

HUMAN TRAFFICKING

PART 7 SECTION M (2 HOURS)

TOPIC DESCRIPTION

Instruction to provide an overview of New York State and Federal Human Trafficking Legislation and their implications; insight into identifying the crime of trafficking, possible victims and traffickers, guidelines for investigating and assisting the human trafficking victim and finally provide a comprehensive list of agencies and organizations, both public and private, to support victims of human trafficking.

INSTRUCTOR QUALIFICATIONS

Instructors in this topic are generally expected to be those certified by the Municipal Police Training Council. They should be able to document this by producing a current certificate issued by the Council. This certificate should read the person is certified as a general topics instructor. Further, they should possess a background and experience in the topical area, as documented to the school director. This supporting documentation should remain a part of the course file in the academy, available for later inspection or audit.

If a school director believes an individual who is not certified is otherwise qualified for teaching this topic, they may ask in writing for approval for that person to teach. The OPS may, if finding the individual possesses a combination of an advanced degree and unique or qualifying experience, find the individual to be qualified and be approved to instruct. Those that are found qualified, are listed as approved instructors, and will have a letter issued to them indicating what they are approved to instruct in. The school director should keep a copy of the letter in the school file.

School directors should understand the Office of Public Safety can only examine complete applications for instructors that are filed in a timely manner. Generally, this instructor approval often requires time that is in addition to the requirements (45 days by the State Regulation, the Municipal Police Training Council and its Zone Coordinators) for police training approval. This time allows for proper review of curriculum, instructors, and the needs for training in a zone. Complete applications are those which include a properly completed Instructor Personal History Form, and documents supporting the facts contained therein.

TRAINING OBJECTIVES

Upon completion of instruction the student will be able to:

1. Explain the difference between human smuggling and human trafficking.
2. Identify four keys to effective implementation of New York's human trafficking law.
3. Explain the relationship between prostitution and sex trafficking.
4. Define the elements of the following human trafficking offenses:
 - a. Sex trafficking - PL. 230.34
 - b. Labor trafficking - PL. 135.35
5. Explain three methods a trafficker may use to control a victim.
6. Identify five challenges to effectively interviewing human trafficking victims.
7. List three possible indicators of human trafficking.
8. Explain the importance of working closely with service providers in human trafficking cases.
9. Explain the importance of the "Law Enforcement/District Attorney Office Referral of Human Trafficking Victim Form."
10. List five types of services available to human trafficking victims under New York State law.

CURRICULUM OUTLINE

- I. What is Human Trafficking.
 - A. Human trafficking is a form of modern day slavery that is present in every country in the world.
 - B. It is estimated that between 14,500 and 17,500 people are trafficked into the United States every year for commercial sexual activity or labor.
 - C. New York State's long international borders and several major points of entry make it a major transit and destination point for trafficking victims.
 - D. Human trafficking is one of the three largest criminal activities in the world measured by revenues generated.
 - 1. Rivals narcotics; and
 - 2. Weapons trafficking.
 - E. Human trafficking victims are obtained and controlled by various means designed to
 - 1. Trick them;
 - 2. Make them dependent on their traffickers;
 - 3. Make them fear law enforcement; and
 - 4. Fear for the health and safety of themselves and their families.
 - F. Human trafficking deprives people of their human rights and freedoms,
 - 1. Is a global health risk and
 - 2. Fuels the growth of organized crime.
 - G. Human trafficking is not just a big city problem.
 - 1. Sex and labor trafficking victims are found in

- a. Large cities,
- b. Suburbs and
- c. Rural areas.

II. Human Smuggling vs. Human Trafficking.

- A. Its is important to understand that there is a difference between human smuggling and human trafficking. It is also important to understand that situations that begin as human smuggling can turn into human trafficking if one of the prohibited means found in Penal Law 230.34 or 135.35 is applied.
- B. **Human Smuggling** - The surreptitious entry of people into the United States, facilitated by a third party, involving the deliberate evasion of immigration laws. Smuggling may be motivated by the need for employment, family reunification or political reasons. Human smuggling is:
 1. Voluntary; no coercion, force or trickery is involved.
 2. Individual typically contracts to be taken across the border.
 3. Smuggling typically ends after the border is crossed. The smuggled person can then leave or change jobs without interference by the smuggler.
 4. Always international in nature.
- C. **Human Trafficking** - The advancing or profiting from prostitution by one of the prohibited means contained in Penal Law 230.34; or by one of the prohibited means contained in Penal Law 135.35 by compelling or inducing another to engage in labor or by recruiting, enticing, harboring or transporting such other person.
 1. Not voluntary; one cannot consent to being trafficked.
 2. Need not involve the actual movement of the victim.
 3. Not always international; can occur entirely within the United States.
 4. Trafficked persons are victims and are involved in prostitution or some form of labor/services.

- III. Keys to Effective Implementation of New York’s Human Trafficking Laws.
 - A. Be aware that victims will include US citizens and legal residents as well as those without legal status.
 - B. Movement of the victim isn’t required.
 - C. Trafficking victim will not always be the object of the prohibited method.
 - D. Where prostitution is tolerated, trafficking flourishes.
 - E. Monitor the internet and print advertisements.
 - F. Coordinate with social service providers before making arrests.
- IV. Understanding the Relationship Between Prostitution and Sex Trafficking.
 - A. Sex trafficking is an article PL Article 230 offense, it emanates from New York State’s promoting prostitution statutes.
 - B. PL §230.34 makes a person guilty of sex trafficking if he “advances or profits” from prostitution by one of the prohibited methods that follow.
 - 1. Term “advances or profits” comes directly from the New York State definition of promoting prostitution contained in PL §230.15.
 - C. Sex trafficking is the response to the demand for prostitution.
 - 1. To address the demand (patronizing a prostitute), New York has repealed PL §230.03 and amended PL §230.34 resulting in the lowest level patronizing offense rising to a class A misdemeanor.
- V. New York Human Trafficking Law.
 - A. New York State Human Trafficking Law has provided state law enforcement officials the ability to effectively tackle human trafficking cases. These laws can increase the number of cases discovered, investigated and prosecuted and the number of victims rescued by local law enforcement and state prosecutors.
 - B. In 2007, New York State repealed and amended the Penal Law and Criminal Procedure Law in relation to human trafficking (Penal Law §230.34 and §135.35), promoting prostitution (Penal Law §230.25) and patronizing a

prostitute (Penal Law §230.03 and Penal Law §230.04) to insure that traffickers and patronizers of prostitutes are subjected to severe punishment under state law.

C. Full text versions of those sections of the Penal Law and Criminal Procedure Law that have been amended are included in the “Human Trafficking Appendix.” These are sections PL §230.34, PL §230.06, PL §135.35, PL §135.36, PL §230.25, PL §230.03, PL §230.04, PL §230.07, PL §460.10 and CPL §700.5. New York State law creates two human trafficking crimes: sex trafficking and labor trafficking.

1. Sex Trafficking - Penal Law §230.34 - Class B Felony

a. Makes a person guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

(1) Unlawfully providing narcotics to the patronized person with intent to impair his or her judgment.

(a) Case: Forbes (CT-conviction). Defendant coerced young women into prostitution and maintained control over them by several methods including providing illegal drugs.

(2) Making material false statements, misstatements or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity.

(a) Material false statements, misstatements or omissions are seen in virtually every sex trafficking case.

(3) Withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document with intent to impair said persons freedom of movement.

(a) Confiscation of passports, visas and other national identification documents is very common in cases of international trafficking.

- (4) Requiring that prostitution be performed to retire, repay or service a real or purported debt.
 - (a) Such debt bondage schemes are often used to control trafficking victims.
 - (b) Victims are required to pay back grossly inflated debts to their traffickers.
 - (c) Many victims are resold before they pay off the debt, creating a new cycle of bondage and exploitation.

- (5) Using force OR engaging in any scheme, plan or pattern to compel or induce the person patronized to engage or continue to engage in prostitution by means of instilling a fear in the patronized person that if the demand isn't complied with the actor or another will do one or more of the following:
 - (a) Cause physical injury, serious physical injury or death to a person.
 - i) Traffickers often exploit their own nationals, many times even originating from the same town or area as their victims.
 - ii) Often times they have accomplices in the source trafficking location who are capable of carrying out these threats.
 - (b) Cause damage to property other than that of the actor.
 - i) Under this section, the property need not be that of the trafficking victim.
 - ii) It may be that the property threatened is that of the victim's family.
 - (c) Engage in other conduct constituting a felony OR unlawful imprisonment in the second degree.

- i) Felonies commonly committed against victims of sex trafficking include
 - a) rape,
 - b) robbery,
 - c) assault and
 - d) sexual abuse.

- (d) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person.
 - i) Deportation is often an unwelcome alternative to a trafficking victim because he/she might have an outstanding debt to the trafficker, might have been trafficked with the complicity of government official in their home country or because their culture might attach great shame to having been a prostitute.

- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.
 - i) This is an effective method of obtaining or controlling victims. The ease with which any activity can be recorded and placed on the internet makes such threat real and easily achieved.
 - ii) Jones (GA-conviction). Among the methods the defendant used to maintain control over his sex trafficking victims was the threat to expose sexually explicit videos of them.

- (f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
 - i) A pimp will threaten that he will testify that the victim consensually entered into and

remained in a prostitution relationship in opposition to her claim that she was forced or coerced.

- (g) Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely.
 - i) Kim and Chae (NY-conviction). Defendant police officers provided protection to a brothel that exploited Korean women. They also conducted raids of competing brothels.
- (h) Perform any other act which would not itself materially benefit the actor but which was calculated to harm the person who is patronized materially with respect to his or her health, safety or immigration status.
 - i) This is a “catch-all” section designed to cover conduct of the traffickers which might not fit neatly into any of the aforementioned prohibited means.
 - ii) On sex trafficking - the specified prohibited means set forth in Penal Law §230.34 are commonly used by pimps to obtain and then maintain control of their victims.
 - iii) On sex trafficking - Many of the specified prohibited means set forth in Penal Law §230.34 do not require that the sex trafficking victims be the object of the prohibited means. In many cases the prohibited activity can be directed against another, most likely a family member of the victim. See Penal Law §230.34 (5) (a), (b), (c), (d), (e), (f) and (g).

b. Locations where sex trafficking victims are found:

- (1) Brothels.
- (2) Massage parlors.
- (3) Escort services.
- (4) Street prostitution.
- (5) Pornography.
- (6) Strip clubs.

2. Labor trafficking - Penal Law §135.35 - class D felony.

Note: The following prohibited methods of labor trafficking closely track those of sex trafficking included in Penal Law §230.34.

- a. Makes a person guilty of labor trafficking if he compels or induces another to engage in labor or recruits, entices, harbors or transports such other person by means of intentionally:
 - (1) Unlawfully providing a controlled substance to such a person with intent to impair said person's judgment.
 - (a) Contrast this section, which requires provision of a "controlled substance", with the broader provisions of Penal Law §230.34 (1).
 - (2) Requiring that the labor be performed to retire, repay or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person.
 - (a) Under this section the traffickers actions must be ongoing and systematic. A single act is not sufficient to violate this section as it would be under Penal Law §230.34 (2).
 - (3) Withholding destroying or confiscating any actual or purported passport, immigration document or any other government identification document of another person with intent to impair said person's freedom of movement.

- (a) “Purported” document means that withholding, destroying or confiscating even forged or fraudulently obtained documents will constitute a violation of this section.
- (4) Using force OR engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:
 - (a) Cause physical injury, serious physical injury, or death to a person.
 - i) This threat need not be directed at the victim. It can be directed at any person as long as the result is that the fear has been instilled in the victim.
 - ii) In many cases the threat of physical injury, serious physical injury or death will be made against a family member of the trafficking victim.
 - (b) Cause damage to property, other than that of the actor.
 - (c) Engage in other conduct constituting a felony OR unlawful imprisonment in the second degree.
 - (d) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such a person.
 - (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.
 - (f) Testify or provide information or withhold testimony or information with respect to another’s legal claim or defense.

- (g) Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty in such manner as to affect some person adversely.

b. Locations where labor trafficking occurs:

- (1) Agricultural/farm work.
- (2) Restaurants.
- (3) Hotels.
- (4) Construction.
- (5) Landscaping.
- (6) Domestic work.
- (7) Sweat shops.

VI. Identifying Human Trafficking.

A. Recruitment and control of human trafficking victims.

- 1. Human traffickers often recruit from vulnerable populations, including discriminated against minority or ethnic groups, girls and women, migrants, refugees and displaced persons, runaways and the poor.
- 2. The methods used to recruit and then maintain control over trafficking victims are the same as those prohibited means set forth in Penal Law §§ 230.34 and 135.35.
 - a. It is not unusual to see multiple prohibited means applied to the same human trafficking victim. In many instances the trafficking victim will be recruited by material false statements, misstatements or omissions (Penal Law §230.34 (2)).
 - b. After the victim has been obtained by this method they are then controlled by force or threats (Penal Law §230.34 (5)),

withholding of passports (Penal Law §230.34 (3)) or debt bondage (Penal Law §230.34 (4)).

(1) **Case:** The Carreto crime family tricked victims into coming to the United States by having male family members promise to marry young Mexican women.

(2) Once they arrived in the United States the women were forced into prostitution where they were held by use of several of the means prohibited by Penal Law §230.34.

B. Characteristics of trafficking victims.

1. Victims may have few or no personal possessions.
2. Victims may have few or no personal financial records.
3. Victims may ask about their whereabouts or don't know what city they are in.
4. Victims may not control or have possession of their identification documents.
5. Victims communication may be controlled or restricted.
 - a. They may not be allowed to speak for themselves or
 - b. A third party insists on translating for them.
6. Victims may lack freedom to leave working or living conditions.
 - a. Trafficking victims may live and work in the same location.
7. Victims may be unpaid, paid very little or paid only through tips.
8. Victims may live or work in locations with excessive or inappropriate security features such as barbed wire, opaque or boarded up windows or doors that lock only from the outside.
9. Victims may have lived in multiple locations within a brief period of time.

- a. They may not know the place they have been,
 - b. how long they remained in each place or
 - c. the order of the places they stayed.
 10. Victims may claim to be just visiting an area but do not know where they are, how long they will remain or where they will go next.
 11. Victims may be excessively fearful of police and law enforcement personnel.
 - a. They may react as if they are being arrested rather than rescued.
 - b. Many times victims are trafficked with the complicity of police or government officials in their homes or transit countries.
 - c. Many times traffickers will tell victims that they face long prison sentences for engaging in prostitution or being in the United States without documentation.
 12. Multiple victims may be represented by the same attorney that they do not seem to know.
 - a. Because New York's sex trafficking law (Penal Law §230.34) is an extension of our promotion of prostitution statutes the most reliable characteristic of sex trafficking victims will be the presence of a pimp.
- C. Interviewing human trafficking victims.
1. Challenges to effectively interviewing human trafficking victims.
 - a. Victims may be afraid to cooperate because they still feel their traffickers or their traffickers accomplices. Fear of harm to family members also inhibits victim cooperation.
 - b. Victims may fear law enforcement because of negative previous experiences or as a result of coaching by their traffickers.
 - c. Many trafficking victims do not identify themselves as such.

- d. Victims may feel too ashamed to speak candidly.
 - e. Victims may provide a cover story that their trafficker has coached them to repeat.
 - f. Victims may be too traumatized to discuss their ordeal in an organized, linear way. Rather, their stories will be shared in pieces over time.
 - g. Victims will often require counseling and other rehabilitative services.
 - h. Patience, empathy and persistence are necessary to gain the trust of human trafficking victims and to enable them to cooperate with law enforcement in the arrest and prosecution of their traffickers.
2. Interview process.
- a. Because human trafficking victims will initially be reluctant to cooperate with law enforcement, the initial interview should be designed to gain the trust of the victim and establish that you are there to assist them.
 - (1) Explain that crime victims in New York State are entitled to certain benefits.
 - (2) Explain that you can assist them in obtaining those benefits.
 - (3) Determine the precise fear of the victim: arrest, deportation, violence from their trafficker, or fear for family members.
 - (4) Explain that the police are there to provide protection for them.
 - (5) Do not push the victim in an initial interview to discuss matters that upset them or make them fearful.
 - (6) Ask general questions about the circumstances of the victims exploitation as opposed to specific questions. Ask:

- (a) Where have they lived?
 - (b) Who did they work or travel with?
 - (c) Who made their travel arrangements or transported them?
 - (d) Have they witnessed bad treatment of others?
- (7) As trust is developed, more detailed questions about the victim's specific experiences can be asked.
- b. The successful interviewing of a human trafficking victim requires that law enforcement work closely with agencies that provide services to trafficking victims. These agencies often have access to personnel with language and cultural expertise that can be used to increase the comfort level of the trafficking victim. Many such agencies have experience working with trafficking victims and are willing to provide that expertise to law enforcement. Human trafficking is not just a law enforcement problem and an effective solution requires more than just law enforcement response.
- c. Trafficking can still be present even where the following have occurred:
- (1) Victim committed unlawful acts.
 - (2) Victim was paid.
 - (3) Victim had some freedom of movement.
 - (4) Victim did not take advantage of opportunities to escape.
 - (5) Victim knowingly entered the United States illegally.
 - (6) Victim is a citizen or legal resident of the United States.
 - (7) Victim was a prostitute before becoming involved with a pimp.
 - (8) Victim and traffickers are married or otherwise related.

(9) Victim's family knew of or consented to the trafficking arrangement.

(10) Victim wasn't moved.

VII. Preventing Sex Trafficking by Eliminating the Demand for Prostitution.

A. Sex trafficking is the response to the demand for prostitution.

1. Reducing the demand for prostitution requires sustained and consistent application of the patronizing a prostitute sections of the Penal Law.
2. Reducing the demand for prostitution requires that those charged with this offense not be treated more leniently than others charged with equivalent offenses.
3. Patronizers of prostitutes often have information about prostitution locations, specific prostituted persons and pimps. They should be interviewed with the goal of having them reveal such information.

B. The patronizing of prostitutes can be deterred.

1. The Buffalo Prostitution Project revealed that 50% of patronizers of prostitutes feared arrest.
2. The Buffalo Prostitution Project revealed that the recidivism rate for convicted patronizers of prostitutes was only 8%.
 - a. Demonstrates that arrest of patronizers is an effective deterrent and should be an integral part of all anti-sex trafficking efforts.
3. Penal Law §230.34 is the lowest level patronizing offense.
 - a. "A person is guilty of patronizing a prostitute in the third degree when he or she patronizes a prostitute."
 - b. Penal Law §230.04 is a class A Misdemeanor.
4. Other patronizing a prostitute offenses carry increased penalties depending upon the age of the patronizer and the person patronized.

- a. Penal Law §230.05, patronizing a prostitute in the second degree, is a class E felony.
 - (1) Occurs when the patronizer is over 18 years of age and the person patronized is less than 14 years of age.
- b. Penal Law §230.06, patronizing a prostitute in the first degree is a class D felony.
 - (1) Occurs when the person patronized is less than 11 years of age.

VIII. Law Enforcement and Provision of Services to Trafficking Victims.

- A. Services and relief are available to human trafficking victims under both New York State and Federal law. New York State’s human trafficking law invests law enforcement agencies with certain responsibilities in helping trafficking victims access these services and to remain in the United States while their case is being investigated and prosecuted.
- B. Confirmation Process, Social Services Law §483-cc.
 - 1. State law enforcement agencies who identify a sex trafficking victim(s) (Penal Law §230.34) or a labor trafficking victim(s) (Penal Law §135.35) must complete the “**Law Enforcement/District Attorney Office Referral of Human Trafficking Victim Form**” to begin the confirmation process. (See “Human Trafficking Appendix” for form)
 - a. The referral form must be filed “as soon as practicable after a first encounter with a person who reasonably appears...to be a human trafficking victim...”
 - (1) When an individual will reasonably appear to be human trafficking victim will vary on a case by case basis. Therefore, the Referral form might be filed during the investigative stage, at the time of arrest or long after arrests are made depending upon when law enforcement has developed sufficient evidence to make such a determination.
 - b. A Law enforcement agency’s obligation to notify both the **Division of Criminal Justice Services and the Office of**

Temporary and Disability Assistance is satisfied when the form is faxed.

- c. Within three business days of receipt of the referral form the Division of Criminal Justice Services and the Office of Temporary and Disability Assistance will consult and advise the referring agency and the victim whether the victim is eligible for services.
 - d. If the referred individual is confirmed by the Division of Criminal Justice Services they will be eligible to receive the services set forth in Social Services Law §483-bb (b). These include:
 - (1) Case management.
 - (2) Emergency temporary housing.
 - (3) Health care.
 - (4) Mental Health counseling.
 - (5) Drug addiction screening and treatment.
 - (6) Language interpretation and translation services.
 - (7) English language instructions.
 - (8) Job training.
 - (9) Placement assistance.
 - (10) Post-employment services for job retention.
 - (11) Assistance to enable individuals and family members to establish permanent residence in New York State or the United States.
- C. New York has been divided into eight regions for the provision of services to individuals confirmed as human trafficking victims.
- 1. Early and close cooperation with service providers will be of invaluable assistance to law enforcement personnel in both enhancing the likelihood of victim cooperation and in the victim referral process.

2. Map showing the eight regions and a roster of regional service providers for each of the eight regions can be found in “Human Trafficking Appendix.”
- D. Law enforcement assistance with respect to immigration.
1. If requested by a human trafficking victim or their representative, the referring law enforcement agency shall provide the victim with the United States Citizenship and Immigration Service (USCIS) Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (See “Human Trafficking Appendix” for form).
 - a. Form I-914 Supplement B must contain a description of the victimization including the date the trafficking occurred and whether the victim had been recruited, harbored, transported and provided or obtained for either labor or sex trafficking.
 - (1) When completing Form I-914 Supplement B, list all methods used against the victims. In sex trafficking cases the age of the victim should be included.
 - (2) Social service providers often have access to immigration specialists that can assist in the completion of the form.