

A Case of Mistaken Identity: The Criminalization of Victims of Labor Trafficking by Forced Criminality

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Abstract

This Article seeks to fill a gap in prior research around the relationship between trafficking victimization and history of arrest. Identifying a subset of labor trafficking victims—those who experienced labor trafficking by forced criminality and faced homelessness before the age of 22—the research describes the characteristics of the victims’ childhood experiences, homelessness, trafficking victimization, and arrest histories using a case-series design. The findings overwhelmingly point to trafficking victimization as a precursor to first arrest experiences, and depict pathways to rapidly deepening criminalization of victims who evaded detection as victims in repeated subsequent law enforcement encounters. Positive identification of young victims with trafficking experiences and the provision of timely victim services may have altered the pathways to criminalization.

facing the most significant social, economic, and health challenges in a diversity of settings including Australia, China, Egypt, Guatemala, India, Liberia, Nepal, Kazakhstan, the Philippines, South Sudan, Taiwan, and Thailand. Among other accolades, Dr. Stoklosa has been honored with the U.S. Department of Health and Human Services Office of Women’s Health Emerging Leader award, the Harvard Medical School Dean’s Faculty Community Service award, has been named as an Aspen Health Innovator and National Academy of Medicine Emerging Leader. Her anti-trafficking work has been featured by CNN, the New York Times, National Public Radio, Fortune, Glamour, Canadian Broadcasting Corporation, STAT News, and Marketplace. Dr. Stoklosa published the first textbook addressing the public health response to trafficking, “Human Trafficking Is a Public Health Issue, A Paradigm Expansion in the United States.”

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Introduction

The 2014 U.S. Trafficking in Persons Report highlighted labor trafficking by forced criminality (LTFC),¹ yet this problem remains under-identified. LTFC refers to all labor trafficking where the labor or services the victim is being forced, coerced, or defrauded into performing are activities that could otherwise be classified as a crime.² Types of underlying crimes may include shoplifting, loitering, provision of false documents, and other crimes.³ LTFC has been identified as one of the 25 types of trafficking by the Polaris Project.⁴ Because all LTFC victims have committed a crime, they are often misidentified as criminals, and often do not have access to the protections and services that would become accessible to them if they were appropriately identified as victims.⁵

Victims of LTFC often do not self-identify and rarely report the crime to law enforcement.⁶ They may not be familiar with the crime of human trafficking and even if they did know about the crime of trafficking they are not able to apply the legal definition to their perceptions of their own experiences.⁷ Police miss victims of human trafficking due to lack of training and tools to identify human trafficking, and preconceptions about the presentation of trafficking victims

¹U.S. DEP'T STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, THE USE OF FORCED CRIMINALITY: VICTIMS HIDDEN BEHIND THE CRIME 1 (2014), <https://2009-2017.state.gov/documents/organization/233938.pdf>.

²Corey Rood, Stephanie Richard, & Laura T. Murphy, *Adolescents and Labor Trafficking*, in MEDICAL PERSPECTIVES ON HUMAN TRAFFICKING IN ADOLESCENTS 69, 88-89 (Kanani E. Titchen & Elizabeth Miller eds., 2020).

³U.S. DEP'T STATE, *supra* note 1; Joan A. Reid, *Entrapment and Enmeshment Schemes Used by Sex Traffickers*, 28 SEXUAL ABUSE, 491, 503 (2016); Amy Farrell, Meredith Dank, Leke de Vries, Matthew Kafafian, Andrea Hughes, & Sarah Lockwood, *Failing Victims? Challenges of the Police Response to Human Trafficking*, 18 CRIMINOLOGY PUB. POL'Y, 649 (2019).

⁴Polaris, THE TYPOLOGY OF MODERN SLAVERY, 1, 48, (2017), <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf>.

⁵*See generally* Rood et al., *supra* note 2.

⁶Kristina Lugo, Roger Przybylski, Erin Farley, Susan Howley, Akiva Liberman, Jennifer Yahner, Malore Dusenbery, Storm Ervin, Erica Henderson, Jeremy Welsh-Loveman, Carla Vasquez-Noriega, & Olivia Garcia, ESTIMATING THE FINANCIAL COSTS OF CRIME VICTIMIZATION 187-88, 190 (2018), <https://www.ojp.gov/pdffiles1/nij/grants/254010.pdf>; Farrell et al., *supra* note 3 at 656-58.

⁷Rood et al., *supra* note 2, at 84; Silvia Rodriguez-Lpez, *Telling Victims From Criminals: Human Trafficking For the Purposes of Criminal Exploitation*, in THE PALGRAVE INTERNATIONAL HANDBOOK OF HUMAN TRAFFICKING, 18, 25 (2020); Amy Farrell, Katherine Bright, leke de Vries, Rebecca Pfeffer, & Meredith Dank, *Policing Labor Trafficking in the United States*, 23 TRENDS IN ORGANIZED CRIME, 36, 50, 53 (2020).

and criminals.⁸ Because victims are so seldom identified, there is a deficit in available information about the characteristics of LTFC victimization.⁹

LTFC victim identification is particularly difficult due to the lack of statistically correlated conditions or case histories—in fact, in a multivariate analysis of factors associated with a human trafficking experience, history of arrest emerged as the only factor associated with statistical significance.¹⁰ But the importance of arrest history in prior research has raised the question: is there a causal relationship between arrest and the trafficking crime?¹¹ There is a gap in current research showing whether arrest or trafficking occurred first in victims' case histories that contained both, and the answer to the temporality question holds the potential to open a new realm of opportunity for prevention, of either trafficking or arrest depending on the findings.¹²

The absence of reliable reporting of human trafficking victimization underscores the importance of victim-led research to understand victims' needs and trafficking patterns.¹³ This Article proceeds as follows. First, we describe the characteristics, childhood experiences, and trafficking exploitations of LTFC victims who sought residential services for youth facing homelessness at Covenant House New Jersey (CHNJ) between 2016 and 2022. Then, we take a close look at the arrest histories of the same individuals, and shed light on common characteristics of their experiences. The findings present data to answer the temporality question for the first time, and further include the types of charges levied and the sequelae of penalties and future charges that followed. We conclude by noting the points where positive identification of young victims with trafficking experiences and the provision of timely victim services may have altered the pathways to criminalization.

Methodology

A case-series study was conducted using a file review of victims

⁸See generally Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 87, 157–211, (2007); Amy Farrell & Rebecca Pfeffer, *Policing Human Trafficking: Cultural Blind-ers and Organizational Barriers*, 653 ANNALS AM. ACAD. POL. & SOC. SCI. 46, 52–53 (2014); Amy Farrell & Jessica Reichert, *Using US Law-Enforcement Data: Promise and Limits In Measuring Human Trafficking*, 3.1 J. HUM. TRAFFICKING, 39, 53 (2017).

⁹See generally Farrell et al., *supra* note 3 at 652.

¹⁰Makini Chisolm-Straker, Jeremy Sze, Julia Einbond, James White, & Hanni Stoklosa, *A Supportive Adult May Be The Difference in Homeless Youth Not Being Trafficked*, 91 CHILDREN AND YOUTH SERVICES REVIEW 115, 118–19 (2018).

¹¹Chisolm-Straker et al., *supra*, note 10, at 119.

¹²Chisolm-Straker et al., *supra*, note 10, at 119.

¹³Farrell et al., *supra* note 3, at 650–51.

of labor trafficking by forced criminality who received services at CHNJ, a non-profit organization serving youth facing homelessness in Newark, Atlantic City, and throughout the state of New Jersey. Victims and survivors of human trafficking were identified by a multi-step screening, identification, and confirmation conducted with all 18- to 21-year-old residents of CHNJ who stayed between July 1, 2016 and June 30, 2022 by residential staff, including licensed social workers and lawyers trained to identify human trafficking. Each client was screened utilizing QYIT, and subsequently completed the Human Trafficking Identification and Assessment Measure 14 (HTIAM-14), a validated human trafficking assessment tool,¹⁴ with a social worker, social work intern, or case manager trained on the legal definition of trafficking. LTFC cases were initially identified by reviewing the HTIAM-14s that were positively scored during the time period for labor trafficking or labor and sex trafficking. LTFC was verified by parallel file review by two reviewers and in some cases three.¹⁵ Qualitative information from the HTIAM-14 was used to supply facts about the LTFC experience.

Additionally, a case file review of CHNJ's residential records for the identified LTFC survivors was conducted. Staff attorneys in the Youth Advocacy Center, a pro bono legal services department of CHNJ, conducted separate file reviews of privileged documents contained in legal files and publicly available arrest records. De-identified information was shared with any non-legal researchers for inclusion in this paper.

After factors for analysis were identified, de-identified comparative data was generated for all clients served by CHNJ during the time-period and compiled for analysis.

All data was retrieved from ETO management information system. All LTFC victims included in the analysis had consented to use of their de-identified information for research.

I. Overview of Labor Trafficking by Forced Criminality

A. Legal definition of Labor Trafficking

The crime of labor trafficking is codified by the Trafficking Victims Protection Act (TVPA) as "The recruitment, harboring, transportation, provision, and/or obtaining of a person for labor or services, through the use of force, fraud, and/or coercion for the purpose of involuntary

¹⁴Jayne Bigelsen & Stephanie Vuotto, *Homelessness, Survival Sex, and Human Trafficking: As Experienced by the Youth of Covenant House New York*, COVENANT HOUSE N.Y. 1, 17, (2013), <https://humantraffickinghotline.org/sites/default/files/Homelessness%2C%20Survival%20Sex%2C%20and%20Human%20Trafficking%20-%20Covenant%20House%20NY.pdf>.

¹⁵One of the reviewers was also one of the staff completing original assessments.

servitude, peonage, debt bondage, or slavery.”¹⁶ Labor trafficking in general does not tend to receive the amount of research and media attention as other types of trafficking such as commercial sexual exploitation of children (CSEC).¹⁷ Labor trafficking has been identified as a prevalent form of human trafficking among youth experiencing homelessness.¹⁸ Other research has emphasized the need to learn more about the labor trafficking experiences of youth.¹⁹

B. What Does Labor Trafficking by Forced Criminality (LTFC) Look Like?

In LTFC cases, the “labor or services” is an illicit activity.²⁰ Thus, in all instances of labor trafficking by forced criminality, victimization and criminalization are inextricably intertwined: at the same time the victim experiences trafficking, the victim also commits a criminal offense.²¹

LTFC may occur as single exploitation or multiple exploitation cases.²² In multiple exploitation LTFC, typically sex and labor trafficking co-occur such that victims are forced to commit crimes (stealing, selling drugs, assault) while being sex trafficked.²³ These fact patterns are more likely to be identified by law enforcement than single exploitation cases that lack the context of sex trafficking victimization.²⁴ Multiple exploitation cases may also appear for labor trafficking only fact patterns, for example an individual who is forced to commit battery while being coerced to distribute drugs.

The following are de-identified case vignettes intended to capture the diverse experiences of LTFC victims:

Rob ran away from his foster home when he was ten years old, and became involved with a trafficker who began using him to move drugs. He needed money, and was too young to work anywhere else. He’d

¹⁶Trafficking Victims Protection Act, Pub. L. No. 106-386, 22 U.S.C.A. §§ 7101 to 7112 (2000).

¹⁷Rood et al., *supra* note 2, at 71; Laura Murphy, LABOR AND SEX TRAFFICKING AMONG HOMELESS YOUTH: A TEN CITY STUDY, 1, 28, (2016), <https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/murphy-labor-sex-trafficking-homeless-youth.pdf>.

¹⁸Makini Chisolm-Straker, Jeremy Sze, Julia Einbond, James White, Hanni Stoklosa, *Screening for Human Trafficking Among Homeless Young Adults*, 98 CHILD. & YOUTH SERVS. REV. 72, 77 (2019).

¹⁹See generally Jordan Greenbaum, Ginny Sprang, Frances Recknor, Nancy S. Harper, & Kanani Titchen, *Labor Trafficking of Children and Youth in the United States: A Scoping Review*, 131 CHILD ABUSE & NEGLECT, 131 (2022).

²⁰U.S. DEP’T STATE, *supra* note 1.

²¹U.S. DEP’T STATE, *supra* note 1.

²²Rood et al., *supra* note 2, at 84.

²³Rood et al., *supra* note 2, at 84.

²⁴Carolina Villacampa & Nuria Torres, *Human Trafficking for Criminal Exploitation: The Failure To Identify Victims*, 23 EUR. J. CRIM. POL’Y RES. 393, 401 (2017).

seen other people who moved drugs hurt if they tried to leave, and he was afraid they would hurt his family if he tried to leave himself. He eventually fled the state to escape the situation.

Aiden was 12 years old when he took a job delivering food products, but later learned he was actually delivering cocaine, methamphetamine, and marijuana. He only received a portion of the money he earned from selling drugs. His trafficker told him that if he didn't do what he was told or told anybody he would be hurt.

Eric started delivering drugs for his stepfather when he was 8 years old. When he tried to say no, his stepfather would yell and scream, and say "you have to do this, you don't have a choice." His stepfather told him to deny selling drugs if anyone ever asked. Eric was afraid of his stepfather because he was "big and scary" and was involved with a gang. At 12 years old, Eric began selling drugs on his own.

When Emily was 17, she and her 20 year old girlfriend were homeless. Her girlfriend began arranging for her to have sex with men for money, shoplift, and steal and would beat her if she refused. Her girlfriend would also sell sexual images of Emily. Emily reports that this went on for about a year, and when she left that situation, while still 17, she went to stay with a man in his 40's who provided her with food and a place to sleep in exchange for sex. Emily came to Covenant House when she was 20 years old with her 8-month-old son.

II. Findings And Discussion of LTFC Victims' Characteristics and Childhood Trauma

A. Findings

1. Characteristics of Youth who Experienced LTFC

Eighteen youth who sought residential services at Covenant House New Jersey between January 1, 2016 and July 1, 2022 were identified as survivors of labor trafficking by forced criminality (LTFC). These LTFC survivors accounted for more than half (64.29%, 18 of 28) of labor trafficking survivors (for whom the typology of labor trafficking was known)²⁵ identified in CHNJ's youth short-term residential programs during this time.

LTFC was more common among males than females with 12 males (66.67%) and six females (33.33%), consistent with prior research into labor trafficking experiences of youth experiencing homelessness.²⁶ Similar to the population of youth served by CHNJ, the majority were US citizens (16 of 18), and their experiences of human trafficking were domestic. Among the LTFC survivors, eight (44.44%) identified as African American, five (27.78%) identified as

²⁵An additional four clients had documentation certifying them as labor trafficked, but the category of labor trafficking was not indicated.

²⁶Debra Schilling Wolfe, Johanna K.P. Greeson, Sarah Wasch, & Daniel Treglia, *Human Trafficking Prevalence and Child Welfare Risk Factors Among Homeless Youth*, FIELD CTR. 35, (2018), <https://fieldcenteratpenn.org/wp-content/uploads/2013/05/6230-R10-Field-Center-Full-Report-Web.pdf>.

Caucasian, one (5.56%) identified as Multi-racial, and four (22.22%) identified their race as Other.

Age at time of trafficking was often long before reaching age 18. Among youth identified as having experienced LTFC, 10 of 18 (55.56%) identified as being a minor at the time of their trafficking. Four reported being under the age of 12, five reported being between the ages of 12 and 15, and one reported being age 16 or over at the time of their trafficking.²⁷

2. Complex Trauma and Family Separation Experiences of Youth Who Experienced LTFC

A commonly used tool to measure experiences of childhood trauma is the Adverse Childhood Experiences (ACE) Inventory. ACE Inventories are scored on a scale of 1–10, and ask about physical, verbal, and sexual abuse, physical and emotional neglect, exposure to domestic violence in the home, parents separated or divorced, a parent with a substance abuse or mental health condition, and a parent who is incarcerated. ACE scores of four and above are associated with negative life and health outcomes.²⁸ The average score on the ACE Inventory for homeless youth who had experienced LTFC was 6.66 (N=14). This LTFC average ACE score was similar compared to youth who had experienced any type of trafficking (6.68), but significantly higher than the population of youth facing homelessness served by CHNJ (4.69).

Among the homeless youth who experienced LTFC, 90% (N=10) were identified to have at least one parent absent for a significant amount of their childhood. Reasons for absences were varied, including multiple youth with a deceased parent (30%, N=10), parents who were incarcerated, substance use, or parents who were absent for unknown reasons.

Foster care experiences were also common among LTFC victims, with 52.94% (N=17) having been in foster care at some point. The percentage of victims of LTFC with foster care experience is marginally higher than the 46.50% of youth who have experienced any type of human trafficking.

²⁷ See *infra* Table 3 for further age detail.

²⁸ Vincent J. Felitti, *Adverse Childhood Experiences and Adult Health*, 9 *ACAD. PEDIATRICS*, 131–32 (2009); Centers for Disease Control, *Fast Facts: Preventing Adverse Childhood Experiences*, (2022), <https://www.cdc.gov/violenceprevention/aces/fastfact.html>; Vincent J. Felitti, Robert F. Anda, Dale Nordenberg, David F. Williamson, Alison M. Spitz, Valerie Edwards, Mary P. Koss, & James S. Marks, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences Study*, 14 *AM. J. PREVENTIVE MED.* 245, 251 (1998).

3. Type of LTFC Exploitation and Categories of Underlying Crimes

In 12 of 18 (66.67%) cases, youth experienced labor trafficking only, and in six of the cases they experienced labor and sex trafficking. In four of the sex and labor trafficking instances, the trafficking was multiple exploitation; the remaining two individuals experienced separate and unrelated labor trafficking and sex trafficking victimizations.

The most common underlying crime was drug distribution (13 of 18), consistent with the limited information available on LTFC.²⁹ Other types of crime included assault/battery, robbery, and theft/shoplifting, with multiple youth being forced to commit more than one type of crime.

Table 1. Characteristics of LTFC Exploitation

Number of Victims	Type of Trafficking	Illicit Activity	Exploitation
8	Labor	Drug distribution	Single
3	Labor and sex	Drug distribution	Multiple
1	Labor	Theft	Single
1	Labor	Drug distribution, assault	Single
1	Labor and sex	Shoplifting, theft, sale of sexual images	Multiple
1	Labor	Assault, robbery	Single
1	Labor	Battery	Single
1	Labor and sex	Shoplifting	Single

4. Information about the traffickers

Information about the victim's relationship to the trafficker was available in 12 of the 18 files. Most notable about the information is the absence of any discernible pattern. Individuals were trafficked by known and unknown traffickers, family and non-family, friends, and intimate partners. But the existence of a relationship with a purpose separate and apart from the relationship created by trafficking victimization is significant in that it is present in all 12 of the cases.

Table 2. Relationship of Trafficker to Victim

Number of Victims	Trafficker
2	Gang
1	Family friend
1	Stepfather
2	Romantic partner
2	Uncle

²⁹Polaris, *supra* note 4, at 48; Murphy, *supra* note 17, at 28.

Number of Victims	Trafficker
2	Landlord
1	Mother
1	Person offering housing

The means of control traffickers used to prevent the 18 victims from leaving their victimizations were: threats of harm, physical abuse, seeing others hurt, threats to harm family members, and withholding identification documents.

5. An unexpected finding: Experiences as Parents

Eight LTFC survivors (47.06%, N=17) were identified as having at least one child before the age of 22. The percentage of parenting youth is considerably higher than the 14.33% of the entire population of youth and the 18.47% of trafficked youth residing in Covenant House residential shelters. In most cases, the child was born after the trafficking situation had ended.

B. Discussion

1. Understanding Childhood Trauma and Homelessness

Childhood trauma and adverse life outcomes due to multiple experiences of childhood trauma are known factors associated with human trafficking experiences.³⁰ Victims of human trafficking are often coping with multiple and long-running victimization, causing complex and deeply-ingrained trauma.³¹ Trafficked youth are generally found to have long histories of physical and sexual abuse, leading to physical and psychological trauma.³² Childhood maltreatment often precipitates foster care involvement, and prior research has also found a relationship between foster care involvement and human trafficking.³³ The presence of child maltreatment and foster care experiences remained consistent with the homeless youth identified as LTFC victims.

Youth facing homelessness lack stable and safe social support networks,³⁴ which leaves them at risk for human trafficking. Previous research has found the presence of a caring, supportive adult to be

³⁰Chisolm-Straker et al., *supra* note 10, at 117–18.

³¹Farrell et al., *supra* note 3, at 652–53, 664.

³²Deborah A. Gibbs, Alana M. Henninger, Stephen J. Tueller, & Marianne N. Kluckman *Human Trafficking and the Child Welfare Population in Florida*, 88 *CHILD. & YOUTH SERVS. REV.* 1, 4 (2018); Joan A. Reid, Michael T. Baglivio, Alex R. Piquero, Mark A. Greenwald, & Nathan Epps, *Human Trafficking of Minors and Childhood Adversity in Florida*. 107 *AM. J. PUB. HEALTH*, 306, 309–10 (2017).

³³Chisolm-Straker et al., *supra* note 10, at 117–18.

³⁴Gina M. Samuels, Christine Cerven, Susanna Curry, Shonta R. Robinson, & Sonali Patel, *Missed Opportunities in Youth Pathways Through Homelessness*,

a protective factor for homeless youth against human trafficking.³⁵ Having at least one parent who is absent during childhood, by death or for other reasons, can often significantly limit a child's ability to have a supportive adult present.

The relationship with the trafficker often plays a role in the youth remaining in the trafficking situation, as well as the victim's likelihood to report the crime despite the abuses that may be occurring in the relationship.³⁶ Indeed, research suggests that traffickers deliberately prey on individuals who will not report the crime of trafficking, further promoting its invisibility.³⁷ The variability of the types of traffickers further illustrates the challenge for law enforcement, who find victims when they know who to look for as their traffickers.

Children are often fearful of leaving their abusers due to direct and indirect threats of harm.³⁸ Children often find it difficult to say no to the requests and demands of their family members, particularly family elders and caregivers.³⁹ Fears of getting in trouble or the adult no longer providing their basic needs leave them fearful to leave and feeling like there is no one to turn to.⁴⁰ LTFC victims were found to remain in their trafficking situations for a variety of reasons. Threats of harm, physical abuse, seeing others hurt, threats to harm family members, and withholding identification documents were all tactics utilized to force or coerce LTFC victims into compliance.

2. The Connection Between Trafficking Victimization and Becoming Parents

More research is needed to learn about the relationship between adolescent and young adult parenting and LTFC. In prior research, parenting classes were identified as a self-identified need of homeless youth who experienced any form of trafficking.⁴¹ Other research has shown a relationship between high ACE scores, and male

VOICES YOUTH COUNT 5 (2019), https://voicesofyouthcount.org/wp-content/uploads/2019/05/ChapinHall_VoYC_Youth-Pathways-FINAL.pdf.

³⁵Chisolm-Straker et al., *supra* note 10, at 117–18; Bigelsen, *supra* note 14, at 15.

³⁶Anthony Marcus, Amber Horning, Ric Curtis, Jo Sanson, & Efram Thompson, *Conflict and Agency Among Sex Workers and Pimps: A Closer Look at Domestic Minor Sex Trafficking*, 653 ANNALS AM. ACAD. POL. & SOC. SCI. 225, 232 (2014); Pamela M. Anderson, Karin K. Coyle, Anisha Johnson, & Jill Denner, *An Exploratory Study of Adolescent Pimping Relationships*, 35 J. PRIMARY PREVENTION 113, 116 (2014).

³⁷Melissa Milam, Nicole Borrello, & Jessica Pooler, *The Survivor-Centered, Trauma-Informed Approach*, 65 U.S. ATT'YS BULL. 39, 39 (2017).

³⁸Rood et al., *supra* note 2, at 80.

³⁹Rood et al., *supra* note 2, at 79.

⁴⁰Rood et al., *supra* note 2, at 80.

⁴¹Chisolm-Straker et al., *supra* note 18, at 76.

involvement in teen pregnancy.⁴² In a study conducted with pregnant runaway and homeless adolescents, pregnant teen mothers were more likely to be less connected to their parents, on probation or charged with a misdemeanor or felony, and away from home for longer periods of time.⁴³ Family dysfunction, such as coming from a single-parent home, feeling abandoned by your parents, and an emotionally abusive mother were also found to play a role in adolescent pregnancy.⁴⁴ Conduct disorder, a mental disorder characterized by aggressive, antisocial, and criminal behavior in juveniles,⁴⁵ has also been associated with adolescent pregnancy.⁴⁶ This suggests that LTFC and adolescent pregnancy may have more than an incidental relationship and may share similar root causes.

III. Findings and Discussion of Histories of Arrest and Pathways to Criminalization

A. Findings

In this study, none of the 18 victims were positively identified by law enforcement as victims of labor trafficking. Of the 18 victims, only three were possibly charged for the related forced crimes, but the data creates only an inference not confirmation (e.g. charges for drug distribution and trafficking in the illicit drug industry, but timing not explicitly aligned).

Yet, 15 of the 18 (83.33%) victims experienced arrests before they reached the age of 22. This finding corresponds to prior research that history of arrest and human trafficking experiences are correlated. It also highlights the exponential likelihood of a history of arrest with LTFC experience when compared with the broader population of homeless youth who experienced human trafficking (51.59%).

1. Trafficking Experiences Occurred Before Arrest Experiences for the Majority of Individuals

Temporality information was available for 12 of the 15 youth who

⁴²Robert F. Anda, Daniel P. Chapman, Vincent J. Felitti, Valerie Edwards, David F. Williamson, Janet B. Croft, & Wayne H. Giles, *Adverse Childhood Experiences and Risk of Paternity in Teen Pregnancy*, 100 *OBSTETRICS & GYNECOLOGY* 37, 42, (2002).

⁴³Sanna Thompson, Kimberly A. Bender, Carol M. Lewis, & Rita Watkins, *Runaway and Pregnant: Risk Factors Associated with Pregnancy in a National Sample of Runaway/Homeless Female Adolescents*, *NAT'L INSTS. HEALTH* 5–6 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2742657/pdf/nihms143369.pdf>.

⁴⁴Anda et al., *supra* note 42, at 7.

⁴⁵Jacqueline Corcoran, *Teenage Pregnancy and Mental Health*, 6 *SOCIETIES* 2, 4, (2016); AMERICAN PSYCHOLOGICAL ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 469–71, (5th ed. 2013).

⁴⁶Anda et al., *supra* note 42, at 5.

experienced LTFC and arrests. Nine (75.00%) experienced LTFC victimization before arrest, and the arrests of at least eight of the nine were unrelated to the underlying forced crimes. One was arrested as a juvenile on charges likely related to the forced crime underlying LTFC.

For many of the victims, comparative temporality of trafficking and arrests experiences was evident from the age at which trafficking occurred, alone. All nine individuals were ages seven to fifteen at the time of trafficking. Four of them were ages ten or below.

Despite not being a research question for this Article, the data on age at which the cohort sample first became homeless stood out as a notable finding for its similarly low ages. The average age at which the individuals in the study sample left home was 14.67. Information was missing for three individuals, but among the remaining fifteen, two individuals left home before they reached ten years old. An additional five were out of the home by age fourteen and six more by age eighteen. Only two individuals first left home ages nineteen and above. Homelessness takes many forms, ranging from sleeping on the streets to couch surfing with a friend or relative.⁴⁷ Twelve of the eighteen individual case files in this study had information about their experiences of homelessness. Eight of the twelve (66.67%) reported unsheltered periods of homelessness.

2. Law Enforcement did not Identify Individuals Who had Previously Experienced Trafficking as Victims

Eight of the nine individuals who experienced arrest after LTFC were not known to law enforcement during their victimization. In other words, not only did law enforcement not identify them as victims, it also did not identify them as perpetrators of crimes (albeit ones for which they should not have been held culpable.) Law enforcement, simply, did not recognize them at all.

Additionally, all nine individuals experienced single trafficking exploitation, resonating with prior research discussed *supra* that law enforcement is less likely to identify single exploitation cases as victims of labor trafficking.⁴⁸

3. The First Point of Entry to Criminalization was Poverty or Homelessness.

The charges are known for six of the eight victims who experienced trafficking before their first arrest (excluding the ninth individual who was believed to be arrested for the underlying forced crime), and all of the arrests were for low-level crimes of poverty and homelessness: loitering, fare evasion, theft, trespassing, disorderly conduct, simple assault, and driving offenses. For the two victims whose charges

⁴⁷Samuels et al., *supra* note 34, at 9–11.

⁴⁸Villacampa et al., *supra* note 24.

were unknown, the charges were contained in closed juvenile records. Because information about closed juvenile records would not assist in determining current service needs, the client's attorneys would not inquire about the nature of their charges as a matter of trauma-informed best practice.

Table 3. Temporal Relationship of Trafficking, Arrests, and Types of Charges

Age at time of trafficking for victims who ever experienced arrest (N=15)	Temporality of arrest/trafficking	Early charges	Later charges
7	trafficking + arrest	U (juvenile) simple assault, possession, harassment, hindering charges to trespass charges	weapons, burglary, driving offenses, DUI, robbery
8	trafficking — arrest	disorderly conduct, driving offenses	possession (dismissed), assault (dismissed), driving offenses
8	trafficking — arrest	U	agg. assault and terroristic threats — pled to resisting arrest
10	trafficking — arrest	Simple assault (dismissed), fare evasion (vacated)	driving offenses, theft, disorderly conduct, assault
12	trafficking — arrest	theft, criminal trespass (sleeping in abandoned buildings)	burglary, theft, loitering, criminal trespass
12/13	trafficking — arrest	loitering	aggravated assault, criminal mischief, wandering/prowling, disorderly conduct, theft and criminal trespass
13/14	trafficking — arrest	driving offenses (speeding, driving on a suspended license)	warrants for driving offenses
14	trafficking — arrest	U	none
14/15	trafficking — arrest	simple assault related to driving	none
17	arrest — trafficking	U (juvenile)	breach of peace (DV)
18	arrest — trafficking — arrest	U (juvenile)	disorderly conduct
18	arrest — trafficking — arrest	U	U [superior court charge]
U	Unknown	driving offenses	warrants for driving offenses
U	U	U (juvenile)	DV, burglary, theft, aggravated assault
U	U	U history of arrest	U

** trafficking and arrest timing overlapped

** U = Unspecified

4. Subsequent criminality

Table 3 shows seven of the nine victims had an accumulation of later charges or warrants while they were still youth, depicting a small piece of a continuing story of increasingly severe penalties and future repercussions. The sequelae of trafficking followed by arrests for low-level crimes included warrants, aggravated assault, burglary, and robbery. Unresolved driving offenses had exponential impacts, such as the suspension of a license followed by a charge for driving with a suspended license.

B. Discussion

1. Trafficking Before Arrests: Impacts of Early Victimization and Homelessness

The trauma of victimization, especially repeat victimization as often is the case with trafficking and was the case with these young victims, can lead to crime.⁴⁹ Additionally, the experience of homelessness drives crime, when crime is used as a survival mechanism to find basic necessities (stealing) and shelter (criminal trespassing).⁵⁰ The trafficking victims in this case series all experienced homelessness, by virtue of the setting of the research, but the link between homelessness and human trafficking is well established in other research settings as well.⁵¹ Young individuals who experience

⁴⁹Lena J. Jggi, THE RELATIONSHIP BETWEEN TRAUMA, ARREST, AND INCARCERATION HISTORY AMONG BLACK AMERICANS: FINDINGS FROM THE NATIONAL SURVEY OF AMERICAN LIFE. SOC'Y & MENTAL HEALTH, 187, 197, 200 (2016); Mark T. Berg & Rolf Loeber, *Examining the Neighborhood Context of the Violent Offending Victimization Relationship: A Prospective Investigation*, 27 J. QUANTITATIVE CRIMINOLOGY, 427, 443 (2011). See generally Wesley G. Jennings, Alex R. Piquero, & Jennifer M. Reingle, *On the Overlap Between Victimization and Offending: A Review of the Literature*, 17 AGGRESSION & VIOLENT BEHAV. 16 (2012) (a meta-analysis of the relationship between repeat victimization and crime); Graham C. Ousey, Pamela Wilcox, & Bonnie S. Fisher, *Something Old, Something New: Revisiting Competing Hypotheses of the Victimization-offending Relationship Among Adolescents*, 27 J. QUANTITATIVE CRIMINOLOGY 53, 66 (2011); Joni Paton, William Crouch, & Paul Camic, *Young Offenders' Experiences of Traumatic Life Events: A Qualitative Investigation*. 14 CLINICAL CHILD PSYCH. & PSYCHIATRY 43, 48 (2009).

⁵⁰Makini Chisolm-Straker, Julia Einbond, Jeremy Sze, & James White, *Recognizing Human Trafficking Among Homeless Youth*, COVENANT HOUSE N.J. 50, (2017), <https://covenanthousenj.org/wp-content/uploads/2019/02/CHNJ-Recognizing-Human-Trafficking.pdf>; Kristin M. Ferguson, Kimberly Bender, Sanna Thompson, Bin Xie, & David Pollio, *Correlates of Street-Survival Behaviors In Homeless Young Adults In Four US Cities*, 81 AM. J. ORTHOPSYCHIATRY 401, 405–06 (2011).

⁵¹Meredith Dank, Jennifer Yahner, & Lilly Yu, *Consequences of Policing Prostitution*, WASH.: URB. INST. 7–8 (2017); INST. MED & NAT'L RSCH. COUNCIL, *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES*, 85–87 (2013).

unsheltered experiences of any duration typically experience insecurity that drives victimization and risky behaviors for survival.⁵²

3. Similarities Among the Three Who Experienced Arrests Before Trafficking

The three individuals who experienced arrests before they experienced LTFC were all older, ages 17 and 18, at the time of trafficking and were victims of sex and labor trafficking. Two experienced multiple exploitations in the same trafficking experience: forced to commit drug sales or theft while being sex trafficked. The third was sex and labor trafficked by the same trafficker, yet each was a single exploitation trafficking event.

4. Pattern of Increasing Criminalization

The accumulation of subsequent charges is depicted in only a brief snapshot in Table 3. While the nature of charges is accurately captured, the volume of charges is not even attempted. Victims had dozens of charges, some resolved and many unresolved at the time of publication. Records showed periods of incarceration—past and present.

In addition to causes of criminalization discussed in III.B.1, *supra*, charges may accumulate due to an individual's avoidance of justice systems to resolve their issues. The occurrence of LTFC experiences before arrest means traffickers may have already instilled a fear of justice systems in victims as a means of coercion for trafficking.⁵³ Even without the traffickers' influence, individuals from marginalized communities have negative direct and indirect experiences of policing. As negative interactions with police increase and intensify, crime victims become less likely to engage as victims in need of assistance.⁵⁴ The impact of justice involvement can have lasting impacts on victim services. According to the New Jersey Victims of Crime Compensation Office (VCCO), arrests, criminal charges, incarceration, and open warrants made up the most common category of reasons that VCCO funding claims were denied in 2019, comprising 54.7% of such rejections.⁵⁵ Arrest carries other repercussions as well, sometimes permanently barring access to

⁵²Chisolm-Straker et al., *supra* note 50.

⁵³Rood et al., *supra* note 2, at 84.

⁵⁴Melissa E. Dichter, *They Arrested Me—And I Was the Victim: Women's Experiences with Getting Arrested In the Context of Domestic Violence*, 23 *WOMEN & CRIM. JUST.* 81, 92 (2013).

⁵⁵N.J. OFF. ATT'Y GEN., NJ VICTIMS OF CRIME COMPENSATION OFFICE — FY2019 REPORT, 1–2, i–xxiv, xiv (2019), <https://www.nj.gov/oag/njvictims/pdfs/reports/vcco-19-ar-FINAL.pdf>. Note this regulation is now changed in NJ, easing some of the restrictions predicated on open warrants and even low-level justice system involvement. 53 N.J.R. 359(a) (2021) (“Recodified subsection (h) would be amended to allow the Office to make an award due to emergent need despite the presence of warrants

living-wage employment and higher education, which limits opportunities to break cycles of victimization and criminalization.⁵⁶

All of the individuals whose cases were discussed in this article had access to free, high-quality legal representation while clients of CHNJ. When provided with legal assistance for any of the charges listed in Table 3, the clients *all* had their charges entirely dismissed or penalties substantially reduced. This was true of early and later charges—including examples of drug possession, simple assault, and aggravated assault charges that were dismissed. The high number of charges listed in Table 3 is as much evidence of a lack of legal representation available to defendants charged with municipal offenses than the criminal culpability of the individuals.

IV. Conclusion

Study of the LTFC case series reveals commonalities of labor trafficking by forced criminality experiences, early childhood experiences, and justice involvement, and allows for a comparison of those characteristics to a large sample of youth experiencing human trafficking and/or homelessness who sought services during the same time period. Survivors of labor trafficking by forced criminality have a lot of labels: trauma, homeless, criminal. But the one they lack is victim.

The relationship between childhood trauma and human trafficking has been previously established; however, this research, particularly about this subgroup of human trafficking victims, has demonstrated that there is more to learn in this area. The profound amount of trauma LTFC victims appear to have experienced—high ACE scores, deceased and absent parents, foster care experiences, lack of supportive adult relationships, early age of homelessness, unsheltered history, which was later exacerbated by juvenile arrests and policing, suggests that there is more to learn about the trauma experienced by trafficking victims and the role it has in their entry into trafficking and their recovery.

A surprising finding of this study was the relationship between LTFC and young adults who were parents. For this study, the researchers had access to data from questions that are asked during the normal course of business at a residential services center for youth facing homelessness. Had the research required design of questions, this topic would not have been included because the relationship between LTFC and youth parenting does not appear in the literature at this time. Given the significant presence of parent

for indicatable offenses. The amendments also ensure that compensation for emergency housing in order to protect the victim's physical safety shall never be denied due to a victim's criminal status. The proposed amendments also removes the Office's ability to withhold payment to crime victims for active criminal charges.”)

⁵⁶Meredith Dank et al., *supra* note 51, at 38–39.

experiences in the LTFC population in contrast to all other comparative groups (homeless youth, homeless youth who have been arrested, homeless youth who experienced trafficking), this is an important area for future research.

The study establishes a new finding that labor trafficking by forced criminality is more often than not a pathway into criminalization for young survivors of LTFC. While the high prevalence of earlier trafficking than arrest experiences for the study sample suggests this is a strong finding, it is nevertheless anecdotal. Further research is needed with a greater study sample size to determine if this finding has statistical significance. Additionally research is needed to determine if this temporality finding extends to other categories of labor trafficking and sex trafficking. Finally, qualitative research with the LTFC cohort sample would be valuable to further understand causation of criminalization after LTFC victimization.

The exploration of pathways into criminalization for LTFC victims now demands an urgent look at pathways out of criminalization. Compensation for victims of crime exists to assist victims in addressing the lasting impacts of victimization, including housing insecurity and mental health needs. Yet, none of the victims included in this sample were able to access victim funds. A closer look is needed into the scale of reform required to address the administrative bar and burden on labor trafficking by forced criminality victims. Additionally, the impact of access to legal representation for young and homeless individuals accused of low-level crimes is suggested by the findings but would benefit from a detailed analysis to support specific recommendations on a larger scale.

The need to increase public and professionals' awareness of labor trafficking in general, and LTFC in particular, is clear. The LTFC victims identified in this research interacted with a number of systems, including child welfare and judicial systems, prior to their arrival at CHNJ. Training law enforcement and judicial officers about how to identify human trafficking survivors and apply principles of non-punishment and non-prosecution of LTFC victims, and debiasing training will be critical in LTFC victim identification and healing. Law reform to pass Safe Harbor laws throughout the U.S. has positively changed the conversation around individuals who experienced sex trafficking, and similar reform is needed for LTFC victims whose labor activities do not align with professionals' views of trafficking situations.⁵⁷ Furthermore, media plays a critical role in changing the narrative of trafficking, and should highlight LTFC to increase the public's awareness of its victims.

⁵⁷Chisolm-Straker et al., *supra* note 18, at 77–78.