

Documenting Forced Criminality: A Guide for Anti-Trafficking Practitioners

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Contents

Introduction.....	2
Deciding Whether to Ask About Forced Criminality.....	2
Providing a Foundation for Forced Criminality Questions	3
Offering Clear and Non-Stigmatizing Examples.....	5
Providing Room for Reflection and Healing.....	6
Deciding What to Document.....	7
Additional Resources.....	9
Documenting Forced Criminality: A Quick Guide	11
References	12

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Introduction

Forced criminality, also referred to as criminal exploitation, occurs when traffickers force survivors to engage in illegal activities.^{1,2} This includes, but is not limited to, circumstances in which survivors are forced to use, cultivate, transport, or sell illegal drugs; to commit theft; to commit identity theft; to commit assault or battery; or to engage in criminalized forms of sex work. Although the U.S. Department of State has recognized that “victims of trafficking should not be held liable for their involvement in unlawful activities that are a direct consequence of their victimization,” trafficking survivors who experience forced criminality are nonetheless often misidentified and treated as offenders within the criminal legal system.³

Although the term “forced criminality” can be helpful for documenting these experiences and advocating for survivors, it’s important to recognize that this language does not resonate with everyone. In some cases, it may be harmful or confusing. Here are some insights we’ve learned from survivor leaders, including two individuals who served as consultants in developing these guidelines:

On hearing the term “forced criminality,” survivors may feel like we’re describing them as criminals

If someone’s trafficking occurred within their family or home community, advocates would describe as “forced criminality” may seem normal and not relevant to an intake or assessment

If a survivor is struggling with feelings of guilt or self-blame, they may not think of themselves as having been “forced” to do anything by their trafficker(s)

Consultants further emphasized that **disclosing any engagement in illegal activity, even activity forced by a trafficker, can be a difficult and vulnerable experience.** We must not assume that clients will feel safe with us, even if we make every effort to explain agency-wide confidentiality protections and attorney-client privilege (where applicable). We must put in the work to earn clients’ trust and recognize that, as anti-trafficking practitioners, we are connected with multiple systems that have done and continue to do harm.⁴

Our original plan had been to develop and distribute a forced criminality screening tool. We envisioned writing 3-5 standard questions that might be asked of any client during an intake or assessment. After meeting with project consultants, we shifted our approach. The following guidelines offer a strategy for asking survivors about experiences of forced criminality in an open and conversational manner, providing room for reflection and healing throughout the process. This approach creates space for survivors to share an accurate account of their experience in their own words, and emphasizes the need to provide clear explanations and to create as safe and affirming an environment as possible, which will help to improve clients’ experiences with accessing services and contribute to better data collection.

Deciding Whether to Ask About Forced Criminality

As a first step, think about your reasons for asking (or not asking) clients about forced criminality. If this information will improve your capacity to serve clients, or will help to reach organizational goals, it may be

appropriate to ask. In the context of legal and other direct services, asking about forced criminality can be helpful if your organization provides support with vacatur or expungement, provides linkage to external legal services for such matters, or provides letters of support to clients who face challenges accessing housing or employment due to prior criminal legal involvement. On an organizational level, analyzing aggregate data about clients’ experiences may contribute to goals such as evaluating and improving services, raising awareness of survivors’ needs and experiences, or advocating for better policy. **As discussed below in the section on “Deciding What to Document,” your reasons for addressing forced criminality should guide practices for collecting, analyzing, and disseminating relevant data.**

Once you’ve identified your reasons for asking about forced criminality, let those reasons guide your approach. If you are not sure of your reasons for asking, or if your reasons are not related to service provision or broader organizational goals – for example, if you find that you are simply curious about what someone has been through, or if you feel a connection with someone and want to get to know them on a more personal level – then it may not be appropriate to collect this information at all.

Providing a Foundation for Forced Criminality Questions

In anti-trafficking work, there is often pressure to collect a broad range of information as quickly as possible. Some of this is due to funders’ expectations, as many grants require detailed reporting on clients served. Additionally, data collection is essential for effective service provision. Practitioners cannot expect to identify, let alone meet, clients’ needs if we do not develop a comprehensive understanding of their circumstances.

We recognize and share in these pressures. Nonetheless, it is important to recognize barriers to disclosure, such as fear of arrest or mistreatment, even within service provision. It is further important to center clients’ wellness and to empower survivors to discuss their experiences and access services on their own terms. **Project consultants and other survivor leaders have cautioned against checkbox and multiple-choice approaches to asking about forced criminality, and instead recommended a more conversational approach.** This tells us something important about when and how to ask. As much as we may want to collect data quickly and efficiently, **we should only ask about those experiences when we have the time and capacity to engage in open conversation.** Even if a client discloses something that may indicate forced criminality during a hotline call or meeting, program staff should be cautious about asking follow-up questions if there is limited time or if clients indicate discomfort, safety concerns, or any other hesitation with sharing further.

If you determine that it is appropriate to ask about forced criminality, we recommend taking the following steps to ensure that your process is trauma-informed and survivor-centered:

Foundational Step	Aims/Reasons for Step	Sample Language
Find out whether it's a good time to talk about forced criminality	<ul style="list-style-type: none"> • Possible safety concerns (e.g., if trafficker is nearby) • Possible privacy concerns (e.g., if survivor is with law enforcement, in a public place, or with relatives) 	<p>“Are you in a safe place to talk?”</p> <p>“I have some questions about your experiences, and what</p>

	<ul style="list-style-type: none"> • Survivor may not be in a state to discuss (e.g., if they are experiencing crisis or other needs) • Safety & privacy concerns may vary by topic, and forced criminality and criminal history are sensitive issues 	<p>[trafficker] previously made you do. Is this an ok time to talk about that?"</p>
<p>Clarify your role and reasons for asking</p>	<ul style="list-style-type: none"> • Transparency in service provision, which demonstrates respect for clients and helps build relationships • Clients may interact with staff in a range of roles, and it is important to be clear about the support that each individual can (and cannot) provide • Forced criminality questions may seem invasive and can be risky to answer 	<p>"I'm a staff attorney here, which means that I can provide support with [services]. I'm going to ask some questions about your experience, including any time you may have been arrested, to see how best I can help to clear any records"</p> <p>"I'm a case manager here, which means that I can provide support with [services]. I'm going to ask some questions to figure out what legal needs you may have, so that I can connect you with resources"</p>
<p>Explain confidentiality protections & mandated reporting responsibilities</p>	<ul style="list-style-type: none"> • Transparency in service provision • Empowers clients to make informed decisions regarding what to share and what not to share with different staff 	<p>"As an attorney, everything we talk about is confidential. I am not a mandated reporter, so what you share will stay between us."</p> <p>"As a counselor, everything that we talk about is confidential with a few exceptions. Those include [review confidentiality exceptions in your area, being specific about when and to whom you might have to report]."</p>
<p>Explain victims' rights</p>	<ul style="list-style-type: none"> • Empowers clients to make informed decisions regarding what 	<p>"As a victim of human trafficking, you have a right not to be arrested or charged for</p>

	<p>to share and what not to share with different staff</p> <ul style="list-style-type: none"> • Empowers clients to make informed decisions regarding what services to pursue, within and outside of your organization • This information may allow survivors to identify previous violations of their rights as human trafficking victims 	<p>things that your trafficker made you do” [tailor as needed to the legal context in your state]</p> <p>“In our state, trafficking survivors have the right not to be arrested or charged for nonviolent offenses”</p>
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Collectively, these steps demonstrate a commitment to survivor-centered work and empower clients to share their stories and access (or decline) services with informed consent.

Offering Clear and Non-Stigmatizing Examples

Direct questions are not always effective. This is something that many anti-trafficking practitioners know from their work, even if we don’t always apply that knowledge in all aspects of service provision. For example, few (if any) organizations screen clients in for services by asking, “have you ever been trafficked?” Instead, staff may ask a series of questions using a screening tool^{5, 6} or engage in a more open-ended conversation⁷ to learn about someone’s experience. They may provide examples of trafficking and other forms of harm. They may clarify what is meant by terms such as “force,” “fraud,” and “coercion,” or use plain language alternatives, to explore potential and current clients’ experiences.

Those practices can and should be put to use when it comes to forced criminality. **Direct questions, such as “have you ever experienced forced criminality” or “has anyone ever forced you to break the law” can be ineffective for several reasons.** As mentioned above, this language can be stigmatizing. Survivors may feel that they are being criminalized by practitioners, and may further fear losing access to services or being reported to law enforcement if they disclose. Language like “forced criminality” can also be confusing. Such terms can be further misunderstood when working with clients who speak different languages and when working with an interpreter. Even if a survivor feels completely comfortable discussing their experiences, answering direct questions “correctly” requires (a) that clients have a clear understanding of forced criminality, as defined in the anti-trafficking sector, and (b) that they are able to apply that concept to their own experiences.

Consultants for this project emphasized the importance of clear, non-stigmatizing examples for gathering information about forced criminality. Practitioners should offer plain language descriptions. They should be mindful of barriers to disclosure, such as stigma, fear of being reported, and fear of losing access to services. Where possible and appropriate, it can be helpful to mirror the language that a client uses – for example, if a client refers to a trafficker as their “friend” or “partner,” you might want to use those terms when asking questions. We have provided a few examples below. Wherever you see terms in brackets, such as [trafficker], these are terms where mirroring language can be particularly important:

Sometimes people are pressured to carry or sell drugs for someone else, when they may not want to. Have you ever experienced something like that?

I want to ask you some questions about drug use. Anything you share will stay confidential, and I'm only asking to make sure that we can provide services that meet your needs as well as possible. When you were living with [trafficker], did they ever offer you drugs?

You've shared that [trafficker] first asked you [to engage in sex work] when you were in high school. Sometimes, people in that situation are asked to bring in new people. Did [trafficker] ever ask you to introduce them to your friends?

Each of these prompts is intended to open space for conversation. If you describe an example of forced criminality and a client confirms that they have experienced something similar, you may want to follow up with something more open-ended such as, “do you feel comfortable telling me more about that?” This will give a client the opportunity to share and reflect further, without requiring them to do so. You might also ask follow-up questions to establish the extent of force or coercion, such as “did you feel like you had to say ‘yes’” or “what would have happened if you said ‘no?’”

In addition to providing examples, we recommend adding a more general question towards the end, such as “**Was there anything you were made to do in addition to what you have already told me?**” This can help to collect information on experiences of forced criminality that were not addressed in your examples. It can also be helpful to identify incidents that did not necessarily seem illegal at the time. For example, a trafficker might make a survivor drive a car from one location to another, hold or transport a package, or cash a check in their bank account, without revealing that these activities are illegal (e.g., without stating that the vehicle is stolen, the package contains illegal drugs or weapons, or the check is fraudulent).

Remember that there is no single correct way to ask about forced criminality. Practitioners and organizations are unique, and we encourage you to find the approaches that work best for you. Survivors are also unique, and a question that resonates with one person may not land well with another. It may be helpful to test out different language, or practice different ways of providing explanations, before meeting with a client to ask about and document their experiences.

Providing Room for Reflection and Healing

Early on in this project, consultants emphasized the importance of reflection and healing throughout all aspects of service provision. This includes intake sessions and any other meetings during which staff may ask about forced criminality. Although the primary goal is typically to gather information, these sessions may

nonetheless contribute to healing and/or cause harm. We understand the potential for healing and harm in a broad sense, encompassing the aftermath of lived experience of trafficking; lived experience of other forms of violence such as sexual assault, stalking, and intimate partner violence; individual and communal experiences with racism, poverty, homophobia, transphobia, ableism, and other forms of oppression; and intergenerational trauma.

Clients and practitioners engage with each other at various stages in our healing journeys. We strongly encourage practitioners to carry this understanding throughout our work, and build in room for reflection and healing even in sessions that are brief or informational in nature. There are many ways to do this. Here are a few examples that came up in project discussions:

- **Debriefing:** whenever possible, plan for a few minutes at the end of intakes and other sessions to check in with clients. Be prepared to hold space for further conversation, to provide internal or external referrals if needed, or to end meetings a bit early if clients would prefer some time alone.
- **Gratitude:** as practitioners, we often ask a great deal of clients. We ask clients to share (and thus revisit) harmful experiences, sometimes over and over. We ask clients to collaborate with us in navigating complex programs and systems. We ask clients to trust us, or to grant us the opportunity to earn their trust, even if they have experienced considerable harm from the systems of which we are a part. We should recognize and honor this labor, make a point of expressing our gratitude.
- **Openness to New Information:** within an intake session, or across weeks or months or years of accessing services, clients may provide new or different information about themselves or their experiences. This may occur as clients build relationships with staff and feel safer disclosing. This may occur as clients learn more about human trafficking and other forms of harm, and come to understand their experiences in different ways. Practitioners can hold space for reflection and healing by being open to new information throughout service provision, even if this information changes our understanding of clients' lived experiences or identities. Rather than worry that clients may have initially concealed information or misled staff, we can be grateful for new disclosures and adjust internal documentation and service plans accordingly.

In addition to these practices, we can provide room for reflection and healing by proactively checking in with clients. Some of the practices described in the section on “Providing a Foundation for Forced Criminality Questions,” such as finding out whether it’s a good time to discuss forced criminality and clarifying our reasons for asking, can make a substantial impact. It can also be helpful to offer breaks, or to change the order of questions, if this would make clients feel safer or more comfortable.

Deciding What to Document

Documentation practices should be based on your organizational needs, as well as those of your clients. Rather than provide a standard or universal approach to documenting forced criminality, we encourage beginning with a few questions:

- Why am I hoping to collect data on forced criminality?
- What kind of data will allow me to reach those goals?

- How can I center clients’ needs, including confidentiality and any concerns they may have around sharing their story, when collecting and acting on this information?

Each of these questions may have multiple answers, even within a single organization. Here are some of the ways that individuals in different roles might answer these questions:

Direct Services		
Reasons for collecting data	Type(s) of data to collect	Centering clients’ needs
<ul style="list-style-type: none"> • Identifying individual clients’ needs • Providing legal services and other direct support • Making appropriate referrals 	<ul style="list-style-type: none"> • Detailed, narrative accounts of clients’ experiences • Some yes/no or other close-ended questions (e.g., “any report of forced criminality,” “any prior arrests”) • Clients’ interest in related services (e.g., vacatur) 	<ul style="list-style-type: none"> • Be clear about why you are asking questions • Allow clients to decide what they share and what services they will access • Restrict access to data, including any personally identifiable information and detailed, narrative accounts, to appropriate direct services staff
Policy and Training & Technical Assistance (TTA)		
Reasons for collecting data	Type(s) of data to collect	Centering clients’ needs
<ul style="list-style-type: none"> • Raising awareness of forced criminality as an issue for trafficking survivors • Incorporating realistic examples into trainings 	<ul style="list-style-type: none"> • Yes/no and other close-ended questions about forced criminality • Other quantitative data to help explore patterns, such as race/ethnicity and trafficking category (labor, sex, both) • Narrative descriptions of some clients’ experiences 	<ul style="list-style-type: none"> • All identifying information should be removed before any data are made available to the TTA team • When drawing on clients’ experiences in trainings, avoid using any personally identifiable information • Wherever possible, ask for permission and give survivors opportunities to review any examples that draw on their experiences
Monitoring & Evaluation		
Reasons for collecting data	Type(s) of data to collect	Centering clients’ needs

<ul style="list-style-type: none"> • Identifying patterns in clients' experiences • Identifying patterns in service provision • Identifying patterns in service outcomes 	<ul style="list-style-type: none"> • Yes/no and other close-ended questions about forced criminality • Other quantitative data to help explore patterns, such as race/ethnicity and trafficking category (labor, sex, both) • Data on service patterns and outcomes, to examine any differences among people who have vs. have not experienced forced criminality 	<ul style="list-style-type: none"> • All identifying information should be removed before data are made available to the evaluation team • Report on aggregate data, rather than sharing individual-level data beyond the agency
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This kind of reflection can extend beyond matters of forced criminality. It is worth considering how well practices for collecting, analyzing, and disseminating client data align with your mission and core values. We also encourage organizations to prioritize survivor engagement in this work. This means listening to clients and acting on their feedback. It also means recognizing that many survivor leaders are professionals in the anti-trafficking sector and may contribute as expert consultants or as employees. Documenting and addressing clients' needs will always be a collaborative process.

Additional Resources

In addition to continuing your own learning, we strongly encourage developing a practice of sharing information on survivors' rights and resources throughout all aspects of anti-trafficking work. Direct services providers, including attorneys as well as individuals in roles such as case management, counseling, crisis intervention, and housing services, may offer information about survivors' rights and appropriate referrals for legal aid. Those who do not provide direct support to clients may still have opportunities to share resources through means such as trainings and other speaking engagements, written reports and fact sheets, pamphlets and other outreach materials, and organization websites and social media accounts. That way, any audience member, reader, or site visitor who might benefit from this information – such as people with lived experience of criminality and those who support them – can access resources without necessarily having to disclose their experience or enroll in formal anti-trafficking services.

Learning about forced criminality is an ongoing process. The legal landscape within and beyond the United States is varied, and laws and resources continue to change. We have provided a brief list of resources below, and encourage readers to explore additional resources specific to their region:

Freedom Network, Survivor Reentry Project

Offers technical assistance for survivors and practitioners, as well as information regarding post-conviction relief laws in each state in the U.S.



COALITION TO
ABOLISH SLAVERY
& TRAFFICKING

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

Cast, Training and Technical Assistance (TTA)
<https://casttta.nationbuilder.com/>

Information on Cast’s free TTA services for legal and social services providers, along with links to access toolkits, webinars, and other resources

Free to Thrive, Training Library
<https://www.freetothrive.org/past-trainings>

Freely available, pre-recorded webinars on forced criminality, vacatur, and other issues pertaining to human trafficking

Polaris, “Criminal Records Relief”
<https://polarisproject.org/criminal-records-relief/>

Overview of state and federal criminal record relief options for survivors, as well as the Trafficking Survivors Relief Act. Includes several brief videos featuring survivor stories.

Office for Victims of Crime, “The Legal Rights and Needs of Victims of Human Trafficking in the United States”
https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/HT_Legal_Rights_Needs_factsheet-508.pdf

Overview of potential legal needs of trafficking survivors, including various civil legal needs federal victims’ rights as well as a brief description of criminal defense needs and post-conviction relief.

Documenting Forced Criminality: A Quick Guide

Documenting clients' experience with forced criminality can be helpful for legal and social services provision, as well as broader organizational efforts such as program evaluation, training and technical assistance, and policy advocacy. However, collecting and analyzing this information can be challenging. It's important to recognize possible barriers and risks for clients, including differing understandings of what "forced criminality" may involve as well as concerns about being stigmatized, denied services, or reported to law enforcement depending on what they share. These barriers may arise before, during, and after collecting information about survivors' experiences.

We recommend the following approach:

Before Asking

- Make sure the client is in a safe place to talk
- Review client's legal rights
- Review confidentiality policies
- Review information on mandated reporting, including any obligations that come with your specific role

How to Ask

- Use clear and non-stigmatizing language
- Provide examples of forced criminality and give clients room to reflect on their experiences
- Finish with a general question to identify additional experiences, such as "were you made to do anything else, aside from what you've already shared with me?"

Documenting and Using Data

- Consider whether you need simple (e.g., any vs. no forced criminality) or more detailed information
- Detailed narratives and identifying information should ONLY be available to staff who work with clients
- Remove all identifying information before making data available to other staff/teams such as policy, training, or evaluation

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