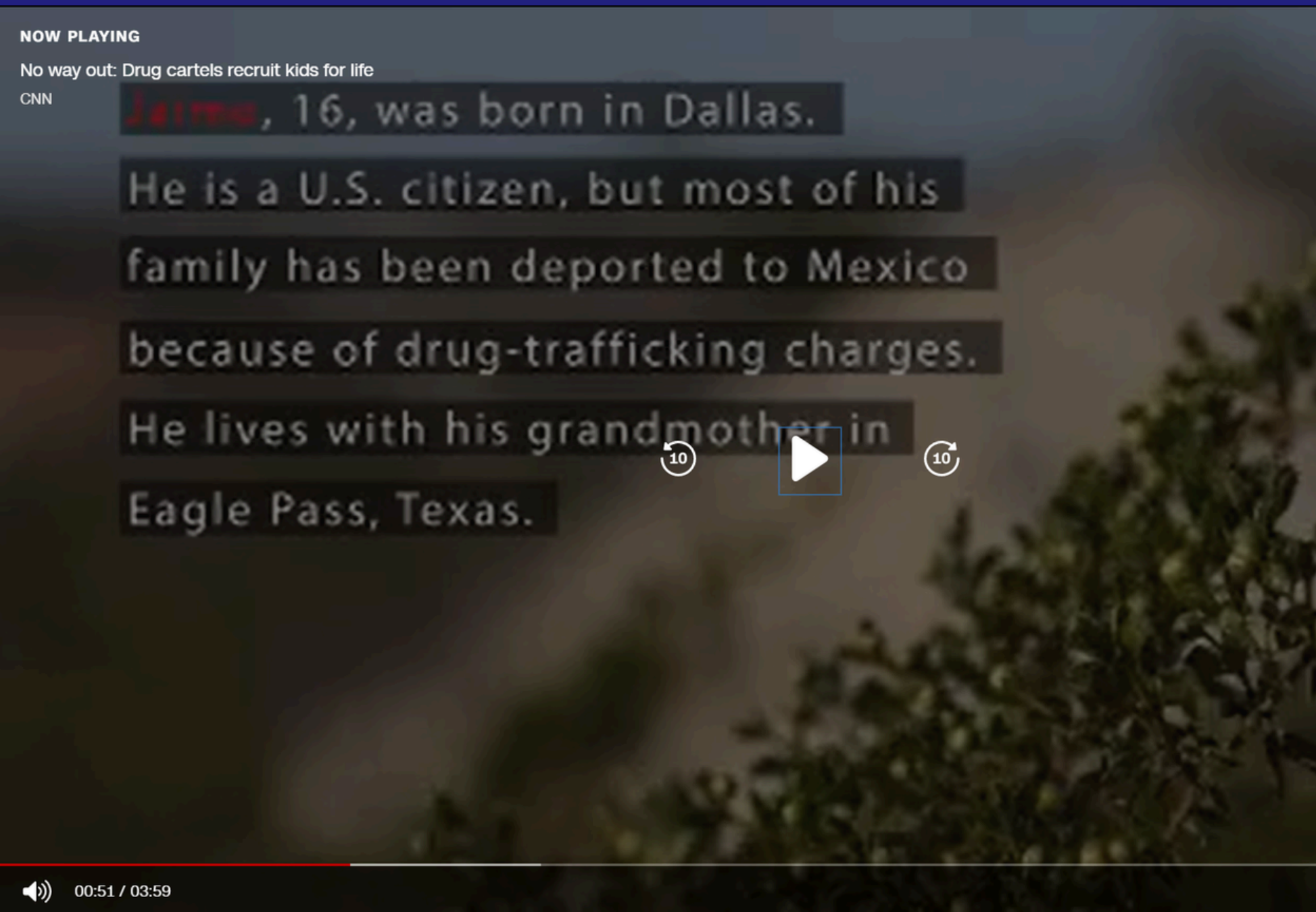


Is it Mutual Aid?
Is a Ind. helping another Ind. meet unmet needs.
Not Commercially Benefiting/No Third Party

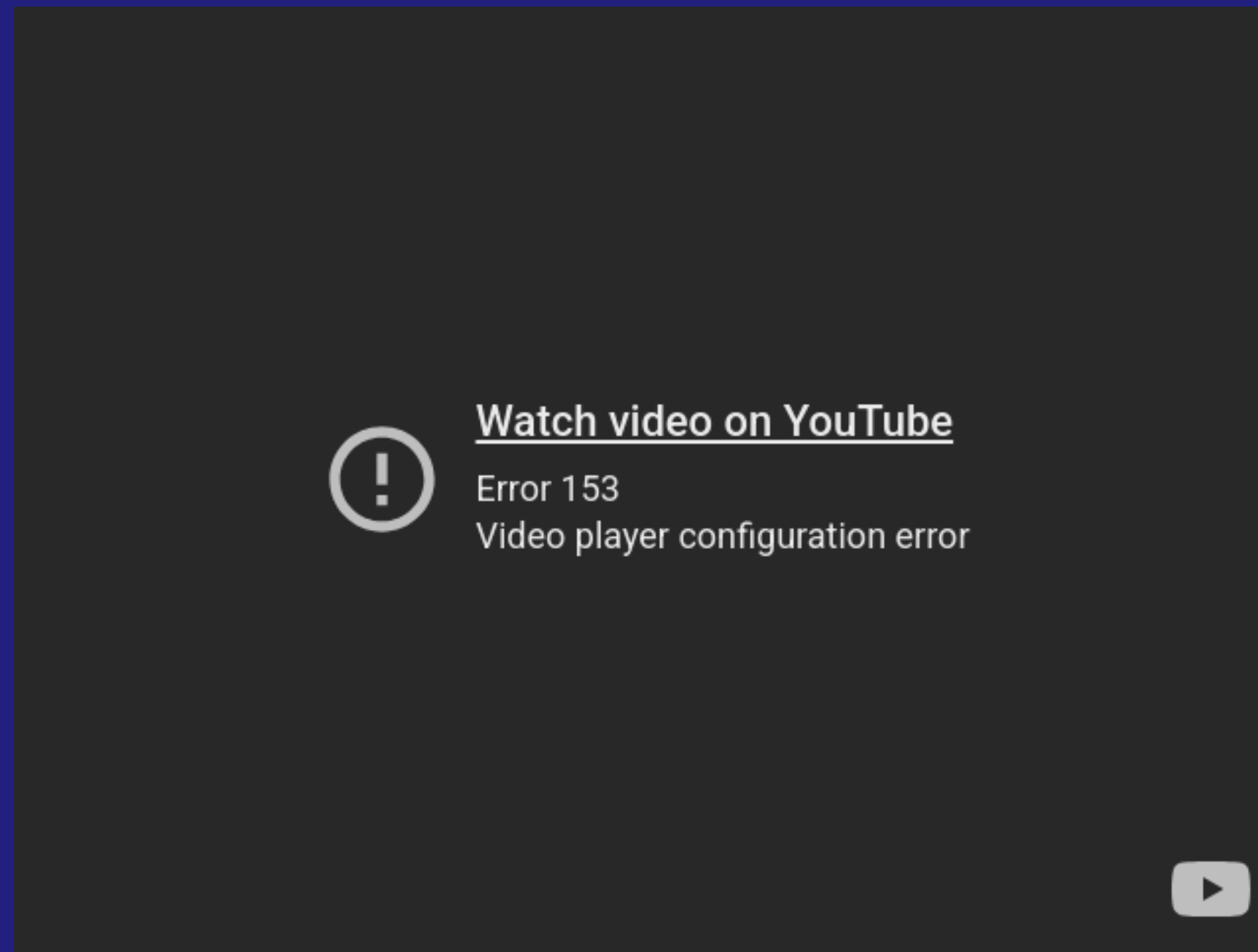


Is a ind. using force, fraud or coercion and trafficking another ind?
Is a ind inducing a youth into commercial sex and commercially benefiting?

Forced Criminality: Drugs



Using Force or Violence to Compel Members of a Gang to Commit Criminal Acts



Key Things to Look for With Gangs and Potential Victims

- Consider the circumstance and each time period of vulnerability
 - Is the ind. homeless and acting out of necessity? Is there a third party exploiting that vulnerability? Is there timeframes when its HT vs. voluntary
- Consider whether the offense is gang-related
 - Who is the leader/s of the gang? How old are they? Was the ind. afraid of the leader? Why was the ind. afraid?
- Consider the relationship between the ind. and other involved parties.
 - Is an adult involved with child victim? If so, what is the relationship between the child and adult? Are there any other factors underlying the relationship? Does the child or their family owe a debt?

Common Examples of Forced Criminality Involved in Gangs

- An adult gang leader orders a youth to transport drugs, carry weapons, or commit violent acts against rival gang members and threatens them with physical violence or serious harm if they refuse.
- An older adult family member coerces a youth to participate in a drug trafficking ring or join a gang other family members are associated with.
- A drug dealer offers to erase a family member's debt if the youth helps them commit a robbery or burglary.

Reality of Human Trafficking Involving Gangs

Many human trafficking victims engage in criminal behavior as part of their victimization:

- Commercial Sex
- Facilitating Trafficking (Bottoms/other gang members)
- Drug Trafficking
- Carrying/Trafficking Weapons
- Robbery/Burglaries
- Smuggling Others
- Kidnapping
- Theft
- Carjacking
- Violence (gang-involved youth), including murder

Man arrested in fatal punishment of teen gang member

Dec 28, 2005 Updated Oct 14, 2013

WAUKEGAN, Ill. (AP) -- An adult gang member was arrested in connection with the beating death of a 16-year-old who was being punished for breaking a gang rule, according to Waukegan police.

Police arrested Rayon Edwards, 27, in Zion on Tuesday. Edwards is charged with first-degree murder for ordering Friday's beating, Deputy Chief Dan Greathouse said.

On Friday, police arrested two 16-year-olds who allegedly carried out Edwards' order that Dontrell Bell receive "a 15-second violation" or punishment. One allegedly held Bell's hands behind his head while the other threw punches at Bell's chest for 15 seconds, Greathouse said.

After about 10 punches, Bell collapsed and stopped breathing, Greathouse said.

Bell died of blunt trauma to his chest, Lake County Coroner Richard Keller said.

CHILD SOLDIERS AND LTFC

- Child Soldiers internationally are seen as victims of human trafficking
- Youth who are experiencing LTFC in the USA are comparable to child soldiers, specially gang involved youth
- Similar Vulnerabilities
 - Obedience, ease of indoctrination, physical vulnerability
 - Economic and protective benefits of joining gangs
 - Traumatic histories common among child soldiers and gang involved youth
- Similar Exploitation Mechanisms
- Recruitment through deception, coercion, and violence
- Forced participation in dangerous activities

May 2024 State Wide Guidance for County Child Welfare on LTFC

- DOCUMENTATION OF LABOR
TRAFFICKING OF CHILDREN IN THE
CHILD WELFARE SERVICES/CASE
MANAGEMENT SYSTEM

- Available at https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACINs/2024/I-16_24.pdf?ver=2024-05-13-110042-667

Labor Trafficking Involving Child in Criminal Behavior:

- Special Project Code to identify a child in LTFC
- Code is utilized to identify a child where a third party profits from the child's involvement in performing an illegal act on the third party's behalf.
- Examples include, but are not limited to, drug/weapon smuggling or sales, drug cultivation and/or sales, fraud/scams, theft, or other activities required by a gang, criminal organization, parent, or guardian or other third party.
- This can also include children who a trafficker forces or coerces to recruit, monitor, or facilitate the commercial sexual exploitation of other children

Understanding Dynamics of CSEC, Trafficking & Abuse for Child Welfare

Abuse-parent is trafficker

- Assault
- Kidnapping
- DV
- Rape
- Labor Trafficking/CSEC

Neglect-third-party trafficker

- Labor Trafficking/CSEC



WHEN YOU CALL: ASK TO DOCUMENT IN DCFS HOTLINE

Injury Harm Detail Code 858
Exploitation
Sub-abuse Categories

- Commercial Sexual Exploitation
- Exploiting Child's Labor
- Involving Child in Criminal Behavior

Client Services - Referral [L, Mother] - [Allegation [L, Susie (15)]]

File Edit Search Action Associated Attach/Detach Window Help Toolz

Conclusion

Current Conclusion

People Involved

Alleged Victim: L, Susie

Abuse Category: Exploitation

Allegation Conclusion: Substantiated

Conclusion Date: 04/12/2016

Abuse Information

+ Abuse Subcategory

Conclusion History

Allegation Conclusion History

Date Conclusion Grievance

Allegation Conclusion modified as a result of

Select Abuse Information

Abuse SubCategory

Child Porno, Knowledg/Involvmnt o

Commercial Sexual Exploitation

Exploiting Child's Labor

Involving Child in Criminal Behavior

Other Exploitation

Selling/Offering to Sell Child

Why is this understanding important for Prevention & Response

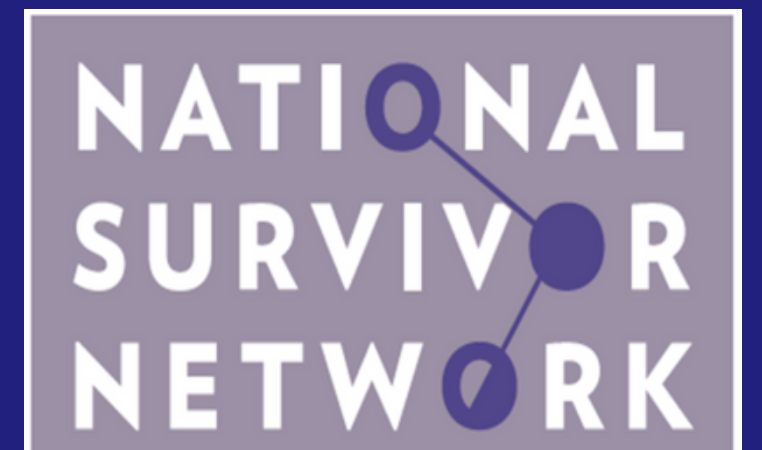


- Understand criminal liability
- Understand legal benefits available
- Understand the psychosocial education needed to prevent this from happening and better serve trafficked individuals



NSN Survey on Impact of Criminal Arrest and Convictions

- 90.8% of survivors reported being arrested or convicted of a crime
- Age of Arrest
 - 41.6% of arrested as minors
 - ~52.3% first trafficked as children.
 - 2 arrested before the age of 10
- 40% arrested 9 times or more
- >50% believed that 100% of their arrests/charges/convictions were directly related to their trafficking experience
- Type of Arrest
 - 65.3% arrested for prostitution
 - 42.7% for solicitation
 - 25.3% for intent to solicit.
 - 40% arrested for drug possession
 - 8.7% for drug sales
 - 60% reported being also arrested for other crimes



91% of youth
reported being
offered lucrative
work that was
fraudulent or sex
trafficking

- THE MAJORITY (81%) OF LABOR TRAFFICKING CASES REPORTED IN THIS STUDY WERE INSTANCES OF HUMAN TRAFFICKING FOR FORCED CRIMINALITY (FORCED DRUG DEALING)
- 23% OF YOUTH WITH "FOSTER CARE HISTORY" WERE TRAFFICKED
- IN LOS ANGELES 50% LABOR AND 50% SEX TRAFFICKED
- IN OAKLAND, LABOR TRAFFICKING WAS MORE PREVALENT THAN SEX TRAFFICKING (60%)

MURPHY, LAURA, "LABOR AND SEX TRAFFICKING AMONG HOMELESS YOUTH: A 10-CITY STUDY," LOYOLA UNIVERSITY NEW ORLEANS MODERN SLAVERY RESEARCH PROJECT (2016)

THE COVENANT HOUSE 2017 STUDY- SEX & LABOR TRAFFICKING
OF CHILDREN

What is a good framework to ID all cases of Human Trafficking eligible for P.C. 236.14?



- Intakes should include to ID for sex and labor trafficking cases *specific questions about criminal acts forced to commit* for the benefit of the trafficker
- If you can only ask two questions:
Did you ever do something illegal or something you thought might be illegal, and someone else got all or most of the money? Yes/No
- *Have you ever had sex for money and someone else received some/all of the money? Yes/No*
- If Yes, screen for HT
- In Sex trafficking cases if a victims is forced to steal, engage in benefits fraud, sell drugs etc this case should be ID as a Sex and Labor trafficking, the labor being the forced criminality.

PC 236.14 –Human Trafficking Vacatur



- Except in the case of juvenile records – the best option for ALL HUMAN TRAFFICKING VICTIMS is to file under P.C.236.14
 - Statute permits both vacatur and sealing of adult and juvenile arrest records
- - Client can still be on probation and have outstanding fines or fees at the time of filing

PENAL CODE

§1473.7

V.

§236.14

For convictions only NOT arrests

1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere,

(2) newly discovered evidence of actual innocence.

Timing:

(3) Must be out of judicial custody/ reasonable diligence standard if notice of immigration proceedings

(

PC 236.14



- Allows for persons who have been arrested, convicted, or have a juvenile adjudication of a non-violent offense while they were a trafficking survivor to:
 1. Have the verdict set aside
 2. Have arrest records sealed
 3. No time limit for filing
- ELEMENTS
 - Must prove (by clear and convincing evidence):
 - Victim of trafficking at time non-violent crime committed
 - Crime direct result of being a trafficking victim
 - Best interest of the petitioner and in the interest of justice

PC 236.15 –Domestic Violence Vacatur



- Petitioner/victim of intimate partner violence or sexual violence at the time of the qualifying crime.
- The arrest or conviction of the direct result of being a victim of intimate partner violence or sexual violence.
- It is in the best interest of justice.

PC 236.15 –Domestic Violence Vacatur



236.15 ONLY

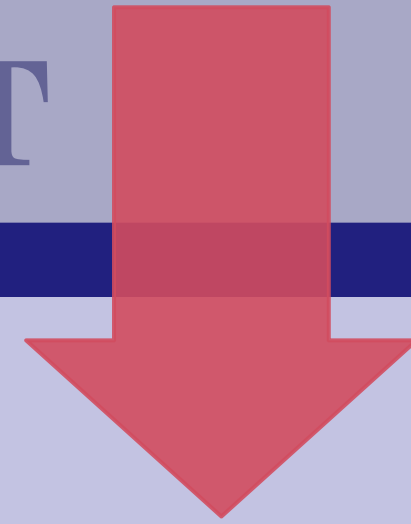
- filed reasonable time after the person ceased to be a victim of intimate partner violence or sexual violence or within a reasonable time after the petitioner has sought services for being a victim

Elements of Vacatur Relief



• Cal. Pen. Code 236.14(a) &(t)(3)

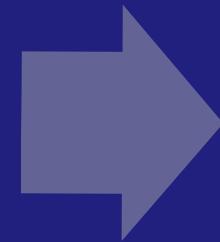
Arrest or Conviction While a Victim of HT



Definition: Victim of human trafficking” means the victim of a crime described in subdivisions (a), (b), and (c) of Section 236.1.

Process

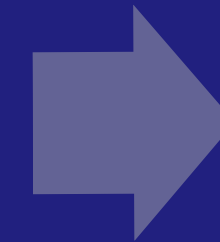
Deprive
or
Violate the
personal liberty
of another



Means

Through:

- Force
- Fear
- Fraud
- Deceit
- Coercion
- Violence
- Duress
- Menace, **OR**
- Threat of Unlawful Injury



End

**With intent to:
Commercial Sex,
Labor or Services**

Persuading a Minor
(Under 18)



*To engage in
Commercial Sex Act*

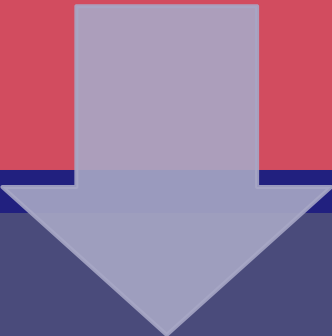
PC 236.1 (g)

The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.

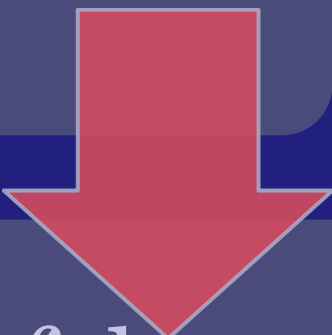
Elements of Vacatur Relief

For Non-Violent Offenses

- (Cal. Pen. Code 236.14(a), (t)(1))



Definition: Violent offenses
Defined in Penal Code §667.5c EXCLUDED

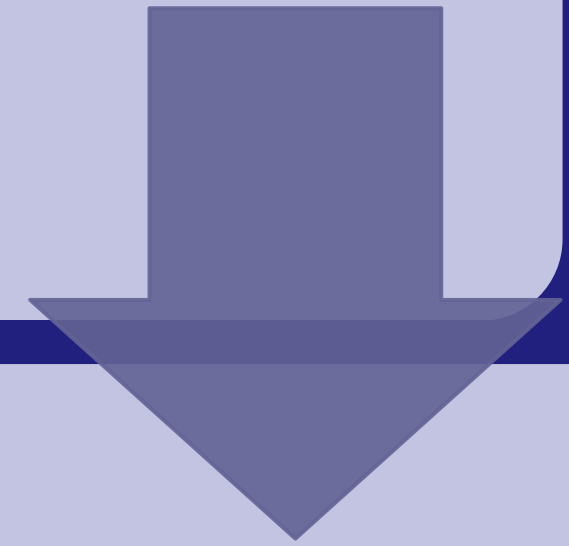


Examples of what is excluded: murder, rape, Any felony punishable by death or life, robbery, kidnapping
Note: Charges for HT/pimping not excluded

Elements of Vacatur Relief

- Cal. Pen. Code 236.14(a)

Committed as a direct
result of being a victim
at time of victimization



Definition: No definition.
Direct Result provided

Elements of Vacatur Relief

Cal Pen. Code 236.14(g)(3)

In interests of justice



Definition: No



Applies to Adults only. For Children presumption that element met. See 236.14(j)

Catch All



- 236.14(r) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

Supporting Evidence for 236.14(m)

- “Official Documents” can be provided by to Court which is defined as:
 - Any document issued by federal, state or local agency that tends to show petitioner’s status as victim of HT.
 - Official Documents are not required.
 - Likely Hearsay Exception because of the language in the statute.
 - Many Victims Apply only with detailed declaration
- Prosecutors Guide contains good information to argue standard under 236.14
 - <https://www.sccgov.org/sites/da/Documents/IPG%20Memos/2017-IPG28.pdf>

Drafting the Petition and Supporting Documents



- The critical components of the petition include:
 - Motion
 - Stipulation
 - Notice of Concurrent Filing (for a multi-jurisdictional petition)
 - Client's sworn declaration
 - Minute orders from each case
 - Corroborating evidence: (Many just have client declaration)
 - Sworn statements of witnesses/other victims from the same trafficker
 - Criminal convictions of the trafficker
 - Photographs of tattoos exploiter required victim to obtain/injuries
 - News articles on the trafficker
 - Letters of support from therapists, mentors, law enforcement, employers, etc.
 - Medical records
 - [Proposed] Order

Forms



- Only Available for Juvenile Cases
 - JV-748 and JV-749
 - FILE with declaration
 - Court Rules for Adults
 - Standard 4.15. Vacatur relief under Penal Code section 236.14
- https://courts.ca.gov/cms/rules/index/standards/standard4_15



To Access Templates: 236.14 working group - Airtable



<https://airtable.com/apptITAYsI3IIGEsK/pagz4dLEZjF9ZUnIM/edit>

PC 236.14 Procedural Rules

- Petition must be served on the state or local Prosecutorial Agency that obtained the conviction or had jurisdiction over charging decision.
 - Must serve and have service of process for each agency (All DA's involved)
 - If no response within 45 days, the court shall deem it unopposed and may grant it.
- Court may, with agreement of all involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdiction.
- If opposed or if the court deems it necessary, it may conduct a hearing on the petition
- 236.14(n) provides that petitioner can be excused from appearing in person and may appear telephonically or by video conference if they have a compelling reason

Practical Considerations Surrounding the Petition Process with Prosecutors

- Advocacy for Prosecutors to AGREE to the relief requested without a hearing.
- Contact all prosecutorial agencies before filing a petition.
 - Keep in mind that information shared with the prosecution may not be confidential, so always obtain informed consent from your client before communicating with the prosecution informally.
 - Share draft motion AND document to sign to agree to (1) stipulation to not oppose the case (2) consolidate cases if needed
- Look for updated contacts in resources table and update table to help others
- PC 236.14(e) allows multiple jurisdictions in one hearing BUT requires the agreement of EACH prosecutorial agency.
 - the Los Angeles City Attorney's Office, Los Angeles DA's Office, Ventura County DA's Office, San Diego and Orange County DA's Office all have agreed to consolidate cases.
- If, prior to filing the petition for relief, you reach an agreement with all involved agencies to consolidate, you should file a stipulation and proposed order to consolidate with the petition.

Practical Considerations – Consolidating Multijurisdictional Petitions

- In advance of filing the petition, determine the best court for the client based on geography, the severity of any given charge, and any known background of particular prosecutorial offices.
- It is important that the prosecuting agency with authority over the “lead case” – the case adjudicated in the department you seek to consolidate in – will assist you in consolidating via stipulations.
 - It is more work for the agency that consents to being the lead case, so if you know the agency will be uncooperative, may be better to file somewhere less geographically convenient.

Practical Filing Considerations

- Given the rareness of filing, many clerks have rejected filings made by mail because they simply didn't understand the petition.
- In order to assure proper filing, filing in person in the specific department is necessary.
 - This is also a good time to speak with the Clerk to get on the calendar if you anticipate a hearing will be required.
 - If no response of prosecutorial agency in advance of filing, a good practice is to ask for a court day ~60 days from when you file.
 - Best to get on the calendar even if stipulation to make sure judge reviews case
 - Contact Judge's clerk one-two weeks after filing to check in on case

Practical Considerations- Confidential Filing

- The vacatur petition must be placed in a sealed envelope
 - Seal in front clerk to get stamped copy
- Envelope holding the filing: Marked
 - “Confidential (Cal. Penal Code §236.14(q) and Cal. R. Ct. 4.15(b))-May Not Be Examined Without Court”
- Affix a cover sheet onto the envelope.
 - A sample cover sheet available here:
<https://castla.box.com/v/23614coversheet>
- Bring an extra copy of the filing for records and have court clerk stamp copy as received.
- Have service of process forms stamped at same time and mail /drop off that day



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Okay so I created this table where you can see contacts for 236.14/15
Here <https://airtable.com/appVzzZ7AUiaS2ILN/shrnnPPxIDrt9fyji>

| Resources to Support Collaborative Work

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SB 823-Other Judicial Issues

- Conviction already vacated BUT record not sealed
- Conviction expunged under different standard
- Likely broader standard than the Affirmative Defense
 - Does not require additional showing of coercion or that D acted out of reasonable fear of harm/ can apply right after plea
- No need to pay financial restitution ordered unless it is for another victim.

Hearings

- The initial court date may turn out to be a jurisdictional hearing instead of on the merits.
 - Judges are unfamiliar with the procedure and wary of granting relief for cases in other jurisdictions.
 - Be prepared to educate the judge and/or prosecutorial agencies on the procedural mechanisms.
 - Client does not need to appear unless merits/can appear telephonically
- Merits Hearings
 - One contested hearing aware of.
 - Don't wait file if DA is not responsive this forces them to take position on case

Additional Follow Up After Relief is Granted

- If the client is on probation, ensure that the probation officer receives a copy of the order granting relief.
 - The order automatically terminates probation, but you want to ensure they are aware of it to prevent any unnecessary issues
- At the hearing, ask the clerk for certified copies for every jurisdiction where relief was granted. Mail these directly to the clerk in the other departments.
- Follow up with the financial department of the court if court grants client's request to reimburse fines or fees.
- Notify all other prosecuting agencies involved.

Results of Vacatur

- Sealing & destruction of all records
 - DOJ
 - Court Records
 - \$\$\$\$\$\$ (except restitution)
 - Fingerprints/booking records
 - Police/arrest records
 - Probation records/CDCR/Parole



How is a Sealing/Vacatur Different than an Expungement in CA?

- Sealing/Vacatur records means ALL documents related to arrest are sealed for 3 years and then destroyed
- Expungement in CA is not a true expungement where record is destroyed, instead still see arrest but result is “dismissed”
- Vacate under 236.14: means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section.
 - The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that he or she may thereafter state that he or she was not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

Make Sure Your Order is Enforced

Recommended follow-up in six months

- Background check completed to see if removed
- Follow up DOJ if needed
 - Correction packet to the DOJ to enforce order. Include the following:
 - BCIA 8706 form:
 - • This form should list the attorney's address to protect the client's privacy.
 - • The attorney should list their name/organization as a designate at the bottom of the form.
 - Form also requires a wet signature. E-signatures will be rejected.
- Client's most recent LiveScan

Employment
Advisement to
client after PC
236.14 granted

- Normal CA Arrest/ Expungement also 236.14:
 - Employer cannot ask an applicant about an arrest that did not result in a conviction. CA Labor Code § 432.7
 - Expungement granted ≠ dismissal on the record ≠ arrest that did not result in conviction
 - Can mark “No” on job applications for most private employers if asked about convictions
 - New CA law: can not run background check until AFTER employment offer

Arrests

- Generally arrests not leading to convictions cannot be considered for employment purposes.
 - California Labor Code section 432.7
 - Employer cannot ask someone applying for a job for information about an arrest or detention that did not end in a conviction
 - Employer Cannot Ask about referral or participation in any diversion program
- There are some narrow exemptions for law enforcement agencies and concessionaires hired by state or local government.

Duty to register as a sex offender

- Under regular expungement:
 - If you have been required to register as a sex offender as a result of a conviction, you have to make a different motion to the court in order to be relieved of this requirement. A dismissal will not relieve you of your duty to register as a sex offender. Your status as a registered sex offender will continue to be available to the public on the Internet under Megan's Law.
- Under 236.14 believe it would be automatically removed
 - Only apply when pimping & pandering as others would be violent offenses

Assistance For Human Trafficking Survivors With Out of State Arrests/Convictions

- <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>



Freedom Network USA

Engaging Clients in the Process

- **Manage expectations (length of process, type of evidence)**
- **Assess how involved client wishes to be in motion/ the creation of the declaration**
 - **Some clients have wanted to edit their own statement, others wanted as little involvement as possible.**
- **Recommend training on trauma-informed interviewing/Coordinated SS needs/Triangulation and Self Care for Attorneys**

If you ID HT victim.....



- They are eligible for a lot more benefits
- Immigration: T-visa eligible
- They are also eligible for AB 629 victim compensation benefits (up to \$20,000())
- Additional specialized social service support



AB 629

**INCOME LOSS COMPENSATION FOR
HUMAN TRAFFICKING SURVIVORS**



VICTIM COMPENSATION BOARD



WHAT IS THE VICTIM COMPENSATION BOARD?

Established in 1965, CalVCB is a state program dedicated to providing reimbursement for many crime-related expenses to eligible victims who suffer from injury or the threat of physical injury as a direct result of a violent crime.

WHO CAN HELP SURVIVORS APPLY:

VICTIM REPRESENTATIVES

- CA licensed attorney
- Victim Advocates (system and community-based advocates)
- A SW designated by county social services to represent child abuse/or elder abuse victim
- A legal guardian or conservator of a minor or legally incompetent adult
- Immediate family member, parent or caregiver





ELIGIBILITY CRITERIA

RESIDENCY

- California resident at the time of the crime, or
- Non-resident victimized in California

TIMELY APPLICATION

- Must apply within 7 years of the date of the crime
- Victims under the age of 18 have 7 years after their 21st birthday to apply
- 7 years from when the crime could have been discovered

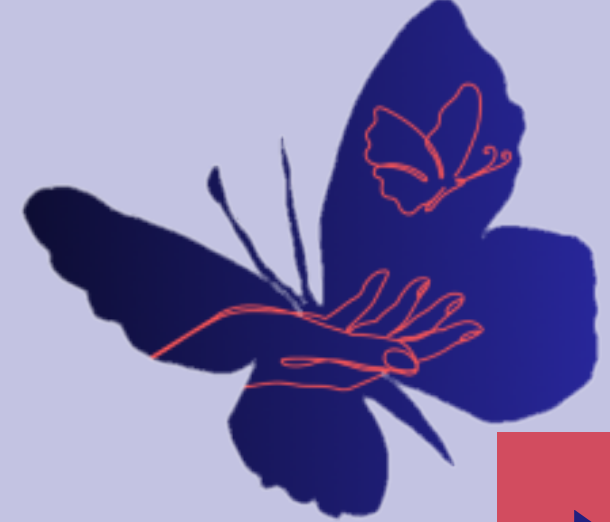
CRIMES COVERED

- Assault with a Deadly weapon
- Battery
- Child abuse
- Child sexual assault
- Child endangerment & abandonment
- Domestic violence
- Drunk driving
- Elder abuse
- Hate crimes
- Homicide
- Human trafficking
- Hit and run
- Murder
- Kidnapping
- Online harassment
- Rape
- Robbery
- Sexual assault
- Stalking
- Sexual battery
- Terrorism
- Vehicular Manslaughter
- Other crimes that result in physical injury or a threat of physical injury to the victim



CALVCB CANNOT DENY APPLICATION BASED SOLELY ON:

- Immigration Status
- Membership in, association with, or affiliation with, a gang, or
- Designation as a suspect gang member, associate or affiliate in shared gang database, as defined in Section 186.34 of the Penal Code.





WHAT IS COVERED

ELIGIBLE EXPENSES

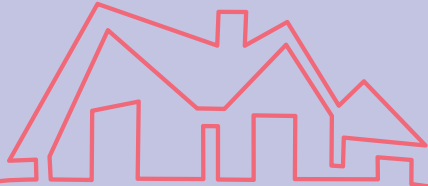
- Medical and dental treatment
- Mental health treatment or counseling
- Funeral and burial
- Income loss
- Support loss for dependents of a victim who is injured or dies
- Up to 30 days of income loss for the parent or legal guardian of a minor victim who is hospitalized or dies
- Job retraining
- Home or vehicle modifications for a victim left permanently disabled
- Home security installation or improvement
- Relocation
- Crime scene clean-up
- Veterinary fees or replacement costs for a guide, signal, or service dog
- Round trip mileage costs to medical, dental, or mental health appointments
- Mental health counseling for minors who witness a violent crime

NON - ELIGIBLE EXPENSES

- Personal property losses, except for medically necessary items like eyeglasses and hearing aids
- Expenses related to prosecuting a suspect
- Compensation for pain and suffering
- Expenses paid by insurance or another source of reimbursement or coverage
- Expenses submitted more than seven years after they are incurred Exceptions are:
 - When the victim is still liable for debt at the time the expense is submitted to CalVCB, or
 - The victim already paid the expense
- Expenses incurred while person is:
 - On parole, probation, or post-release community supervision for a violent felony
 - Incarcerated
 - Required to register as a sex offender



WHAT IS AB 629



Beginning January 1, 2020, AB-629 authorized CalVCB to provide compensation for income loss to victims of human trafficking in California.

FORMAL RECOGNITION OF ECONOMIC LOSS

Acknowledges financial harm trafficking victims suffer, treating income loss about as compensable damage.

SUPPORTED FINANCIAL RECOVERY

Helped survivors rebuild their lives by providing funds they could have earned if not trafficked.

INCOME LOSS BENEFITS

Survivors are eligible to apply for up to \$10,000 per year, for a maximum of 2 years in compensation for lost wages.

ELIGIBILITY

Human trafficking survivors can apply for compensation even if they have not reported the crime to law enforcement.



ELIGIBILITY FOR UP TO \$20,000

Survivor of Labor and/or Sex Trafficking, either residing in California or trafficked within the state.



PROOF OF VICTIMIZATION

- Police report or declaration from human trafficking case worker

PROOF OF INCOME LOSS

- Evidence Can include, but not limited to:
 - Statement under penalty of perjury from:
 - Applicant
 - Human trafficking case worker
 - Attorney
 - Witness
 - Must include: duration (started and ended) and hours worked per week





HOW TO APPLY



CalVCB Online allows you to:

- Apply for compensation
- Upload and submit documents
- Communicate with CalVCB

What is CalVCB Online? ▶



[Apply for Compensation](#)



[Service Provider Access](#)

Apply by Paper Form:
CalVCB
P.O. Box 3036
Sacramento, CA 95812-3036





Loyola Law School
Loyola Marymount University
Sunita Jain Anti-Trafficking Initiative



AB 629

INCOME LOSS COMPENSATION FOR HUMAN TRAFFICKING SURVIVORS

**FORMS & TEMPLATES AND
1 HOUR TRAINING AVAILABLE:
 WWW.LLS.EDU/SUNITAJAIN/
[HOW-TO-APPLY-AB-629](#)**



CA PC 236.14 CAST Resource Guide

<https://castla.app.box.com/v/CAVacaturGuide23614>



[www.lls.edu/sunitajain
/human-trafficking-
vacatur](http://www.lls.edu/sunitajain/human-trafficking-vacatur)

Register to Receive:

templates, technical assistance and to be connected with others who have filed P.C. 236.14 cases:

<https://airtable.com/apptITAYsI3IIGEsK/pagz4dLEZjF9ZUnIM/form>



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SJI POLICY PRIORITIES



PROCUREMENT



DATA



RESTORATIVE JUSTICE



FORCED CRIMINALITY



FOREIGN LABOR RECRUITERS



BUDGET



ACCESS TO VICTIM SERVICES



CLIMATE JUSTICE

Resources LTFC



- IDENTIFYING AND ADDRESSING THE NEEDS OF YOUTH WHO ARE LABOR TRAFFICKED BY FORCED CRIMINALITY IN THE LOS ANGELES AREA (MARCH 2024)
 - <https://www.lls.edu/media/loyolalawschool/academics/clinicexperientiallearning/sji/publicationsandreports/LTFC%20Report.pdf>
- YOUTH AT RISK: THE IMPACT OF LABOR TRAFFICKING BY FORCED CRIMINALITY (JULY 2024)
 - <https://www.lls.edu/academics/experientiallearning/sunita-jain/what-we-do-sji/convening/ltfcwebinar/>
- PREVENTING AND ADDRESSING CHILD TRAFFICKING (PACT)
 - Child Labor Trafficking in California (October 2019)
 - <https://pact.cfpic.org/wp-content/uploads/2021/08/Child-Labor-Trafficking-in-California.pdf>
 - Child Welfare Response to Labor Trafficking
 - <https://pact.cfpic.org/wp-content/uploads/2021/08/Fact-Sheet-Child-Welfare-Response-to-Labor-Trafficking.pdf>
- LA COUNTY POLICY GUIDE WHICH INCLUDES LTFC
 - https://policy.dcfs.lacounty.gov/Policy?id=5744#Section_Child_Labor_Trafficking
- MN ADVOCATES TOOL FOR CHILD WELFARE AGENCIES & SERVICE PROVIDERS
 - https://www.theadvocatesforhumanrights.org/Res/labor_trafficking_protocol_guidelines_final%202.pdf
- FRAMEWORK TRAINING ON LTFC
 - [HTTPS://SURVIVEANDTHRIVEADVOCACY.ORG/WP-CONTENT/UPLOADS/2024/04/LABOR-TRAFFICKING-AND-FORCED-CRIMINALITY-MAY-2024.PDF](https://surviveandthriveadvocacy.org/wp-content/uploads/2024/04/LABOR-TRAFFICKING-AND-FORCED-CRIMINALITY-MAY-2024.PDF)

Activity: Work with your group....
Think about past clients you have served and **write your own case example** that involves sex, labor trafficking and labor trafficking for forced criminality arrests & convictions

- You can combine different experiences in one example
- Write down your example/ put in chat
- List questions on 236.14 that come up for your specific cases as a group /put in chat
- Select one person from your group to read your example and questions



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