

Meeting The Legal Aid Needs Of Human Trafficking Survivors

By **Sarah Dohoney Byrne and Renata Parras** (April 21, 2023)

The recently released Legal Deserts Report 2.0, or LDR2, which we co-authored with the National Survivor Law Collective and the Avery Center, highlights the continued gaps in access to justice for victims of human trafficking.

While national efforts to increase awareness about both sex trafficking and forced labor have been successful, many survivors of this crime continue to have a wide range of unmet legal needs. The LDR2 is the successor to a 2021 report that identified geographic and subject matter gaps in legal support for survivors. LDR2 takes the next step by proposing ways firms, bar associations, academia, clinics, companies and funders can better fill these gaps.

Following are some suggestions for how law firms and attorneys can heed the call, informed by our own anti-human-trafficking legal practice and reinforced by the conclusions of the LDR2 report.

Understand Trauma-Informed Practices

First and foremost, as LDR2 points out, "it is imperative that attorneys who work with trafficking survivors are trauma informed and understand best trauma-informed practices."

A trauma-informed approach includes understanding the power differential between survivors and their legal representatives, and acknowledging the former lack of agency many clients experienced in the context of their exploitation. Training in this regard ought to be imbedded in any law firm pro bono program and in any law school clinic or curriculum endeavoring to address human trafficking.

With a trauma-informed foundation, law firm programs setting out to provide pro bono legal representation to trafficking survivors must acknowledge the need for a comprehensive and holistic approach to address the full spectrum of legal needs for this distinct category of crime victim. Where a firm does not have the expertise to handle one portion of a survivor's case, partnering with other legal service providers is key to success.

Address Civil Law Needs

In addition to often needing representation to expunge or vacate criminal records incurred while being trafficked, or with immigration applications, most survivors present with a variety of other civil law needs.

Family Law

Upon distilling feedback from stakeholders, including survivors, lawyers and service providers, LDR2 found that "assistance with family law matters surfaced as the number one unmet legal need of survivors." If the original firm doesn't have that competency in-house, partnering with family law attorneys may be key to building a successful relationship with the survivor.



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In addition, innovative charitable or philanthropic funding programs from other stakeholders, including corporate clients, could provide the financial resources to train lawyers to become proficient in family law matters. They could also fund limited-scope representations for family law attorneys for survivors who would otherwise have no support in advocating for their rights to their children.

Consumer Law and Credit Repair

The consequences of financial fraud committed by traffickers, which can include identity theft, coerced debt or tax filings, leaves many survivors in need of consumer law and credit repair assistance. This niche area is ripe for pro bono assistance by attorneys in various practice areas.

In the last year, Regulation V of the Fair Credit Reporting Act became effective specifically providing relief from bad credit status for trafficking victims. At this time, though, there remains no central provider to assist survivors with their filings under this federal regulation. Yet pro bono support has already proven to enhance survivor access to the relief they deserve.

This is also a particularly ripe area for pro bono partnerships between law firms and their business clients, who frequently express a desire to support survivors, but are oftentimes uncertain about how they can offer the most value in light of their business expertise.

Train Legal Navigators as Survivor Liasons

If firms are looking for an innovative way to support human trafficking survivors, LDR2 suggests developing "legal navigator" roles for legal professionals. A legal navigator serves as the point of contact for a survivor who has various legal needs in various geographic areas that are being met by various providers.

The legal navigator liaises between the survivor and their lawyers to provide information and receive updates. This helps the survivor avoid repeatedly relaying information that may be traumatizing. It also lets them receive updates from a trusted and comfortable central source who can help explain an otherwise confusing processes. This is most helpful for survivors who are seeking criminal records relief in multiple jurisdictions.

Pursue Federal Criminal Records Relief

It bears reminding that there remains one gaping hole in access to justice for human trafficking survivors: criminal records relief on the federal level.

By its very definition, the crime of human trafficking involves being forced, coerced or tricked into activities that a person would not otherwise engage in — such as selling sexual services or performing work without pay. Human traffickers often force or coerce victims to engage in criminal activity involving weapons, drugs, identity theft and other financial fraud, or even facilitating the trafficking scheme.

Most states have a statutory mechanism to provide relief in the form of affirmative defenses or expunction and vacatur for criminal records that resulted from the survivor's being trafficked. However, there remains no federal statutory relief for survivors who are arrested, charged or convicted of federal offenses that resulted from trafficking.

The Trafficking Survivors Relief Act, proposed in the U.S. House of Representatives in 2022, would provide a framework for a federal affirmative defense and expunction relief under certain circumstances. Advocacy for this important piece of federal legislation, enhancements to current state records relief statutes and increased pro bono representation to access this relief, are much needed.

All that said, criminal records relief and affirmative defense statutes still require survivors to bear the burden of demonstrating a nexus between the crime they are accused or convicted of and their victimization. For this reason, it is also necessary to increase awareness throughout the criminal justice system about the relationship between trafficking, trauma and coercion. Preemptive awareness about the realities of this crime of exploitation would mitigate the harms caused by criminalizing victims and decrease the need for post-conviction relief processes.

Looking Forward

These suggestions just scratch the surface of worthy efforts to increase access to justice for human trafficking survivors. As LDR2 concludes, "With care, coordination, and collaboration among all stakeholders we can close the gaps and increase support of trafficking survivors on their journeys to freedom."

Law firms, and attorneys, should consider joining the fight against human trafficking and working toward restorative justice for survivors.

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