

Cast

COALITION TO
ABOLISH SLAVERY
& TRAFFICKING

Coalition to Abolish Slavery and Trafficking (CAST)

“Arrest is Not the Answer”

Victims of Human Trafficking Should Not be Arrested for Crimes Their Traffickers Force Them to Commit

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January 2016

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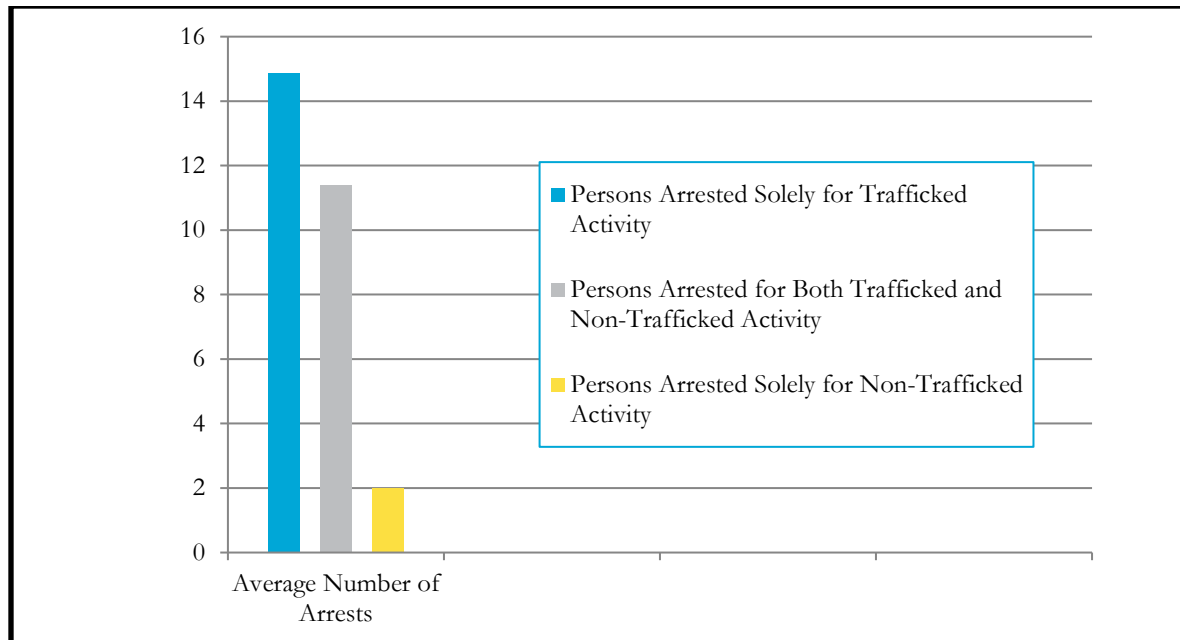
INTRODUCTION

Arrest frequency data from the Coalition to Abolish Slavery & Trafficking (CAST) indicates that human trafficking victims are arrested seven times more frequently for activity directly related to their trafficking than for non-trafficked activity. Victims are often detained by well-intentioned officers to remove them from the streets and from the control of their traffickers. The data suggests that this law enforcement tactic does not work; and, in fact, it produces many unintended results.

Criminal detention of trafficking victims begins an escalating cycle of further victimization. The detention itself stigmatizes them, breeds distrust of law enforcement, confirms stereotypes used by traffickers to enforce control, and results in a lifetime of challenges that oftentimes cannot be overcome by the victims. As our data show, the detention does not remove them from the streets for long. Most victims are quickly re-trafficked, which results in more forced criminal behavior and more arrests. CAST's records show that some victims have been arrested 30 or 40 times in a few years under the control of traffickers. Arresting victims does not reduce the vicious cycle; it perpetuates it. Criminal detentions leave scars that follow victims into later life and affect them educationally, occupationally, financially, and psychologically.

The best way to address the crime of human trafficking is not to arrest the victim. We call on legislators across the United States to reform state laws to ensure that trafficking victims are not criminalized for offenses their traffickers force them to commit. Victims must be treated as victims, not criminals. Public officials must increase the State's ability to identify victims of human trafficking and ensure sufficient funding levels for public and private services for trafficking victims as an alternative to criminal detention.

Fig. 1 – Average Number of Arrests



ANALYSIS OF TRAFFICKING VICTIM DATA FROM CAST

a. Description of CAST

The Coalition to Abolish Slavery & Trafficking (CAST), a not-for-profit organization established in 1998, provides comprehensive long-term services to human trafficking victims.

CAST is the first organization in the United States devoted solely to serving survivors of human trafficking and slavery. Following the landmark El Monte trafficking case in 1998, CAST was formed to focus attention on the growing problem of human trafficking, to give survivors a voice by advocating for programs and laws which address their unique concerns, and to provide survivors the services they need to regain their emotional and physical health, self-respect, and independence. Once a victim has been identified and is liberated from the trafficking situation, the long process of rehabilitation and true emancipation begins.

CAST is the largest provider of trafficking victim services in the country. As a pioneer in the anti-trafficking field, CAST played an instrumental role in the passage of the federal Victims of

Trafficking and Violence Protection Act of 2000 (and subsequent reauthorizations) and the California Trafficking Victims Protection Act of 2005. CAST was one of the founding members of the Los Angeles Metropolitan Task Force on Human Trafficking, and is now leading the expanded LA County-Task Force with LA County Sheriff, which includes more than 100 local and federal law enforcement agencies and community partners. CAST representatives have been invited to speak at national and international conferences, including the United Nations and the National Association of Attorneys General. In 2014, CAST became the first non-profit organization to receive the Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons.

b. CAST Database

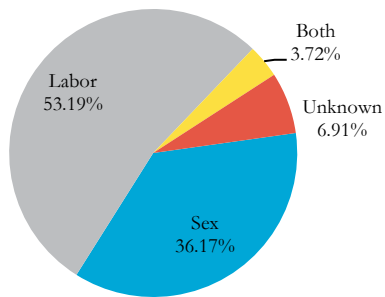
In January of 2013, CAST launched a customized database for use by CAST legal and social service providers serving victims of human trafficking. This database was designed to learn about and address the complexities of human trafficking cases, evaluate and improve the long-term services that victims need in order to rebuild their lives, and assess survivors' progress in reaching service goals. As CAST began utilizing this customized database, information buried in individual client files began coming to light. One of the most striking revelations was the high number of arrests and convictions that trafficking victims faced.

The CAST database contains biographical and conditional information¹ obtained from 926 victims and includes both sex and labor trafficking of minors and adults. Although CAST attempts to include complete information for each individual in its database, some fields were unknown and were thus excluded from the results summarized below.

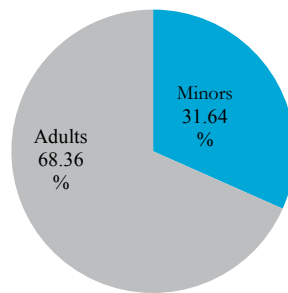
¹ The information includes gender, nationality, date of birth, age when trafficked, how the victim was recruited or obtained, the type of trafficker, the trafficking category, agreed-upon and actual conditions, the approximate date of entry into the United States for foreign national cases, past and current threats and/or fears, abuse, and referrals to law enforcement. Because the database was launched in 2013, records for earlier time periods are incomplete.

Fig. 2 – Biographical and Conditional Data

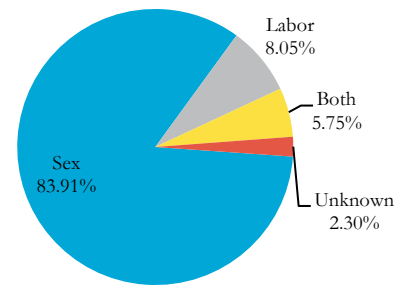
Type of Trafficking (Adults)²



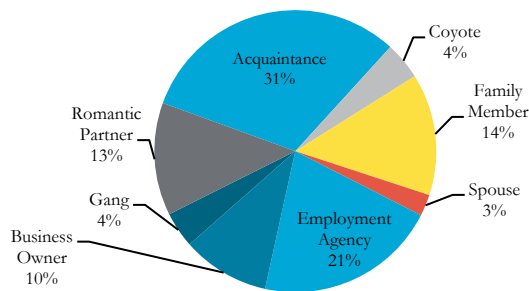
Age When Trafficked³



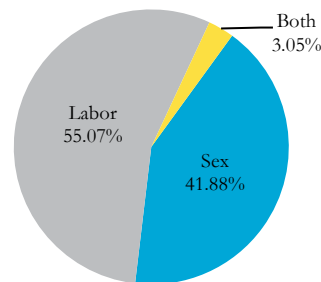
Type of Trafficking (Minors)⁴



How Recruited or Obtained⁵



Type of Trafficking⁶



CAST examined its database to determine, where possible, the association between arrests and trafficked activity. Victim files included a subset of 61 victims from the past ten years⁷ who self-identified as having had contact with law-enforcement. CAST then reviewed the files, including any FBI and/or law enforcement records, for these 61 victims. The records contain details of arrests, detentions, citations, and convictions.⁸ Upon review of the arrest records, each arrest was categorized as either “directly related” or “unrelated” to the trafficking. Arrests that occurred during the trafficking time period were considered to be directly related to the trafficking. Arrests that

² Known for 188 victims.

³ Known for 275 victims.

⁴ Known for 87 victims.

⁵ Known for 487 victims.

⁶ Known for 819 victims, regardless of whether age status is identified.

⁷ The intake of victims covered a time period from May 2005 until August 2015. The availability of information varies for each individual and over time. CAST did not have the ability to input all data for closed client files.

⁸ For purposes of this study, the term “arrest” will be used to describe any incident where a citizen is taken into custody by law enforcement.

occurred either before or after the trafficking time period were considered unrelated to the trafficking.⁹

The database is not large enough to permit a rigorous statistical analysis. The data reveal a clear pattern, however, providing a useful starting point in determining the association between arrests and trafficked activity. It is critically important that government and private agencies share data and information to conduct a large-scale statistical analysis to determine whether these suggested patterns prove true throughout the broader trafficked population.

c. Results, Conclusions, and Impact

Of the 61 victims studied, 42 individuals (69%) have arrest records. Of those 42 victims, 28 (67%) have at least one arrest directly related to their trafficking.¹⁰ Among the 28 victims with at least one directly related arrest, 15 (54%) of those victims *only* have arrest records directly related to their trafficking. Most of these victims were minors when their trafficking began.

The number of arrests per victim is telling. The 15 individuals arrested *only* for crimes directly related to their trafficking were arrested between one and 42 times, with an average of 14.86 arrests. Individuals arrested for crimes both directly related and unrelated to the trafficking were arrested an average of 11.39 times. By contrast, individuals arrested only for unrelated crimes were arrested on average only two times.

⁹ This definition is conservative in that it excludes arrests that are likely collateral consequences of the trafficking. For example, an individual arrested for prostitution or solicitation may not have been under the control of a pimp at the time of the arrest, excluding the arrest from being “directly related” to the trafficking. However, it would be naïve to believe that this arrest is not a collateral consequence of prior sex trafficking.

¹⁰ Of the 42 individuals with arrest records, two were categorized as “unknown arrests” because the length of servitude was unknown and thus it could not be determined whether the arrests were directly related or unrelated to the trafficking.

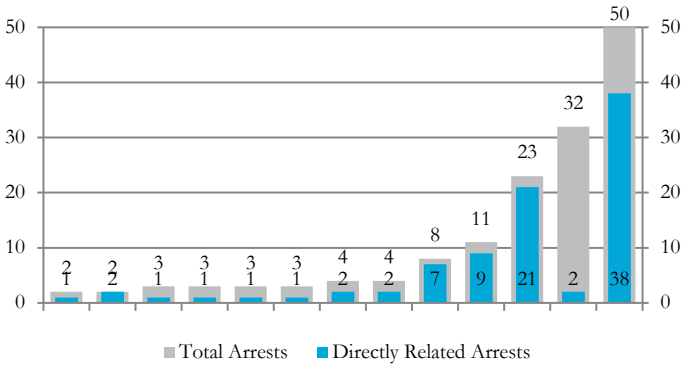


Fig. 3
 For individuals with arrests both directly related and unrelated, the vast majority of the arrests are directly related.

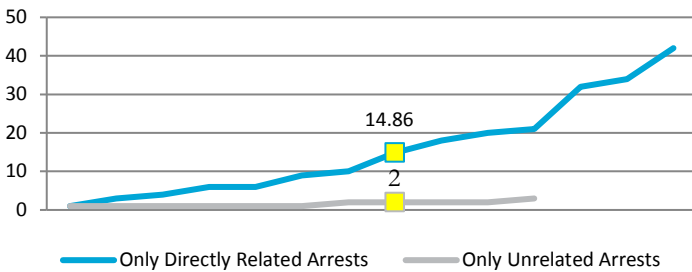


Fig. 4
 Individuals arrested only in relation to their trafficking are arrested 7x more often than those arrested only for activity unrelated to their trafficking.

Remarkably, some victims were arrested 30 to 40 times solely for trafficking-related offenses. Some were arrested multiple times within a few days. These statistics underscore the key signal that emerges from our study: trafficking victims are arrested frequently. They are arrested over and over again for crimes they are forced to commit. The “benefit” that is intended to come from taking them off the street by arresting them may well be illusory.

d. Personal Stories

Statistics rarely tell the full story, and this is especially true of human trafficking. Every statistic represents a real person, often a child, who was the victim of psychological and often physical and sexual abuse, over a lengthy time period. Each faces immense challenges to survive on a daily basis. Below are the “voices” of four of these victims whom the system failed and who have lived under the barriers of criminal arrest and conviction as they struggle to rebuild their lives.

“Carla”

Carla (not her real name) ran away from home at age 14. She met a woman who put her into a hotel room and brought “clients” to her. For the next 13 years, Carla had 20 different pimps who were verbally and physically abusive, limiting her to two hours of sleep per day at times. They listed her for sexual services on multiple internet sites. At age 18 she had a child. She married and divorced one of the pimps. By the time Carla was referred to CAST for services, she had been arrested 32 times and convicted of 52 offenses, mostly prostitution. The first conviction came when Carla was 16 years old. She was assessed numerous fines, was repeatedly on probation, and spent time in both juvenile hall and jail.

“Martin”

Martin (not his real name) is a survivor of labor trafficking who was forced into servitude by a food store owner. Martin was threatened with deportation and arrest if he did not comply with his trafficker’s every demand. About two years into his trafficking situation, making good on his threats, Martin’s trafficker planted jewelry and other valuable items stolen from customers near Martin when he was working in the store and called the police. Martin was arrested. Martin pled guilty to a theft related charge as he did not understand the US legal system.¹¹

“Susan”

Susan (not her real name) dropped out of school in the 11th grade. Before she turned 20, she had been arrested 12 times for burglary, prostitution, bad checks and drugs. At age 20 she came under the control of a male trafficker and gang member. At first he treated her like a girlfriend, but within a few months he was beating her and forcing her to work for him. He restricted her movements and took her ID. For the next eight years, he made Susan work 9-10 hours a day, seven days a week, forcing her to turn over all the money to him. She escaped from him three times, but the first two times he tracked her down and brought her back. While Susan was under the control of her trafficker, she was arrested 38 times in eight years, and spent time in jail. Most of her arrests were for prostitution-related offenses.

“Penny”

Penny (not her real name) was forced into commercial sex at age 12. Before she turned 14, she had been arrested seven times for prostitution, false ID, and theft. She had several pimps, all of whom abused her and threatened her. She spent time in juvenile hall. She bore a child at age 15. Finally, at age 21, she escaped her trafficker and reported him to the police. They picked him up and released him, which put Penny in grave danger. Penny was arrested 42 times during her nine years of being trafficked.

¹¹ Example provided by Safe Horizon.

DISCUSSION

a. Reasons for the High Frequency of Arrests

Trafficked activity clearly results in more arrests than non-trafficked activity. While this phenomenon stands out in the data, the reasons underlying it are not clear. One possible explanation is that trafficked persons may simply be committing more “crimes” because their traffickers are forcing them to do it for longer periods of time, for more hours in the day, and to take greater risks. If this is the case, however, then that should be a tip-off to law enforcement that an apparent perpetrator is, in fact, a victim.

There is also another plausible explanation that is based on the good intentions of law enforcement officers. Officers seeking to help trafficking victims by removing them from the streets, and from the clutches of their traffickers, may feel they have no other option but to arrest them.¹² Criminal detention does keep victims from their traffickers – temporarily. Unfortunately, the services that the State can provide are limited or nonexistent. Worse, our data suggest that criminal detention does not keep victims away from their abusers for long, and might even be one of the very reasons they return to them, because the “system” treated them the way their traffickers threatened them it would – as criminals. Often times because victims are trauma bonded to their traffickers and the systems that should protect them fails them, victims return to their traffickers, are arrested again, and the cycle repeats itself. The arrest and detention exacerbate the victim’s trauma while making it harder to identify the true perpetrator and recover from the abuse.

¹² See Barnert, E. S., et al., “Identifying best practices for ‘Safe Harbor’ legislation to protect child sex trafficking victims: Decriminalization alone is not sufficient,” *Child Abuse & Neglect* (2015), <http://dx.doi.org/10.1016/j.chiabu.2015.10.002>. In this UCLA research study, the authors cite examples of “well-meaning CSEC responders who continue to criminalize youth victims to ‘keep them safe.’” One study participant stated, “I’ve heard from many law enforcement officers, ‘Yes, I continue to arrest, but I do so because that is the only way I can ensure that child is away from her pimp.’” *Id.* at 10.

Ours is not the only study to observe this phenomenon. In a report by the Urban Institute and Streetwise and Safe,¹³ published in *The Guardian*,¹⁴ researchers found that “youth in the sex trades are caught in a vicious cycle of arrest and court-involvement.”¹⁵ Frequent arrests “create instability and perpetuate youths’ need to engage in survival sex as a result of far-reaching collateral consequences.”¹⁶ The arrest-based approach is “part of an escalating sequence of cause and effect: instability in home and school, inability to pay fines and surcharges, active warrants, incarceration, disqualification from public benefits, deportation and consequences for future employment.”¹⁷ In other words, arrests breed more arrests.

b. The Long-Term Effects of Arrest and Detention on Victims

When a trafficking victim is arrested, a chain of likely harmful effects begins. The effects can be permanent, and they exist even if no conviction ensues. As one legal scholar has noted:

With [collateral effects], people are separated into groups of acceptables and unacceptables or . . . classifications of insiders and outsiders The label therefore infers that the person did not just do something wrong, but that there is something wrong with the person.¹⁸

Shamere McKenzie is a survivor of sex trafficking and the CEO of Sun Gate Foundation, which helps survivors obtain educational opportunities. Describing the struggle to overcome her arrest record, she says she continues to feel “the invisible bars even though I am free.”¹⁹

The American Bar Association has catalogued approximately 47,000 federal, state, and local

¹³ “Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex,” September 2015, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000424-Locked-In-Interactions-with-the-Criminal-Justice-and-Child-Welfare-Systems-for-LGBTQ-Youth-YMSM-and-YWSW-Who-Engage-in-Survival-Sex.pdf>.

¹⁴ Brendan Conner, “A New Law To Save Minors From Survival Sex Will Force Them Into State Custody,” *The Guardian*, October 15, 2015, <http://www.theguardian.com/commentisfree/2015/oct/15/new-law-to-save-minors-from-survival-sex-will-force-them-into-state-custody>.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Shawn D. Stuckey, “Collateral Effects of Arrests in Minnesota,” *University of St. Thomas Law Journal*: Vol. 5: Iss. 1, Article 14 (2008), available at <http://ir.stthomas.edu/ustlj/vol5/iss1/14>.

¹⁹ Personal conversation between Stephanie Richard and Shamere McKenzie on January 8, 2016.

collateral consequences individuals with a criminal record face.²⁰ Even when there are no specific legal consequences, the stigma associated with an arrest can create substantial hurdles. Some of the most palpable collateral effects experienced by human trafficking victims are discussed below.

I. Employment

After escaping their traffickers, it is critical that victims have access to a wide range of support services. Employment opportunities are critical to regaining a sense of independence and establishing stability. Over half of the catalogued collateral consequences of a criminal record flow from a denial of employment opportunities.²¹ However, because an estimated 80% or more of employers in the United States use criminal background checks during their employment process,²² trafficking victims with criminal records face significant hurdles to obtaining employment.

The Supreme Court has held that an arrested individual has no right to privacy in his arrest information.²³ The fact of an arrest may not be used directly to bar employment by itself. However, arrest information is available to, and can be considered by, potential employers.²⁴ Even when a court has expunged or sealed a record, private companies often do not erase these details from their

²⁰ American Bar Association, *National Inventory of the Collateral Consequences of Conviction*, <http://www.abacollateralconsequences.org/search/>.

²¹ See U.S. Dep't of Justice, *EEOC to Examine Arrest and Conviction Records as Hiring Barrier*, July 26, 2011, (written testimony of Amy Solomon, Senior Advisor to the Assistant Attorney General), <http://www1.eeoc.gov/eeoc/meetings/7-26-11/solomon.cfm?renderforprint=1#fn34>.

²² Alfred Blumstead & Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," 47 *Criminology* 327, 329 (2009); see also U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks*, (June 2006), at 2, available at http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf.

²³ See *Paul v. Davis*, 424 U.S. 693, 713 (1976) (rejecting the claim that there is a constitutional right to privacy that prevents a state from publicizing "a record of an official act such as an arrest.").

²⁴ See EEOC, No. 915.002, *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, at 6 (Apr. 2012), pp. 1, 12 ("In one survey, a total of 92% of responding employers stated that they subjected all or some of their job candidates to criminal background checks. Employers have reported that their use of criminal history information is related to ongoing efforts to combat theft and fraud, as well as heightened concerns about workplace violence and potential liability for negligent hiring.").

databases.²⁵ The Bureau of Justice Statistics has estimated that approximately 80% of state criminal history files are accessible through automated file searches.²⁶

Human trafficking victims seeking employment are faced with a quandary: disclose their criminal records at the risk of losing the job, or withhold information, which if discovered makes the victim seem dishonest. Many victims experience feelings of shame or embarrassment when explaining their trafficking. Forcing victims to explain their records to potential employers creates yet another barrier, as victims seek to reclaim their lives and put their trafficking behind them, rather than relive the trauma. As such, criminal records continuously follow individuals and have been described as a “negative curriculum vitae[.]”²⁷

Four real-world examples from trafficking survivors illustrate these problems:

“Mary”

Mary (not her real name) was trafficked to the U.S. from Nigeria at the age of 20. She thought she was going to Europe to be a dancer. Instead she was forced into prostitution in the United States for almost 15 years. She was beaten with a whip and locked in a closet in the basement when she tried to escape. During the time of her enslavement she was arrested four times: for trespassing when she tried to escape from her traffickers, for possession of drugs as her traffickers forced her to be addicted to drugs as part of her trafficking, and for prostitution. After Mary escaped from her traffickers she worked hard to begin a new life. Eventually, she received a job offer at an adult residential facility. Because of her criminal background, Mary’s employer had to apply for an exemption for her to be able to do this work. Although the employer was willing to apply for this exemption, Mary would have had to wait several months for the exemption to be processed. She expressed extreme concern that her employer now knew what had happened to her during her trafficking experience. She therefore decided to keep looking and was unemployed for over a year before locating a position in another state.

²⁵ See Joe Palazzolo & Gary Fields, “Fight Grows to Stop Expunged Criminal Records Living On in Background Checks,” *Wall Street Journal*, (May 7, 2015), available at <http://www.wsj.com/articles/fight-grows-to-stop-expunged-criminal-records-living-on-in-background-checks-1430991002>; California’s legal framework for expungement of misdemeanors has been described as “not only old, but it is creaky and dangerous—it fails to deliver on its implied promise of ‘expungement’ and fails to provide the opportunity [. . . of] a reasonable ‘second chance’ of success[.]” Wallace Wade, *WHO’S LYING NOW?: How the public dissemination of incomplete, thus half-truthful, criminal record information regarding a statutorily rehabilitated petty offender is an unjust penalty and why laws regarding expungement of and restrictions on dissemination of criminal records information in California must be reformed.*, 38 W. St. U. L. rev. 1, at 3-4, (2010-2011).

²⁶ Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012, A Criminal Justice Information Policy Report* (Jan. 2014), <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

²⁷ James Jacobs & Tamara Crepet, “The Expanding Scope, Use, and Availability of Criminal Records,” 11 N.Y.U. J. Legis. & Pub. Pol’y 177, 177 (2006), available at <http://www.nyujlpp.org/wp-content/uploads/2012/10/Jacobs-Crepet-The-Expanding-Scope-Use-and-Availability-of-Criminal-Records.pdf>.

“David”

David (not his real name) was a child labor trafficking victim from Honduras. He was forced to work in a warehouse in California under threat. As a juvenile he was arrested and convicted of petty theft. After escaping from his traffickers he received support and services from CAST. As an adult he sought employment at an international airport. Because of his juvenile adjudication for theft, his application was closely scrutinized and it was only when he granted his advocate permission to reveal to his employer that he was a victim of human trafficking that he able to secure the position. Knowing that his employer knew about his past abuse made David very uncomfortable in his new job which he soon left.

“Ava”

Ava (not her real name) was recruited as a minor and enslaved by her trafficker for almost a decade. She was abused and treated like a dog. As a direct result of her trafficking, she picked up 12 convictions on her record. After Ava was rescued, she tried to move on from her past. She finished school. She graduated at the top of her class and was the valedictorian. She applied to work for the county and was provisionally accepted, provided she pass her security clearance. Because of her extensive criminal record, the security review took an entire year, and ultimately was the only reason she lost this job. Since this incident, CAST has helped to get 11 out of 12 of her cases dismissed, yet still has one more conviction that a courthouse refuses to dismiss because of unpaid court fees. Ava also has a wage garnishment attached to each paycheck she receives because of unpaid court fees. These lingering reminders of her past make it painstakingly difficult for Ava to get a higher-than-minimum-wage job, to provide for her son, and to move on.

“Owen”

Owen (not his real name) was a child labor trafficking victim from India enslaved in the United States. He was enslaved by a family who prevented him from going to school and forced him to work in their home and a family business 12 hours a day without rest. Before he escaped, his traffickers entrapped him in a situation which led to his arrest for sexual abuse of a minor which was without basis. Already suffering the symptoms of post-traumatic stress disorder (PTSD), Owen lost complete memory of his early childhood, and was even uncertain as to where he had been born or spent his early years. For the next 10-15 years he fell into at least three more trafficking situations at different stores. At each of those stores, he was framed for additional crimes, first a weapons possession and then a drug possession. Later, as an adult, Owen was sent home on his first day of work with a highly reputable health care company because the employer had not fully explored Owen’s record prior to hiring. Currently, he has only been able to find temporary work because of his criminal record.²⁸

²⁸ Example provide by Safe Horizon.

As these examples show, a record of arrests and/or convictions can be an insurmountable barrier to employment. Even when not a direct barrier, it creates extra hurdles to be overcome. It creates delays in employment access for months and sometimes years. It requires victims to re-tell and re-live their horrifying experiences. As a survivor of a violent crime seeking to rebuild their lives, in many ways the system continues to punish them for their prior victimization.

Difficulty in finding employment can cause long-lasting downstream effects. The lack of a job, or a gap in employment, can be the reason a survivor returns to the trafficking experience. It can also make a survivor dependent on victim service provider support for a longer period, and make the candidate less attractive to future potential employers due to unexplained gaps in employment. All of these long-term effects are unjust and unnecessary. When a human trafficking victim engages in conduct at the hands of a trafficker, it is not a reflection of the individual, it is not a choice, and it is not a crime. These victims should not be re-victimized each time they seek employment.

2. Psychological Impact of Detention

Trafficking is unique in that during victimization, as part of the actual trafficking (commercial sexual exploitation or forced labor for illegal acts), victims are committing all the elements of criminal acts. One of the most common threats that U.S. citizen and foreign national trafficking victims face from their traffickers is that the police will arrest them if they try to leave, because the system will see them as prostitutes or “illegal” immigrants.²⁹ This threat is powerful because it is based in truth, as the experiences of human trafficking victims confirm. The power of this threat demonstrates how psychological control of victims is reinforced by the very system

²⁹ See, e.g., *U.S. v. Calilim*, 538 F.3d 706, 709 (7th Cir. 2008). A woman from the Philippines was brought to the U.S. to work as a housekeeper and kept in terrible living conditions due to her employer’s threats to have her arrested, imprisoned, and deported if she didn’t follow their directives. The employers were convicted of obtaining and conspiring to obtain forced labor and harboring an alien for private financial gain.

designed to provide protection.³⁰ Research documents that being arrested, often handcuffed, taken to a police station, booked, and held overnight causes serious psychological distress.³¹

For minors and undocumented trafficking victims who are arrested, the psychological harm increases during detention between arrest and trial. Detention centers are used to house individuals perceived to pose a high risk of re-offending before trial or to fail to appear for trial.³² CAST's data suggest that trafficking victims are at a high risk of "re-offending." The large number of arrests many trafficking victims face, together with their traffickers' control over their lives, means that victims are often unable to make court appearances. Thus, detention between arrest and trial is an eventuality for many trafficking victims.

Detention has significant negative impacts. Due to overcrowding, youth detention centers foster a chaotic and violent environment.³³ Detention aggravates existing mental illness and increases the risk of self-harm and violence.³⁴ Research indicates that for one-third of incarcerated youths diagnosed with depression, the onset began after they began their incarceration.³⁵ Almost a quarter of the youth surveyed in one study had suicidal ideations in a one-week period, and over a third suffered from a "current significant clinical level of depression."³⁶ Finally, detention has been shown to aggravate recidivism and to pull detained youth further into the criminal justice system.³⁷ The nature of detention contributes to "mental deterioration, despondency, suicidality, anger, and

³⁰ One study showed that individuals who have been arrested or handcuffed, and did not feel respected by the arresting officer during the interaction, retain long-term negative attitudes toward police that continue for at least two years. See Krammeddine, Y.I. and Silverstone, P.H., "Police use of handcuffs in the homeless population leads to long-term negative attitudes within this group," *International Journal of Law and Psychiatry* (2015) at 8.

³¹ Rachel A. Harmon, "The Problem of Policing," 110 *Mich. L. Rev.* 761, 779 (2012).

³² Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf

³³ *Id.* at 8.

³⁴ *Id.* at 8, 9.

³⁵ *Id.* at 8.

³⁶ *Id.* at 8.

³⁷ *Id.* at 4, 5.

frustration.”³⁸ This psychological stress is impacted by the length of detention and worsens over its course.³⁹ The real-world examples below show how detention works on victims psychologically:

“Luis”

Luis (not his real name), an 18-year-old from Mexico, was forced to be a drug mule by traffickers. He believed that he or his family would be killed if he did not do what his traffickers said. He was arrested at the U.S. border on felony drug charges. He remained in detention for over a year. He had advocates who were willing to defend him and obtain a T-visa for him. However, because the detention dragged on so long, Luis decided he could not handle it any longer and accepted a plea for felony drug charges. He was then deported to Mexico.

“Star”

Star (not her real name) an 18 year old from the United States was arrested at the age of 16 on felony pimping and pandering charges, despite the fact that she had been victimized at the hands of her trafficker since the age of 14 through extreme physical violence and threats to her and her family. After spending almost two years in detention fighting these charges, Star finally plead guilty to felony charges as she was offered time served because she so desperately wanted to leave prison. At 18 she now faces years of barriers from her felony conviction.

In addition to the negative effects of arrest and detention, disclosure of the arrest itself can lead to lasting stigma, particularly where schools or other agencies outside the justice system are notified.⁴⁰ Finally, negative experiences with law enforcement and the justice system decrease victims’ levels of trust and make it less likely they will call police when they are in need of help, or assist law enforcement in prosecuting traffickers.⁴¹

3. Housing

A 2012 survey determined that only 678 shelter beds were exclusively designated for human

³⁸ “Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families,” a Report of the Inter-American Human Rights Court (August 2013), at 4, 6.

<http://www.bc.edu/content/dam/files/centers/humanrights/doc/IACHR%20Report%20on%20Psychosocial%20Impact%20of%20Detention%20Deportation-FINAL%208-16-13.pdf>.

³⁹ *Id.* at 6.

⁴⁰ See “Arrests as Regulation,” 67 *Stanford Law Review* 809 (April 2015) at 844.

⁴¹ Krammeddine, Y.I. and Silverstone, P.H., “Police use of handcuffs in the homeless population leads to long-term negative attitudes within this group,” *International Journal of Law and Psychiatry* (2015) at 2. Conversely, law enforcement officials find that when they treat trafficking victims as true victims, they are more cooperative and engaged in the effort to catch traffickers. Brittany Woolsey, “LBPd Human Trafficking Task Force Recognized for Effectiveness by End Abuse Long Beach,” *Long Beach Post* Dec. 11, 2014, available at <http://lbpost.com/news/city/2000005056-lbpd-human-traffic-task-force-recognized-at-end-abuse-long-beach-event>.

trafficking victims in the United States.⁴² “Once human trafficking victims are removed from their situations, it’s imperative that they have the housing services they need to stay safe and begin to rebuild their lives.”⁴³ One of the very issues that makes people vulnerable to trafficking is that they have nowhere else to go. Studies have shown that shelter and long-term housing are among the largest needs for human trafficking victims’ escape and recovery.⁴⁴ Female sex trafficking victims report both long-term and transitional housing “as an urgent need.”⁴⁵ Additionally, the lack of appropriate shelter for male victims is a pressing issue.

Rather than stable, permanent housing, female victims are often referred to shelters that serve domestic violence victims while men’s only options are homeless shelters. Stigmas attached to trafficking can create additional barriers to shelter options. Trafficking victims that are placed in domestic violence shelters report “humiliation and isolation . . . attributed to perceptions that [the] victims were prostitutes or willing participants.”⁴⁶

In addition to short term housing barriers that create hurdles to trafficking victims’ recovery, a long-term hurdle created by criminal arrests and convictions is that victims cannot access long-term, affordable, safe and stable housing. The stories of two victims illustrate the hurdles:

“Beth”

Beth Jacobs is a child sex trafficking survivor. She has become an advocate for victims’ rights and the founder of Willow Way, an organization that helps former sex slaves rebuild their lives. After escaping her trafficker, she found that she could not

⁴² Polaris Project, *Shelter Beds for Human Trafficking Survivors in the United States* (June 2012), available at <http://www.dcf.state.fl.us/programs/humantrafficking/docs/ShelterBedsForHumanTraffickingSurvivors.pdf>.

⁴³ Polaris Project, *NJ Dept. of Children and Families Named award Finalists* (Dec. 17, 2013) (quoting Kaitlyn Keisel, Director of Polaris Project New Jersey), <http://polarisproject.org/news/press-releases/polaris-project-nj-dept-children-and-families-named-award-finalists>

⁴⁴ See e.g., Polaris Project, *Survivor Story: On the Road to College* (Mar. 12, 2012), <https://polarisproject.org/blog/2012/03/26/survivor-story-road-college> (“The traditional housing played a fundamental role in Claudia’s recovery. She was able to focus on other need without having to worry where she was going to live the next day. Claudia would constantly tell us that her apartment brought her the peace of mind that she needed after leaving her trafficking situation.”).

⁴⁵ Heather Clawson et. al., *Human Trafficking Into and Within the United States: A Review of the Literature* (Aug. 30, 2009), available <https://aspe.hhs.gov/basic-report/human-trafficking-and-within-united-states-review-literature>.

⁴⁶ Heather Clawson et. al., *Study of HHS programs Serving Human Trafficking Victims: Final Report* (Dec. 15, 2009) (hereinafter “Study of HHS Programs”), available <http://aspe.hhs.gov/basic-report/study-hhs-programs-serving-human-trafficking-victims-final-report>, §5.2.

rent an apartment in her own name because of extensive background checks by property management. She always had to have a roommate, couldn't have her name on mailboxes, couldn't report problems, couldn't receive deliveries, and sometimes had to hide from landlords. "It's horrible to live that way," she says.

"Adriana"

Adriana (not her real name) escaped from child sex trafficking more than 20 years ago. She has a master's degree in social work. Because of the criminal record left from her long-ago trafficking, she still rents her apartment in her mother's name because of the stigma associated with her past.

Federal Housing laws currently permit providers of public, Section 8, and other federally assisted housing to perform criminal background checks on individuals applying for public housing.⁴⁷ Public Housing Agencies ("PHAs") have wide authority to use these criminal records to reject housing applications.⁴⁸ Although Cal. Penal Code §11105 prohibits the State from disclosing arrests not resulting in convictions,⁴⁹ some city PHA guidelines specifically permit the consideration of arrests when making eligibility determinations.⁵⁰ Certain California PHAs have defined "criminal activity" to include arrests.⁵¹ Thus, even arrests without conviction can bar access to affordable and stable housing. Given that over 50% of victims in CAST data had extensive criminal arrest records, the search to secure safe, affordable housing can often be insurmountable for many victims and lead to re-victimization

⁴⁷ 42 U.S.C. §1437d(q).

⁴⁸ 24 C.F.R. 966.1(i)(ii)(iii)(A) (A PHA may evict a tenant "if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.")

⁴⁹ Cal. Pen. Code §11105.03(b)(2).

⁵⁰ For example, the San Francisco Housing Authority considers "all credible evidence, including but not limited to, any record of convictions, **arrests**, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest" (emphasis added). The San Francisco Housing Authority, *Admissions and Continued Occupancy Policy*, available at <http://www.sfha.org/ca001a01.pdf>.

⁵¹ See Marie Claire Tran-Leung, *When Discretion Means Denial. A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, (Feb. 2015), available at <http://povertylaw.org/sites/default/files/images/publications/WDMMD-final.pdf> (noting that the Contra Costa Housing Authority defines criminal activity as including an arrest within the past 12 months and that the Housing Authority of the County of San Diego defines criminal activity as including an arrest within the past 5 years); see also The Oakland Housing Authority, *Admissions and Continued Occupancy Policy*, at 3-29 (Oct. 2015), available at <http://www.oakha.org/AboutUs/ReportsPolicies/Pages/default.aspx> ("Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, release from custody, or evictions . . . within the past 5 years.")

4. Credit

Credit bureaus can report arrest records for seven years, and conviction records indefinitely.⁵² Banks are not required to disclose whether they consider criminal exposure in making loans, but they regularly require applicants to disclose their arrest records and other “criminal exposure” which they use to determine credit worthiness.⁵³

More than 80% of those charged with crimes are too poor to afford an attorney.⁵⁴ Federal law suspends eligibility for education grants, loans, and work assistance for students convicted of offenses involving the possession or sale of controlled substances while receiving student aid.⁵⁵

c. Wasted Resources – Better Allocation Of Funds

The price tag to society of arresting and detaining trafficking victims is extremely high. The cost of a single arrest is between \$896⁵⁶ and \$1,000.⁵⁷ For some of the trafficking victims in CAST’s database, arresting them 30-40 times incurs a cost of \$30-40,000 by itself. This is for arrest alone.

Juvenile detention costs the State of California \$252,000 per person per year.⁵⁸ The detention cost is higher, and rising faster, than tuition at California’s best universities.⁵⁹ As New York’s Director of the Office of Children and Family Services says, “We could send [a juvenile justice youth] to Harvard for [what we pay for incarceration], and we don't get very good outcomes.”⁶⁰

⁵² See 15 U.S.C. §1681(c)(a)(2).

⁵³ Taja-Nia Y. Henderson, “New Frontiers in Fair Lending: Confronting Lending Discrimination Against Ex-Offenders,” 80 *N.Y.U. L. Rev.* 1237, 1243 (2005).

⁵⁴ J. McGregor Smyth, Jr., “From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings,” *Criminal Justice* (Fall 2009) at 43.

⁵⁵ See 20 U.S.C. §1091(r)(l).

⁵⁶ The \$896 figure is for an arrest by the Los Angeles County Sheriff Department in 2013. National Justice Network, *How to Calculate the Cost of a Youth Arrest* (2013), available at <http://www.modelsforchange.net/publications/513>.

⁵⁷ “Recently D.C. Lawyers for Youth calculated that it cost \$1000 to arrest and detain a youth in Washington, D.C., even though most young people are arrested for nonviolent offenses and fewer than half are actually charged with a crime.” Tamar Birkhead, “The High Cost of a Youth Arrest,” *Juvenile Justice Blog*, <http://juvenilejusticeblog.web.unc.edu/2012/11/16/the-high-cost-of-a-youth-arrest/>.

⁵⁸ Richard A. Mendel, “NO PLACE FOR KIDS: The Case for Reducing Juvenile Incarceration,” p. 21, available at <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>.

⁵⁹ *Id.*

⁶⁰ Birkhead, “The High Cost of a Youth Arrest,” at 4, quoting Gladys Carrion.

The direct costs paid for confinement “are just the tip of the iceberg of what young people, their families, their communities, and all of us pay for these policy choices. Youth confinement imposes heavy burdens on family members, leaves confined youth vulnerable to assaults, exposes our communities to higher rates of recidivism, and impedes young people’s transition to adulthood.”⁶¹ The Justice Policy Institute estimates that the cost of recidivism, lost earnings and tax revenue, additional Medicaid and Medicare spending, and the cost of sexual assault on detained youth add \$7.9 to \$21 billion to the annual price tag.⁶² In a study by Vanderbilt University, the present value of saving a 14-year-old high-risk juvenile from a life of crime was estimated to be \$2.6 to \$5.3 million per person.⁶³

If trafficking victims are not processed through the criminal justice system, where will they go? Social service agencies are underfunded and understaffed. For example, in a study of gangs and sex trafficking in San Diego, the researchers found that out of 1,766 trafficking victims who came into contact with law enforcement, only 70 victims were treated by eight agencies and only 29 beds were available for human trafficking victims.⁶⁴ There is unquestionably an “epidemic shortage of voluntary services” for trafficking victims.⁶⁵ Of course, this begs the question. If millions of dollars can be saved by reducing arrest and detention of trafficking victims, that money can be better spent funding agencies that provide needed support to victims. It is, therefore, not a question of “where will the money come from” but a question of how to allocate existing funds in a more rational manner. The benefits of a paradigm shift will greatly exceed the cost.⁶⁶

⁶¹ Id.

⁶² Id. at 3.

⁶³ Mark Cohen and Alex Piquero, “New Evidence on the Monetary Value of Saving a High Risk Youth,” *Journal of Quantitative Criminology*, Vol. 2 (2009).

⁶⁴ Ami C. Carpenter and Jamie Gates, “Gangs and Sex Trafficking in San Diego,” https://www.sandiego.edu/peacestudies/about/detail.php?_focus=53109.

⁶⁵ Brendan Conner, “A New Law to Save Minors from Survival Sex Will Force Them Into State Custody,” *The Guardian*, October 15 2015, <http://www.theguardian.com/commentisfree/2015/oct/15/new-law-to-save-minors-from-survival-sex-will-force-them-into-state-custody>.

⁶⁶ A cost-benefit study in Minnesota concluded that “[early intervention to avoid sex trading and trafficking of Minnesota’s female youth passes a rigorous benefit-cost test with a return on investment of \$34 in benefit

d. What Should Legislatures And Law Enforcement Do?

In its 2015 Report on Human Trafficking, the Department of State recommended that the United States “[e]ncourage the adoption of victim-centered policies at the state and local levels that ensure victims, including children, are not punished for crimes committed as a direct result of being subjected to trafficking[.]”⁶⁷ To reach this goal each State must take significant steps to accomplish this needed outcome for trafficking victims.

I. Legislatures

Twenty-eight states have enacted statutes that provide varying “safe harbor” protections for victims of human trafficking.⁶⁸ While there are variations, most enable minor victims only to avoid convictions by either exempting minors from prosecution for prostitution (occasionally including related offenses) or creating an affirmative defense of human trafficking for certain offenses. CAST’s home state of California provides neither of these.⁶⁹ Thus, even trafficked minors can be, and still are, prosecuted in California for prostitution even though a minor cannot legally consent to sex.⁷⁰ This is true in many other states as well.

According to the National Conference of State Legislatures, as of July 2014 only six states make minors immune from prosecution for prostitution.⁷¹ These states include: Illinois, Mississippi, Nebraska, North Carolina, Tennessee, and Vermont.⁷² In Connecticut, the immunity applies only to

for each \$1 in cost.” University of Minnesota Urban Research and Outreach-Engagement Center, “Early Intervention to Avoid Sex Trading and Trafficking of Minnesota’s Female Youth: A Benefit-Cost Analysis,” available at http://www.uroc.umn.edu/documents/benefit_cost_study_executive_summary_public_distribution.pdf.

⁶⁷ U.S. Dep’t of State, *Trafficking in Persons Report* (July 2015), <http://www.state.gov/documents/organization/245365.pdf>.

⁶⁸ National Conference of State Legislators (“NCSL”), Human Trafficking Overview, available at <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-overview.aspx>

⁶⁹ California provides a limited evidentiary exclusion, Cal. Evid. Code § 1161(a). This does not prevent children and adults from being arrested or prosecuted for the crimes their traffickers force them to commit in California.

⁷⁰ See, e.g., *In re Aarica S.*, (2014) 223 Cal.App.4th 1480; *In re M. V.*, (2014) 225 Cal. App. 4th 1495.

⁷¹ National Conference of State Legislatures, “Human Trafficking Crimes Against Children: States Respond,” available at http://www.ncsl.org/documents/summit/summit2014/onlineresources/Human_trafficking_document_Summit_Handout.pdf.

⁷² 720 Ill. Comp. Stat. Ann. 5/11-1; Miss. Code. Ann. § 97-29-49; Neb. Rev. Stat. Ann. § 28-801; N.C. Gen. Stat. Ann. § 14-204; Tenn. Code Ann. § 39-13-513; Vt. Stat. Ann. tit. 13, § 2652.

children under the age of 15.⁷³ These “safe harbor” and immunity statutes, however, do nothing to counteract the unique negative effects of arrests of victims.

To ensure that all victims are not arrested and subjected to the long-term consequences of criminal arrest and detention,⁷⁴ a comprehensive approach must be taken to protect all trafficking victims, not just minors and not just sex trafficking victims. Trafficking is a unique crime in that as part of the actual criminal act itself, victims may be forced to commit additional criminal acts.

Although some states have begun to take preliminary steps to address this issue, none of the existing state legislation goes far enough. Even in the most advanced jurisdictions, victims are still largely treated as criminals. To change this requires a paradigm shift. Child victims of human trafficking should receive complete immunity from arrest and criminal detention for non-violent crimes they were forced to commit. Both adult and children should have the additional protection of a specific affirmative defense based on the fact that they were trafficking victims, and the crimes committed were the direct result of being a victim. Finally, victims should be provided legislative means to a clean slate, meaning that records of expunged convictions should be sealed or destroyed, and victims should be allowed to state that they have never been arrested for or convicted of a crime.⁷⁵ Denial of employment, housing and other benefits to human trafficking victims based on crimes they were forced to commit should be addressed in state law.

⁷³ Conn. Gen. Stat. Ann. § 53a-82.

⁷⁴ In 2013, the National Conference of Commissioners on Uniform State Laws (NCCUSL) passed a model law containing provisions for vacating and expunging convictions for trafficked crimes. NCCUSL, Uniform Act on Prevention of and Remedies for Human Trafficking, Section 15, available online at

http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013_UPRHT_Final%20Act.pdf). Expungement provisions permit victims to petition the court to expunge their records, including records of arrest. Currently some state statutes designed for human trafficking victims only permit expungement of criminal records for prostitution (e.g. N.C. Gen. Stat. Ann. § 15A-145.6), while others more broadly permit expungement for other nonviolent offenses that were a direct result of the individual being a victim of human trafficking (e.g. N.J. Stat. Ann. § 2C:44-1.1).

⁷⁵ Several states have enacted laws that permit individuals whose records have been expunged to represent that they have never been arrested, charged, or convicted of a crime with respect to the expunged offenses. For example, the Arizona statute directs: “Except on an application for employment that requires a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, a person whose conviction is vacated under this section may in all instances state that the person has never been arrested for, charged with or convicted of the crime that is the subject of the conviction, including in response to questions on employment, housing, financial aid or loan applications.” Ariz. Rev. Stat. Ann. § 13-907.01 (emphasis added). These statutes protect victims of human trafficking by enabling them to do things like apply for credit or employment without the fear of having to disclose their histories.

At the same time, Legislatures must allocate appropriate funds for victim services. They must establish local service agencies or increase funding to existing agencies. Human trafficking is not just a personal problem for the victim, it is a shared public issue as well – one of the most important of our time. These are necessary and important steps toward minimizing the re-victimization of trafficked persons.

2. Law Enforcement

Significant strides have been made in the past decade. Police have become better able to recognize the signs of trafficking. They have shown an intention to address this issue and have increased the available resources and officers to combat this human rights abuse. However, in many ways, law enforcement has been hamstrung by existing laws, which need to be changed. They are influenced by a culture that approves the notion that arresting victims to get them services is a viable option to protect victims.

It will always be the case that police officers and sheriff deputies will be in contact with human trafficking victims. Those who provide services to victims consider law enforcement to be their partners, aligned in the goal to prevent trafficking, apprehend traffickers, and protect victims. In the paradigm shift we propose, law enforcement officers must be involved in identifying victims and arresting their traffickers. However, they must receive adequate training to identify perpetrators and victims and also understand the proper procedures to follow and resources available once a trafficking victim is identified. Law enforcement should join with victim service providers in calling for States to provide the resources they need to refer trafficking victims to service agencies instead of criminal detention or prosecution.

CONCLUSIONS

Human trafficking victims are arrested at high frequency for crimes they are forced to commit. The arrest frequency comparison between trafficked and non-trafficked activity is stark. It is corroborated by other studies and it is explained by plausible, well-intentioned law enforcement behavior. We call for action on four fronts:

First, CAST calls for public and private agencies to publish their data on this subject. Our data do not tell the full story. If other agencies' data corroborate ours, it will provide strong support to our calls for action.

Second, we call for passage of comprehensive reform legislation to protect human trafficking victims. Existing criminal laws that punish trafficking victims must be examined and the complexities of this crime understood. Criminal laws should uniformly treat trafficking victims as victims, not re-victimize them. To be clear, this means more than just providing limited safe harbor or other evidentiary procedures to allow victims a strong defense. It means changing the culture of misunderstanding around this crime and passing the complex legislation necessary to foreclose arrests, criminal detention, and prosecution of victims for actions they were forced by traffickers to commit. Comprehensive legislation in this area should also recognize that when our systems fail, and trafficking victims are arrested, detained and prosecuted, there is a clear path to rectification.

Third, we call on law enforcement to end criminal detentions of human trafficking victims for offenses they were forced to commit. Law enforcement must be a strong voice in affirming that victims should not be arrested for crimes they are forced to commit, and recognizing them as victims who need referral to appropriate services. We call on law enforcement to be a strong voice in creating a cultural shift that will ensure that more victims will run to law enforcement for protection and help, rather than fearing the very system designed to protect them.

Fourth, we call for expansion and greater funding of public and private services to human trafficking victims. Victims cannot view their traffickers as their only option for support and shelter, and they should not be criminally detained to provide them services. The help they need must come from a network of service providers who can meet their unique and complex needs. Service providers are currently understaffed and underfunded. Government and the private sector can work hand-in-hand to increase the level of services available to human trafficking victims.