Building Human Trafficking Cases with Intimidated and Missing Victims
Jessie Plamp
Project Coordinator
International Association of Chiefs of Police
Zoom How-To

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• For the best meeting quality, close other windows during the webinar

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Help us Count!
About the IACP

*Shaping the Future of the Policing Profession*

- The International Association of Chiefs of Police (IACP) is the world’s largest and most influential professional association for police leaders. With more than 30,000 members in 150 countries, the IACP is a recognized leader in global policing, committed to advancing safe communities through thoughtful progressive police leadership.

- Since 1893, the association has been serving communities worldwide by speaking out on behalf of law enforcement and advancing leadership and professionalism in policing worldwide.

[www.TheIACP.org](http://www.TheIACP.org)

[www.TheIACP.org/humantrafficking](http://www.TheIACP.org/humantrafficking)
Funded by the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime

Includes federal, state, and local law enforcement and prosecutorial partnerships, alongside victim and social services providers; and relevant community stakeholders

Develops, expands, or strengthens service programs for victims of human trafficking

Enhances the capacity of law enforcement and other stakeholders to identify victims and provide justice for those victims through the investigations and prosecution of their traffickers

Requires ECM human trafficking task forces to implement collaborative, sustainable approaches to investigation, prosecution, and service delivery

Trauma-Informed

Victim-Centered

Proactively Identify & Serve All Human Trafficking Victims

Enhanced Collaborative Model to Combat Human Trafficking

Shaping the Future of the Policing Profession®
Four Core Functions of an Enhanced Collaborative Model Human Trafficking Task Force

1. Internal Foundations, Operation, & Collaboration
   These elements describe the internal processes, protocols, systems, and efforts that contribute to the task force functioning as a collaborative group. These elements are sometimes overlooked, but are important for the long-term success of a collaborative team.

2. Case Operations
   These elements describe core functions and considerations for anti-human trafficking case response, such as victim-centered investigation and prosecution, delivery of victim services, confidentiality, and referral protocols.

3. Data, Reporting, & Assessment
   These elements describe data collection, analysis, and assessment activities of a task force. They focus on the measurement, analysis, and application or integration of data to enhance task force activities.

4. Public & Community Engagement, Awareness, & Training
   These elements describe the activities that fall outside of ongoing task force coordination and direct case response. They focus on external or outward-facing activities, including community engagement through outreach, awareness, and training.

The Development & Operations Roadmap for Multidisciplinary Anti-Human Trafficking Task Forces can be accessed at www.theiACP.org/humantrafficking
Jane Anderson
Attorney Advisor
AEquitas
INNOVATIVE
Sustaining effective practices and promoting systemic change

INFORMED
Training, resources, and assistance supported by research and experience

PRACTICAL
Customized strategies that are accessible, responsive, and easy to apply
What AEquitas Does

**Resources**
Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices

**Consultations**
Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions

**Training Events**
Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals

**Partnerships & Initiatives**
Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training
Objectives

- Support victim participation
- Minimize and respond to witness intimidation
- Identify victim statements that may be admissible without the victim testifying
What is your biggest challenge when investigating or prosecuting human trafficking cases?

*Please answer in the Chat Box*
Challenges

Meeting the elements of trafficking statutes

Effectively supporting victims to allow for participation
Increasing Participation

- Build Trust and Rapport
- Provide Services
- Connect with Peer Support
- Maintain Contact
Inability to Participate

- Fear
- Need for Resources
- Trauma
- Failure of Communication
- Witness Tampering
- Lack of Services
Anticipate Offender Tactics

- Force, Fraud, and Coercion
- Witness Intimidation
What type of intimidation have you witnessed in human trafficking cases?

Please answer the Poll Question
Common Tactics

Emotional Appeals


Cultural Fear Tactics

Deportation

Threats of Violence

Financial Manipulation
I’m Not Giving Up on Us
Perfect love only happens in the movies. In the real world we sometimes say things in anger that we wish we could take back. We sometimes do foolish things without thinking about the consequences... and we hurt the ones we love most. But that doesn't mean our love isn't real — or that it's not worth fighting for.

Let's focus on what's good between us and remember the reasons why love brought us together. I believe we can grow from these hard times and our relationship will become stronger and healthier as we learn more about the power of compromise, forgiveness — and love. ~ Jason Blume
Strategies

Educate victims
- Reality of tampering
- How to report and preserve

Protect privacy
- Seal documents from public records
- Use initials, redact identifying information

Monitor offenders
- Jail communications and social media
- Pretrial release conditions; GPS

Safety plan
- Technology
- Third-party offenders

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Read Between the Lies

When he says, “Stay in pocket”

DON’T BE TRICKED

he means, “Stay under my thumb”

OWN YOUR LIFE

LET US HELP

CALL 305-547-0749

Heard these lines before?

“I promise, this will never happen again.”

“It’s just until we can pay off these bills.”

“If you go to the police, they’ll arrest you.”

“I took you when your own family didn’t want you.”

“You’re supposed to be my girl.”

“If you didn’t snitch, I wouldn’t be in this situation.”

“When I beat this case, we can finally get married.”

“You were in the game before I met you.”

“Who’s going to want you now?”

“If anyone finds out, you’ll lose your kids.”

“If you don’t come to court, this will all go away.”

“I’ve always got eyes on you.”
Prepare for Recantation

1. Victim is strong and resolved
2. Offender minimizes the abuse & casts themselves as the victim
3. “They don’t understand us”
4. "Lie for me, it’s us against the world”
5. Developing the Plan

Meet Me at the Hill Where We Used to Park
Eliminating the Payoff
Are sex and labor trafficking victims eligible for protection orders in your jurisdiction?

*Please answer the Poll Question*
# Protection Orders

<table>
<thead>
<tr>
<th>Criminal</th>
<th>Civil</th>
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<tbody>
<tr>
<td>• Condition of pretrial release</td>
<td>• Relationship between offender and victim</td>
</tr>
<tr>
<td>• Revocation of release</td>
<td>• Type of violence or threats</td>
</tr>
<tr>
<td>• May be a crime</td>
<td>• Violation is a crime</td>
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<tr>
<td>• Contempt</td>
<td>• Contempt</td>
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Contempt

• File a Petition for an Order to Show Cause
• Order to Show Cause initiates civil or criminal contempt proceeding
  • Tells defendant to “show cause” why they should not be held in contempt
• Judges have an inherent right to uphold their own orders
• Defendant will have a right to an attorney, but likely not a right to a jury
• Allowable punishment can range from 30-90 days in jail
Inside the Courthouse

- Safe spaces
- Train personnel
- Make a record
- Ask for court orders
When Intimidation has Occurred

• Make a record and ask for additional security measures, including court orders
  • Cell phone policies
  • Require identification to enter courtroom
    • “Intimidation is enabled by anonymity”
    • e.g. United States v. Smith, 426 F.3d 567, 574 (2d Cir. 2005)

• Convene an anonymous jury
  • 28 U.S.C. § 1863
  • e.g. United States v. Dinkins, 691 F.3d 358, 375 (4th Cir. 2012)
Test for any partial court closure, including closing the courtroom during a victim’s testimony:

1. The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced

2. The closure must be no broader than necessary to protect that interest

3. The trial court must consider reasonable alternatives to closing the hearing; and

4. The court must make findings adequate to support the closure
Forfeiture by Wrongdoing
F.R.E. 804(b)

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending that result.
Have you ever been involved in a case where Forfeiture by Wrongdoing was used?

Please answer the Poll Question
“The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.”

Reynolds v. U.S., 98 U.S. 145 (1878)
Elements

Witness is unavailable

Because of the defendant’s wrongdoing

The defendant intended to make the witness unavailable
Unavailability

• Witness cannot be located after diligent attempts
  • Document steps taken and attempts made
  • May need to issue a subpoena
• Witness has real or feigned amnesia or memory loss
• Defendant marries the witness
• Witness refuses to testify
Wrongdoing
State v. Hallum, 606 N.W.2d 351, 356 (Iowa 2000)

• Wrongdoing is not limited to wrongful conduct or misconduct
• Does not require threats, force, in intimidation
• Includes persuasion and control by the defendant
• May be established if the defendant directs the witness to exercise the Fifth Amendment privilege
People v. Pappalardo
152 Misc. 2d 364, 576 N.Y.S.2d 1001 (Sup. Ct. 1991)

• A witness's claim of amnesia at the time of trial creates a “practical unavailability”

• Defendant financed, supported and was actively involved in implementing the plan to prevent the witness from testifying.

• Court found that the forfeiture could be established when the defendant had any knowledge or complicity
Defendant’s Intention

Sufficient for prosecution to prove that “wrongdoing was at least partially intended to procure the declarant, his wife's, unavailability”

- United States v. Montague, 421 F.3d 1099 (10th Cir. 2005)

“defendant need only intend ‘in part’ to procure the declarant's unavailability”


To establish forfeiture by wrongdoing, prosecution “need only show that the defendant ‘was motivated in part by a desire to silence the witness”

- United States v. Dhinsa, 243 F.3d 635 (2d Cir.), cert. denied, 534 U.S. 897 (2001)
Com. v. Szerlong

“Even if the idea to marry originated with the victim, the defendant agreed to marry, and the victim's spousal privilege existed only because of his agreement...the judge was entitled to infer that the defendant intended to make her unavailable to testify by agreeing to marry her. The judge did not need to find that making her unavailable as a witness was the defendant's sole or primary purpose in marrying her; it is sufficient that it was a purpose in marrying her."
What if the victim recants on the stand?
Emerging Issue

"'Unavailability' in this context is not limited to a witness's outright refusal to testify or physical absence from the proceedings; a witness is practically or effectively unavailable where the witness recants his or her initial statements or otherwise changes his or her version of the events as a result of misconduct on the part of the defendant."
Argument for Expansion
People v. White, 772 N.Y. S.2d 309 (1st Dept. 2004)

“To deem a testifying, but recanting witness ‘available’ for Confrontation Clause purposes, as defendant suggests, would provide witness tamperers with an incentive to induce witnesses to recant rather than to refrain from testifying at all.”
Judicial Determination

• Requires hearing outside of the jury
• Standard = “Preponderance of the evidence”
  • MD, WA, and NY require “clear and convincing evidence”
• Hearsay evidence admissible, including affidavits
• Statements which you wish to introduce are admissible
• Consider using expert witness to educate
• Court may reserve ruling based on unavailability until trial
Evidence of Wrongdoing

1. Jail calls
2. Witness statements
3. Dynamics of the relationship
Bringing the Victim’s Voice into the Courtroom
“Hearsay” means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

A “statement” is:

• An oral or written assertion; or

• Nonverbal conduct of a person, if it is intended by him as an assertion.
Solicitation as a Verbal Act
“...the act of posting an online advertisement offering sexual conduct for money, itself, carries legal significance, regardless of whether the statements contained in the advertisement are true. In any event, the advertisements in this case were not offered to prove the truth of the statements in them but, rather, to demonstrate that defendant was connected to offers of prostitution. Therefore, the advertisements are verbal acts and not hearsay.”
Statements of Coconspirators
F.R.E. 801(d)(2)(E)

• Statements made by the defendant’s coconspirator during and in furtherance of the conspiracy are not hearsay
• Coconspirator need not be charged
• Coconspirator may be immune from prosecution
  • People v. Brown, 14 Cal. App. 5th 320, 221 Cal. Rptr. 3d 854 (Ct. App. 2017) - Statute prohibiting prosecution of victims did not preclude such victims from being considered uncharged coconspirators under coconspirator exception to hearsay rule
Hearsay Exceptions

- Present sense impression
- Excited utterance
- Then-existing mental, emotional, or physical condition
- Statement made for medical diagnosis or treatment
## Crawford Analysis

<table>
<thead>
<tr>
<th>Testimonial</th>
<th>Nontestimonial</th>
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<tr>
<td>• Generally more formal or made to law enforcement or their agents</td>
<td>• Statements during ongoing emergency</td>
</tr>
<tr>
<td>• Primary purpose is to report facts for later prosecution</td>
<td>• Casual remarks to others</td>
</tr>
<tr>
<td></td>
<td>• For purposes of medical treatment</td>
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Reports and Records

**Testimonial**
- Forensic reports that include information from scientific testing are testimonial
  - e.g. DNA, Ballistics, fingerprints, drug testing

**Nontestimonial**
- Records that are compilations of stored information
  - e.g. Phone records, caller ID, GPS printouts
Statement Analysis

Is it hearsay?

Does an exception to hearsay apply?

Is the statement testimonial?
Identifying Admissible Statements

• Identify anyone the victim spoke to
• Interview all witnesses and suspects
• Document any statements made to the witness by the victim
• Document circumstance of the statement
  • Timing
  • Demeanor
Why is it important to document demeanor evidence?

*Please answer in the Chat Box*
Prior Testimony

• Victim’s prior testimony can be admitted where the defense had a full and fair opportunity to cross examine
  • Provide discovery prior to testimony
  • Allow for wider scope of inquiry
  • Preserve testimony

• Grand Jury testimony does not qualify
• Adversarial Preliminary Hearings
• Preservation of Testimony
Example: Cal. Penal Code § 1335
Conditional examination of witnesses is authorized

(c)(1) If a defendant has been charged with human trafficking... and there is evidence that the victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter...
Example: Cal. Penal Code § 1335
Conditional examination of witnesses is authorized, cont’d.

(2) If a defendant has been charged with human trafficking... and the court finds that there is a reasonable basis to believe that the material witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness or victim from testifying, and if the defendant has been fully informed of his or her right to counsel as provided by law, the court may have a witness examined conditionally as prescribed in this chapter.
Going Forward

Encourage victim participation by providing services

Combat witness intimidation and eliminate the payoff

Identify and preserve admissible victim statements
Questions for the presenter?
Submit them in the chat box

Don’t forget: we love your feedback! Scan with your smart phone or use the link below to let us know your thoughts:

https://forms.gle/ozH2UPZDFJDZys4M8
Jane Anderson

ATTORNEY ADVISOR

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Access resources and trainings at www.aequitasresource.org
Contact AEQUITAS at info@aequitasresource.org
IACP Training and Technical Assistance Resources

- Child Sex Trafficking Toolkit
- Online Trainings and Events
- Classroom Trainings
- Peer-to-Peer Mentoring
- Customized Technical Assistance
- Task Force Connect, exclusively for ECM members

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IACP Learn is your hub for all on-demand and live virtual learning such as training, webinars, and podcasts. Police leaders can access IACP content and training anytime, from any device. Find resources on community-police engagement, ethics, leadership, and more.

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<th>On-demand and live training</th>
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## Additional OVC-funded Human Trafficking Technical Assistance Resources

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<th>Description</th>
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<tbody>
<tr>
<td><strong>ICF Incorporated</strong></td>
<td>Enhanced Collaborative Model Capacity Building and Implementation</td>
</tr>
<tr>
<td><strong>Coalition to Abolish Slavery and Trafficking</strong> (CAST)</td>
<td>Comprehensive Legal TTA</td>
</tr>
<tr>
<td><strong>National White Collar Crime Center</strong></td>
<td>Preventing Human Trafficking and Child Exploitation Through Education</td>
</tr>
<tr>
<td><strong>International Rescue Committee – Framework</strong></td>
<td>Tools to Combat Labor Trafficking</td>
</tr>
<tr>
<td><strong>OVC Training and Technical Assistance Center</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Freedom Network USA</strong></td>
<td>Training Institute Housing TTA Project</td>
</tr>
<tr>
<td><strong>Human Trafficking Capacity Building Center</strong></td>
<td>Improving Outcomes for Child and Youth Victims of Human Trafficking TA</td>
</tr>
<tr>
<td><strong>Youth Collaboratory</strong></td>
<td>Preventing Trafficking of Girls Training and Technical Assistance</td>
</tr>
<tr>
<td><strong>U.S. Committee for Refugees and Immigrants, Inc.</strong></td>
<td>Project Trauma Response to Uplift Survivors of Trafficking (TRUST)</td>
</tr>
<tr>
<td><strong>American University</strong></td>
<td>Maximizing OVC’s Survivor Assistance in Court Settings (MOSAICS)</td>
</tr>
<tr>
<td><strong>Futures Without Violence</strong></td>
<td>Promoting Employment Opportunities for Survivors of Trafficking Program</td>
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Thank you!

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