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Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases

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CHAPTER 1
INTRODUCTION AND LITERATURE REVIEW

Background

Over the past several decades, the problem of human trafficking has received increased public attention. In the United States, stakeholders from various interest groups have publicized the problem and encouraged strong governmental responses (Batstone, 2007; Bales, 2008). In 2000, the federal government passed the *Victims of Trafficking and Violence Protection Act (TVPA).* This law defined a new set of crimes related to human trafficking[1] and enhanced penalties for existing offenses such as slavery, peonage and involuntary servitude. Under the TVPA, a severe form of trafficking in persons was defined as:

> a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of

Chapter Overview

Since the passage of the TVPA in 2000, 49 states have enacted legislation criminalizing human trafficking, yet reports still indicate that fewer cases of human trafficking have been identified and prosecuted than would be expected.

There are many potential explanations for the gap between identified and estimated victims. One explanation is that law enforcement has yet to translate new laws into action. Previous scholarship on new and newly prioritized crimes suggests a number of legal, institutional and individual explanations explored here.

The purpose of this study is to examine practices that improve the ability of local law enforcement agencies to identify, investigate and prosecute human trafficking cases.

[1] These include forced labor (18 U.S.C. § 1589); trafficking with respect to peonage, slavery, involuntary servitude or forced labor (18 U.S.C. § 1590), sex trafficking of children or by force, fraud or coercion (18 U.S.C. §1591); unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude or forced (18 U.S.C. § 1592), benefitting financially from peonage, slavery and trafficking in persons (18 U.S.C. § 1593a) and attempting and conspiring to violate these provisions (18 U.S.C. § 1594).

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subjection to involuntary servitude, peonage, debt bondage, or slavery (TVPA, Section 103, 8a and b).

The TVPA definition does not require transportation of victims across borders or state lines, but instead rests upon the 13th amendment principles of preventing slavery, or involuntary servitude in any form. The TVPA and its reauthorizations in 2003, 2005 and 2008 include provisions to protect victims, prosecute offenders and prevent future trafficking. For example, the TVPA and its reauthorizations mandate restitution and forfeiture of assets upon conviction for trafficking offenses (18 U.S.C. § 1594, 1594,d-e, 2006) and include a civil remedy for human trafficking victims to be provided with compensation for losses (18 U.S.C. § 1595). The TVPA also establishes that non-citizen victims of human trafficking who participate in the investigation and prosecution of trafficking cases, or who are under 18 years of age, can qualify for refugee benefits and the opportunity to remain in the county through a special visa created for trafficking victims (T-visa) or through a certification of continued presence.

The TVPA and its reauthorizations provided significant resources to support federal law enforcement to identify and prosecute trafficking offenders. In 2007, the U.S. Department of Justice (DOJ) created a specialized unit within the Criminal Section of the Justice Department's Civil Rights Division dedicated to the prosecution of human trafficking offenses. In 2009, the DOJ received a 50% increase in the funding dedicated to prosecution of federal human trafficking cases, bringing the Human Trafficking Prosecutions Unit budget to $5.3 million (ATEST, 2011). Despite the TVPA's focus on federal prosecution of human trafficking, the federal criminal justice system cannot effectively prosecute all incidents of human trafficking occurring throughout the U.S. Local and state governments have traditionally been responsible for crime control in the U.S. As an illustration of this division of responsibility, the federal

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courts handle only a small proportion of all criminal offenses. In 2008, approximately 80,000 criminal cases were filed in U.S. federal courts compared to over 21 million criminal cases filed in state courts (U.S. Census Bureau, 2011). State and local authorities will encounter and must identify trafficking incidents occurring in local communities and as a result, they need to have the adequate authority through statute and institutional capacity to prosecute human trafficking cases locally.

The federal government has taken a number of steps to facilitate state and local responses to the problem of human trafficking. The DOJ publicly tasked the over 17,000 municipal, county and state law enforcement agencies responsible for carrying out routine policing functions of local communities to "be the eyes and ears for recognizing, uncovering and responding to circumstances that may appear to be a routine street crime, but may ultimately turn out to be a human trafficking case" (U.S. Department of Justice, 2004: 5). To support the anti-trafficking efforts of this large and diverse pool of local law enforcement agencies, the federal government devoted significant resources to support local law enforcement responses to human trafficking through the funding of multi-agency task forces and police training.[2] Additionally, in 2004 the DOJ developed the *Model State Anti-Trafficking Criminal Statute,* which was widely disseminated as the first model state law. The DOJ model legislation covered both "labor," which absent coercion or force would normally be lawful employment, and "services," which include unlawful activities such as prostitution. The DOJ model law also criminalized conditions where children are induced into prostitution without the necessity of proving force, fraud or coercion, a departure from most existing state prostitution statutes (Farrell, 2007). However, the

[2] Approximately $73 million has been devoted to supporting state law enforcement's anti-trafficking efforts. This figure was calculated based on data reported in the FY 2002 to 2009 U.S. Attorney General's Report to Congress and Assessment of U.S. Activities to Combat Trafficking in Persons, released annually by the U.S. Attorney General's Office.

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model statute included minimal victim service provisions and was confusing for states to implement because it categorized commercial sex acts as "services. These deficiencies prompted human trafficking advocacy groups to develop and publicize alternative model legislation templates (Polaris Project, 2004, 2006, 2010; Freedom Network/Global Rights, 2005), key provisions of which have been adopted by numerous state legislatures.

In the eleven years following the passage of the TVPA, forty-nine states have passed state legislation criminalizing human trafficking and some states have mandated more comprehensive mechanism such as police training, victim services and data collection to improve local identification of victims and response to the crime (Polaris Project, 2011; Center for Women Policy 2011). State anti-trafficking laws differ widely in both the definition of what actions constitute a human trafficking crime and the focus of the state response to the problem. While a discussion of the strengths and weaknesses of various legal mechanisms in state legislation is beyond the scope of this study (see Richard 2004; Farrell 2007; Tangaho, 2008; Center for Women Policy Studies, 2011, Polaris Project, 2011 for assessments of state human trafficking legislation), Appendix A provides a breakdown of state anti-trafficking laws and their specific provisions.

Despite the prioritization of human trafficking through new laws and devotion of resources to anti-trafficking efforts, the U.S. law enforcement have identified and prosecuted fewer human trafficking cases than estimates of the problem would predict. To date, approximately 2,300 victims of human trafficking have received T-visa certification (U.S. Citizen and Immigration Services, 2011) and over 700 trafficking suspects have been prosecuted federally for trafficking related crimes (U.S. Department of Justice, 2010; U.S. Department of

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State, 2011).[3] An unknown number of human trafficking cases have been prosecuted under state anti-trafficking statutes but the U.S. Department of State reports that as of 2011, only 18 states brought forward human trafficking cases under state human trafficking statutes.

A number of explanations have been offered for the lower than expected numbers of human trafficking prosecutions. Some claim the low numbers of prosecutions are evidence that government officials are not doing enough to enforce the provisions of the TVPA and state anti-trafficking laws (Morse, 2007; Zeitlin, 2006). Others suggest there is insufficient coordination among agencies responsible for state and federal anti-trafficking efforts (GAO, 2007). Still, others argue that such low numbers demonstrates there are not as many victims of human trafficking as politicians and advocates lobbying for the passage of anti-trafficking legislation claimed (McDonald, 2004; Weitzer, 2007, Markon 2007).

Missing from this debate is concrete information about the readiness and ability of local and state officials, such as the police, prosecutors and courts, to investigate and prosecute human trafficking cases. Existing research on police responses to human trafficking has identified a number of challenges to local identification of human trafficking cases. Local criminal justice officials are generally uninformed about the problem of human trafficking, have limited experiences investigating such cases and lack organizational tools such as protocols or policies to guide their identification and investigations (Farrell, McDevitt, Fahy, 2010; Newton, Mulcahy, Martin 2008; Clawson, Dutch and Cummings, 2006; Wilson, Walsh and Kleuber, 2006). We do not yet know what practices would improve the ability of local agencies to identify, investigate and successfully prosecute human trafficking cases. This study seeks to fills these gaps.

[3] These statistics do not include prosecutions of commercial sexual exploitation of children cases that were not brought under the TVPA sex trafficking provisions.

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Utilizing a multi-method approach to understand the challenges local and state officials face investigating and prosecuting human trafficking cases, this study helps us identify and recommend strategies to overcome barriers to local investigation and prosecution of human trafficking. This study includes a systematic review of human trafficking case records in a targeted sample of counties across the U.S. Cases were coded to identify key factors related to identification, classification, investigation, arrests, charging decisions, victim participation and case outcomes. Additionally basic demographic information on offenders and victims was recorded. In addition to examining the investigation and adjudication of human trafficking cases, a sample of case records for other types of crimes that may include indicators of human trafficking but were not investigated or charged as such were also reviewed in each study site. This review helps us understand how often and under what circumstances incidents with indications of human trafficking are classified, investigated or prosecuted as other types of crimes.

In addition to reviewing human trafficking cases in a sample of counties across the U.S., the research team conducted in-depth interviews with police, prosecutors, victim service providers and other stakeholders participating in the investigation and prosecution of a subset of human trafficking cases that are representative of the cases identified in each county. The in-depth interviews help identify the roles and responsibilities of various actors and understand the factors that helped promote or hinder the investigation and prosecution of these cases.

The Perception and Response of Law Enforcement to the Problem of Human Trafficking

Despite the passage of state anti-trafficking legislation, research suggests that local police and prosecutors are generally unaware of the statutory tools that exist to prosecute such cases. A survey of local law enforcement agencies found that in states with anti-trafficking legislation,

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forty-four percent of police respondents and fifty percent of prosecutors reported that their states do not have legislation or that they are not aware of legislation (Newton et al., 2008). Similarly, in a survey of seventy-seven state and local prosecutors in twenty-seven states, Clawson et al. (2008) found that a quarter of prosecutors in states with existing human trafficking legislation were unsure or unaware of state human trafficking laws. Additionally, when asked to provide definitions of human trafficking, local law enforcement officials provided varying definitions of the crime, in some instances providing definitions in conflict with the statutory definitions in their state (Newton et al., 2008).

The lack of knowledge about the existence and potential benefits of state human trafficking laws is not surprising considering the fact that local law enforcement officials generally do not believe that human trafficking is a problem in their local community. In a national survey of municipal, county and state agencies, three-fourths of law enforcement leaders indicated that human trafficking was rare or non-existent in their community and only ten percent indicated investigating a human trafficking case (Farrell et al., 2010). A study of law enforcement leader perceptions of the problem of human trafficking in Minnesota similarly found that two-thirds of officers surveyed indicated that sex trafficking and prostitution were not problems in their local community (Bortel et al., 2008). Local prosecutors express a similar lack of concern about the problem. In the Clawson et al. (2008) survey of state and local prosecutors over two-thirds felt that human trafficking was not a problem in their jurisdiction and only seven percent had prosecuted a trafficking case since 2000 (Clawson et al., 2008).

The relative lack of knowledge about the existence of state anti-trafficking legislation and perceptions that trafficking is not a local problem among law enforcement leaders has a direct impact on the success of state and local identification, investigation and prosecution of human

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trafficking cases. Agency leaders who do not think human trafficking is a concern in their local community are less likely to develop tools and training necessary for their agencies to identify, investigate and prosecute human trafficking cases. Perhaps as a result of law enforcement leaderships' perception that trafficking is not a problem in local communities, by 2007, only 18% of state, county and municipal agencies had some type of human trafficking training, only 9% developed a protocol to investigate these cases and only 4% designated specialized human trafficking units or personnel (Farrell et al., 2010). Those law enforcement agencies that worked in partnership with federally funded human trafficking task forces, however, thought trafficking was a more serious problem in their community and were much more likely to have adopted training and have specialized personnel than other medium to large sized agencies (Farrell, McDevitt and Fahy, 2008).

Even when police agencies prioritize human trafficking and their officers are properly equipped to identify the crime it is difficult to ensure that trafficking investigations will result in arrests and prosecutions of offenders. The national survey of law enforcement indicates that by 2007, only 10% of local law enforcement agencies had identified and investigated a human trafficking case (Farrell et al., 2010). Similarly, in the Clawson et al (2008) survey of state and local prosecutors, only 7% of respondents had prosecuted a human trafficking case since 2000.

The low numbers of state and local investigations and prosecutions of human trafficking are not surprising considering the widespread lack of awareness of the problem and the specific challenges that these types of cases present. U.S. Department of State (2004) ranks human trafficking cases as "the most labor and time-intensive matters undertaken by the Department of Justice" (p. 24), due to the complexity of these cases and the challenges police face working with highly traumatized victims. While there are certainly some challenges unique to the

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investigation and prosecution of human trafficking cases, our understanding of the limited police and prosecutorial response to human trafficking is informed by research on prosecution of other types of new or newly prioritized crimes such as domestic violence, stalking, sexual assault and hate crimes.

Challenges Investigating and Prosecuting New Crimes

Local police and prosecutors are the gatekeepers to the criminal justice system. While legislators pass laws creating new criminal offenses, the police decide which offenses to investigate, offenders to arrest and cases to forward to the prosecutor. Based on the information provided by the police, prosecutors determine what cases will be prosecuted, the types of criminal charges that suspects will face and whether or not suspects will be offered a plea bargain. Police and prosecutors have a wide range of discretion in making these decisions. For example, prosecutors may decide not to charge an individual when they believe the suspect is innocent or undeserving of punishment. They may also decide against filing criminal charges in cases where they believe the suspect is guilty and deserving of punishment, but there is insufficient evidence to proceed with prosecution. Researchers have identified three main explanations to help us understand police and prosecutor decisions about criminal charging - legal environment explanations, institutional structure explanations and individual explanations. We briefly review the literature in each of these areas relative to other new or newly prioritized crimes and discuss specific challenges that may emerge in human trafficking cases.

Legal Environment

Legislation enabling and supporting the prosecution of specific offenses is a necessary first step to criminal justice system response. Forty-nine states now have laws criminalizing human trafficking offenses, following the passage of the TVPA, but state legislatures were

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relatively slow in passing anti-trafficking statutes. Washington was the first state to pass a law criminalizing human trafficking in 2003 and prior to 2006 only twelve states passed laws criminalizing human trafficking offenses. As a result, an overwhelming majority of state human trafficking laws are less than five years old.

New laws are challenging for prosecutors because the specific elements of the crime necessary to establish a prima facie case are often ambiguous until tested in court. In response to an uncertain legal environment, prosecutors may charge individuals engaged in human trafficking crimes with offenses under other state statute (e.g., promoting prostitution, fraud, rape, kidnapping) where the legal elements of the crime are more established and prosecutors believe there is a greater chance of a conviction (Newton et al., 2008). Additionally, local prosecutors report turning human trafficking cases over to federal authorities rather than proceed with state prosecution because they perceive human trafficking cases to be complex and demanding resources that are burdensome to state agencies (Clawson et al., 2008). As a result of state prosecutors choosing alternative methods to dispose of human trafficking cases, in most states human trafficking laws remain underutilized and untested.

Similar patterns have occurred with the criminalization of other types of new offenses. For example, in years immediately following passage of anti-stalking laws, law enforcement and prosecutors lacked training on what constituted a stalking offense and often referred stalking incidents to specialists in other units (Miller, 2001). Similarly, in their work on hate crime, Grattet and Jenness (2001) found that following the passage of state hate crime legislation prosecutors struggled with the perceived ambiguity of these new laws, often overlooking bias motivation in crimes based on their inexperience with new hate crime laws. Once prosecutors established the legal elements necessary to charge bias motivated crimes, they achieved

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conviction rates within the normal range of other crimes. New crimes, like human trafficking, often begin as "imprecise multivalent concepts whose definition and attendant policy implications become more refined and settled over time" (Grattet and Jenness, 2001, 39). Prosecutors must become aware of new laws and translate the language of those laws into operational definitions that guide arrests and prosecutions.

Institutional Explanations

The passage of legislation is just the beginning of the process of enforcement. Legislatures pass laws criminalizing certain behavior but law enforcement agencies, both police and prosecutors, must fill the gap between law-on-the-books and law-in-action. Criminal justice system agencies are responsible for putting in place institutional structures and policies that promote an "operational" understanding and enforcement of laws (Grattet and Jenness, 2005). Without such action, laws are often unenforced. As described previously, the limited research on criminal justice system responses to human trafficking suggests that law enforcement agencies and prosecutors offices have generally done little to establish institutional responses to guide front-line police and prosecutors in the identification of or response to human trafficking incidents occurring in local communities (Farrell et al., 2008; Newton et al., 2008). We briefly discuss some of the potential challenges created when criminal justice agencies fail to establish institutional responses to new or newly defined crimes like human trafficking.

There are numerous institutional barriers to enforcement of new criminal laws. The day-to-day activities of police and prosecutors are highly institutionalized and there is resistance to changing practices in response to new legislation (LaFave 1965; Lipsky, 1980; Crank and Langworthy, 1992). This resistance is particularly acute when front-line actors see the

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identification of new crimes as "a reflection of political whims, the politicization of law enforcement, and a distraction from basic 'good police work'" (Jenness and Grattet, 2005: 337). Additionally, the needs of an organization, its existing structures and its capacity to respond to emerging crime problems further constrain decisions about how to handle particular cases.

When legislatures pass new laws or communities prioritize the identification of new types of crimes, enforcement of these laws often depends on police agencies adopting formal policies that outline the expected responses to new crimes as well as training officers and holding them accountable for enforcement to overcome institutional resistance. For example, enforcement of domestic violence (Buzawa and Buzawa 2002; Ferraro, 1989) and hate crime laws (Nolan and Akiyama, 1999; Jenness and Grattet, 2005) required comprehensive law enforcement training and policies to guide officer responses. Likewise, since formal policies and informal norms within prosecutors' offices constrain the decisions of individual prosecutors (Jacoby 1976, 1980; Mellon et al 1981), agency-level responses to new laws are often necessary to promote prosecution. Institutional responses have been particularly important for crimes such as domestic violence, sexual assault and hate crime where there is a history of individual and institutional resistance from law enforcement.

Basic training for all agency personnel about the nature and elements of new crimes is critical to promoting successful identification and prosecution. Successful prosecution of all types of crime is dependent on police and prosecutors developing a shared understanding of the kind of evidence necessary to secure convictions. When prosecutors routinely decide not to file charges in cases where the police make arrests, the number and quality of cases referred by the police will decline, ultimately leading to even fewer cases being prosecuted (Cole, 1984). With new crimes, the police and prosecutors have not yet developed shared understandings of the

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types of evidence needed to proceed with criminal prosecution, which can lead to frustration by the police when their arrest practices are not legitimized by prosecutions.

To overcome institutional challenges, some agencies designate specialized personnel or units to promote the investigation and prosecution of specific types of offenses. Specialization provides a small group of decision makers with additional training around a new or newly prioritized crime. Specialized personnel or units serve as subject matter experts to the organization and help police and prosecutors develop routines for dealing with cases that may be less common and often have specific evidentiary challenges. Specialization is also intended to promote consistency in decisions about charging and case processing because all cases of a particular type are funneled to a small group of highly trained investigators or prosecutors who work with victims throughout the entire case process.

Despite the importance of institutional responses such as specialization, empirical research on the effectiveness of such responses to promote prosecution is mixed. For example, studies of specialized sexual assault units in both police agencies (LaFree, 1981, 1989) and prosecutors' offices (Beichner and Spohn, 2005) suggest that while actors in specialized units hold more empathetic attitudes towards sexual assault victims, arrest and charging patterns in specialized units were similar to those of non-specialized units. Beichner and Spohn (2005) suggest that institutional pressure to prosecute particular crimes may be in conflict with focal concerns shared by institutional decision makers. In the case of sexual assault, they suggest that "focal concerns" (Steffensmeir et al. 1998) shared by prosecutors about what constitutes a credible victim was the most influential factor in explaining why certain cases were forwarded to prosecution while other cases were dismissed. Prosecutors were less likely to file charges when the victim had engaged in "risk taking" behavior or there were questions about the victims

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"moral character" regardless of the type of unit. As this example illustrates, institutional explanations alone are insufficient for understanding the prosecution of new crimes. Additionally, it is necessary to understand the factors that affect the actions of individual decision makers.

Individual Explanations

Decades of empirical research has been devoted to understanding how police and prosecutors use their discretion to process different types of cases through the criminal justice system. A common explanation advanced for understanding the decisions of criminal justice actors, particularly prosecutors, is the need to avoid uncertainty. According to this perspective, prosecutors will only file criminal charges in those cases where they believe the chance of conviction is high (Albonetti, 1986, 1987). In the case of new crimes, uncertainty about the likelihood of a conviction is high and prosecutors are anticipated to be more cautious about proceeding with prosecutions.

Prosecutorial assessment of whether or not a case will result in a conviction is largely influenced by legal factors such as the severity of the offense and the strength of the evidence (Albonetti, 1987; Jacoby et al., 1982; Miller 1969; Stanko, 1982; Schmidt and Steury, 1989). In the case of new crimes or newly prioritized crimes, a prosecutor's is less able to assess legal factors, such as the type of evidence necessary to secure convictions. In these cases, legally irrelevant factors such as the race, class and gender of suspects and victims may have a stronger affect prosecutorial charging decisions (Kerstetter, 1990; Spears and Spohn, 1997; Spohn, Gruhl and Welch, 1987). Legally irrelevant factors appear to affect prosecutorial decisions through the mechanisms of prosecutorial assessments of victim or suspect credibility. Since prosecutors

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often do not have all the necessary information about what happened in a criminal incident, they commonly employ a form of perceptual short-hand (Hawkins, 1981), whereby stereotypes based on personal characteristics affect prosecutor assessments of an individual's credibility and trustworthiness. Ethnographic research with prosecutors suggests such personal characteristics have a particularly significant effect on prosecutor decisions to file charges when these characteristics alter the perceived credibility of the victim (Frohmann, 1991).

As a result of their focus on securing successful convictions, prosecutors develop a "downstream orientation" where they evaluate evidence based on how they believe information will be received by judges and juries (Frohmann, 1997). Thus, even if prosecutors personally believe a victim being truthful, they will be reluctant to file charges if they do not believe that judges and juries will believe the victim's testimony. This is particularly important in human trafficking cases where concerns about victim cooperation and credibility are well documented (Advocates for Human Rights, 2008). Even after victims have initially cooperated with the police and/or prosecutors, they have a tendency to recant their testimony out of fear or dependency on their trafficker and mistrust of the police (Clawson et al., 2008). The police interview processes necessary to secure information for the arrest or prosecution of offenders can re-traumatize trafficking victims, exacerbating their anxiety and reducing their ability to clearly remember and recount events. These interviews can replicate some of the features of trafficking experiences, particularly if victims feel coerced to provide information or believe their safety and security is dependent upon their successful cooperation with the police (Women's Commission for Refugee Women and Children, 2007).

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The Present Research

The crime of human trafficking presents a number of significant challenges law enforcement agencies tasked with investigating and prosecuting these cases. Despite the passage of legislation and the devotion of resources from state and federal governments to promote human trafficking identification, a relatively small number of cases have been prosecuted under these new laws. Previous research suggests challenges that local law enforcement agencies face identifying, investigating and prosecuting new crimes, but we do not yet understand the specific challenges that local officials face bringing human trafficking cases forward to prosecution. This study seeks to fill this gap by providing information about the contexts under which cases involving human trafficking offenses move forward to local prosecution and the types of practices that would improve the ability of local and state police, prosecutors and courts to move cases from initiation and investigation to arrest and resolution.

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CHAPTER 2
RESEARCH QUESTIONS AND METHODOLOGY

Research Questions

This study contributes to our understanding of the current state of human trafficking investigation and prosecution in the U.S. in three main ways. Because we lack basic information about the characteristics of human trafficking cases prosecuted under new state human trafficking statutes or other existing criminal laws, we first seek to understand the characteristics of local human trafficking investigations and prosecutions. Second, based on previous research on new or newly prioritized crimes, we seek to identify whether certain types of human trafficking offenses or features of the offense such as offenses with particular victim or offender characteristics, predict prosecution under new human trafficking laws or other criminal offenses. Thirdly, we seek to understand how the legal environment, institutional factors such as the organization, structure and culture of law enforcement and prosecutorial agencies, and individual factors such as the attitudes of decision makers inhibit or facilitate the prosecution of human trafficking cases. We identify a number of questions that flesh out specific areas of inquiry

Chapter Overview

This study addresses three main questions:

1. *What are the characteristics of local human trafficking investigations and prosecutions?*
2. *Do certain types of human trafficking offenses or features of the offense such as offenses with particular victims or offender characteristics predict prosecution under human trafficking laws or other criminal offenses?*
3. *What are the organizational, structural or cultural factors that inhibit or facilitate the prosecution of human trafficking cases?*

Multiple methodologies were utilized, including analysis of quantitative data from 140 closed human trafficking case records, analysis of in-depth interviews with 166 police, prosecutors, victim service providers and other court stakeholders, descriptive analysis of information from incidents that were never classified as human trafficking but might contain elements of human trafficking.

Data was collected in twelve study sites representing three different levels of state human trafficking legislation (none, basic or comprehensive) and states with and without federally funded human trafficking task forces.

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outlined in Table 2.1 below.

Table 2.1 Key Research Questions

1: What are the characteristics of local human trafficking investigations and prosecutions?

a. How do human trafficking cases come to the attention of law enforcement?
b. What criteria are used to classify cases as human trafficking?
c. What key actors/agencies are involved in local human trafficking investigations?
d. What are the characteristics of suspects and victims in human trafficking cases?
e. What is the likelihood that arrests will be made in human trafficking cases?
f. Once arrested, how likely are individuals to be charged with human trafficking offenses?
g. What types of evidence or testimony are important in the prosecution of human trafficking cases?
h. What are the outcomes of prosecutions of cases involving human trafficking?
i. Do case outcomes vary by type of trafficking or offender and victim characteristics?

2: How do these characteristics vary across cases with different types of criminal dispositions?

a. How do the characteristics of human trafficking cases that are prosecuted locally as a trafficking offenses differ from those cases prosecuted locally as different types of crimes?
b. How do the characteristics of human trafficking cases prosecuted at the state level differ from cases prosecuted federally?
c. How do the characteristics of human trafficking cases that are never prosecuted differ from those that are prosecuted (either locally or federally or as trafficking or a different offense)?
d. What factors predict whether cases identified and investigated as human trafficking move forward to prosecution for a human trafficking offense or other offense at the state or federal level?

3: How does the legal environment, institutional structure and culture and the attitudes of individual decision makers inhibit or facilitate local prosecution of human trafficking cases?

a. What are the challenges associated with investigating and prosecuting human trafficking cases?
b. Does state human trafficking legislation help facilitate local prosecution of human trafficking cases?
    i. How does legislation help overcome challenges to prosecuting trafficking cases?
    ii. How are human trafficking cases prosecuted in the absence of state legislation?
c. What are the local organizational or structural factors that impede or facilitate local human trafficking prosecutions?
    i. How are decisions to prosecute human trafficking cases made?
    ii. Does participation in federally funded human trafficking task forces or statewide task forces help overcome local barriers to prosecution?
    iii. What strategies have been successful for overcoming the challenges to the investigation and prosecution of human trafficking cases in different organizational and cultural contexts?
d. How do the attitudes of decision makers such as law enforcement and prosecutors affect the investigation and prosecution of human trafficking cases?

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Research Design

We utilized a multi-method approach to answer the questions outlined above. Quantitative and narrative data from closed human trafficking case records was collected to help us describe the characteristics of human trafficking cases that come to the attention of local law enforcement and identify the factors that predict different types of adjudicatory outcomes. Qualitative data from interviews with law enforcement, prosecutors, victim service representatives and other court stakeholders involved in the investigation, support, or prosecution of the studied cases was used to help us understand the challenges and barriers that local communities face identifying, investigating and prosecuting cases of human trafficking. Additionally, descriptive information from incidents that were not classified as human trafficking but which may contain elements of human trafficking crimes was used to understand how often local agencies misidentify potential cases of human trafficking. Data was collected in twelve counties that represent different types enabling human trafficking legislation and organizational structures (measured here as federally funded human trafficking task forces) to support human trafficking identification and investigations.

A project advisory board made up of practitioners experienced in investigating and prosecuting and serving victims in cases of human trafficking was convened at four different points in the project to provide feedback and recommendations on the research questions and design and to help guide the ongoing analysis. The board also reviewed final project deliverables and made recommendations to help improve the usefulness of this report.

The following sections outline sampling and site selection procedures, describe the methodology for closed human trafficking and non-trafficking case review and stakeholder interviews and describe analytic methods used to answer the research questions identified above.

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Sampling and Site Selection

The data for this study was collected from a targeted sample of counties across the U.S. Since human trafficking investigations are uncommon among local agencies, randomly selecting counties for study would not have yielded study sites with the expertise necessary to help us answer our research questions. To overcome this challenge, we used a multi-stage cluster sampling approach to identify states with particular characteristics and conduct a targeted sampling of counties within each of the state strata.

Since our research questions focus on understanding how local officials identify, investigate and prosecute human trafficking cases in different legal contexts, we first divided all states into three categories representing the enabling state anti-trafficking legislation. These categories included 1) states with basic anti-trafficking legislation (criminalization only), 2) states with comprehensive anti-trafficking legislation (criminalization plus two additional elements that enhance identification such as victim services provisions, law enforcement training, research or state task forces) and 3) states without anti-trafficking legislation. State anti-trafficking legislation changes with each legislative cycle. To control for changes in state legislation we defined state legislation as the status of state anti-trafficking laws ***at the end of 2007***. Selecting states based on their legal status in 2007 allowed us to identify the influence of state legislation on cases where there was sufficient time for the cases to be adjudicated and closed by the time we started data collection in 2010. Figure 2.1 illustrates the status of state legislation at the end of 2007.

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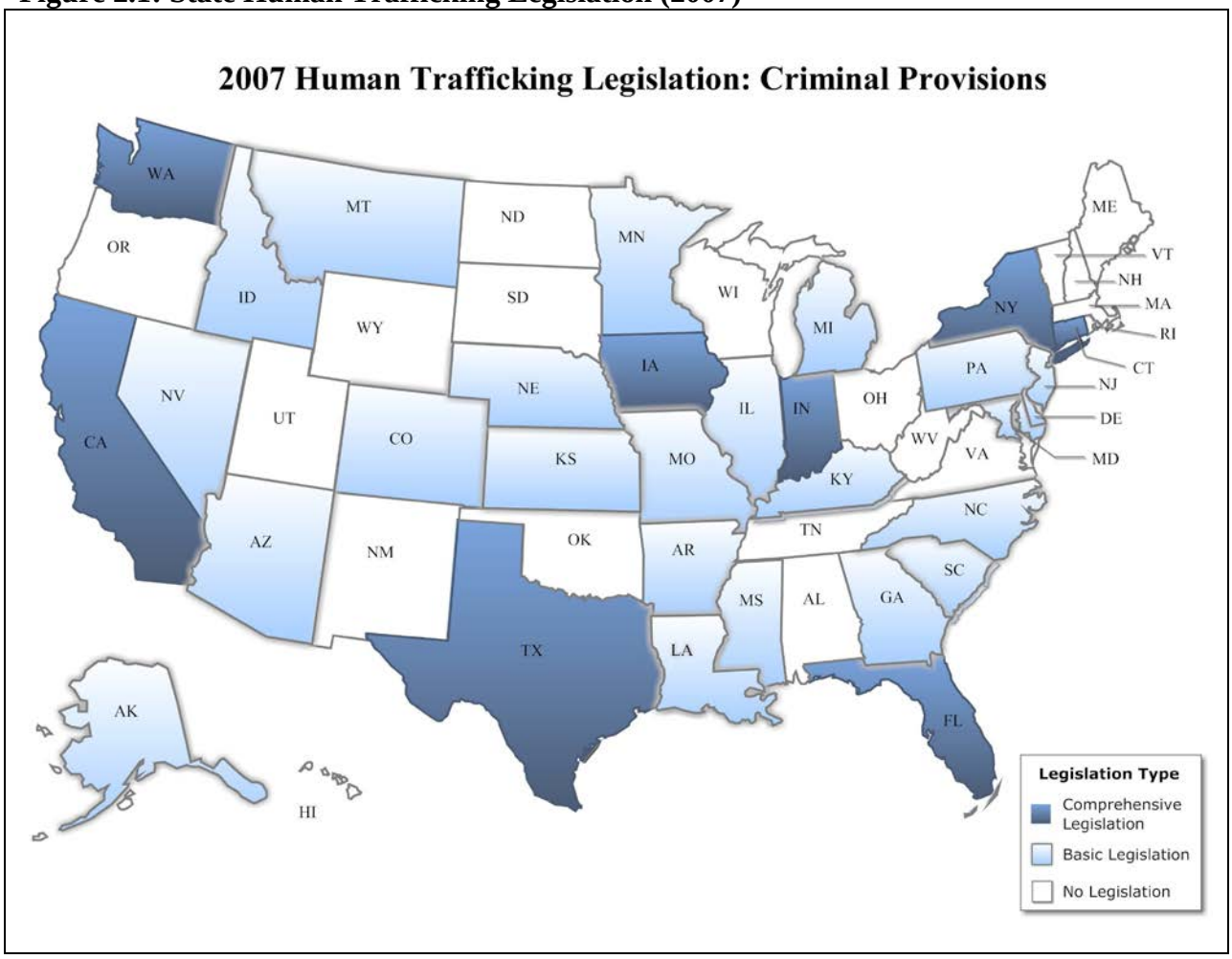
Figure 2.1: State Human Trafficking Legislation (2007)



To further refine the state sampling strata, we then identified whether or not states had a federally funded human trafficking task force. Research has shown that agencies in states with federally funded human trafficking task forces are more likely to identify cases of human trafficking, make arrests and prosecute those cases (Farrell et al., 2008). While some states have a state task force, either alone or in addition to a federal task force, the goals and structures of these state task forces vary considerably. Therefore, we limited our definition of the task force strata to the states with task forces funded by the Bureau of Justice Assistance (BJA) to support the local identification and prosecution of human trafficking cases. These task forces have similar goals and structures. They have also all received significant funding by the federal

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government to support the identification of human trafficking victims in local communities. To account for the influence of federally funded task forces, we then divided states into six strata representing the type of state legislation and whether or not the state has a federally funded human trafficking task force. Figure 2 illustrates the distribution of states across the two primary sampling strata. It is important to recall that the distribution of states in Figure 2.2 have changed since 2007, but our analysis used the legal and organizations context in 2007 as the frame for our analysis. A detailed breakdown of states by state legislation and federally funded task force strata can be found in Appendix B.

Figure 2.2: State Sampling Strata - 2007 Legislation Status and Task Forces

State Legislation and Task Force Status at 2007	State distribution
States with comprehensive ht legislation (8)	With federal task force (7)
	Without federal task force (1)
States with basic ht legislation (23)	With federal task force (9)
	Without federal task force (14)
States without ht legislation (19)	With federal task force (5)
	Without federal task force (14)

Since the study depended on local officials having some experience investigating cases of human trafficking, we had to select counties from the above strata strategically. We used a number of sources to identify counties in each state that had experience investigating cases of human trafficking since the passage of the TVPA in 2000. These included information about federal prosecutions for crimes that include human trafficking elements[4], data from the National

[4] These included prosecutions for human trafficking charges (Chapter Chapter 77 of U.S. Code, 18 U.S.C. §§ 1581-1595); Mann Act charges (18 U.S.C. §§ 2421-2423) and Commercial Sexual Exploitation of Child charges (18 U.S.C. §§ 2251-2260) . In selecting these federal charges, we realized we were casting the net of charges with potential elements of human trafficking broadly. For example, not all Commercial Sexual Exploitation of Child

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Law Enforcement Survey on Human Trafficking on law enforcement agencies that have identified cases of human trafficking (Farrell et al., 2008) and news reports of human trafficking prosecutions. The latter two categories include cases that may have been investigated as human trafficking cases but were eventually charged under a separate statute. From this preliminary screening of all counties in the U.S., we identified 1,442 counties where there was evidence of law enforcement agencies investigating at least one case of human trafficking or a human trafficking related offense. As a point of context, there are 3,141 counties in the U.S. (U.S. Census Bureau, 2006). A breakdown of the distribution of these counties across our sampling strata is included in Table 2.2 below.

Table 2.2: Human Trafficking Case Identification across Sampling Strata

Sampling categories		Counties with at least 1 known human trafficking investigation	Counties meeting minimum threshold	Counties screened
State Legislation	Federally funded task force			
Comprehensive legislation	Yes	306	60	14
	No	51	3	3
Basic legislation	Yes	274	38	8
	No	414	24	8
No legislation	Yes	74	12	7
	No	323	21	7
Total		1,442	158	47

To help us narrow down the pool of potential study counties, we developed a set of minimum threshold criteria against which to evaluate each of the counties with at least one known human trafficking or human trafficking-related investigation. The minimum criteria specified that counties should only be included in the sample frame if there was more than one

offenses would fit the definition of human trafficking. Likewise, the movement of individuals across state lines for the purposes of prostitution (Mann Act charges) do not always contain the necessary elements of force, fraud and coercion to qualify as human trafficking. Despite these definitional limitations, there is evidence that law enforcement agencies who are engaged in the investigations of offenses that that are known to be associated with human trafficking would be more likely to have the capacity to identify human trafficking offenses.

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federal defendant prosecuted for a human trafficking or human trafficking-related offense in the county since 2000 and evidence of human trafficking investigations from at least one other source besides the federal prosecution data. These criteria helped us ensure that there were multiple human trafficking cases or human trafficking-related cases that could be examined. Using the minimum threshold criteria, we narrowed down the number of eligible counties to 158. Finally, information about the region of the county where the counties were located, whether or not they were a port or border community, and basic census characteristics of the county were identified. We selected 47 counties across the six sampling strata for screening interviews. These counties were selected to ensure both the largest possible numbers of identified human trafficking or human trafficking-related investigations and regional variation.

The primary law enforcement agency in each of the 47 preliminary study sites was sent a letter of introduction that described the purpose of our study and requested their permission to speak with an investigator in their agency who would have worked on human trafficking investigations. Agency leaders were informed that the purpose of the screening was to select cases for final study and that no information obtained in the screening would be used for research purposes (See Appendices C and D for copy of screening permission letter and screening guide). One week following the distribution of the letter we contacted agency leaders to further describe the study and explain the screening process. Preliminary screening interviews were conducted with law enforcement personnel in agencies in each county most knowledgeable about human trafficking investigations during March and April of 2010. This screening interviews collected data on the level of human trafficking training, existence of protocols of policies, numbers and types of cases identified, and the arrest and adjudication status of identified suspects. These questions were intended to help ensure that those agencies selected for participation in the study

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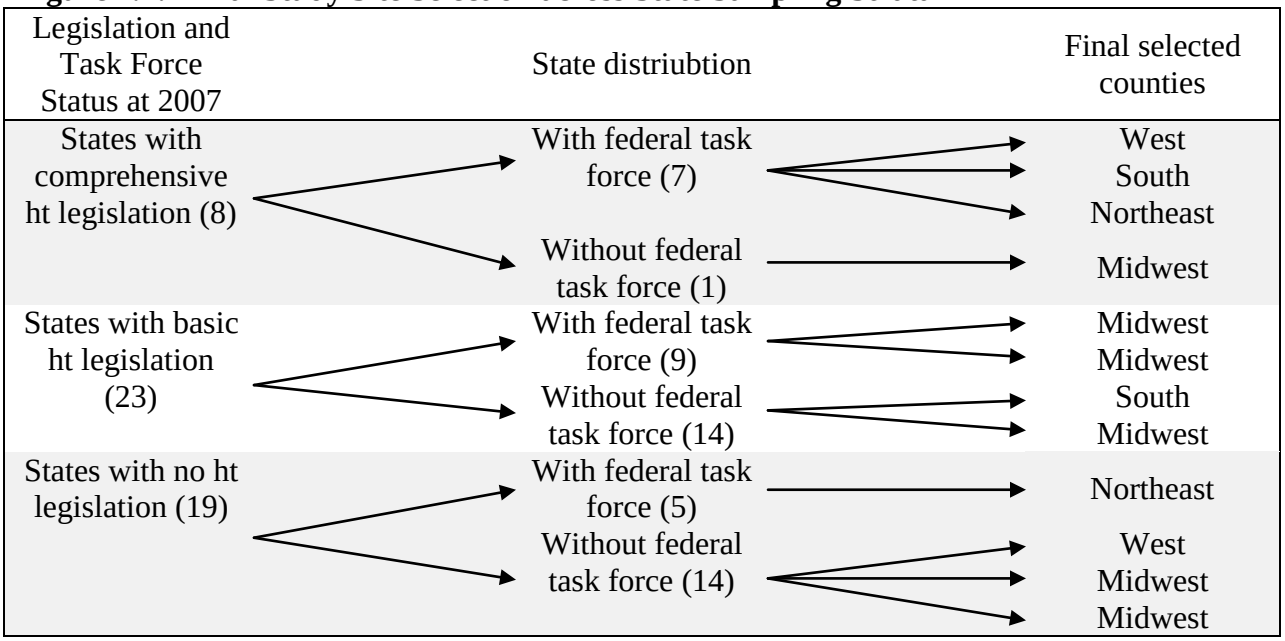
had investigated sufficient number of human trafficking cases. Based on the screening interviews we selected twelve study sites that provided variation across the sampling strata, regional variation and a sufficient number of human trafficking investigations and prosecutions to warrant study. We originally intended to study two counties in each of the six sampling strata, but the distribution of counties with experience investigating human trafficking under particular legislative and task forces structures was uneven, necessitating the inclusion of more counties in some strata and fewer in others. Specifically we selected three sites that had comprehensive legislation and task forces since these sites had the largest numbers of identified human trafficking cases that went forward to prosecution based on data from the screening interviews. Additionally, we included three sites that had no legislation or task forces because these sites faced some of the most significant challenges identifying and investigating human trafficking cases. The final distribution of study sites is illustrated in Figure 2.2 below and a description of study site characteristics is available in Appendix E.

Figure 2.2: Final Study Site Selection across State Sampling Strata



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To protect the confidentiality of the study participants, we utilize a code to refer to each of the specific counties studied and their respective law enforcement agencies. We describe data from each study site using the type of legislation, task force and region. For example, data from a county with comprehensive state legislation and a federal task force in the western region is referred to as "comprehensive legislation-task force-west." When referring to responses from specific interviewees we additionally provide information on the occupational classification of the respondent in study site.

While the primary focus of the proposed study is on the experiences in counties where law enforcement has investigated cases of human trafficking, we conducted additional interviews with relevant stakeholders in three counties (one in a state with comprehensive legislation, one in a state with basic legislation and one in a state without legislation) matched with our targeted sample based on population size and demographic characteristics, where law enforcement agencies have not investigated cases of human trafficking. These interviews help us understand the additional challenges agencies face even identifying human trafficking cases, a critical step to investigation and prosecution.

Once the study counties were selected, we identified the primary law enforcement agencies in each county that investigated human trafficking cases. Our outreach strategy began with police and sheriff agencies as opposed to prosecutors because police agencies are often most knowledgeable about the full range of human trafficking cases investigated in a county that might move forward to prosecution. Prosecutors may not be aware of or have information about those human trafficking cases that did not go forward to prosecution. The chief law enforcement officer for each identified primary law enforcement agency was sent a letter requesting their agency's formal participation in the study (See Appendix F for the Request to Participate letter

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and certification form). Agency leaders were notified of the type of information and access to personnel that they would need to make available to the research team when we came on site to collect data. Each agency leader had to agree in writing to the terms of the study protocol and designate a staff member responsible for assisting with the coordination of our data collection.[5] The following sections explain the data collected in each study site in more detail.

Closed Human Trafficking Case Review

To answer our first two research questions about the characteristics of human trafficking cases in different state contexts and the relationship between case factors and the processing of cases in the criminal justice system we collected data from closed human trafficking case records. In each of the twelve study sites, we identified all cases investigated by the primary law enforcement agency in the county that had been closed by 2010.[6] These cases could have been investigated as human trafficking and prosecuted locally as such, investigated as human trafficking but prosecuted locally as a different crime, locally investigated as trafficking but prosecuted federally, locally investigated as trafficking but never prosecuted, or prosecuted locally as human trafficking but identified originally as a different crime. For each case, we requested access to all available case records from law enforcement including the investigative files. Identified cases were also cross-referenced with other available information on human trafficking investigations in each study county including news reports and reports of cases by victim service agencies to determine if there are additional cases of human trafficking that were

[5] Two agencies that were originally contacted to participate in the study declined participation due to legal restrictions that prohibited them from making the investigative records of closed cases available for the research team. The two sites were replaced with an alternative agency in the same sampling frame that met the study criteria based on the information we received in the screening interview process.

[6] The majority of case records we received were for investigations initiated between 2005 and 2010, a period commensurate with the rise of state anti-trafficking legislation. We define a closed case as those cases where a suspect was arrested, prosecuted and fully adjudicated by the court or when the investigation ended without arrest and prosecution of any suspects.

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not included in the official records maintained by law enforcement. In some cases, we identified cases in the county that were prosecuted federally where a federal law enforcement agency lead the investigation. For these cases, we requested access to interview federal law enforcement agents involved in the investigation as we were not granted access to federal investigative records. Additional information on law enforcement interviews is provided below.

The numbers of closed human trafficking cases varied across the twelve study counties. In most cases, study sites had fewer than twenty closed case records and we collected data on all available cases. In three sites, there were over twenty closed human trafficking cases. In those sites, we collected data on a targeted sample of twenty case records.[7]

In each site, we had access to the full investigative files; some were electronic but most were paper records. The information available from each site varied, but generally included police incident reports, interview notes, photographs, records of physical and digital evidence collected, arrest records and criminal complaints. We utilized a case data collection form to ensure the standardized collection of information from each case record (see Appendix G for copy of the closed human trafficking case review form). For each closed case, we gathered basic information about the characteristics of the case, including how it came to the attention of law enforcement, the type of crime it was initially investigated as, the number and types of agencies and officers that were involved in the investigation and their respective roles. We collected detailed information on the number and characteristics of the suspected perpetrators, including demographic information, citizenship status, relationship to the victim, prior criminal history and information about their arrest and bail status. We collected detailed information on all victims identified in the investigative records including demographic information, citizenship status,

[7] In the three sites that had over twenty case records, we selected twenty closed cases that had clear indications of human trafficking, were the most recent and had the most complete records.

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primary language, relationship to the suspect, whether or not the victim was initially arrested or identified as a perpetrator, whether the victim was interviewed by law enforcement and information about the housing and other services victims received. We also collecting information about other individuals identified in the investigative records such as witnesses.

In addition to information about the characteristics of those involved in the investigation, we recorded information on the types of evidence collected by the police including, interviews with victims, witnesses and suspects, physical and digital evidence, documents and other written statements. Based on the information in the investigative record we developed a checklist of indicators of human trafficking that were supported by the evidence in the case. We identified the indicators listed in Table 2.3 based on the elements of human trafficking offenses as outlined in the TVPA and its subsequent reauthorizations.

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Table 2.3: Indicators of Human Trafficking

1.	Threatened or actual physical or non-physical (psychological, financial or reputational) harm which compels victim to perform or continue to perform labor or services to avoid harm
2.	Use or threatened use of law to exert pressure on another person to perform labor or services
3.	Demeaning and demoralizing the victim (verbal abuse, humiliation)
4.	Disorienting and depriving victim of alternatives (isolation, restricted communications, manipulation of debts, monitoring/surveillance)
5.	Diminishing resistance and debilitating (substandard living conditions, deny food, water, medical care, weaken with drugs or alcohol)
6.	Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)
7.	Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)
8.	Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)
9.	Knowingly benefited, financially or by receiving something of value, from participating in above venture
10.	Knew [or recklessly disregarded] that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts **or**
11.	Victim under the age of 18
12.	Past involvement of suspect or victim in suspected human trafficking incidents

Since the records from law enforcement usually ended at the point when the case was forwarded as a complaint to local or federal prosecutors, we obtained case processing and court record information by requesting case records from the county court clerks' offices or accessed publicly available case processing information through state and federal court records management systems such as Public Access to Court Electronic Records (PACER). We collected information from indictment and charging documents, court testimony records and sentencing opinions. From these records, we identified the dates of indictments, charges (both descriptions and number), descriptions of overt acts, names of lead prosecutors and defense

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attorneys, plea bargains, case dispositions, evidence presented at trial (where applicable) and sentencing. In the small number of cases where court records were not available we conducted detailed interviews with the prosecutor assigned to a case to gather the necessary information about the case adjudication process.

Across the twelve study sites, we collected detailed information about 153 closed human trafficking cases, involving 372 offenders and 159 victims. The characteristics of these cases are described in more detail in the following section.

In-Depth Interviews

While official case records provide an important source of information for understanding the types and characteristics of cases investigated and prosecuted as human trafficking, they do not always include information about the formal and informal decision making processes that may influence decisions to pursue investigations, make arrests or file charges in these types of cases. To address our third research question about the structural, organizational and cultural factors that inhibit or facilitate prosecution of human trafficking cases, we conducted interviews with police, prosecutors and other court officials involved in the investigation and prosecution of cases in each study site.

The interviews provided information about how cases are identified as human trafficking and the challenges of gathering evidence and investigating these cases. Additionally, interviews helped us understand the factors that influence whether a case progresses to state or federal prosecution, the challenges of bringing human trafficking cases forward to prosecution and facts about the case that were not included in the case files that informed the prosecutorial decision making processes. We also conducted interviews with victim service providers involved in

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supporting victims during case investigation and prosecution. Interviews with victim service providers were important for understanding the challenges victims face coming forward to law enforcement, providing testimony and staying engaged with the court process as criminal cases progress to prosecution. Additionally, victim service providers offered suggestions about how to improve the support provided to human trafficking victims to both enhance prosecution and help restore the victim.

Across the twelve study sites, we conducted 166 in-depth interviews. Seventy-two (72) interviews were with local law enforcement, 14 with state or county prosecutors, 18 with federal law enforcement (primarily FBI or ICE agents), 15 with federal prosecutors, 40 with victim service providers and 7 with other court officials, legislators or community stakeholders. We conducted most interviews in-person[8] and they lasted between one and two hours. The interviews were tape recorded with the permission of the interview participant. In the cases where interviewees did not agree to be tape recorded interviewers took detailed notes. The interviews were semi-structured, so respondents will be encouraged to provide open-ended responses. Copies of interview recruitment materials, consent forms and interview protocols for all interviewees can be found in Appendix H.

Interviews were transcribed and interview text was uploaded into QSR-NVivo 9, a qualitative data analysis software package for coding and preliminary analysis. Thematic codes were developed representing themes derived from the key actor interviews, reviews of existing literature and representing various components of our research questions. A list of 155 unique codes were developed in the following broad categories: cases (24), community background

[8] In some cases, interviews could not be arranged while we were onsite due to scheduling constraints of the interviewees.

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(20), law enforcement experiences (47), prosecutor experiences (40) and victim service experiences (24).[9] A complete list of thematic codes can be found in Appendix I.

Non-Trafficking Case Review and Comparison Site Interviews

Prior research suggests that perceptions about trafficking held by law enforcement and preparation to investigate these types of cases significantly affect whether or not cases are identified and investigated (Farrell et al., 2008). To help us understand the challenges local agencies face identifying cases of human trafficking, a key first step to the investigation and prosecution of such cases, we conducted two additional analyses. First, we analyzed incident reports for other similar types of crimes to determine if they included indications of human trafficking (referred to here as the non-trafficking case review). The non-trafficking case review were intended to help us identify how often and under what circumstances incidents with indications of human trafficking are found in cases that are not identified or investigated as such. In each study site, we conducted the non-trafficking cases reviews in tandem with the closed human trafficking case reviews. We requested access to the last 50 incidents involving the crime of prostitution to help us identify potential sex trafficking cases among prostitution incidents. We also requested access to the last 50 incidents involving extortion or alien harboring to help us identify potential labor trafficking cases. The number of incidents available for us to review

[9] We developed codes through a multi-phase coding conference process. Members of the research team developed a list of preliminary codes based on the research questions and reviews of existing literature. Team members independently coded three interviews using the preliminary code structure and adding new codes as they emerged from the review of the interview text. A series of coding conferences were held where research team members compared the coding of each segment of text and made final determinations of how existing codes would be applied and added new codes that emerged from the independent reviews.

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varied by agency.[10] In total, we reviewed 530 incident reports, 396 of which involved prostitution offenses and 134 of which involved extortion, harboring or other offenses[11].

To guide our review and coding of each non-trafficking case, we developed a list of indicators of human trafficking based on the elements of the crime as specified in the TVPA and its reauthorizations (see table 2 above). Multiple sources of information helped inform this list of indicators including existing human trafficking training materials, reports, and informational interviews with human trafficking task force members experienced identifying such cases. Additionally, the project advisory board provided feedback on the preliminary list of indicators.

The second method that we employed to understand the challenges identifying human trafficking cases was interviewing law enforcement, prosecutors and victim services stakeholders in sites where human trafficking cases had not been investigated or prosecuted. We identified three counties (one in a state with no legislation, one in a state with basic legislation and one in a state with comprehensive legislation), matched to our study sites based on size, demographic factors and legislation where law enforcement agencies have not identified or investigated cases of human trafficking. We conducted telephone interviews with law enforcement, prosecutors

[10] For each offense, we requested access to the last 50 incidents since 2000. Not all agencies had 50 incidents involving prostitution or 50 incidents involving extortion or harboring since 2000. Additionally, one agency (comprehensive legislation, task force, west) denied access to non-trafficking incident records after agreeing to participate in the study and providing access to closed human trafficking cases. Identifying incidents that potentially contained indicators of labor trafficking was extremely challenging. At the outset of the project, the advisory board provided a number of recommended crime types that they where they suggested labor trafficking cases might get classified. The project advisory board provided a number of suggested crime types that they believed might contain elements of labor trafficking including kidnapping, extortion, harboring and assault. After reviewing a preliminary set of incident reports from a broad array of incident types we decided that extortion and harboring cases were conceptually the most close to the elements of labor trafficking. Most sites had fewer than 50 incidents of harboring or extortion during the study period. As a result, we often reviewed a small number of incidents that could potentially contain elements of labor trafficking. In many cases, the study sites were confused about why we were requesting access to extortion or harboring cases because they claimed that they did not have any labor trafficking cases and it would be unlikely that the elements of such cases would be found in other crime types. The challenges that we faced identifying incidents that contained potential labor trafficking elements and accessing information from study sites about potential labor trafficking is indicative of the lack of knowledge local law enforcement agencies have about labor trafficking and the lack of systems in place within agencies to correctly identify and classify such incidents.

[11] In some cases agencies included incident reports where one of the offenses was extortion or harboring but the primary offense type was some other type of offense such as

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and victim services stakeholders in each of the three comparison counties to help understand the challenges these agencies face in identifying human trafficking cases, a critical first step to investigation and prosecution. Interviews with agencies in counties that have not investigated or prosecuted cases of human trafficking helps shed light on the organizational, cultural and structural factors inhibiting the identification of human trafficking by police and prosecutors.

Analysis

Information from interviews was analyzed within individual cases to help paint a picture of what happened in each case from investigation to case closing. This analysis included in depth contextual factors collected from case files and from interviews allowing for a nuanced understanding of the factors that contributed to a case moving from one stage of the process to the next. Case information was also analyzed and contrasted among multiple cases in a single county to understand variations in how cases proceed from investigation to prosecution. Many factors may contribute to a case proceeding from one stage in the criminal justice process to the next including characteristics specific to the case itself, its victims and offenders and the primary law enforcement agencies within counties bringing the cases forward to state or federal prosecutors. Finally, cases and the experiences of individuals participating in the case investigation, prosecution and adjudication is contrasted across counties. This analysis helps us identify differences in the experiences of prosecuting human trafficking cases that may be attributable to community or regional factors.

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CHAPTER 3
CHARACTERISTICS OF HUMAN TRAFFICKING CASES

This chapter describes characteristics of human trafficking cases identified by law enforcement agencies in twelve U.S. counties that work under different legislative contexts and task force environments (see chapter 2 for description of county selection). Data from closed case files collected from local law enforcement in the twelve study counties were analyzed to understand the characteristics of cases investigated as well as differences on key case characteristics across sites and across site types.[12] The characteristics we examined included: type of exploitation, method of identification by law enforcement, locations of the incident, indicators of trafficking, the level of collaboration within and among investigative agencies, demographic characteristics of victims and suspects, length of investigation, evidence collected, services provided to victims, and information about the arrest, indictment and prosecution of trafficking suspects. We also conducted bivariate analyses to understand the relationships

Chapter Overview

The patterns described below should not be generalized beyond the counties studied.

Findings from the case review:

- 85% of the 140 cases we reviewed were sex trafficking, 11% were labor trafficking and 4% both labor and sex trafficking.
- The majority of human trafficking victims identified were female (89%).
- 39% of human trafficking cases began as a tip to law enforcement rather than being developed proactively, reflecting a reactive approach to uncovering incidents of human trafficking.
- 69% of cases went forward to prosecution. 33% were prosecuted in state courts and 36% of cases were prosecuted in federal courts.
- Few human trafficking offenses charges (7% sex trafficking offenses, 9% sex trafficking of a minor offenses, and 2% labor trafficking offenses).
- The most common state charges were for compelling or promoting prostitution and the transport of persons for the purposes of prostitution.

Findings from the non-trafficking review

- 10% of prostitution incident reports contained evidence of human trafficking elements; 4% of extortion and harboring incident reports.

[12] As described in detail in chapter two, the site types are defined by the combination of two important contextual dimensions: legislative environment (i.e., whether the site was located in a state with human trafficking laws, either comprehensive or basic) and federal task force presence.

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between various case characteristics and case processing outcomes (prosecution, conviction, and sentencing).

As explained in Chapter 2, this sample is not a nationally representative sample of either counties or human trafficking cases. It only represents the experiences of those counties selected for study. As a result, ***the findings described in this chapter are <u>not</u> reflective of national trends in human trafficking cases and this data should not be used to draw conclusions about patterns of human trafficking prosecution nationally***. However, since so few human trafficking cases have been identified and prosecuted to date across the county, this sample does represent an interesting cross-section of early human trafficking investigations. Analyzing patterns in known human trafficking cases is important in that it can help in the future identification and investigation of human trafficking cases and highlights types of trafficking situations or characteristics of victims or suspects that may influence decisions about the prosecution of human trafficking cases.

In this chapter, we also present the findings from the review of cases that were not identified as human trafficking, but which may contain indicators of human trafficking offenses – referred to throughout the report as the non-trafficking case review. While it is beyond the scope of this study to measure the degree of human trafficking victimization occurring in local communities undetected by law enforcement, we have attempted to measure how often police agencies misclassify incidents that come to their attention which may contain indicators of human trafficking crimes. The main findings from this analysis are presented in the present chapter and detailed findings from the non-trafficking case review are presented in included in the appended materials.

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Case Characteristics

We collected and analyzed data on one hundred and forty (140) closed cases of human trafficking across the twelve study counties. As described in more detail in Chapter 2, in each study county we requested information about every human trafficking investigations that were closed as of 2010. These cases could have been investigated as human trafficking and prosecuted locally as such, investigated as human trafficking but prosecuted locally as a different crime, locally investigated as trafficking but prosecuted federally, locally investigated as trafficking but never prosecuted, or prosecuted locally as human trafficking but identified originally as a different crime. For each case, we requested access to all available case records from law enforcement including the investigative files. The majority of case records we received were for investigations initiated between 2005 and 2010, a period commensurate with the rise of state anti-trafficking legislation. We define a closed case as those cases where a suspect was arrested, prosecuted and fully adjudicated by the court or when the investigation ended without arrest and prosecution of any suspects.

Table 3.1 provides illustrates the distribution of identified cases across the twelve study sites. As detailed in the description of sampling and site selection in the previous chapter, six counties were located in the Midwest region of the U.S., two were located in the Northeast, two were located in the West, and two were located in the South. The number of total cases in each county ranged from 3 to 22.[13] Additionally, Table 3.1 presents the distribution of cases that were classified as sex trafficking, labor trafficking or both sex and labor trafficking across the twelve

[13] In each county, we reviewed all available investigative records for closed cases unless the primary law enforcement agency in the county had investigated more than 20 human trafficking cases. Three sites had over twenty closed human trafficking cases. In those sites, we collected data on a targeted sample of twenty case records based on those cases that had clear indications of human trafficking, were the most recent and had the most complete records.

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study sites. As a reminder, there is an unequal number of sites included in each site type due to the distribution of legislative and task force contexts across sites.

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Table 3.1: Number of Cases by Site (n=140)

Site Type (Legislative Environment, Task Force, Region)	All cases (N)	Sex trafficking (N)	Labor trafficking (N)	Sex & labor (N)
1. Comprehensive Legislation, Task Force, West	14	13	1	0
2. Comprehensive Legislation, Task Force, South	11	9	1	1
3. Comprehensive Legislation, Task Force, Northeast	10	7	3	0
4. Comprehensive Legislation, No Task Force, Midwest	7	4	2	1
5. Basic Legislation, Task Force, Midwest	17	17	0	0
6. Basic Legislation, Task Force, Midwest	8	5	2	1
7. Basic Legislation, No Task Force, South	18	13	3	2
8. Basic Legislation, No Task Force, Midwest	12	11	0	1
9. No Legislation, Task Force, Northeast	22	21	1	0
10. No Legislation, No Task Force, West	3	3	0	0
11. No Legislation, No Task Force, Midwest	12	10	2	0
12. No Legislation, No Task Force, Midwest	6	6	0	0
TOTAL	140	119	15	6

Summary of Findings across Sites

Table 3.2 presents a summary of the cases reviewed across all sites. The information is also broken down to reflect patterns in sex trafficking cases compared to labor trafficking cases across the study sites. As noted in the table below, the overwhelming majority of all cases identified by law enforcement were sex trafficking cases (85% of 140 cases). A much smaller percentage of all investigated cases of human trafficking were labor trafficking (11%) or both labor and sex trafficking (4%).

The most common means for a case of human trafficking to come to the attention of law enforcement was through a tip. Overall 39% of all human trafficking cases began as a tip to law enforcement reflecting more of a reactive approach to uncovering incidents of human trafficking across study sites. The source of tips varied widely from service providers to "Johns" who suspected someone might be a victim. This reactive approach was more pronounced in cases of labor trafficking where approximately two-thirds of cases (64%) began as tips. The second most

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common method of human trafficking case initiation was through an ongoing investigation. These were often vice investigations into prostitution that uncovered evidence of trafficking. Only 11% of all cases (12% of sex trafficking cases) were investigated through a sting/entrapment.

Victims or victims' families seldom report victimization to the police. Victim's self identify and victims' family report comprise only 13% of all cases referred to law enforcement a victim came forward or the victim's family reported the victimization. This percentage was higher for labor trafficking cases with a combined 18% of cases referred to law enforcement by a victim's family (9%) or a victim's self-report (9%). The conclusion that victims or victims' families seldom report cases to law enforcement among the investigations we reviewed is important since as indicated in subsequent chapters of this report, law enforcement officials are often expecting victims of sex and labor trafficking to come forward and self-identify before they can initiate an investigation.

Information was also collected through the review of human trafficking cases on the location of human trafficking incidents investigated by law enforcement. In some cases, locations are physical spaces such as a residence or a business that the police encountered during operations. In other cases, locations represent spaces such as the internet where victims were identified by law enforcement, though suspect arrests or victim rescues may have occurred in different locations. The most common incident location across all case types was a residence (43% of all cases identified in a residence). This has important implications for our understanding of human trafficking as a hidden crime. The police have less access to identify potential victims hidden inside private residence compared to victims that are exposed to the public through the internet, street prostitution or work in a public industry such as a restaurant.

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Twenty-seven percent (27%) of cases were identified through the internet, 13% on the street and 10% at a hotel. The majority of labor trafficking incidents were located in a residence (54%) or a restaurant/bar (31%). Despite stakeholders in nearly every study site describing massage parlors (sometimes hundreds) operating as fronts for prostitution and potential sex and/or labor trafficking, only 3% of all cases we reviewed had incidents located at a massage parlor. As will be discussed in later chapters, law enforcement is struggling with both political buy-in to investigate massage parlors, as well as difficulty infiltrating the often closed ethnic networks operating these often legitimately licensed businesses.

Fifty-four percent of all reviewed cases involved a minor victim. While minors were involved in all types of human trafficking cases at high rates, they were involved in a higher percentage of sex trafficking cases (58%) than labor trafficking (27%). As will be noted in subsequent sections of this report, this large proportion of cases involving minor victims may be the result of law enforcement prioritizing cases involving minors. On average, cases included three suspects and five victims. An exception to this pattern was the relatively high number of victims identified in labor trafficking cases (average of 9 compared to 5 for other types of trafficking).

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Table 3.2: Characteristics of All Reviewed Cases

	All cases n=140	Sex trafficking n=119	Labor trafficking n=15	Sex & labor trafficking n=6
Type of trafficking				
Sex	85%	-	-	-
Labor	11%	-	-	-
Both	4%	-	-	-
How did the case come to the attention of le?				
Tip	39%	37%	64%	17%
Ongoing investigation	18%	18%	9%	33%
Entrapment/sting	11%	12%	-	17%
Victim self-identify	10%	10%	9%	-
Referral other LE	7%	5%	9%	33%
Referral within LE	4%	5%	-	-
Call for service	3%	3%	-	-
Confidential informant	3%	3%	-	-
Victim family report	3%	3%	9%	-
Other	2%	3%	-	-
Where incident was located				
Residence	43%	40%	54%	83%
Internet	23%	27%	-	-
Street	11%	13%	-	-
Hotel	8%	10%	-	-
Restaurant/Bar	6%	3%	31%	-
Massage parlor	3%	3%	-	-
Other	6%	4%	15%	17%
Involved a minor victim	54%	58%	27%	20%
Average # suspects	2.78	2.77	2.73	3.16
Average # victims	5.10	4.62	9.21	3.00
Went forward to prosecution	69%	68%	80%	67%

Note: percentages shown above are based on non missing cases

Over two-thirds (69%) of all cases went forward to prosecution. The overall prosecution trend was similar for cases of sex trafficking – 68% went forward to prosecution. Although the overall number of cases involving labor trafficking was small (n=15) and should be interpreted

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cautiously, a higher proportion of these cases were prosecuted - 80% of labor trafficking cases - went forward to prosecution.

Findings Grouped by Type of State Legislation

Table 3.3 presents a summary of the reviewed cases grouped by the type of state legislation that governed the study site. The total number of cases in each type included in the study is included in parenthesis in the table below.

Table 3.3: Number of Cases by Site Type (n=140)

		Site Type		
	All Sites	Comprehensive Legislation	Basic Legislation	No Legislation
Case type				
Sex	85% (119)	79% (33)	84% (46)	93% (40)
Labor	11% (15)	17% (7)	9% (5)	7% (3)
Both	4% (6)	5% (2)	7% (4)	0% (0)
Total	100% (140)	100% (42)	100% (55)	100% (43)

Note: percentages shown above are based on non-missing cases

A vast majority (85%) of the 140 human trafficking cases in our sample involved sex trafficking, 11% involved labor trafficking as the primary offense and 4% involved both sex and labor trafficking. There was some variability on trafficking type across site types, although sex trafficking comprised the majority of cases for study sites regardless of legislation type. Jurisdictions in states with comprehensive legislation had a greater share of labor trafficking cases (17%) as compared to jurisdictions in states with either basic or no legislation, where less than 10% of cases were labor trafficking. It is important to note that while differences exist between site types in the type of cases that were identified and the characteristics of those cases,

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described in more detail below, most differences are modest and do not rise to the level of statistical significance. In the following tables, we note those few instances where the differences across study sites rise to a level of statistical significance.

Method of identification by law enforcement

There are numerous methods that law enforcement agencies in our study sites reported as helping them identify cases of human trafficking. The most frequent method of identification of human trafficking cases was a tip (either from the community, a victim services organization, or through a hotline call), which was cited in 39% of human trafficking investigations (see Table 3.4). In 10% of cases the victim self reported their victimization to the police, and in another 3% of cases the victim's family reported the victimization. In 3% of the cases, human trafficking was identified in response to a call for service. Together these traditionally reactive identification strategies were used to identify 55% of all the cases we reviewed.

Table 3.4: Method of Identification, Across Site Types (n=114)

	All Sites	Site Type		
		Comprehensive Legislation	Basic Legislation	No Legislation
Method of Identification				
Tip	39%	32%	52%	24%
Ongoing investigation	18%	16%	15%	24%
Entrapment/sting	11%	5%	19%	7%
Victim self-identify	10%	11%	6%	14%
Referral other LE	7%	11%	2%	10%
Referral within LE	4%	11%	0%	4%
Call for service	3%	0%	0%	10%
Conf. informant	3%	5%	0%	3%
Victim family report	3%	8%	2%	0%
Other	2%	0%	4%	3%
Total	100%	100%	100%	100%
Note: percentages shown above are based on non-missing cases				

Human trafficking was identified during the course of an ongoing investigation (for human trafficking or other types of crimes) in 18% of the cases, during an entrapment or sting operation in 11% of cases and as a referral from an officer within the law enforcement agency or

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from another law enforcement agency in 11% of cases. Information provided from confidential informants led officers to identify 3% of cases. There were some differences in how human trafficking incidents came to the attention of the police across states with different types of human trafficking legislation. Reactive strategies for identifying cases were most prominent in states with only basic legislation, accounting for police identification in 60% of the reviewed cases compared to 51% in states with comprehensive legislation and 48% in states with no legislation.

Location of incident

Table 3.5 provides information about the location where human trafficking was uncovered. The most frequent location where human trafficking incidents were identified in the cases in our sample was a residence (42%), followed by the internet (23%), the street (13%), and at a hotel (9%). Across site types, those sites located in states without legislation had a greater percentage (49%) of their cases identified at residences than did sites in states with basic (44%) or comprehensive legislation (34%). There is variation in the degree to which agencies utilize the internet as a tool to identify victims of sex trafficking. In nearly a third (30%) of the cases in states without legislation victims were identified through the internet, compared to only one-fifth (20%) of cases in states with basic or comprehensive legislation. It is possible that sites without state legislation have fewer resources for investigative strategies that might be used to identify victims and must rely on more readily available tools such as internet ad searches. As will be discussed in later section of the report, while law enforcement agents discussed investigative strategies to identify victims in massage parlors in a number of our study sites, only 3% of all cases we reviewed were located in massage parlors (and most of these occurred in sits located in states with comprehensive legislation).

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Table 3.5: Where Incident was Identified, Across Site Types (n=128)

	All Sites	Site Type		
		Comprehensive Legislation	Basic Legislation	No Legislation
Location of Identification				
Residence	42%	34%	44%	49%
Internet	23%	20%	20%	30%
Street	13%	17%	11%	9%
Hotel	9%	10%	11%	3%
Restaurant/Bar	6%	5%	6%	6%
Massage parlor	3%	7%	0%	3%
Other	4%	7%	8%	0%
Total	100%	100%	100%	100%
Note: percentages shown above are based on non-missing cases				

Collaboration with other agencies

Local law enforcement collaborated with other agencies (including federal and state agencies and victim service providers) in more than half (58%) of all investigations into human trafficking (Table 3.6). Interagency collaboration was most common in those sites with either comprehensive or basic legislation.

Table 3.6: Collaboration with Other Agencies, Across Site Types (n=108)

	All Sites	Site Type		
		Comprehensive Legislation	Basic Legislation	No Legislation
Collaboration with other agencies				
No	42%	48%	32%	50%
Yes	58%	52%	68%	50%
Total	100%	100%	100%	100%
Note: percentages shown above are based on non-missing cases				

Cases with underage victims

Nearly two-thirds (62%) of all human trafficking investigations in our sample involved victims who were minors (Table 3.7). The majority of cases in sites located in states with legislation (either basic or comprehensive) involved minor victims, whereas only half of the cases from states without legislation involved minors. The focus on adult victims in states

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without legislation was driven in large part by a single study site that focused on investigations of sex trafficking of foreign national women, a majority of whom happened to be adults. Conversely, in states with comprehensive legislation 60% of all cases involved only minor victims.

Table 3.7: Type of Victim, Across Site Types (n=106)

	All Sites	Site Type		
		Comprehensive Legislation	Basic Legislation	No Legislation
Type of victim				
Adult only	38%	23%	40%	50%
Adult and minor	13%	17%	12%	12%
Minor only	49%	60%	48%	39%
Total	100%	100%	100%	100%
Note: percentages shown above are based on non-missing cases				

Victims interviewed

Victims were routinely interviewed as a part of the human trafficking investigations that we reviewed. Victims were interviewed in 98% of the cases reviewed.[14] There was little variation in whether or not a victim was interviewed across the study sites.

Evidence collected

Physical evidence was collected in a majority (66%) of human trafficking investigations conducted by law enforcement (Table 3.8). This finding is somewhat surprising considering the importance both police and prosecutors place on victim statements and their concern about the challenges obtaining corroborating evidence, discussed in more detail in the following chapters. There is little variation among site types in the degree to which physical evidence is collected, though physical evidence was collected most commonly in states with basic legislation (71% of cases).

[14] Detailed information about the dates of interviews and characteristics of interviewees is missing in 91 of the 140 case records. The percentages of victim interviews described in the report are based on non-missing cases.

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Table 3.8: Physical Evidence Collected, Across Site Types (n=108)

	All Sites	Site Type		
		Comprehensive Legislation	Basic Legislation	No Legislation
Physical evidence collected?				
No	34%	37%	29%	39%
Yes	66%	63%	71%	61%
Total	100%	100%	100%	100%
Note: percentages shown above are based on non-missing cases				

Indicators of trafficking supported by the evidence

In addition to collecting information about the characteristics of the investigation, we reviewed each case record to determine whether or not there was evidence in the description of the criminal incident supportive of indicators of human trafficking. We identified the indicators listed in Table 3.9 based on the legal elements of human trafficking offenses as outlined in the TVPA and its subsequent reauthorizations, as of the most recent 2008 TVPRA. It is important to note that whether or not a case record contained indicators of human trafficking was a function of whether law enforcement investigated the incident to determine if these elements were present. It also important to remember that in order to meet the definition of human trafficking, it is not necessary that an incident contain all of the legal elements of human trafficking below. However, as the case review demonstrated, with few exceptions, the legal elements necessary to prove human trafficking under federal law were present (sometimes in large numbers) in the incident files of local law enforcement across all site types – those with state laws and those without state laws, sites with task forces and those without task forces. In real terms, this means that high rates of violence, physical, sexual and emotional abuse, exploitation, threats, and financial gain were found in the investigative files across all sites. These data are particularly telling in light of whether or not a case was ultimately prosecuted using state or federal human

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trafficking charges or other non-trafficking charges. The following discussion presents overall trends in indicators and trends in indicators found across study site types.

The presence of a pimp/trafficker, evidence of a trafficker's financial gain through trafficking and the sex trafficking of minors were the most common elements of trafficking found in case records reviewed across sites. Given that sex trafficking was the primary type of human trafficking investigated by local law enforcement, it is not surprising that 57% of cases we reviewed included the element (#8), *Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp).* This element of federal law has been interpreted by most law enforcement and prosecutors to be applicable to the presence of a pimp/sex trafficker. The recent 2008 reauthorization of the TVPA added "maintained" to the definition (as included in our review).[15] There were statistically significant differences on this element across site types: 61% of cases from states with comprehensive legislation and 72% of cases from states with basic legislation included this element, compared to just 35% of cases from sites in states without human trafficking legislation. Given that over half of all cases included the presence of a pimp/sex trafficker, it follows that proof of financial benefit from sex trafficking was also common – found in 58% of cases across sites. On average, 54% of all investigations contained at least one victim of sex trafficking under the age of 18.[16] However, there were statistically significant differences across site types in the share of sex trafficking investigations containing evidence of

[15] During stakeholder interviews, a few prosecutors wondered if adding "maintained" could enable federal prosecutors to use the TVPA/TVPRA to prosecute what are commonly referred to as Johns or customers of sex trafficking victims. In none of the cases we reviewed for this study were "Johns" or customers of sex trafficking prosecuted under federal or state trafficking laws. In some sites, customers were charged with solicitation of a minor or other offenses, but as will be noted in the latter section on prosecution, these charges are often dropped or lessened in exchange for the cooperation of the customer during the prosecution of a case (to corroborate the victim's story and show that a sex act did occur). In the majority of cases, however, customers were not held accountable under any laws, federal, state or local.

[16] Proportionately more cases contained underage victims, but for this element, we are measuring whether or not a minor victim was specifically involved in a commercial sex act.

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at least one minor victim: 59% of cases from states with comprehensive human trafficking laws and 61% of cases from states with basic human trafficking laws contained evidence of a sex trafficking victim under the age of 18, while only 38% of cases from states with no legislation contained evidence of a minor victim. To prove sex trafficking for victims over the age of 18, it is necessary to prove the elements of *force, fraud, or coercion* (element #10) were used against a victim. At least one of these elements was found, on average, in 29% of cases.

High rates of violence, threats, and isolated atmospheres of violence were commonly found throughout reviewed cases. In 40% of all cases, evidence that victims were *compelled to perform labor through threatened or actual physical or non-physical harm* (element #1) was found in case files. Analyses revealed statistically significant differences on this element across sites types: 44% of cases with comprehensive legislation and 48% of cases from states with basic legislation had evidence of this element present, compared with just 26% of cases from states with not legislation. Overall, 41% of all cases, on average, victims were *disoriented or deprived of alternatives through isolation, restricted communications, debts and monitoring* (element #4), but again, statistically significant differences emerged across site types: sites in states with legislation (either comprehensive or basic legislation) contained higher proportions (44% and 50% respectively) of cases with evidence of this element compared to sites in states without legislation (for which, just 25% contained evidence of this element). Similarly, in 38% of all cases, victims of sex and labor trafficking endured environments where they were *dominated, intimidated, or controlled through abuse, an atmosphere of violence, displaying weapons, rules and punishments* (element #7).

On average, human trafficking cases contained five (5) indicators of human trafficking. Sex trafficking cases on average had five (5) indicators, labor trafficking cases four (4) indicators

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and sex and labor trafficking cases had six (6) indicators. In cases where there was an arrest there were on average six (6) indicators present compared to only three (3) indicators among those cases where there was no arrest. Similarly, cases that went forward to either state or federal prosecution has more trafficking indicators (6) on average than case that were not prosecuted (3).

There are some interesting patterns in the elements of trafficking found less commonly in our review. Only 16% of the cases we reviewed contained evidence that a trafficker *threatened use of law to exert pressure on another person to perform labor or services* (element #2). This may be due to the fact that this element of trafficking is more likely to be found in cases of labor trafficking which comprised a small proportion of the cases we reviewed. Also, only 16% of cases contained elements of *diminishing resistance and debilitating (denying food, water, medical care and weakening with drugs or alcohol)* (element #5). Again, this may be explained by the high percentage of sex trafficking cases. Information revealed during our qualitative interviews suggests that in cases of sex trafficking traffickers commonly provide food, clothing and other necessities to a victim in a way to entice and gain control over victims, especially minor victims who more often tend to be runaway/thrown away youth particularly vulnerable to such offers.[17] The low rates of these two elements found in cases across all study sites begs the question of how law enforcement, prosecutors, judges and juries evaluate situations where victim resistance and debilitation was more psychological rather than physical.

[17] Through interviews with stakeholders we heard mixed reports on the use of drugs and alcohol that may explain these findings. Stakeholders unanimously reported that while traffickers often offer/force victims to drink alcohol and/or smoke marijuana, they do not expose them to more addictive, harder drugs like Methamphetamine, Heroin or Cocaine. This is driven completely by profit and control motives. Traffickers know that a victim addicted to hard drugs cannot make as much money as a "cleaner" victim and that sex trafficker/pimps lose control over a victim that is more controlled by a drug addiction.

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Table 3.9: Elements of Human Trafficking Identified in Investigative Records (n=138)

		Total	Site Type		
			Comprehensive Legislation	Basic Legislation	No Legislation
1	Threatened or actual physical or non-physical harm which compels victim to perform labor*	40%	44%	48%	26%
2	Use of threatened use of law to exert pressure on another person to perform labor or services	12%	20%	11%	7%
3	Demeaning or demoralizing the victim	23%	24%	24%	19%
4	Disorienting and depriving victims of alternatives (isolation, restrict communication, debts, monitoring)*	41%	44%	50%	25%
5	Diminishing resistance and debilitating (deny food, water, medical care, weaken with drugs or alcohol)	15%	15%	22%	7%
6	Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)*	21%	15%	32%	14%
7	Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)	38%	44%	43%	28%
8	Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)*	57%	61%	72%	35%
9	Knowingly benefited, financially or by receiving something of value, from participating in above venture	58%	66%	63%	44%
10	Knew [or recklessly disregarded] that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts]	29%	22%	35%	28%
11	Sex trafficking victim under the age of 18*	54%	59%	61%	38%
	Note: percentages shown above are based on non-missing cases * Indicates differences across site types are statistically significant at .05				

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Proportion of cases moving forward to prosecution

Of the cases we reviewed, 69% resulted in the prosecution of at least one suspect on any type of criminal charge (Table 3.10). Overall, 36% of cases resulted in prosecution in federal court of at least one suspect and 33% of cases resulted in the prosecution in state court of at least one suspect. As Table 3.10 illustrates, there is some variation among sites types in the prosecution of human trafficking cases. It is important to remember that the trends in prosecutions described below should not be generalized beyond the twelve study sites included in this report. In our study sites, agencies in states with comprehensive legislation were more likely to have cases result in a prosecution compared to either agencies in study sites in states with basic state legislation or agencies in study sites in states with no state legislation. Not surprisingly, the agencies in states with comprehensive state legislation were also more likely to have criminal cases pursued in state courts. Forty percent of the cases reviewed in states with comprehensive legislation were prosecuted in state courts, compared to only 36% in states with basic legislation and 24% in states with no legislation. Conversely, federal prosecutions were most common in agencies in states without human trafficking legislation (44% of cases prosecuted federally) compared to agencies in states with basic (26% of cases prosecuted federally) or comprehensive legislation (40% of cases prosecuted federally). It is possible that law enforcement is more likely to pursue prosecution of human trafficking federally in those states where there is no a local human trafficking prosecution option. As will be described in later sections discussing suspect data, it is important to note that when human trafficking cases were prosecuted in either state or federal court, suspects were often charged with other types of offenses than human trafficking offenses.

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Table 3.10: Case Prosecuted (n=132)

	All Sites	Site Type: Comprehensive Legislation	Site Type: Basic Legislation	Site Type: No Legislation
Case prosecuted overall				
No	31%	21%	38%	32%
Yes	69%	79%	62%	68%
Case prosecuted state court				
No	67%	60%	64%	76%
Yes	33%	40%	36%	24%
Case prosecuted federal court				
No	64%	60%	74%	56%
Yes	36%	40%	26%	44%

Note: percentages shown above are based on non-missing cases

Victim and suspect characteristics

In addition to collecting information on the evidentiary characteristics and indicators of human trafficking in case records, we also collected detailed information about suspects and victims identified in the investigative records. Across the 140 reviewed cases, we collected detailed information on 190 victims and 379 suspects.[18] Table 3.11 provides an overview of victim and suspect characteristics for all cases. Across all types of human trafficking cases (sex trafficking, labor trafficking and sex and labor trafficking) we reviewed, half of the victims were white, 26% were Black, 16% were Asian and 9% were other races. Twenty percent (20%) of victims were Hispanic and 25% were non-citizens. Eighty-nine percent (89%) of all the victims in the case records we reviewed were female. The average age of victims was 21 years old. Approximately one-third (30%) of all victims were arrested by law enforcement. Further differences in victim characteristics are broken out by type of human trafficking below.

The overwhelming majority of all human trafficking victims identified in the cases we reviewed were victims of sex trafficking (144 of the 190 victims), of whom 95% were female.

[18] Detailed information about each victim associated with a particular case was not always available. Information reported here includes specific information about individual victims identified in investigative files or court records. In many cases, there were victims associated with a case for which detailed demographic information was not available.

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The race of identified sex trafficking victims was split fairly evenly with 47% White, 32% Black and 13% Asian. With respect to the ethnicity of victims of sex trafficking, only 16% were Hispanic. Sex trafficking victims in the cases we reviewed were also overwhelmingly U.S. citizens (81%). This finding is consistent with much of the prior research on human trafficking cases identified by law enforcement (see Farrell et al., 2010; Banks and Kylkehahn, 2011), but contradicts the impression often put forth in media about foreign victims as the most common type of human trafficking victim. With respect to age, 79% of sex trafficking victims fall within the range of under 16 to 20 years of age (specifically, 24% were under 16, 33% were 16-17, and 22% were 18-20). Despite the young average age of sex trafficking victims, more than one-third (35%) were arrested by local or federal law enforcement.

While there were a relatively small number of labor trafficking victims identified in our case review (n=28), the characteristics of these victims were different from sex trafficking victims. With respect to race, proportionately more labor trafficking victims were Asian (33%) compared to sex trafficking (16% Asian) and only 4% of victims of labor trafficking were Black, compared to 26% of sex trafficking victims. Labor trafficking victims were also more likely to be Hispanic (33%) and non-citizen (81%) than sex trafficking victims. Unlike victims of sex trafficking who tended to be majority female, the gender of labor trafficking victims was more evenly split with 48% female and 52% male victims identified in our case reviews. While sex trafficking victims in the cases we reviewed were young (80% under the age of 20), labor trafficking victims were older; 36% of labor trafficking victims were over the age of 40. A small number of victims (n=18) were associated with cases that were classified as involving both sex and labor trafficking and their personal characteristics were fairly similar to those of sex

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trafficking only victims with the exception of race (8 in 10 of these victims were white which is quite different from the more heterogeneous racial distribution of sex trafficking only victims).

Table 3.11 also provides detailed information about the characteristics of the 379 suspects identified in the human trafficking case records we reviewed. Like victims, the majority of suspects were associated with sex trafficking cases (319 of the 379 suspects). While the majority of victims of all types of human trafficking were female (89%), the majority of suspects of all types of human trafficking were male (70%) –with relatively no difference in gender by type of trafficking (males comprise 70% of suspects of sex trafficking, 71% of labor trafficking suspects and 72% of labor and sex trafficking suspects). On average, 81% of suspects of all types of human trafficking were arrested, however, arrest rates drop to 69% when looking specifically at suspects of labor trafficking. Similar to the trends in victim characteristics, the age, race, ethnicity, and citizenship characteristics of suspects varied by type of human trafficking. Differences in suspect characteristics by type of human trafficking are presented below.

The race characteristics of suspects of sex trafficking were fairly evenly split with 39% White, 39% Black, and 18% Asian. Sixty-nine percent (69%) of sex trafficking suspects were non-Hispanic. Fifty-eight percent of sex trafficking suspects in the cases we reviewed were U.S. citizens, 26% were non-U.S. citizens; however the citizenship of 16% of sex trafficking suspects was unknown. While the majority of suspects were male, approximately one-third (30%) of sex trafficking suspects were female. Interviews with stakeholders revealed that many of the female suspects arrested for sex trafficking had been victims of sex trafficking in the past, but became offenders when they recruited other young women and children into trafficking situations for pimps/traffickers. The average age of sex trafficking suspects in the cases we reviewed was 33

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years old. These suspects were on average eight years younger than labor trafficking suspects who had an average age of 41. As noted earlier, arrest rates were high for suspects of sex trafficking at 83 percent.

The characteristics of labor trafficking suspects differed from those of sex trafficking suspects in the cases we reviewed. Fifty-four percent (54%) of all labor trafficking suspects were White and half were identified as either Asian (38%) or "other" (8%). None of the identified labor trafficking suspects were Black in the cases we reviewed. With respect to ethnicity, 53% of all labor trafficking suspects were Hispanic. About a quarter of all labor trafficking suspects were identified as non-citizens, 41% were citizens and the citizenship of 35% of labor trafficking suspects were "unknown" to law enforcement. Approximately one-third (29%) of labor trafficking suspects were female. As mentioned above, the average age of labor trafficking suspects (41 years old) is nearly a decade older than sex trafficking suspects. Unlike sex trafficking, no identified suspects of labor trafficking were under the age of 20 years old. Sixty-two percent (69%) of suspects of labor trafficking were arrested, which is lower than the arrest rates for sex trafficking suspects (83%) in the cases we reviewed. Only a small number of suspects (n=19) were associated with cases classified by law enforcement as being both sex and labor trafficking.

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Table 3.11 Demographics of Identified Victims and Suspects

	Victims				Suspects			
	All Cases (n=190)	Sex Trafficking (n=144)	Labor trafficking (n=28)	Sex & Labor Trafficking (n=18)	All Cases (n=379)	Sex Trafficking (n=319)	Labor trafficking (n=41)	Sex & Labor Trafficking (n=19)
Race								
White	50%	47%	48%	82%	39%	33%	54%	47%
Black	26%	32%	4%	18%	39%	36%	0%	53%
Asian	16%	13%	33%	0%	18%	16%	38%	0%
Other	9%	8%	15%	0%	4%	3%	8%	0%
Ethnicity								
Hispanic	20%	16%	33%	25%	34%	31%	53%	62%
Non-Hispanic	80%	84%	67%	75%	66%	69%	47%	38%
Gender								
Female	89%	95%	48%	94%	30%	30%	29%	28%
Male	11%	5%	52%	6%	70%	70%	71%	72%
Citizenship								
Citizen	68%	81%	15%	80%	56%	58%	41%	43%
Non-Citizen	25%	11%	81%	20%	25%	26%	24%	14%
Unknown	7%	8%	4%	0%	19%	16%	35%	43%
Age								
Under 16	22%	24%	9%	15%	0%	0%	0%	0%
16-17	29%	33%	9%	8%	1%	1%	0%	0%
18-20	23%	22%	9%	39%	10%	11%	0%	0%
21-29	11%	11%	18%	8%	35%	36%	19%	29%
30-39	4%	3%	18%	8%	25%	25%	24%	29%
40+	11%	7%	36%	23%	29%	26%	57%	43%
Average Age	21	20	33	26	34	33	41	39
Arrested	30%	35%	11%	14%	81%	83%	69%	73%

Note: percentages shown above are based on non-missing cases

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Arrest, charging and adjudication of suspects

For all suspects identified in the cases reviewed, we identified whether or not they were arrested and ultimately indicted on a state or federal criminal charges. Table 3.12 presents the distribution of suspects who were arrested and criminally indicted on any type of charge and breaks down the indicted suspects by indictment for state or federal offenses, overall and across study site types. Overall, 81% of identified suspects were arrested. Of those suspects who were arrested, 78% were indicted on either state or federal charges. There is some variation across state legislation types on the likelihood of arrest or indictment. Suspects were most likely to be arrested and indicated in states with comprehensive legislation. As might be expected, a larger proportion of cases in states with no legislation were charged federally (54%) compared to state with comprehensive legislation (41%) or basic legislation (47%).

Table 3.12: Proportions of Identified Suspects Arrested and Criminally Charged (N=379)

		Site Type		
	All Suspects	Comprehensive Legislation	Basic Legislation	No Legislation
Arrested	81%	93%	74%	81%
Indicted on any charge	78%	86%	69%	83%
Indicted on state charge	28%	35%	22%	30%
Indicted on federal charge	50%	51%	47%	54%

Note: percentages shown above are based on non-missing cases

For those suspects charged in either state or federal court we collected information on the type of offense charged. While the variety of state and federal offense types was numerous, for the purposes of analyses we grouped the primary offense types together in similar offense categories. Table 3.13 reports the primary offense for suspects charged in state and federal court overall and by study site type. Regardless of legislation type, the most common state charges

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were for compelling or promoting prostitution and the transport of persons for the purposes of prostitution. Overall, only a small proportion of all suspects in state cases were charged with human trafficking offenses (10% charged with human trafficking and 7% charged with sex trafficking offenses) suggesting that despite new state laws on human trafficking, state prosecutors continue to charge human trafficking offenders with other types of crimes. No suspects in state cases were charged with labor trafficking offenses

Table 3.13: Type of Charges Filed

		Site Type		
	All Suspects	Comprehensive Legislation	Basic Legislation	No Legislation
State Charge	(n=100)	(n=40)	(n=32)	(n=28)
Compelling/promoting prostitution	41%	53%	26%	36%
Human trafficking	10%	11%	16%	4%[19]
Kidnapping	4%	0%	0%	14%
Labor trafficking	0%	0%	0%	0%
Prostitution	10%	7%	16%	9%
Sex offense	3%	7%	0%	0%
Sex trafficking	7%	4%	16%	5%
Sexual exploitation minor	4%	0%	16%	0%
Other	20%	18%	11%	33%
Federal Charge	(n=179)	(n=58)	(n=70)	(n=51)
Harboring	26%	50%	5%	29%
Labor trafficking	6%	10%	8%	0%
Transport for purposes of prostitution	27%	12%	49%	12%
Transport for purposes of prostitution – minor	8%	0%	6%	20%
Sex trafficking	6%	12%	6%	0%
Sex trafficking – minor	13%	2%	12%	25%
Sexual exploitation minor	1%	2%	0%	2%
Other	13%	12%	15%	12%
Note: percentages shown above are based on non-missing cases				

The distribution of federal charges is different from those observed for state charges. Nineteen percent (19%) of the human trafficking cases that were charged federally were charged with sex trafficking offenses under 18 U.S.C. 1591 and 6% were charged with labor trafficking

[19] These cases represent prosecutions for human trafficking offenses that were brought forward to prosecution under human trafficking legislation that was passed after 2007.

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offenses under 18 U.S.C. 1590. Twenty-seven percent (27%) of human trafficking suspects charged in federal courts were charged with Mann Act violations and an additional 8% were charged with Mann Act violations specific to minors. Finally, 26% of federal cases were charged with various alien harboring offenses. There is variation across the study sites based on state legislation type in the federal charging practices. In states with no legislation a larger proportion of cases that were charged federally were charged with sex trafficking of minors (25%) whereas labor trafficking offenses were charged only in sites in states with basic or comprehensive legislation. These differences are sometimes attributable to one or two large cases that involved multiple suspects in a single study site and thus should be interpreted cautiously. As has been indicated earlier in the chapter, the conclusions from the case review are also not generalizable beyond the twelve study sites.

For all suspects indicted on a state or federal criminal charge we identified the disposition of all charges in the indictment. Table 3.14 reports the dispositions for the primary charge for each offender indicted in either state or federal court. In state court, the most common outcome of a criminal prosecution for a human trafficking offense was a guilty plea (41%). While similar patterns held for most agencies across study site type, those agencies in states with comprehensive legislation were surprisingly less likely to have criminal cases result in a guilty verdict via plea but more likely to have guilty verdicts through trial (and also more likely to have not guilty verdicts through trial). A substantial proportion of suspects (36%) had their cases dismissed by the prosecutor (nol pros), indicating that cases involving human trafficking offenders whether charged with human trafficking offenses or other offenses may not always be strong enough for a prosecutor to bring them to trial.

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A similar pattern held in the federal courts. In the cases we reviewed, sixty-seven percent (67%) of human trafficking suspects who are charged federally were adjudicated guilty via a plea. Another 10% were adjudicated guilty via a trial. As with the state courts, a significant number of human trafficking cases were dismissed (19%) by the prosecution. Also similar to the state courts, there is variation across the study site types in the degree to which cases are dismissed or adjudicated guilty.

Table 3.14: Dispositions of Criminally Charged Suspects

	All Suspects	Comprehensive Legislation	Basic Legislation	No Legislation
State charge	(n=100)	(n=40)	(n=32)	(n=28)
Guilty –Plea	41%	35%	41%	50%
Guilty – Trial	14%	19%	14%	6%
Nol Pros	36%	39%	32%	38%
Not Guilty	3%	8%	0%	0%
Other	6%	0	14%	6%
Federal charge	(n=179)	(n=58)	(n=70)	(n=51)
Guilty –Plea	67%	46%	76%	74%
Guilty – Trial	10%	4%	9%	17%
Nol Pros	19%	40%	15%	2%
Not Guilty	1%	2%	0%	0%
Other	4%	8%	0%	7%

Note: percentages shown above are based on non-missing cases

To help us understand the factors that may promote arrest, prosecution and adjudication of human trafficking cases in the twelve study sites we conducted bivariate analyses examining the relationship between case and suspect-level variables and three outcomes: whether the suspect was arrested, whether the arrested suspect was prosecuted (and in which court, state or federal), and the disposition of all prosecuted suspect cases (Table 3.15).

A number of case factors affected the outcome of a human trafficking investigations in the cases we reviewed. Suspects in cases involving minor victims were more likely to be arrested and prosecuted, though there was no relationship between the existence of a minor

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victim and the suspect being adjudicated guilty in our study sites, contrary to the perceptions of many police and prosecutors. In support of a multi-agency model, suspects were more likely to be prosecuted and convicted in those cases where there is collaboration among law enforcement agencies.

As described earlier in the chapter, we reviewed each case record for evidence of specific elements of human trafficking largely derived from the legal elements outlined in the TVPA. The existence of many of these elements increased the likelihood that a suspect would be arrested and prosecuted. Evidence of a suspect disorienting a victim, deceiving a victim about the consequences of their action, knowingly benefitting from trafficking, recklessly disregarding trafficking or being a pimp each significantly increased the likelihood that a suspect was arrested. For example, suspects were arrested in 91% of the cases where there was evidence of a suspect deceiving a victim about the consequences compared to arrests in only 77% of cases where no such evidence was present. All of the human trafficking indicators were significantly related to the prosecution of suspects, suggesting that prosecutors look for specific TVPA elements when considering whether to pursue charges against arrested suspects. Only a few of the TVPA elements, however, were significantly related to convictions of charged individuals. In the cases we reviewed, suspects were more likely to be convicted when the following elements were present: evidence of suspects diminishing victim resistance, the presence of a pimp, knowingly benefitting or recklessly disregarding victims.

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Table 3.15: Bivariate Analysis of the Relationship between Community, Case and Suspect Characteristics and Arrest, Prosecution and Disposition

	Arrest (n=379)		Any Prosecution (n=247)		Disposition Guilty (n=204)	
Case factors						
Type of case						
Sex trafficking	83%		86%		72%	*
Sex and labor	75%		100%		78%	
Labor trafficking	69%		100%		42%	
Minor victim						
No	76%	*	80%	*	68%	
Yes	88%		94%		69%	
Average # victims	10	*	10		12	
Physical Evidence						
No	69%	*	91%		62%	*
Yes	85%		88%		78%	
Collaboration						
No	76%		79%	*	53%	*
Yes	79%		91%		80%	
#1 Physical or non-physical harm						
No	82%		80%	*	70%	
Yes	80%		95%		71%	
#2 Threats of law						
No	79%		85%	*	70%	
Yes	89%		100%		73%	
#3 Demeaning victims						
No	79%		83%	*	71%	
Yes	87%		100%		68%	
#4 Disorienting victims						
No	76%	*	76%	*	71%	
Yes	86%		99%		71%	
#5 Diminishing resistance						
No	80%		84%	*	73%	*
Yes	84%		100%		66%	
#6 Deceiving about consequences						
No	77%	*	82%	*	66%	
Yes	91%		100%		79%	
#7 Dominating and controlling						
No	78%		78%	*	72%	
Yes	85%		99%		70%	
#8 Presence of pimp						
No	73%	*	82%	*	55%	*
Yes	85%		91%		77%	
#9 Knowingly benefitting						
No	63%	*	70%	*	49%	*
Yes	91%		95%		78%	
#10 Reckless disregard						
No	74%	*	82%	*	60%	*
Yes	93%		96%		82%	

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Table 3.15 Predicting Arrest, Prosecution and Disposition (continued)

	Arrest		Any Prosecution		Guilty	
Suspect factors						
Race						
White	81%		96%	*	79%	
Black	82%		86%		71%	
Asian	76%		73%		74%	
Other	100%		100%		92%	
Ethnicity						
Non-Hispanic	77%	*	84%		69%	*
Hispanic	91%		91%		85%	
Citizen						
Noncitizen	90%	*	92%		87%	
Citizen	78%		86%		74%	
Sex						
Male	86%	*	93%	*	62%	
Female	70%		77%		73%	
Prior record						
No	72%		81%		78%	
Yes	74%		82%		80%	
Age arrested	34		34		36	

* Indicates differences across site types are statistically significant at .05
Note: percentages shown above are based on non-missing cases

Some of the individual characteristics of suspects were also related to the likelihood of arrest, prosecution and conviction in the cases we reviewed. Hispanic and non-citizen suspects were more likely to be arrested than non-Hispanic and citizen suspects. Male suspects were more likely to be arrested, and prosecuted than female suspects, though suspect sex had no relationship with the likelihood of conviction. Interestingly, there was no relationship between a suspect's prior criminal record, as identified in the case records we reviewed, and the likelihood of arrest, prosecution or conviction.

The results of the bivariate analyses presented here should be interpreted cautiously. As has been described previously, this is a study of the patterns of human trafficking investigations and prosecutions in only twelve counties in the U.S. that are not intended to be nationally representative. It provides a first glimpse at some of the factors that promote or impede human trafficking investigations and prosecutions in states with different types of legislative frameworks, but is not intended to evaluate the effectiveness of these various legal

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structures. In the following chapters we explore in more depth the challenges presented by various factors related to cases, police and prosecution organizations and community contexts. Before moving to this analysis, however, we briefly discuss our findings about the degree of under or misidentification of human trafficking cases in our twelve study sites.

Identification and Classification of Human Trafficking Cases: Findings from the Non-Trafficking Case Review

It is beyond the scope of this study to measure the degree of human trafficking victimization occurring in local communities that goes undetected by law enforcement, but we have attempted to measure how often police agencies misclassify incidents that come to their attention which may contain indicators of human trafficking crimes. This analysis, referred to as the non-trafficking review, involved collecting and analyzing a set of incident reports in each study site for other types of crimes to determine if they included indications of human trafficking. This review was intended to help us identify how often and under what circumstances incidents with indications of human trafficking are found in cases that are not identified or investigated as such. Additionally, we were interested in understanding whether the level of under-identification varied by the local context. A similar methodology was used to estimate the degree of under-identification of hate crimes (McDevitt et al., 2002) and in a study of four local jurisdictions, a case review methodology was used to identify cases with signs of human trafficking (Newton et al., 2008).

A detailed description of the non-trafficking case review methodology and findings can be found in Appendix J. Here we briefly review the study and draw some preliminary conclusions about the problems of under identification of human trafficking incidents. In each site we requested access to the last 50 incidents involving the crime of prostitution to help us

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identify potential sex trafficking cases among prostitution incidents. We also requested access to the last 50 incidents involving extortion or alien harboring to help us identify potential labor trafficking cases. In total, we reviewed 530 incident reports, 396 of which involved prostitution offenses and 134 of which involved extortion, harboring or other offenses[20].

To guide our review of each non-trafficking case, we developed a list of indicators of human trafficking based on the elements of the crime as specified in the TVPA and its reauthorizations. These included twelve separate elements of human trafficking offenses. For each non-trafficking incident we reviewed the incident report and narrative to determine if any of the twelve human trafficking elements could be identified. For each element, we identified whether there was clear evidence of the element (yes); some evidence of the element, but no clear evidence (unclear); or no evidence of the element (no). An incident was considered to have clear evidence supporting human trafficking when one or more elements was coded as "yes". We classified incidents as "unclear" when no elements were coded "yes" but one or multiple elements were coded as "unclear." We review incidents from each study site to determine the degree of under-identification and examine the degree of under-identification across sites with different legislative and task force contexts.

In addition to reviewing prostitution and extortion and harboring incidents to determine whether there was evidence of elements of human trafficking, we collected information on the characteristics of suspects and victims identified in the incident reports. We use that information to determine whether or not there are differences in suspect and victim characteristics in those cases that are identified as human trafficking by an agency (from the closed case review, chapter

[20] In some cases agencies included incident reports where one of the offenses was extortion or harboring but the primary offense type was some other type of offense.

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3) and similar incidents that were not identified as human trafficking. These results can be found in Appendix J.

Across the eleven study sites that took part in the non-trafficking case review[21], 6% of the incident reports not classified as human trafficking had clear evidence of human trafficking elements. Another 3% had some evidence of human trafficking, but it was less clear and 91% percent of the incident reports we reviewed had no evidence of indicators of human trafficking (Table 3.16). There were more elements of human trafficking found in the prostitution incident reports compared to the extortion and harboring incident reports. Nearly 10% of the prostitution incident reports contained some evidence of human trafficking elements (7% percent clear and 3% unclear) compared to 4% of the extortion and harboring incident reports (2% percent clear and 1.5% percent unclear).

Table 3.16: Trafficking Elements Identified Across Case Types

	Yes	Unclear	No	Total (n)
All incident reports	6.1%	2.8%	91.1%	100% (527)
Prostitution reports	7.4%	3.3%	89.3%	100% (393)
Extortion and harboring reports	2.2%	1.5%	96.3%	100% (134)

While these findings are by no means representative of the degree of under identification of human trafficking nationally, there are some interesting similarities between the results reported here and those identified in other studies using similar methodologies. In a four-jurisdiction study of cases that could potentially involve human trafficking conducted by the National Opinion Research Center (NORC) (Newton et al., 2008), researchers concluded that 9% of the reviewed cases showed signs of potential human trafficking. While the specific criteria researchers in the NORC study used to select cases for review[22] or to identify a "sign of potential

[21] One site that had comprehensive legislation and a federal human trafficking task force was unable to provide incident reports for the non-trafficking case review.

[22] The NORC study report (Newton et al., 2008) indicates that researchers requested access to 20-25 cases in each study site from a "a list of statutes provided by the researchers." It is not clear what specific offense types were

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trafficking" is not specified, the general approach of the methodology appears to be quite similar to the non-trafficking case review. Similarly, an eight-jurisdiction study that used a similar case review methodology to identify potentially un-identified bias motivated crimes from a sample of non-domestic violence assault cases, found indications of bias motivation in three percent of the cases reviewed, though the range of cases with bias-motivation indicators ranged from zero to eight percent across the study sites (McDevitt et al., 2003).

Table 3.17 illustrates the variation in criminal incidents with elements of human trafficking that were not properly identified as such across the study sites. In sites in states with comprehensive legislation, 7% of the incidents had some evidence of human trafficking elements. In those sites with basic legislation 8% percent of the incidents had some evidence of human trafficking elements. In those sites with no legislation, 11% percent of the incidents had evidence of elements of human trafficking. When we break down the under identified incidents by state legislation and type of incident we find additional differences across the legal context of the study counties. In counties with comprehensive states legislation only 8.5% of prostitution incident reports and 2.5% of the extortion or harboring incident reports contained evidence of human trafficking elements. In counties with basic state legislation, 11% of the prostitution incident reports had elements of human trafficking, though none of the extortion or harboring incidents reports had such elements. In counties with no state legislation, 12% of the prostitution incident reports had elements of human trafficking and 10% percent of the extortion or harboring incidents had elements of human trafficking. These patterns suggest there may be a relationship

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reviewed. Interestingly, the NORC study authors reported similar challenges identifying cases that involved potential incidents of labor trafficking. As a result, it appears that their study focused on the under-identification of sex trafficking cases.

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between the legal context of the county and the ability of law enforcement agents to identify human trafficking cases when criminal incidents come to the attention of the police.

Table 3.17: Elements of Human Trafficking Identified by Legal Context

Trafficking Suspected by Legislation type	Yes	Unclear	No	Total (n)
Basic legislation	4.%	4%	92%	100% (225)
Comprehensive legislation	5%	1.5%	93%	100% (134)
No legislation	9.5%	2%	89%	100% (168)
Trafficking Suspected by Case Type and Legislation Type	Yes	Unclear	No	Total
Basic legislation				100%
Prostitution	5%	6%	89%	100%
Extortion	0%	0.0%	100%	100%
Comprehensive legislation				100%
Prostitution	6%	2%	92%	100%
Extortion	2.5%	0.0	92%	100%
No legislation				100%
Prostitution	11%	1%	88%	100%
Extortion	5%	5%	90.5%	100%

The patterns identified should be interpreted cautiously. The non-trafficking case review suggests that the degree of under-identification of human trafficking is relatively small across all types of counties. The review described here involved a small number of counties and thus variation in a single county may drive trends across categories of county context. Additionally, it only assesses the ability of law enforcement to classify correctly human trafficking cases *among those criminal incidents that come to their attention*. It does not provide any information about the effectiveness of the police in uncovering instances of human trafficking victimization that exists in their communities. It is possible, and in some cases likely, that elements of human trafficking actually existed but law enforcement did not recognize them and as a result, information supporting a human trafficking identification was never recorded in the incident narrative. Therefore, our review represents a conservative estimate of the degree of under-identification of human trafficking in the study sites. Despite these limitations, the non-

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trafficking case review suggests that all agencies in our study misclassified some incidents with evidence of human trafficking elements as other types of crimes, though misclassification was not common. It further suggests that there may be a relationship between this misclassification and the legal context, represented here as state anti-trafficking legislation that bears further study.

The following sections of the report detail the findings from the qualitative interviews with criminal justice and victim service stakeholders in each study site which help us better understand how human trafficking cases are identified and the factors that facilitate or impede the investigation and prosecution of such cases. The findings are organized across four main themes – challenges identifying human trafficking cases, challenges investigating human trafficking cases and challenges prosecuting human trafficking cases at both the state and federal level.

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CHAPTER 4
IDENTIFICATION OF HUMAN TRAFFICKING CASES

Identifying human trafficking incidents in local communities and accessing the victims of these crimes is one of the most significant challenges facing law enforcement agencies across the United States. Before police can investigate cases or prosecutors can prosecute suspects, law enforcement must identify incidents of human trafficking victimization occurring in their local communities. Identification refers to the way that human trafficking cases come to the attention of law enforcement and are classified properly as a crime of human trafficking as opposed to other crimes that may have similar elements, such as prostitution. Police identify crimes in a number of ways that can be either reactive or proactive. Reactive identification occurs when law enforcement officers respond to calls from victims or tips from community members, victim service agents or hotlines. Proactive identification occurs when law enforcement develops intelligence about criminal activities occurring in their community and targets investigatory resources to identify suspects and victims. Previous research suggests that law enforcement has generally relied on reactive strategies to identify human

Chapter Overview

Challenges inherent to human trafficking cases:
- Trafficking often involves hiding and moving the victim, making reactive policing strategies ineffective.
- Many victims do not self-identify as victims and most are fearful of reporting to law enforcement.

Challenges originating with law enforcement or prosecution:
- Human trafficking is often not prioritized within communities and law enforcement agencies.
- There is a lack of resources to devote to training, staffing, and investigating cases.
- There is a lack of training for patrol officers and first responders, even though they are the most likely to encounter trafficking situations.
- Lack of interviewing techniques and foreign language knowledge can interfere with identification.

Identified strategies to increase the identification of human trafficking:
- Prioritization of human trafficking identification in communities and law enforcement agencies.
- Provision of institutional resources specifically for human trafficking
- Proactive investigation strategies

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trafficking cases (Farrell, 2010; Gallagher and Holmes 2008). In this chapter, we discuss the challenges of this approach and explore the difficulties local law enforcement agencies face finding strategies to identify human trafficking successfully in local communities.

The challenges to the identification of human trafficking cases discussed in this chapter come from in-depth interviews with primarily with law enforcement agents in our twelve study sites. Challenges to the identification of human trafficking cases identified by local law enforcement officials fall into two major categories. First, some challenges are inherent in human trafficking cases due to the unique nature of this crime including hidden victims and highly traumatized victims. Second, organizational challenges – those with their roots in the structure of law enforcement agencies themselves – can impede proper case identification. Identification challenges that fall within these two broad categories are discussed in more detail in the sections below. At the conclusion of the chapter, we discuss strategies to help improve identification that were emerged in interviews with federal law enforcement, victim service providers and prosecutors.

Challenges to Identification

Challenges Inherent to Human Trafficking Cases

The nature of the crime of human trafficking presents a number of unique challenges to law enforcement's successful identification of victims and offenders. In the following sections, we discuss challenges inherent to human trafficking cases including the hidden nature of the crime and the limitations of the traditional policing methods, the failure of victims to recognize their own victimization and self-identify to law enforcement, victim fears of reporting and law enforcement attitudes toward victims that exacerbates the challenges of identifying human trafficking cases.

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Hidden Victimization and the Problem of Traditional Policing Methods

Law enforcement interviewees reported that the hidden nature of human trafficking victimization was one of the greatest impediments to identifying cases. Police interviewees described the efforts made by traffickers to keep victims out of sight of people likely to take notice and call the police. As one detective noted,

> They're out there, but you won't find them on Craigslist because [these] guys are smart. They realize, hey listen, I've got a juvenile, if I get caught with this girl I'm going down for a really, really hard time. And you know, those girls… there are only certain circles that you are going to find those girls. Or in the really, really tough neighborhoods where nobody says anything, and you know, people just…nobody is calling the police.
> *Basic Legislation-No Task Force-South, Law enforcement 4*

Another detective explained that residential brothels in his jurisdiction purposefully had clients arrive and depart during business hours, when most people were at work to avoid attracting any attention to the illicit operation. Law enforcement interviewees frequently[23] suggested that the methods exploiters use to move, house, and communicate with their victims changes constantly, presenting additional challenges their identification of potential victims. One detective described the inefficiency of trying to police street prostitution, saying,

> Street prostitution has gone down, but it's still there. When we add a new mapping area, they just move over or change areas that they're working…We've got to adapt our methods to what's going on. They're getting more technology…they're changing their methods a little bit…they'll try to stay one step ahead of us.
> *Basic Legislation- No Task Force- Midwest, Law enforcement 3*

[23] Throughout our discussion of the findings from the qualitative interviews we have utilized a standard system to classify the frequency in which various themes were found in interviews. When a particular finding is described as infrequent or rare it generally was discussed in less than 25% of respondents interviews or found only in a single site. When findings are described as common, they were found in at least half of the interviews. When findings are described as frequent or overwhelming, they were found in three-quarters of the interviews.

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This detective expressed frustration that he is always a step behind the traffickers in terms of sophistication and trafficking methodology, a result of applying reactive policing methods to the problem of the trafficking in persons.

Perpetrators of labor trafficking also take steps to ensure that victimization is hidden from the police. One law enforcement officer describes how farms in the area keep labor trafficking victims hidden.

> A big sign at one of the migrant farms locally says "Law enforcement not welcome, Do not enter, You have no right" stuff like that. You know, wired off and in the middle of nowhere where they [perpetrators] have complete control over them [victims]. So any kind of surveillance is just not going to be fruitful at all.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

An officer in another community suggested that labor trafficking is more difficult to identify than sex trafficking due to confusion about the distinctions between labor exploitation and labor trafficking.

> It's something that is even more hidden I think in our community, or at least our attention; we don't see it as easily. I personally think that we have a huge problem with it given our agricultural basis and some of our food processing and we have a lot of migrant workers so I know that those conditions are ripe for people being exploited, but what we're still trying to figure out is where does labor trafficking begin and exploitative work conditions end or poor work conditions, and we don't know.
> *Basic Legislation-Task Force-Midwest, Law enforcement 7*

Consumers of trafficked services also contribute to the hidden nature of human trafficking. Since these individuals are often engaged in illegal behavior themselves, they have an incentive to help keep any illicit activity hidden. In the case of sex trafficking, police interviewees commonly indicated that purchasers of commercial sex, commonly referred to as "Johns", keep the location of victims hidden through the use of online communications such as websites reviewing the services of escorts and other sex workers fearing that their involvement

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might become known to their family or community. One detective described this phenomenon, saying,

> You have USAsexcat.info, where the Johns will actually go on and rate anything from street walkers to strip clubs to escorts. And they talk to each other, and it's like, these guys are hobbyists. They just go from stripper to stripper, or from hooker to hooker, or from escort to escort, saying, 'Oh no. She was great. She was all that she said she was.' I mean, they actually talk about this in an open forum…but it's just so hard to infiltrate.
> *No Legislation- No Task Force-Midwest, Law enforcement 2*

Hidden communication between Johns is not limited to online forums. In another study site, located at the intersection of several interstate highways, communication between Johns was conducted via CB radio. There, law enforcement reported that Johns communicate with each other about where police are patrolling and which truck stops to avoid in an effort to keep the victimization hidden.

The hidden nature of human trafficking victimization demands proactive identification strategies. Law enforcement agents we interviewed understood the nature of human trafficking victimization and the reasons why victims are kept hidden, but believed there was little they could do to proactively find these cases; instead they suggested they must wait for victims to come forward to police or to other service providers who could make referrals to the police. One officer explains his agency's dependence on tips from the community.

> A lot of times concerned citizens call in 'cause they have suspicions about what is going on. Other prostitutes will call in and say 'hey there is a young girl up here' or business owners or people that live in the area or someone who has a guilty conscious that might have used their services and said hey their wife caught them or whatever and said you are going to stop this, they are going to call. A lot of it comes through tips; we get tips...hotline tips.
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

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As the review of closed human trafficking cases described in more detail in the previous chapter confirmed, tips from non-governmental agencies or victim service hotlines were the primary method law enforcement used to identify victims of human trafficking cases in sites included in this study and one-tenth of the identified cases came from self-reports by the victim to the police. Not surprisingly, this orientation failed to identify large numbers of victims.

Police interviewees described a few different investigative tactics that they used to identify victims. A common tactic was searching through internet ads for prostitution for potential victims, though these investigations were often instigated following a tip from a parent or community member. As one officer explained,

> There's several different ways [to find victims]. We get them [tips] from parents. Parents will call up and say, "Hey, my daughter's on BackPage." Or, before it was Craigslist. "Hey, my daughter's on Craigslist, prostituting herself." And, you know, "Can you help her?" And then that has, that has a couple different angles. Because if she's an adult, not a lot I can do. I can call her and say, "Hey, I know you're real name's Tammy. You know, whatever. And I'm calling, 'cause I'm concerned, and I'd like you to stop. And, you know, if you're pimp's right there, I apologize. Call me when you can." 'Cause the pimp will beat her ass for having, for me calling. Which the mom doesn't realize, 'cause the girl doesn't accept the mom's calls. But then as we...as we scroll through BackPage, EscortPost, I mean, any escort site, and what not, we look for the young girls. The ones who haven't been on a lot who are rather new...new faces.
> *Basic Legislation-Task Force-Midwest, Law enforcement 9*

Police interviewees commonly reported that officers in their agency stumbled upon cases of human trafficking during the course of their routine patrols. One detective expressed concern about the department's reactive approach to human trafficking investigations, particularly in contrast to other types of investigations such as gangs.

> Down here we are extremely reactive. It's not…and that makes me uncomfortable because it…in our gang world we are extremely proactive and it seems like in this world we are extremely reactive.

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> We are simply taking cases that roll into our lap or a beat officer will roll up on a car where a fifteen year old is having sex with a forty year old guy and we start an investigation and just continue to mushroom from there. That's how we get our cases down here and I don't know what other states are doing.
> *Basic Legislation- No Task Force- Midwest, Law enforcement 1*

Police commonly adopt a reactive stance toward the identification of crime. In many cases, such as burglary or property crime, victims are motivated to come forward and report their victimization to the police. Proactive policing requires new innovative strategies, increased intelligence and many more resources. This presents a dilemma for law enforcement. While most of the police agencies included in this study did not identify as many human trafficking cases in their jurisdictions as they believed existed, interviewees overwhelmingly recognized that without more resources for training, personnel, and investigations they would not be able to find more cases. Without finding more cases, they would not have the justification for the increased resources necessary to adopt investigative strategies beyond reactive identification. As a result, law enforcement was often limited to developing intelligence about human trafficking using more readily available tools such as internet searches of prostitution ads.

The tools available to help law enforcement identify labor trafficking cases are even more limited. One officer described the challenges of identifying labor trafficking in cases where victims do not come forward to the police and their victimization is hidden behind the doors of legitimate businesses.

> So first you've got to figure out the victim, and that's the hardest part because you that that it's here, just out of sheer odds, you know, with the amount of Hispanic and Oriental restaurants we have around here. It's here. And it may not be whip and chain, "I'm gonna beat you." Or "I'm gonna have forced sex," or "I'm gonna use you as my sex slave"-type forced labor. But "let me hold your passport and you're going to work in my restaurant for five years until you pay off your bill." We know that's here, but until that individual comes forward and says, "I need some help.

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> He told me that he would hold my passport for two years, now he says he's going to hold it for three years." Without that victim, we just don't have a starting point. We can't go and investigate every restaurant in town, so that's the problem with forced labor.
> *No Legislation- No Task Force- Midwest, Law enforcement 1*

A police commander at another study site explains that officers in his community do not find labor trafficking cases because the regular duties of the police do not place them in contact with potential victims.

> You may have labor trafficking going on in but we're missing it. Most of our trafficking that we see is little girls that are runaways that are getting exploited by some shmo and we run into that so I think our vice unit will expose a lot more of that.
> *Basic legislation-No Task Force-Midwest, Law enforcement, 1*

Victim service providers upon whom many law enforcement agencies depend to provide tips about victimization occurring in the local community expressed concern about the lack of proactive investigations by the police and the limitations of the victim service community to identify victims.

> So it's hard to know because those professionals don't know and you count on them to develop and bring forward cases. Of course the law enforcement, I found out, does not do proactive law enforcement investigations, they're reactionary to complaints or 911 calls. So they're not out looking for crime, they're trying to catch up with the crime that's already been reported. So they really need those community partners—the medical industry, the mental health industry, the shelters, the servicing groups, the homeless groups—you know all those groups to understand. So when they run across a possible victim they can refer those forward and that's a big issue that we need to develop here in the whole state, everywhere I go to speak, the first thing people say is, "well we've never had one of those but tell us what you know." Then after I'm done they're like, "oh my goodness, I can think now about certain cases that could have been that, but I didn't even know, on the intake, what to ask. We didn't know as counselors what to talk about." So the lack of knowledge and information is our huge issue. And we know what we know, all of us, and we don't know what we don't know.
> *No Legislation-No Task Force-Midwest, Victim service 4*

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Officers in agencies in states with human trafficking task forces had more awareness about the limitations of the reactive approach to human trafficking investigations. As one detective noted, "Nobody calls us and says, 'Hello. My name is … and I'm a victim of trafficking. Please help me.' It doesn't happen," (*Comprehensive Legislation- Task Force- West, Law enforcement 3*). While the reactive approach was still dominant in task force sites, police officials expressed frustration and often cited institutional practices that impeded more proactive investigations. For example, a police chief in another task force site explained how institutional policies on immigration inhibit proactive victim identification.

> The police in this community are prohibited to ask about immigration status. Officers here are not looking to deport people. They won't ask questions that even find out about immigration status. We need people to come to the police and let us know when crime occur in their community…[Police] need people from those communities to come forward and let the police know when these crimes are happening.
> *Comprehensive Legislation-No Task Force- Midwest, Law enforcement 3*

According to this Chief, because law enforcement officers are limited in their ability to inquire into potential indicators of victimization, such as having control of your immigration documents or living independently, he suggests victims have the responsibility to bring their situation to the attention of law enforcement.

Victim Reluctance to Self-Identify and Seek Help

In addition to the fact that perpetrators purposefully keep victims hidden from law enforcement and restrict victim ability to seek help, law enforcement interviewees also commonly suggest that many victims of human trafficking do not self-identify as victims and would be reluctant to come forward to the police even if they had the opportunity. Human trafficking victims often do not understand that there are laws defining their status as that of a

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victim, and not an offender. For example, sex trafficking victims know that prostitution is illegal and often identify themselves as engaged in crimes that would get them into trouble with law enforcement. As one detective stated, "Until they recognize that they're an actual victim, they just think they're a criminal" (*Basic legislation- No task force- Midwest, Law enforcement 3).* Since sex trafficking victims have often been arrested and charged with crimes in the past they have little reason to believe that their interaction with the police when they report victimization would be different. As one detective explained,

> Law enforcement has treated them [prostituted women] so badly, all these years, that it's hard for them to trust law enforcement. That tagged along with, you know, their pimp, reinforcing the fact that law enforcement isn't gonna do anything about it, it's hammered into their heads, they don't want to talk to us.
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

Foreign national victims of trafficking without lawful immigration status are additionally fearful that their own complicity to come to the United States illegally will result in their deportation, no matter the circumstances. Across our study sites were commonly heard stories of foreign nationals agreeing to incur a debt to a smuggler in exchange for assistance entering the country, but then later becoming a victim of human trafficking. In these cases, foreign national victims perceive their status as a person in the county illegally, not as a victim; subsequently, they do not see law enforcement as a source of rescue or relief from their present situation. An ICE agent from a site near the U.S.-Canadian border describes the transition from willing smuggling participant to trafficking victim,

> We have a large number of South Korean citizens that were smuggling into the country. They're able to enter Canada without a visa, so they would, you know, pretend to be visiting Canada, and they would smuggle down, mostly toward trafficking situations…there were some young females that got smuggled down that were later found working in brothels in trafficking situations in California. The trafficking more started after they had

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> entered through the smuggling process so at that point that they entered the United States illegally they weren't necessarily trafficking victims yet, but they got down there and someone increased their…told them it was gonna cost more, and then debt bondage…you know, it kind of led to [trafficking] eventually. *Comprehensive Legislation- Task Force- West, Law enforcement 2*

Police interviewees noted that based on information from a victim's exploiters (who benefit from making victims feel that they are actually offenders in the eye of the law), the climate of the area in which they live, and the actions of other law enforcement officials in their community many human trafficking victims will not recognize their own victimization. As a result, these victims do not reach out to receive help directly from the police or from other non-governmental organizations in the community who might be able to notify the police of their victimization. For example, victims of sex trafficking who have an intimate connection or romantic reliance on their exploiter, have often been told by their traffickers that their engagement in prostitution is a short term situation, and once they have enough money they will be able to leave "the life" (referring to the prostitution circuit) and live together as a couple. Often victims believe this mythical promise or for other reasons are too attached to their traffickers to recognize their own victimization. As one law enforcement officer said, "I have had some hardcore juveniles who won't tell me anything because they were so brainwashed" (*No Legislation- No Task Force- Midwest, Law enforcement 6).*

As has been widely reported elsewhere, human trafficking victims, and sex trafficking victims in particular often have a history of trauma and abuse that makes it difficult for them to recognize when they are being victimized (Hopper 2004; Barrows 2008). A police chief explained how human trafficking victims' lack of awareness of their own victimization impedes their identification.

> In most of our investigations, you've got a cooperating victim. 'I got held up. Someone shot me. My house got broken into. They

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> stole my car. They stole my this, that and the other thing.' In sensitive crimes, what do you have? Frequently you have victims that are more or less, even though we know they're not really, cooperating with the assailant, emotionally invested in the assailant somehow. Trusting the assailant. Even as they are being traumatized, they also can't figure out a way out of their predicament. That somehow they deserve what is happening to them, that somehow it's right even though it violates their instincts about what's right and wrong.
> *No Legislation- Task Force- Midwest, Law enforcement 6.*

While the police recognize that human trafficking victims have numerous reasons to perceive themselves as deviant and undeserving of assistance, they frequently indicated that they lacked the tools necessary to overcome this challenge.

Victim Fear of Reporting to Law Enforcement

Even if victims of human trafficking are able to recognize their status as victims, many are too fearful of police or too traumatized by their experiences to provide enough information for law enforcement to identify human trafficking victimization correctly. Police interviewees identified numerous factors that cause victims to be fearful of reporting their victimization to law enforcement, including where the victim is from and what kind of exploitation they have experienced.

Law enforcement interviewees noted that fear of retribution by traffickers is almost universal among human trafficking victims. Victims of sex trafficking express fear of violence from their trafficker or other actors in his network, in addition to an uncertainty that police agents will understand their status as victims and not classify them as offenders for the illegal activity, prostitution, that they were engaging in. Law enforcement interviewees suggested that victims of sex trafficking have often been trained to deny the existence of their trafficker, and they do so out of fear. As one detective explained,

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> I mean, during your initial interview, of course they are going to deny it, deny it, deny it. And then, you know, if you stay on top of them, or you end up picking them up again… I mean even if the guy drives them to the date, that you set up, they are still going to deny. 'Oh no, he's just a friend of mine. I asked him to drive me…he knows nothing of what I'm doing.' You know? They'll deny it.
> *No Legislation- No Task Force- Midwest, Law enforcement 2.*

Sex trafficking victims also commonly fear that if they betray their exploiter by providing information to law enforcement they will lose their only support network, both financially and emotionally, which they may also perceive as their main intimate relationship. A federal prosecutor described this process.

> In a domestic sex trafficking case usually, not always, but usually, the girl or the young woman has an intimate relationship with her pimp, and so their loyalty is to the pimp. And they have also had enough bad experiences with police that the last person they want to talk to is police. And that's just a generalization…because we've definitely had…what they call prostituted youth who don't have that relationship with their pimp, but they're scared of their pimp because they've been threatened…So it's still difficult to get them to come in and cooperate.
> *Comprehensive Legislation- Task Force- West, Prosecutor 1*

For foreign national victims, there are additional fears. Traffickers commonly tell victims that if they talk to law enforcement, not only will the trafficker ensure that the victim's family is harmed in their home country, but they threaten that the victims will be deported as soon as they go to the police. A lieutenant described the fear experienced by foreign national victims, saying,

> I mean, they're scared. Either they believe a) that they're complicit in their own illegal entry to the country and they're afraid, or b) they're afraid because their exploiter or trafficker has threatened them back home, saying, 'we'll kill your family back home.'
> *Comprehensive Legislation- Task Force- West, Law enforcement 1*

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Another interviewee describes how foreign national victim fears affect their willingness to report victimization to the police.

> So, your family is here and they may be here illegally as well, but you paid that coyote to bring you over and now you've got to work in his restaurant for a year and a half to pay off your bill. And they're going to tell you that not only are we going to deport you and beat you and all sorts of things, but we're going to do your family too. So, what motivation is there to come forward? There's very little.
> *No Legislation- No Task Force- Midwest, Law enforcement 1*

Police interviewees sometimes also reported their perceptions that foreign national victims are less likely to come forward to U.S. police based on their negative perceptions of law enforcement shaped by their experiences in their home countries, where corruption and brutality may be more commonplace. A federal prosecutor contrasted the fear experienced by domestic victims of sex trafficking with that experienced by foreign national victims, saying,

> In terms of foreign nationals, they don't have that kind of loyalty [to a pimp]. They don't feel like this person saved my life or this person is the only one that understands me. You know, they don't have that kind of intimacy with their trafficker. What they usually have is, they have fear. They have fear of deportation, they have fear of consequences to their family in their home country, and they're also fearful of what's going to happen to me now because I don't have status…Once they realize that the police here in the U.S. is not the same as the police in Thailand, or in Cambodia, or in Africa or whatever…it's a different dynamic
> *Comprehensive Legislation-Task Force-Northeast, Prosecutor 1*

The difficulties trafficking victims face reporting their victimization to the police are exacerbated when there are few services or safety nets in the community to take care of the victims once they leave the trafficking situation. One officer explains the relationship between a lack of services to support victims and challenges of victim identification.

> They're just so difficult to find, because the kids don't want to tell us what's going on, and…and I think a lot of that has to do with

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> safety. They feel like, I still have to go back to somebody's house at some point in time. And we don't have a safe house here in [local community]. You know, I think the closest one is up in another state, you know, and I think that…that hampers a little bit of how we can investigate and how far we can go with some of these kids.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 9*

In later sections of the chapter, we discuss strategies communities can employ to improve the identification of human trafficking victimization. Our interviews with law enforcement illustrate the importance of victim shelter and support services. Since law enforcement is highly dependent on victims to self-report their victimization it is critical to have services available to offer victims an alternative to the situation of exploitation with a trafficker as a mechanism to help improve reporting and identification.

Misclassification of Victims who Report to the Police

When human trafficking victims do come forward to the police or are identified through police investigations, the police often misclassify them as offenders. For example, across the twelve study sites, law enforcement sometimes encountered sex trafficking victims who were arrested and charged with prostitution (see the results of the non-trafficking case review described in Chapter 3).

The misclassification of victims as offenders is attributable in part to attitudes held by law enforcement about the nature of human trafficking victims. While law enforcement officials responsible for investigating human trafficking are sympathetic to the needs of victims, they often expressed sentiments that conveyed a belief that trafficking victims are in part responsible for the situations of exploitation. Some trafficking victims are engaged in criminal activity that complicates the identification of their victimization. As one detective explained,

> My understanding of human trafficking from the uniform perspective is typically one of misperception of why a person on

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> the street is perpetually in the circumstances they're in and not understanding how they got there.
> *Comprehensive Legislation-Task Force-West, Law enforcement 3*

The likelihood of misclassification is increased when sex trafficking victims return to prostitution under the control of a trafficker following their initial identification by law enforcement. One officer explains the difficulties of keeping sex trafficking victims away from situations of continued victimization when there are few services to help victims in a community.

> Not as many as I would have liked because just face it you know these girls are scared…Ridiculed and separating them from their family any family they have because these pimps are very good at signaling out the females that would be receptive to what they are trying to do. I mean they have got it down to a science…they choose their victims very wisely and these girls are susceptible to the propaganda that these pimps are putting out there so a lot of them don't have the strong family background to take us up on that offer and so that fear is deeply embedded in them and they weren't talking they didn't take us up on it and to this day they are out there right now a lot of them some of the ones we thought we helped are right back out there because once they got out there is nothing in place to get them out if they don't have the skills to go back and get a regular job plus there is that stigma because somebody has dragged it up and said weren't you the one and so they figured what else can I do.
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

Some victims are in the country illegally or do not have proper identification to provide to law enforcement (often that identification has been seized by their trafficker). In these cases, law enforcement may classify victims as criminal aliens, failing to ask questions about potential victimization. In some of the cases we reviewed for this study, patrol officers unfamiliar with trafficking, turned trafficking victims without proper immigration status over to federal Immigration and Customs Enforcement (ICE) officials who before the individuals could be properly identified as victims. As one federal prosecutor explained,

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> Specifically in labor trafficking cases, the victims are illegal. It makes it difficult because either they are scared to come forward or there is a raid and they get deported before anyone knows it was a potential trafficking case. Sometimes ICE informs [local law enforcement] of raids that they suspect might involve trafficking, but most of the time ICE needs to deport them as fast as possible. *Basic Legislation- Task Force- Midwest, Prosecutor 2*

Human trafficking victims often have little ability to advocate for their classification as victims as opposed to offenders. Victims we observed in this study either during the case review or through interviews with law enforcement had numerous vulnerabilities that could hinder correct classification as a victim including an inability to speak English, status as a runaway, significant substance abuse or the presence of a disability. Runaway children, for example, are fearful that law enforcement agents will return them to their homes or a residential facility, and thus avoid contact with law enforcement (Finkelhor, Wolak and Berliner, 2001). It is up to law enforcement to see beyond the status offense of running away to identify the victimization that a trafficked runaway child has experienced. Victims with disabilities are less likely to know their own rights, are often dependent on abusers and are unlikely to be perceived as credible by law enforcement (Petersilia, 2001). Physical, cognitive, and/or emotional disabilities can prevent victims from escaping a trafficking situation, getting to a place to report a trafficking situation, and can have an effect on their perceived credibility once they do report their victimization to authorities.

A victim's inability to speak English may inhibit proper police classification of their victimization. If victims cannot speak English, law enforcement often relies on other people to relay their stories. In these cases the experiences of victims may be misrepresented as offenders. For example, a detective described an investigation that was damaged when, without any translators, police went to a local farm and used the employer to act as translator between the

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Spanish speaking victims and the English speaking law enforcement. The local police, not surprisingly did not identify any human trafficking on the farm according to the farmer's translations.

In order for cases to be properly identified as human trafficking, investigators must recognize the reasons victims are engaged in illegal activity and believe in the credibility of victims. When misclassifications occur, they affirm the victims' worst fears and fulfill the prediction victims heard from their trafficker that the police would not be there to help them.

Organizational Challenges

In addition to the challenges to identifying human trafficking cases that are inherent to the crime of human trafficking itself and the nature of human trafficking victim experiences, agencies tasked with identifying victims face a host of organizational challenges that inhibit proper identification of cases. In the following sections, we discuss how agency prioritization, training, specialized investigatory skills and resources affect the identification of human trafficking cases in local communities.

Lack of Prioritization in Agency and Community

In a time when police budgets are strained, law enforcement agencies are in a position where they are forced to make changes to agency policies based on both priorities within the department and on consideration of what are the major public safety concerns of the community. Law enforcement interviewees commonly expressed concern that since their community lacked knowledge about the problem of human trafficking and was unaware of the threat it posed, the police leadership did not prioritize the identification of human trafficking cases. One prosecutor explained that because members of the community lacked awareness about the realities of what human trafficking is, the general public was not concerned about the problem of human

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trafficking in their community. Explaining why they have identified few labor trafficking cases, one investigator explains how community sentiment affects the priorities of his agency.

> I think a lot of it has to do with especially basically overall the country's stance on immigration. I think that's probably the biggest thing. People are looking, they're looking at these people and saying, "well they're not victims. They're just need to get them out of the country. They're illegals, they're here." And a lot of these people feel victimized. They're like, "they're taking jobs, blah, blah, blah". So I don't think you're getting a lot of sympathy for the labor trafficking.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

An officer in another study site echoes concern about their ability to identify labor trafficking cases when there is little political will to uncover labor trafficking exploitation among community leaders.

> I think it is happening in the local farms here and I think that one of the reasons why is because people don't want to ruffle the feathers of the local farmers here, the people that support politicians and their communities. And I think that we do have a problem with labor trafficking here especially with the contractors.
> *Comprehensive Legislation-Task Force-Northeast, Law enforcement 1*

Law enforcement may not prioritize human trafficking victimization unless it reaches a certain level of harm or brutalization. "Sometimes people say, well, that's not human trafficking. You know, I picture sex slaves being shipped over from some foreign country and held at gunpoint, you know?" (*Basic Legislation- No Task Force- South, Prosecutor 1).*

During the course of our interviews, law enforcement officials provided many justifications for not prioritizing human trafficking investigations, the paramount being the amount of time and resources required to identify victims. One detective explains why their agency decided to focus on sex trafficking to overcome the challenges of a general lack of institutional support for these types of investigations.

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> When we started, you know our purview for our task force is labor and sex both, but to be honest, we made a decision and given where our office is crime victims and who we know, we kind of ended up focusing on sex trafficking. Part of it just was, we were all learning. Part of it was strategic in that we wanted to get some attention and we knew that that would get us some better attention and part of it was we were just struggling to figure out where we were and what we were all about.
> *Basic Legislation-Task Force-Midwest, Law enforcement 7*

In other sites, the focus on sex trafficking as opposed to labor trafficking was a direct result of the agency responding to complaints from the community about sex trafficking operations.

> It kinda blew my mind. I mean we went from like no massage parlors one day, to like all of a sudden we were like "what the hell?" and they all looked alike, you know. We're driving around the city and we're like we got this one and we started working on them, you know? And it just all came up. Yeah you know, I mean, you know, and we started getting a few complaints, you know, about, because they are all next to legitimate businesses. Like there is one up here in expressway next to a little kids dance studio. The owner calls up and she's like "Hey, there's a massage parlor and I go out back to the trash can and there's condoms, used condoms laying everywhere." So we're like, yeah we got to do something about that.
> *No Legislation-No Task Force-Midwest, Law enforcement 6*

One police chief in a state with comprehensive legislation but no task force explained that until members of the community who are affected by human trafficking victimization, particularly members of the immigrant community prioritize the issue of human trafficking the police department will not be able to make it a priority.

> Those community leaders need to prioritize the issue and keep open lines of communication with the police to let them know that this is a problem that they want taken seriously. If people from the community don't think trafficking is a problem then the police are not going to make it a priority.
> *Comprehensive Legislation-No Task Force-Midwest, Law enforcement 3*

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Lack of institutional commitment to addressing the problem of human trafficking translated into a lack of resources for training and specialized personnel to identify cases and conduct investigations.

Lack of Training and Standard Operating Procedures

Training is critical to the proper identification of human trafficking incidents. As one lieutenant stated "Well, you have to train, otherwise you're not going to know what you're looking at…how do you know? Training is crucial." (Comprehensive Legislation-Task Force-West, Law enforcement 1). In most of the study sites for this project, detectives in the unit with the most responsibility for identifying and responding to cases involving human trafficking had generally received some specialized training on human trafficking. A commonly voiced challenge to the identification of human trafficking cases, however, was the fact that the police officers most likely to come into contact with human trafficking victims were patrol officers and other first responders not the detectives in Vice or another specialized unit. Front line officers in the study sites often received little or no training on how to identify or respond to cases of human trafficking. This presents a problem because, in the words of one detective, "Every cop comes across victims of human trafficking and doesn't realize it," (*No Legislation- Task Force-Midwest, Law enforcement 1).*

Of the six sites located in states with federally funded human trafficking task forces, five reported that all of all officers in the department had received some form of training on human trafficking. Of the six sites in states without task forces, only one site reported that there was department-wide human trafficking training given, and that training was less than an hour long. Several detectives from these states without task forces recognized the need for greater training of patrol officers. One detective reflected on his prior experience as a patrol officer and said,

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> As a patrol officer, I can tell you that many patrol officers think [a potential juvenile victim] is just another bratty kid who is running away and needs to learn how to stay at home, or their parents need to learn how to control their kids. So they dismiss the actual questions. Is there a reason why you are running away from home? Is there something going on? Where are you going when you are running away? You know, there are so many questions that can be asked and that was something that we have been wanting to start in the department…to educate the patrol officers, encouraging them to ask more questions and understand that there is more to it than just a runaway.
> *Basic Legislation- No Task Force- Midwest, Law enforcement 2*

The need to train patrol officers, not just in terms of potential juvenile victims, was echoed by other detectives. One investigator from a state without a task force said,

> We [a human trafficking working group] have met with different districts in the city to talk with their vice units and stuff…and sometimes the vice units aren't the ones that see trafficking. It's the patrol officers that see it…Those are the guys that need to be talked to…The flow of information that comes from the patrolmen is just incredible,"
> *No Legislation, No Task Force, Midwest- Law enforcement 2*

Another detective echoed this need but broadened his scope beyond just patrol officers. All first responders, he argued, should be trained to identify human trafficking situations.

> What we need to do a lot more of, and we're endeavoring, is we need to train a lot more cops and first responders, and that includes firefighters, and we haven't really gotten into that realm yet. But any emergency first responders so that when they walk into a scene, they'll know what it is when they see it. And I say that because when I was a cop, I walked into these situations and I didn't know what they were. I knew something was wrong but I didn't know what. Well now I know what. Now I've seen the light. But there are a lot of other first responders that don't.
> *Basic Legislation- No Task Force- South, Law enforcement 5*

Several detectives who discussed the need for training of patrol and front-line officers described, as above, that they did not realize how many indicators of human trafficking they had seen and missed until they had been trained about human trafficking. From a law enforcement perspective, this training is key to increasing the number of human trafficking cases identified by law

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enforcement. In fact, lack of training of patrol officers was also recognized as a challenge by a federal prosecutor, who said, "We need more training for local law enforcement. Street cops are the ones who will encounter human trafficking and field all the 911 calls. The local cops need to know what to look for," (*Basic Legislation-Task Force- Midwest, Prosecutor 2*).

Detectives from two states without task forces cited budgetary restrictions as the primary reason for the lack of training of patrol officers. One of them, from No legislation-No task force-Midwest, said that they try to find free trainings in neighboring states to send select officers to, but this does not solve the problem of training all front-line officers.

Even when front line personnel are trained to identify human trafficking cases there are few formal mechanisms to ensure that identified cases reach the personnel specially trained to investigate these cases. One detective describes how cases may reach the specialized investigative unit responsible for human trafficking investigations.

> More than likely it could go to us. It could also go to Robbery because Robbery also works kidnappings. So, it depends on who reads the report and how the report reads. Ok? If it says forced labor or human trafficking it may come to us, it may go to robbery. There's no definition on human trafficking in our policies as to who it goes to. It depends on the actual elements. Is it a kidnapping? Is it not a kidnapping? Did the guy writing the report view it as a kidnapping? So sometimes it's actually worked out by the supervisors. We'll call and say, "Here's the deal. Here's the elements in it." You just kind of work it out.
> *No Legislation-No Task Force-Midwest, Law enforcement 1*

Another officer explains how incidents involving human trafficking might reach his unit of specialized investigators. This quote illustrates the necessity of patrol officers recognizing potential signs of human trafficking and appropriately documenting this information on an incident report.

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> Once they [patrol officers] go out, I assume they'd put out a report, a police report, then that would come up to investigations and someone would take a look at that. Now, what the classification would be kind of depends on what the officer finds out at the scene. If he finds a girl that fourteen or thirteen doing nails or something like that, well, they would probably, at that point in time, contact our unit because it's a child and we would probably get some…a detective out there to investigate, to see what's going on. And then…I think it would just carry on to there. It depends on the, you know, what all is going on, who they would contact, whether it's ICE or Immigrations. You know, we'd follow up on some of that stuff.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 9*

Lack of Specialized Personnel

Even when law enforcement officers believe they have identified a human trafficking case, there are a number of elements that can prevent them from gathering enough preliminary evidence to open a human trafficking investigation. One of the major ways that officers expressed that they had compromised previous potential human trafficking investigation was through poor interviewing of victims. Common mistakes made during interviews include the use of an untrained or ineffective interviewer, the lack of a translator, the use of a translator who is potentially involved in a case (such as an employer), and lack of cultural sensitivity during interviews. Additionally, during at least the initial interview, and sometimes there is only one, interviewers must keep in mind that victims have only recently been removed from the trafficking situation, often just earlier that day, and may be suffering from immense trauma. Lack of appreciation for this trauma may result in inefficient interviews.

> It's a whole other specialty. That's the whole thing with these task forces. Bringing new investigators in and out and switching… you're asking these guys to be specialists in so many fields. I mean even with human trafficking we're talking about totally different types of investigations from the labor to the sex to the domestic. And each are so unique and complicated.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

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This quote illustrates that not only do officers need to be trained in the basics of human trafficking to properly identify cases, but also there is a need for training about specific types of trafficking victimization.

Sometimes in these cases, because of reasons inherent to the sensitive nature of human trafficking, detectives are forced to employ very different interviewing techniques in order to identify a case as human trafficking. Without training, law enforcement agencies that have little or no experience with human trafficking cases will not know these crucial differences for working with potential victims of trafficking. A detective discussed the challenges he faces during preliminary interviews with potential victims, saying,

> "When I'm building that model, I'm gonna have to figure out how I'm gonna build the model in such a way that I capture everything that I need in one shot because that's the problem with human trafficking investigations. You're only going to get one bite at the apple. Well that's not how anybody's [usual] investigative model works. Even terrorism investigations don't go that way." (*No legislation- No task force- Midwest, Law enforcement 3*).

Proper training how to interview traumatized victims is essential in situations such as this where law enforcement may only have once chance to interview a victim. Despite the fact that research and experience in law enforcement suggests that human trafficking victims who suffer from trauma may require multiple interviews before they can accurately discuss their victimization experiences, law enforcement is often limited to gathering the information necessary to determine if someone is actually a trafficking victim based on a single interview.

One detective described a situation when the vice unit had established that trafficking was taking place in a massage parlor and they worked collaboratively with ICE and victim service providers to set up a sting, after which detectives from the vice unit conducted interviews with potential victims.

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> The investigation…we served the warrants, we detained the women who had charges against them, and began the interviews. We didn't establish anything. We didn't establish anything further than the original prostitution charges. The girls…either it wasn't there or they weren't willing to talk about if they were being trafficked…The following day…I received a call from Asian services…and she said that she had some concerns regarding the way law enforcement handled the interviews with these women. It was relayed to her through the victim advocate from ICE that the detectives did not handle the investigation properly.
> *No Legislation- No Task Force- West, Law enforcement 1*

As this quote illustrates, interview techniques and protocols that force law enforcement to confirm that individuals are victims of trafficking following a single interview, can create friction between law enforcement and their victim service partners who often request that law enforcement conducts multiple interviews and may even request to be included in the interview process.

In addition to interviewing techniques, foreign language skills, or at the very least, access to objective translators who can be available in a timely manner, are also essential to the identification of human trafficking cases. Overcoming language barriers is a significant challenge because patrol officers – the officers most likely to encounter potential human trafficking situations in the first place - generally have very little foreign language knowledge. If patrol officers encounter a potential trafficking case, they must first suspect that something is wrong and then call someone with specialized training in order for the case to be identified as human trafficking. Crucially, this requires that front line officers be properly trained on indicators of human trafficking, and that there be specialists available to the law enforcement agency that can be counted on to handle potential victims appropriately and respond to potential trafficking situations.

Strategies Reported for Improving the Identification of Human Trafficking Cases

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Throughout our interviews, law enforcement, prosecutors and service provider offered a number of suggestions for improving the identification of human trafficking cases. In the following section we discuss recommendations that emerged from these interviews in the areas of prioritization, proactive investigation strategies and improved institutional resources.

Prioritization of Human Trafficking Identification

Across study sites, identification problems were exacerbated by a lack of prioritization of human trafficking as a problem in the local community. Even in sites where there were structural mechanisms to support the identification of human trafficking incidents such as state legislation and federally funded task forces, law enforcement officials indicated that identifying human trafficking cases, particularly labor trafficking cases was not a high priority within their agency or their community more broadly. Officers had institutional support to respond to tips or calls from victims seeking assistance, but felt they did not have much support or the resources necessary to seek out victims or investigate situations in the community where risks for trafficking are more prevalent. Officers suggested a number of reasons for the low prioritization of human trafficking and indicated that it is important for members of the community, particularly community leaders (e.g. mayors, chiefs of law enforcement) to understand the harms that human trafficking inflicts on the community. Unless community leaders have a better understanding of the social costs of human trafficking in their community they are unlikely to prioritize law enforcement seeking out hidden victims.

Proactive Investigation Strategies

Employing proactive investigative strategies was cited as a particularly powerful tool for improving the identification of human trafficking cases. As discussed earlier, one of the major challenges to the successful identification of human trafficking cases is that, for various reasons,

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victims are unwilling to contribute to investigations making traditional reactive investigatory methods ineffective. One detective we interviewed explained how the identification of human trafficking cases differs from other types of criminal cases and why there is a need for proactive investigatory methods. This detective said,

> The problem is finding all the victims, because we know…the cases we have, we know there are more out there. But how do you find them? It's one of those things that, until there's usually some kind of violence that gets our attention, whether at the hospital or the morgue, we don't realize it, you know? We don't…how do you find it?
> *Basic Legislation- No Task Force- Midwest, Law enforcement 9*

The lack of proactive strategies is in part a function of the lack of training mentioned above. In most law enforcement agencies, detectives are simply applying traditional vice investigative techniques (e.g. john decoy operations) and hoping to catch a trafficking victim among those they regularly encounter. Although more rare and often more resource intensive, proactive investigations are possible. In one of the sites we visited in the Midwest, detectives had recognized that runaway children were particularly vulnerable to fall victim to sex trafficking. There, detectives worked to establish a standardized questionnaire for all runaways that came in contact with a children's center that asked questions that could establish whether a child was familiar with commercial sexual exploitation. Screening all children for potential exposure to trafficking helped these detectives identify victims.

Institutional Resources

Providing the resources necessary to develop proactive identification strategies is critical to improving the identification of human trafficking cases in local communities. Most detectives at both the state and federal level expressed concern over resources—in terms of time, energy, and/or money—as a major impediment to the identification of cases involving human trafficking. Access to resources can affect identification rates in several ways. In the first place, the resources

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allocated to human trafficking will determine the number of detectives that are able to focus on the issue. A common frustration among the law enforcement officers that we interviewed was that, since the recession, funding has been tight throughout their entire department, and finding the resources to carry out complex anti-trafficking work has become less available in the department. As one detective noted, "It is what it is. I mean…we're short. There's two of us…You give me eight more guys, I'll fill their caseload too. But patrol is short too. And somebody's got to show up when people are calling 911," (*No Legislation- No Task Force- Midwest- Law enforcement 4*). A federal agent from the South echoed this sentiment, saying,

> Resources are an issue. Agencies are just trying to keep people in their patrol cars," (Comprehensive legislation- Task force- South, Law enforcement 2). Perhaps putting it most directly, a detective from a Midwestern site said, "Cases don't pop up every day on the radar but I can tell you that if we had more investigators, I'm sure we could find more cases,
> *Basic Legislation- No Task Force- Midwest, Law enforcement 3*

Similarly, resources also impact the extent to which law enforcement can follow up on tips or other information about possible cases. A detective from an agency in the South lamented, "The hardest part for us right now is that we have so much intelligence information that we don't have enough resources to move on everything," (*Comprehensive Legislation- Task Force- South, Law enforcement 4).* Although detectives in this jurisdiction are familiar with trafficking and do a good job prioritizing which tips to respond to, they acknowledge that they are likely missing the identification of many human trafficking situations in their jurisdiction.

Limited resources also impact the methods of investigation used by law enforcement, which can make or break the proper identification of human trafficking cases. For example, as an FBI agent in the Midwest explained, "the FBI only has an hour to interview the victim and if the victim does not cooperate, we are unable to pursue the case. We rarely have a window of

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opportunity to work with the victim," (*No Legislation- No Task Force- Midwest, Law enforcement 3*). As will be explored in subsequent chapters of this report, it is common for several interviews with victims to occur before any breakthroughs in the case are made. One detective explained that the limited resources allocated to human trafficking impacted their investigatory methods, saying,

> …the biggest problem that I see in communities right now, especially in the surrounding area, is manpower issues. Most agencies around here…we want to do proactive law enforcement, but we're almost stuck doing reactive stuff when things come to us.
> *No Legislation- No Task Force- Midwest, Law enforcement 3*

Resources also sometimes carry stipulations that can limit the authority of law enforcement to deal with certain kinds of cases. In a site with comprehensive state legislation and a federal task force, a federal grant, enabling a major victim service provider to provide immediate care for rescued victims of human trafficking, was only meant to be used for foreign national victims, which limits what this agency can do when they encounter domestic victims. Similarly, units tasked with combating human trafficking are only able to focus on certain types of cases (e.g. sex trafficking) due to limited resources. In an agency in a state with no legislation and no task force, although there are federal funds for victim services, local law enforcement agents do not have any local funding or victim service options for domestic victims of trafficking or other trafficking victims whose cases will not be prosecuted at the federal level. This impacts the way that they are able to treat victims. The ability to provide potential victims with shelter and services helps to stabilize them to the point where law enforcement can properly identify situations as trafficking.

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Finally, the availability of resources also affects the amount of training that law enforcement officers are able to give and receive regarding human trafficking, which has a direct influence on the number of referrals they get about possible human trafficking cases from patrol officers in their department and from the community at large. As mentioned previously, the training of front-line officers is crucial to the identification of cases involving the trafficking of persons. To date, most of the training about human trafficking has been to specialized investigators, but these are not the people who are on the ground and likely to encounter human trafficking victims. Those people: patrol officers, EMTs and other first responders, emergency room personnel and other types of service providers need to know how to identify cases in order for them to be investigated as human trafficking. It is widely agreed upon that this necessary training of front-line individuals is not taking place across our study sites, although it is crucial to the identification of trafficking cases.

While it is true that law enforcement officers often blame problems on a lack of resources, in human trafficking investigations limited resources may pose significant challenges. Human trafficking cases represent a crime that is new to most law enforcement officers, complex and time consuming to investigate with a lower chance of success than many other crimes, thus more likely to be affected by limited resources. However, resources alone are insufficient for human trafficking identification, as illustrated by the challenges facing agencies in states with access to federal task force funds. Institutional prioritization to develop and implement proactive identification strategies that are supported by additional resources is critical to improving human trafficking identification.

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CHAPTER 5
INVESTIGATING HUMAN TRAFFICKING CASES

Identifying cases of human trafficking is the first step in what is often a lengthy process of bringing these cases forward to prosecution. Once a case is identified and enters the investigative phase, a host of challenges may result in either cases not moving forward to prosecution or perhaps being prosecuted on less serious charges. In addition to challenges that are inherent in the identification of a new and largely hidden crime such as human trafficking, including victim fear and distrust of the police, human trafficking cases present some unique barriers to those charged with investigating such cases. For example, law enforcement often must find and secure evidence to corroborate victim testimony, which is difficult due to the fluid nature of these crimes. Additionally, human trafficking cases often fall apart if the victim chooses not to cooperate in the investigation or if the investigator determines that the victim is not being completely truthful, potentially undermining the victim's credibility if the case is presented for prosecution.

In this chapter, we discuss three major challenges to the investigation of human trafficking cases that were identified through in-depth interviews with local law enforcement agents

Chapter Overview

Main Findings:
- Police were often unprepared for the amount of trauma suffered by victims. Trauma-related symptoms made investigations more difficult and victims often required more services and for a longer period of time than law enforcement could provide. Consequently, law enforcement often resorted to using tactics they would normally use on suspects, including the use of arrest as a means to detain victims and secure their cooperation.
- Victims who believed they had no viable alternatives to their trafficking situation were less likely to cooperate with authorities.

Challenges investigating cases of human trafficking:
- It is difficult to secure and corroborate evidence from victims who are often reluctant to cooperate.
- The credibility of victims is often challenged, which impinges investigations.
- There is institutional resistance when human trafficking cases are not prosecuted.

Identified strategies to improve the investigation of human trafficking cases:
- Provision of victim services, including adequate shelters
- Long-term plan for helping victims reintegrate into society
- Law enforcement training, especially on interviewing techniques
- Proactive and open relationships between police and prosecutors.

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tasked with the investigation of human trafficking cases. The discussion includes challenges of: 1) securing evidence from victims and corroborating that evidence; 2) investigating cases when the credibility of victims is challenged; and 3) overcoming institutional resistance when human trafficking cases are not prosecuted. While these challenges are found in most human trafficking investigations, an examination of these challenges between different types of agencies (i.e., agencies that are in sites with comprehensive state human trafficking legislation and a federally funded task force compared to sites with basic trafficking legislation and no task force) has revealed some variation in those challenges depending on the local context. Additionally, in-depth interviews with federal investigators provide insight into the added challenges they face moving cases forward to federal prosecution and how these challenges differ from those faced by local law enforcement. Finally, this chapter concludes with a discussion of investigative strategies that law enforcement interviewed for this study have found to be successful in bringing cases forward to prosecution.

Challenges to Investigating Human Trafficking Cases

One of the most significant challenges about human trafficking investigations that local law enforcement interviewed for this study identified is securing the evidence necessary to arrest suspects and bring cases forward to prosecution. In addition to securing evidence, law enforcement frequently reported challenges with securing victims or witnesses who will provide reliable and credible testimony at grant jury hearings or trial. Furthermore, reluctance on the part of prosecutors to prosecute human trafficking cases has contributed to an institutional resistance on the part of law enforcement to investigate these cases. The following discussion covers these challenges beginning with evidentiary challenges which includes those challenges that are

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specific to the crime of human trafficking itself such as victim fear as well as institutional and legal impediments.

Securing Evidence from Victims and Corroborating Victim Information

Victim statements about the exploitation they suffered at the hands of traffickers are the primary source of evidence in most human trafficking cases we reviewed. The police rarely witness exploitation directly, and instead must rely on the accounts of victims. The following quote illustrates the necessity of relying on victim accounts of a trafficking situation.

> You may get lucky and stumble onto a victim that comes crashing out of a house but um…it just… there's just no way, there's just no way. That's the biggest thing because these aren't like drug cases that have tangible evidence you can lock away in an evidence locker and break it out for trial. You have a live human being that the foundation of the case rests upon them. And they're your evidence.
> *Comprehensive Legislation-Task Force-Northeast, Prosecutor 1*

As victims are the primary source of evidence in human trafficking investigations, securing victim cooperation is critical. Previous studies that examined law enforcement responses to human trafficking, suggest that victim cooperation is one of the most common challenges faced by law enforcement in the identification and investigation of human trafficking cases (Clawson et al., 2006; Farrell et al., 2010). Victims of human trafficking are often reluctant to cooperate in a criminal investigation based on their fear of the trafficker and lack of alternative to the trafficking situation, distrust of law enforcement and feelings of shame.

> You know these girls are scared. One of the things that I always talk to them about is how is it that someone has convinced you to sell your body and to give them and then take the money you have earned and give them all the money. You don't get any of it I said I don't get it. Please tell me how they do it. It is through the beatings and intimidation from seeing not only what's been done to them but seeing what that pimp did to another girl that works for him and they say I don't want no part of that happening to me.
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

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As we described in the previous chapter, it is a very difficult decision for a victim of trafficking to come to law enforcement and ask for help leaving their trafficker, and it is often even more difficult for those victims to give a formal statement to the police that can be used to help further a police investigation or which will be used in court to convict the trafficker. Our interviews with local law enforcement confirmed the challenges of securing victim cooperation in investigations. Trafficking cases often involve lengthy investigations that can leave victims feeling traumatized, particularly if adequate victim services are not available.

> I mean when we first pick them up, something traumatic has just happened, we get them to talk to us and cooperate with us. Sometimes they don't want to right away. But if we get them to cooperate, keeping them on board long enough to file charges and go through trial is incredibly hard.
> *Comprehensive Legislation-Task Force-West, Law enforcement 5*

Victims may decide that cooperating with authorities is not worth their time and effort especially if their only means of survival had been through their trafficker, and they can not foresee a good alternative means of survival once the case is over. As one detective explained,

> A lot of these girls think that this is their boyfriend, and they don't want to tell on them. And they think; and it all depends on how you're growing up too; if you grew up seeing your mom beat [by] your dad, to you that's normal until you're taught that that's not normal, and that we don't live that way.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 4*

Loyalty to the trafficker may have less to do with the victim's feelings towards the perpetrator and more to do with a lack of viable alternatives to their present situation.

> We have nothing to say "hey, I can put you up in this, in this place. And I can help you get an education. And I can help you get a job. And I can help you take care of your kids." You know, we don't have that. If I had that, man, I could, we could stop prostitution. I'm telling you. I mean, I'm not joking.
> *No Legislation-No Task Force-Midwest, Law enforcement 6*

While law enforcement respondents explained that providing victims services is critical during

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the course of the investigation, services may not be sufficient to overcome victim fear. Victims are often fearful that the trafficker will retaliate against them or their families, which can influence their decision to cooperate in an investigation (Newton et al., 2008). Victims from other countries, for example, are often fearful that harm may come to their families back home and will stay with their trafficker because on these fears. Additionally, when faced with threats of deportation foreign victims without immigration status may be particularly unwilling to provide information to law enforcement. As one officer stated "You can offer them all of the services in the world, but survival is number one for them" (*Basic Legislation, Task Force, Midwest, Law enforcement 6),*

Law enforcement commonly reported that victims feared the negative consequences of coming forward and providing information particularly if they were related to their trafficker or financially dependent on their trafficker. One prosecutor we spoke with recalled a case where a victim of labor trafficking had been victimized by a family member, which made it very difficult for her to cooperate with investigators.

> In some of the labor trafficking cases, when there is a family connection, then it's harder. OK? Like [victim name], it was her uncle. So basically, her family has completely ostracized her… it was very hard for her to come forward as a result of that. *Comprehensive Legislation-Task Force-West, Prosecutor 1*

Victims also sometimes decide that cooperating with authorities is too risky, especially if they come from or live in the same neighborhood as their trafficker and will likely have to return to that neighborhood while the investigation is progressing or following the outcome of the case. The following quote illustrates the challenge that sex trafficking victims face providing assisting with investigations or providing statements to the police.

> Getting them [victims] to do, you know, they'll cooperate in undercover

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> drug deals, but I can't get them to talk about their pimp, because that's where they live and everybody on the street knows everybody else, so the minute that they're put on paper [agree to testify against their pimp], then they're scared for their safety.
> *No Legislation-No Task Force-West, Law enforcement 5*

Victim reluctance to cooperate with the investigation is exacerbated by the fact that law enforcement sometimes cannot secure evidence to corroborate the victim statements. Law enforcement reported various strategies to convince victims to provide information necessary for the investigation. Putting pressure on victims to convince them to participate in the investigation was an approach to securing victim cooperation that law enforcement in this study commonly reported. One investigator explained, "We almost have to do the same grooming process that the pimp did. A lot of times they are very angry you know, they don't want to be picked up [arrested]" (*Basic Legislation-No Task Force-Midwest, Law enforcement 2).* Expressing a similar frustration with victims' reluctance to provide information other investigators talked about repeatedly questioning victims until they "break."

In other cases investigators realized that victims would need reassurance before they would cooperate with investigators.

> When I pulled her to the side, she was really scared and she was really hesitant to talk to me; she kept looking around you know, just nervous. And again, with my experience, I just felt like there was more, and finally she broke. I mean it took a long time and I think it was just me reassuring her; you know, it will be ok, she's not in any trouble, and that I know what's going on. You know, I was basically just trying to explain to her she didn't do anything wrong, and I think it had a lot to do with how you talk to the victims and not treat them as suspects, and I think a lot of times it is hard for some people to separate that, but we finally were able to communicate with her to where she felt comfortable enough with us to tell us that; you know, she was brought here and she didn't want to be there,
> *Basic Legislation-No Task Force-Midwest, Law enforcement 12*

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Recognizing these challenges, the ability to provide victim services was a key to ensuring victim cooperation and participation in the investigation.

> As a criminal investigator, I look at a victim as a piece of evidence just like that tape recorder and so my interest is in having that evidence stabilized into proper custody. My victims specialist is warm and cuddly and she's coddling and all that stuff [and] I think between the two of us we do just fine. Having that victim taken care of is super important in these investigations.
> *Basic Legislation-No Task Force-South, Law enforcement 5*

Despite law enforcement efforts to secure victim cooperation, the nature of human trafficking cases and the challenges of securing corroborating evidence to support victim statements often left victims fearful about cooperating.

> You've got to remember though it's tough on them [victims] because here again you don't have the evidence to support what a victim is telling you [it's] real difficult to get. A lot of times it is the victim versus the trafficker's word.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

Because victims are fearful and often unwilling to provide information, it is necessary for the police to try to corroborate their statements.

> The biggest challenge from the start was to corroborate everything. It didn't matter what the girls told us, how inviting the information was or where they got it from. If we couldn't back it we knew that this [victim's testimony] would be challenged.
> *Comprehensive Legislation-Task Force-West, Law enforcement 8*

In some cases law enforcement take an approach that is commonly used to investigate organized crime where they gather physical and digital evidence to corroborate victim statements. We spoke with one local law enforcement investigator who compared pictures he found on a victim's camera to pictures that were posted on an Internet site that is well known by law enforcement as a site commonly used by pimps to advertise prostitution.

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> Like the last one [case] we had, the girl [victim] gave me permission to look through her camera; [we] set it up through [a] search warrant. Well there is the [same] picture on [name of Internet site] [that] is on the camera, so I mean that kind of ties those two together. When we went into the apartment to get the girls, the pillows that were in the picture on [name of Internet site] were right there. We took pictures of those just to match that stuff up. So we look for pictures, we look for phone numbers that match the pimp's phone to her [victim's] phone that she has. A lot of times these guys give them [victims] prepaid cell phones, so you can connect those two phone numbers up that way to show that there was a connection there. Anything and everything that you can find; clothing, places that they've [victims] been; you do search warrants there. I mean hotels are a little rough, because if it's not that day, sheets have been changed and stuff, but if you [victim] are at an apartment or something, you [law enforcement] might be able to get some evidence off of that; they [victim] left some clothes behind or something like that. We always ask, like the 13 year old [who] went to the john's house. Describe the john's house, so we ended up doing a search warrant there, and we can go in and go, hmmm, this is what she's talking about here and everything looks the same. That way she's never been there for except for these times, and she knows what the inside looks like, so she can't be lying.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 4*

Another investigator describes the necessity of thoroughly gathering corroborating evidence in human trafficking cases.

> It's going that extra step to you know, record conditions, phones, there's just so many things…I mean it really…I can almost say we have…we have tapped into almost every possible investigative means during these cases. I mean we have done search warrants…you know, we have done it. We have exhausted all different kinds of investigative means doing these cases, more so than anything I've done. Even crimes...I've worked crimes against children and it wasn't this difficult you know.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

Unlike traditional organized crime cases, however, human trafficking cases are often difficult to investigate from an organized crime model, which relies on investigative techniques such as electronic surveillance and undercover operations, for example. As one prosecutor

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suggested, once a victim is identified, law enforcement will not put them back in a situation where they could be further victimized in order to gather evidence.

> The cases are also hard because you can't get new evidence. Most of what has happened has already happened. They [law enforcement] would not allow a victim to go back into a trafficking situation to gain evidence. This would be a huge risk to the credibility of the government. They [prosecutors] also are not very favorable of using evidence of reverse stings.
> *No legislation-Task Force-Northeast, Prosecutor 3*

Thus, law enforcement must often rely on statements from other victims or witnesses or victim statements about what happened during the course of the crime. One prosecutor indicated that as investigations progress it is important to have credible witnesses to corroborate the victim's story.

> You need more than just one person saying this is what happened, so often times, and [through no] fault of the victim…things cannot be corroborated. Other witnesses that will corroborate the event are gone or not credible, so you have to weigh the credibility of all the witnesses that will be testifying to see if a jury is going to believe them or not, and that consists of their background, their criminal histories, their age, their relationship to the parties, you know whether they have a stake in the outcome of the case, things like that. So, I guess it's too broad to say that the problem [prosecuting human trafficking cases] is the victim. It is really the victim and the evidence that surrounds the case and often these cases are very shrouded. You know, they're difficult cases just by the nature of the events of the crime.
> *Basic Legislation-Task Force-Midwest, Prosecutor 1*

Law enforcement also faced significant challenges with keeping track of victims and witnesses and making sure they do indeed testify at trial or do not change their story. As one law enforcement agent told us, he faced numerous challenges,

> Not the least of which was keeping the girls on board, keeping in touch with them, knowing where to get in touch with them at any given day or time and eventually getting them to trial. Some we would. Some we wouldn't. Some of the girls we would actually get into the courtroom would recant.
> *Comprehensive Legislation-Task Force-West, Law enforcement 8*

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Even in cases where there is sufficient evidence to corroborate the victim's story, most sites indicated that they still rely heavily on victim testimony. Interestingly, this did not vary across the different types of sites. For example, a law enforcement official from a site with no state human trafficking legislation and no federally funded task force explains why victim testimony is the key piece of evidence for prosecution.

> We can bring that evidence, cell phone records, computer records, hotel receipts; we can take that to a judge and get an arrest warrant for it, but I know, like when it's at the very end and everything is done and we're going to trial, they're [local prosecutor] going to want to put her [victim] on the stand, and I just don't know, they're big on that.
> *No Legislation-No Task Force-Southwest, Law enforcement 4*

A law enforcement official from site that has comprehensive trafficking legislation and a task force expresses a similar situation.

> Um, unfortunately, case loads and budget situations being what they are, if we don't have a victim we're unlikely that we're going to be successful in getting a prosecution.
> *Comprehensive legislation-Task force-West, Law enforcement 5*

Law enforcement interviewees also identified numerous institutional barriers to securing evidence. Effectively corroborating victim testimony takes time and resources, a luxury that many agencies interviewed for this study report they do not have. In some agencies, human trafficking investigations are not a priority which means fewer resources for human trafficking cases and less personnel assigned to investigate human trafficking. Since human trafficking cases tend to take a long time to investigate agencies that are driven by statistics may prioritize other crimes that give them faster results.

> It's really resource intensive for law enforcement agencies and they have a hard time putting resources towards that when they've got one investigator in their police department whose job it is to investigate burglaries, auto theft, everything under the sun, and when you've got people's houses being broken into, the

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> community is going to ask that you address that before spending a lot of time investigating something that they're not even probably seeing on a first hand basis
> *Basic Legislation-Task Force-Midwest, Law enforcement 7*

Law enforcement agents in states without human trafficking legislation and no federal human trafficking task forces generally felt human trafficking investigations received less support in their agency. The quote below illustrates the frustrations of a law enforcement agent in a state without human trafficking legislation where there is more of an incentive for his agency to investigate other crimes.. He suggests that since his agency typically arrests women or girls engaged in prostitution and not the traffickers who may have some financial resources, trafficking cases are less appealing to prosecutors than other crimes.

> In our department the narcotics unit it rules. It rules number one because it brings in the money [from asset forfeiture] you know what I'm saying. The things that they [narcotics unit] do bring in money so they have the manpower needed. I personally do not feel that our manpower is adequate to do an effective job I mean we do a darn good job with what we have been given. We just don't have the resources and unlike drugs where there is drug money yeah there's money from prostitution but 9 out of 10 times the people you are dealing with arresting aren't the ones that are holding that money.
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

This sentiment reflects difficulties agencies face when they narrowly define human trafficking and focus, inappropriately, on arresting potential victims as opposed to building cases against traffickers who engage in the exploitation and control valued assets.

Conversely, sites with state human trafficking legislation and a task force were more likely to report that human trafficking investigations are prioritized by leadership within local law enforcement agencies.

> Here at my agency, absolutely [they take trafficking seriously]. And I know that other agencies look at it seriously and help us, but without having somebody centralized that's going to kind of push

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> the movement forward, I don't think that too many people are going to look at it, take it and run with it [without leadership support].
> *Comprehensive Legislation-Task Force-South, Law enforcement 4*

Law enforcement interviewees also reported legal impediments to corroborating victim testimony, particularly limits on the effectiveness of extracting information from suspects. In other crimes, such as drug trafficking, where suspects face stiff penalties, there is an incentive for suspects to provide information to law enforcement and cooperate with the investigation. It is often the case that human trafficking offenses are charged with other types of crimes that carry lesser penalties (see findings from case reviews described in Chapter 3); therefore there is less incentive for perpetrators to provide information in exchange for a reduced charge.

> The way you get folks who are committing crimes to cooperate is to hold over their heads: time in jail. But charging people with transporting aliens only holds up to twelve months of jail time, which is not that threatening. They think, I can talk and my family in Mexico will be dead, or I can go to jail for 12 months. There is no incentive for the bad guy to cooperate because we have nothing to hang over their heads. In drug cases, people get arrested with a bunch of cocaine and get hauled into the DEA office, and those guys know they are facing twenty years. So they start talking. But when you're looking at six months to twelve months, there is no incentive to make them [suspects] talk.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 10*

This quote illustrates that fact that in some jurisdictions law enforcement may not be fully utilizing new human trafficking laws that carry stiffer penalties than previously existing offenses. Other law enforcement agents expressed the benefits that new legal tools provided. In the example below, a law enforcement agent is explaining the benefits of using a new state conspiracy charge for pandering. It also reflects the difficult situation many victims find themselves in when dealing with an active police investigation.

> They did [provide information] after they got arrested when we were like, "Do you want to be a witness, or do you want to be a

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> suspect? Decide." So, we charged these folks as co-conspirators to the organization and once they came in they got charged with felony prostitution and felony conspiracy. They were like, "No. I may have been a prostitute, but I'm not involved in child prostitution. I don't know what you're talking about." And they became cooperative witnesses. Which is what we wanted. That was the hardest part, to sell the DA's office to try. It was very successful. All of these girls rolled and became cooperative witnesses so they could go back to just a regular prostitution charge and testified on the conspiracy…And so, we ended up with exactly what we had anticipated. We had several cooperative witnesses in an organization that had pushed a child out in a prostitution meeting, and then we did her for child prostitution. *No Legislation-No Task Force-Midwest, Law enforcement 1*

Alternately, investigators may have enough resources in place and few or no legal impediments but lack training that would allow them to successfully investigate a case of human trafficking. While training could include techniques for securing evidence, training in interviewing human trafficking victims could be particularly helpful especially since victims of trafficking often suffer from trauma related symptoms like depression or post traumatic stress (Hopper, 2004) and may be reluctant to cooperate with authorities due to distrust of law enforcement or fear of retaliation by their trafficker.

One victim service provider we interviewed commented that law enforcement often lack the understanding for conducting successful trafficking investigations, including securing evidence to corroborate the victim's story and knowing how to talk to victims so they will agree to participate in the prosecution of the case.

> I think there's a huge void with the victim, you know victims are fearful, victims might not want initially to report they might want to wait for a month before they finally report, well so then its hard to remember everything or its hard to provide enough information that we feel like its going to go on so where more time passes the more difficult it is to be able to go backwards and establish the chain of events and gather evidence. I think a lot of victims… there's a space of time between from when they escape until when they even come to us for services because they don't know where

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> to go or they don't know that someone's there to help them or they're scared to talk to anyone so all of that time that passes makes it difficult and sometimes you just have victims that just don't want to report. Some of our cases they've never wanted to report they just want to move on with their lives they don't want to go through the process of a prosecution.
> *Basic Legislation-No Task Force-South, Victim service provider 1*

Convincing victims who are fearful and suffering from severe trauma to cooperate in an investigation that is building up to prosecution is no easy task and often requires multiple interviews. Law enforcement agencies that do not have adequate resources or have not received training on how to interview trafficking victims are at a disadvantage as noted in the quote below.

> Often law enforcement is thrust into the role of counseling women, but they are not trained in this capacity. They feel for them and try to help them, but these women are so traumatized and often law enforcement is unable to devote the amount of time that needs to go into helping these victims heal or feel comfortable enough to cooperate in an investigation.
> *No Legislation-Task Force-Northeast, Law enforcement 1*

Furthermore, while human trafficking training is available, in some rare instances, institutional barriers prevent training from reaching the individuals who are most likely to investigate cases of human trafficking. For example, a federal agent explains in the following quote how a local law enforcement investigator charged with overseeing the investigation of human trafficking cases within his jurisdiction did not find out about a major human trafficking training held by a federal agency despite the fact that this local investigator worked within the agency's organized crime unit because human trafficking investigations were assigned to the agency's civil rights division.

> The organizational approach is better suited for investigating human trafficking cases, but at the FBI all of the resources are in the Civil

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> Rights Division. That's also where the training is. Recently there was a major human trafficking training being hosted by FBI civil rights division right in the same building where he [local law enforcement] works. No one from FBI organized crime was invited. He didn't even find out until it was over. There were hundreds of agents at the training but he didn't have a chance to even attend.
> *No Legislation-Task Force-Northeast, Law enforcement 1*

Law enforcement also reported the importance of choosing the most appropriate person to interview victims. Investigations involving foreign national victims, for example, may include language and cultural barriers that need to be addressed before an investigation can move forward to prosecution.

> The biggest obstacle initially and probably still is the language barrier. It's very difficult with folks from China and other countries in Asia. You need to get interpreters with certain [dialects] and you lose a lot by interpreting over the phone. The culture is really different too. Mexico is more like the United States than a lot of Asian countries. They seems to be much more private and keep much more stuff, even if it's bad stuff, to themselves. So it's hard to get them to open up and say anything, especially about being a victim.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 10*

Several law enforcement respondents reported that having good interpreters or translators is the key to making human trafficking cases. While some agencies brought in interpreters from the outside, other agencies had investigators working for them who could interview victims directly because they spoke the language and understood the victim's culture.

> You've got to have the patience. You've got to have the ability to understand the individuals. Again, [name of agent] is tremendous with the Hispanic population. She speaks the language, she understands her culture and she can go out and she learns about the other cultures of the victims. So, I think she has a good feel for what she needs to do [getting the victim to provide evidence and information].

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Comprehensive Legislation-Task Force-Northeast, Prosecutor 1

Law enforcement respondents in some sites lamented the loss of investigators with critical language skills and knowledge of particular ethnic groups. Such personnel are often promoted internally within an organization and are no longer available to assist with human trafficking investigations.

Along with individuals with experience interviewing trafficking victims, having services in place for victims of trafficking can often make or break a case. For example, agencies that reported a lack of secure facilities to house victims during the investigative phase also reported problems with keeping track of victims or with having victims disappear.

> Well, if you have a foreign victim of trafficking, or even a victim here, a domestic victim without a cell phone or way of contacting them, they're like gypsies. They move all over the place. Sometimes they go back home. Sometimes they run away again, they end up hooking up with someone else. We end up with a whole different case, with a different exploiter because they hooked up with another exploiter. Or, they go back to their original exploiter.
> *Basic Legislation-No Task Force-South, Law enforcement 4*

In many of the sites agencies reported a lack of adequate shelters for victims of trafficking, including long-term housing, as a major problem since victims were less likely to cooperate with authorities and may even return to their trafficker if they did not have a safe place to stay during the course of the investigation and during the prosecution. In one site that had a shelter program, interviews with the shelter director indicated that having secure long term shelter was a major factor in victims agreeing to cooperate over the course of a lengthy investigation.

In cases where adequate shelters were unavailable law enforcement might put victims up in a hotel, but in some cases victims reported being afraid and returned to their exploiter prior to

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being able to provide testimony in a criminal proceeding. Some sites reported that they have run into problems with multi-victim cases where victims housed in the same shelter talk to each other and end up jeopardizing the case.

Looking at different types of sites revealed that even sites with comprehensive state human trafficking legislation and a federally funded task force experienced problems with providing victims adequate shelter during the investigation.

> Sometimes they go back home. Sometimes they just disappear into the wind. There's no real way to say ok, for the next six months, because that's how long it takes to prepare a case, you've got to stay here. We don't have a way to house them in like a safe house.
> *Comprehensive Legislation, Task Force-West, Law enforcement 1*

Sites that attempted to utilize existing shelters also experienced problems with victims of human trafficking either leaving or getting kicked out. For example, shelters utilizing a domestic violence model are often not equipped to deal with the unique set of problems and needs that are indicative of human trafficking victimization. Local law enforcement in one site with comprehensive state trafficking legislation and a task force pointed out a case where a victim did not comply with the rules of a shelter and ultimately ended up back on the streets.

> You have your victims in the shelter causing problems not playing by the rules. Not doing what they need to do to get off their drugs. Most [law enforcement] [dusts off hands] "We're done. Your problem." Not us. I went in there. I went to my NGO and said, "What's the problem?" They said, "This is the problem." "Alright. We're going to handle it." We went to her, we sat her down, we had a thing. "You have one more chance. Other than that if you do not comply…" I told the victim. I said, "I'm sorry. There's nothing that we can do for you. We're going to have to put you back out on the street." And that's what happened. She basically did not comply. She was a danger to the other residents because of her activities
> *Comprehensive Legislation-Task Force-South, Law enforcement 4*

Furthermore, law enforcement report that human trafficking victims may not quality for

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other types of shelter.

> So, the battered women shelters don't like them [victims], so they're hesitant to take them. If there's no battering then they don't qualify to get into that shelter anyway.
> *No Legislation-No Task Force-Midwest, Law enforcement 1*

In some cases, law enforcement reported using arrest as a means to get the victim to a secure location in order to gain victim cooperation in the trafficking investigation and ultimately prosecution.

> We've had some girls that get to the children's home and run right away, because they know they are in trouble, because pimps know that that's not locked. And so, we've had girls not open up until they do get locked up and that's when they feel safe.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 2*

However, arresting victims to secure testimony can backfire and traumatize and victims. When victims are detained, they often experience many of the same negative emotions that they experienced in the trafficking situation. Arresting victims can destroy their trust in law enforcement and subsequently decrease their willingness to participate in investigations.

Despite the implications of arresting victims, arresting victims to secure testimony occurred across sites including those with state human trafficking legislation and a federally funded human trafficking task force as noted below.

> You've got to take that girl away from that pimp for a long enough time that she trusts you, and that's not going to happen in 24 hours or 36 hours. I mean she's mad. "You arrested me; where's my daddy [referring to pimp], where's my daddy." Daddy will be there the moment you get out of jail to make you sell your ass again.
> *Basic Legislation-Task Force-Midwest, Law Enforcement 6*

Often law enforcement find themselves in a catch 22 where they may end up resorting to arresting the victim for the purpose of holding them in a secure facility, so they will not

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disappear or return to their trafficker thus jeopardizing the investigation. However, arresting victims of trafficking has the effect of labeling victims as criminals. For example, a study on juveniles engaged in prostitution revealed that law enforcement that responded by arresting prostituted youths perceived them as delinquents rather than victims (Mitchell, et al., 2010). Therefore, while arresting victims may allow law enforcement to hold them it may also damage their case since their treatment of victims as criminals may fuel victim distrust of law enforcement and serve to re-traumatize victims who will be less likely to cooperate with authorities.

Investigating Cases when Victim Credibility is Challenged

While securing cooperation and corroborating their statements during the course a trafficking investigation is a significant hurdle, another challenge that law enforcement face when investigating human trafficking is securing victims or witnesses who will provide reliable and credible testimony at grand jury hearings or trial. Even if victims are willing to cooperate in an investigation, it may take multiple interviews before law enforcement can get a credible statement from a victim. In those cases where the victim does cooperate in the investigation, the victim's credibility may be called into question particularly if the victim has changed his or her story or if no evidence exists that would suggest the victim was physically restrained and could not leave their trafficker. Victims may in fact suffer from symptoms related to trauma, including depression, self-blame and excessive guilt that prevent the victim from leaving the trafficking situation and also contribute to their inability to recall the exact details of their victimization (Hopper, 2004). Law enforcement agents we interviewed expressed similar concerns.

> At first it's like, you're going to lie to me too? Okay good. At first. But then you realize after talking to two, three or ten [victims], you realize it's not lying. There is a cultural thing going on. They have

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> issues with dealing with police and law enforcement where they come from. Just because we're great Americans and we want to help everybody, they don't know that. I'm just kidding. But this isn't a communist country or something and we do seriously want to help people. A day in their lives is a difficult thing for them to talk to us about. It continues to be an eye-opener for me.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 10*
> Sometimes when we get them they are so out of their mind either through drugs or other things. Somehow you have to, they're thinking things. The first interview you might get a little bit of information, the second interview their willing to give you a little bit more or maybe they remember something. So there's no set number of interviews that we do with these girls, it all just depends upon the situation with them
> *Basic Legislation-No Task Force-Midwest, Law enforcement 2*

As a result, multiple interviews are often necessary to build trust and rapport between law enforcement and traumatized victims

> Building a rapport with them; sometimes it takes multiple interviews. Um, you know, its… they need to learn that they can trust us and that's what we spend most of our time on with our victims, is getting them to trust us. Not just us trusting our own victims. Um, so…most of our time is spend with that. And then even our witnesses, we might make contact with them and get told to buzz off, but that doesn't mean we're done with a case, it just means that we need more time with them. So…we spend a lot of time on that.
> *Basic Legislation-No Task Force-Midwest, Law enforcement 6*

On the other hand, multiple interviews can have the reverse effect of re-traumatizing victims rather than creating trust and ultimately cooperation in a case against the perpetrator. One law enforcement agent explains how this occurred with one victim, who had to go before a grand jury in order to obtain an indictment.

> They [prosecutors] wanted to put her in front of a grand jury and that's awful because we, I mean we tried to minimize our interviews, and we ended up doing probably doing three different ones with her in two days. She has to explain all of these things,

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> which are, you know, traumatic, you know horrible, and to put her in front of a jury of people who are sitting at a table and you're at the front, and you're… they're asking you questions about being raped anally that's just not a good way to do it, I don't think. We can; we have ways of bypassing that. Not bypassing it, but getting an indictment without having to bring her in front of the grand jury I think.
> *No Legislation-No Task Force-West, Law Enforcement 4*

Negative stereotypes about individuals commonly found as victims of human trafficking complicated the law enforcement response. For example, some law enforcement interviewees viewed victims who were involved with prostitution and had drug addictions negatively and subsequently deemed them as less credible. In some cases, negative stereotypes were conveyed through the use of derogatory terms, including "whore" when referencing victims. The following quotes illustrate the negative attitudes two officers from an agency held toward victims.

> Victims are often unreliable, often addicted to drugs. It's probably easier to prosecute homicides because the victims are dead.
> *Comprehensive Legislation-No Task Force-Midwest, Law enforcement 1*

> 99.99% of the time, those women are crack whores. They are involved in drugs and selling their body to get drugs.
> *Comprehensive Legislation-No Task Force-Midwest, Law enforcement 3*

In other study sites, law enforcement interviewees described the problems of other officials who hold negative attitudes towards potential victims.

> Yeah. I mean, yeah, and I think there is a lot of people out there: prosecutors, law enforcement, period, that they just don't really believe a lot of these people are victims. I mean, they're just never going to believe it…they saw these girls and all they saw were stripper whores.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

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Even if a case has clear elements of human trafficking local law enforcement indicated that the credibility or lack of credibility of victims had a significant impact on whether prosecutors decided to move forward with the case. In the case described below, local and federal prosecutors ultimately decided against prosecution.

> I suspect that a lot of it had to do with the girls being not very good witnesses, and I was told that they might have actually gone forward against [had the girls been good witnesses].Last I heard, one of the girls ended up getting pregnant and the other girl was a runaway, and again, almost all of these girls are damaged goods. They come from, you know, really abusive backgrounds. They've been abused physically or sexually or you know, there's, if you sit down and talk to them you can tell they're just not.
> *Basic Legislation-No Task Force-South, Law enforcement 4*

One law enforcement official noted that girls who are engaged in prostitution are in some cases perceived by prosecutors and law enforcement as worse than drug dealers.

> The media and the movies has made it so they're [prostituted girls] are just the scum of the earth. But once you learn about them, that their backgrounds are…they're horrible. These girls have had horrible lives and they really don't have any choice but to…to do this. So we have a hard time understanding them because automatically they think the prostitutes are just scum. They're worse than dope dealers.
> *No Legislation-No Task Force-West, Law enforcement 1*

This tendency to criminalize the victim extends to foreign-national victims as well, particularly those who are in the country illegally. In some cases, victims may have voluntarily agreed to be smuggled into the country that only serves to diminish their credibility further as they may be perceived as being complicit in their victimization.

> I would have to say ignorance is the biggest hindrance to these investigation. Especially the sex trafficking investigations. People seem to think that even when dealing with minors, it's the classic pimp and ho type of investigation. Why should I care about some pimp beating a ho or why should I care about some pimp putting a

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> girl on the streets. She could have made another choice. Whatever. Or it is the ignorance of they are illegal, they shouldn't be here. To the hell with them. I mean they get what they get.
> *Comprehensive Legislation-Task Force-South, Law enforcement, 7*

In some cases, the credibility of foreign national victims is called into question by law enforcement who may have to prove that the victim was not coached by victim service providers to say they were victims of trafficking in order to stay in the country. Foreign national victims of severe forms of human trafficking who cooperate in law enforcement investigations and the prosecution of the perpetrator(s) are eligible for a T-Visa, which would allow them to stay in the country temporarily and apply for citizenship.

Law enforcement often will prefer to interview the victim initially, so they will not run into problems later on as the case progresses. As one investigator noted, "Law enforcement will have to prove that the victim was not coached if they are interviewed first by a service provider and this could take months" (*No Legislation-Task Force-Northeast, Law Enforcement 4).*

Victims of trafficking may also seem less credible if they are not physically restrained and/or appeared free to leave their trafficking situation. In cases where the victim may have been free to come and go law enforcement have reported that they may have a much more difficult time convincing prosecutors that the victim is believable.

> The kidnapping, the restraining, you know, the force, fraud, coercion, which is the elements of these cases, is usually very subtle…with some of these, you know, like these different ethnic groups. They [prosecutors] don't realize that you say something to a particular culture and you threaten their family, that is taken literally. And I mean, that's like a threat of death.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

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The reluctance on the part of prosecutors to take cases of human trafficking will be discussed in more detail in the next chapter; however, a the next section discusses the challenge law enforcement face investigating cases of human trafficking that are not prosecuted.

Institutional Resistance to Human Trafficking Investigations When Cases are Not Prosecuted

The traditional goals of law enforcement are to identify crimes, investigate cases and arrest suspects who can be prosecuted. Focal concern is investigating cases that end in arrest and prosecution. But, for crimes like human trafficking, failure to prosecute cases may result in a conflict with these traditional goals. Even in those best case scenarios where authorities have cooperative and credible victim witnesses, a reluctance to prosecute human trafficking cases either on the part of federal, state or local prosecutors can set the tone for future investigations where law enforcement may decide that it is not worth the time and effort to investigate what are often lengthy as well as time and resource intensive cases that are often unlikely to be prosecuted or frequently prosecuted on a non-human trafficking charge. This may be particularly true for those agencies that take more of a prosecution oriented approach to investigating trafficking cases as opposed to more of a victim centered approach, which is focused on doing what is in the victim's best interest or making the victim whole (providing services, reintegration of victim into the community) regardless of whether the case is ultimately prosecuted.

While we will get into challenges of prosecuting cases of human trafficking in more detail in the following Chapter 6, some reasons why a state or local prosecutor may be reluctant to prosecute cases of human trafficking include a lack of awareness of existing state human trafficking legislation or inexperience prosecuting trafficking cases.. Federal prosecutors may only take trafficking cases that have multiple victims or certain types of trafficking cases (i.e., sex trafficking involving minors as opposed to labor trafficking).

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While it may appear that more cases would be prosecuted as human trafficking in states with human trafficking statutes this is not always the case. For example, in some cases prosecutors may find that it is easier to prosecute cases under a lesser charge (i.e., kidnapping, rape, prostitution) that may carry less severe penalties but that they are more familiar with and have more experience prosecuting (Newton et al., 2008).

Law enforcement may decide that the investment they make in the investigation of human trafficking cases is not worth it particularly if nothing happens with the case or if the case is prosecuted on lesser charges with minimal penalties. In some cases, local law enforcement has reported that they will not investigate cases that they know will not be prosecuted.

> We go with cases that we think we can get charged. We've had immigration attorneys bring cases to us…uh, labor and sex and a mixture of both, where we've had to say, "We believe you're a victim of trafficking, and we'll help you with your immigration relief paperwork, but it's not a case that we can [get] prosecute[d], therefore we're not going to investigate it."
> *Basic Legislation-Task Force-Midwest, Law enforcement 8*

Interviews of local law enforcement were also examined across the different types of sites to determine if those sites with state human trafficking legislation and/or a federally funded human trafficking task force, for example, were more likely to have the support of state and federal prosecutors in bringing case of human trafficking forward to prosecution. Surprisingly, even some sites with comprehensive state human trafficking legislation and federally funded human task forces reported having problems with securing prosecutions.

> OK. Let me just say that in over sixteen years of law enforcement …These have hands down been the hardest. Um, I…at this point I mean prosecution is getting to a point where it's almost ridiculous. It's almost a joke. We've hit roadblocks everywhere you go. We've had a bad time with US attorneys. We've had NO participation with the attorney general. They are just slow to do it and in my opinion aside from the victim rescue, the case…it's…it's just not worth the work you…you know you'll read the [name of case], the [name of case]? To

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> me that was a textbook human trafficking case. That was a true blue victim as I've ever seen one. And you know it…it got put down to a harboring charge for a two thousand dollar fee and six months of house arrest. I mean, give me a break. That's a joke.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

Other sites with basic state human trafficking legislation and a federally funded trafficking task force expressed disappointment that the local prosecutor would not take human trafficking cases despite these cases having met all of the elements of human trafficking and having been well organized and resulting from "great investigations" that are "strong" and "well-organized" *(Basic Legislation-Task Force-Midwest, Law enforcement 4).*

Local law enforcement interviewed in other sites with basic legislation and a task force also expressed frustration that local prosecutors were reluctant to use human trafficking charges and preferred to instead prosecute using lesser misdemeanor charges that often result in a slap on the wrist.

> I think that when you come to some of the DAs and they want to do the pimping and pandering, that really really hurts the case. You'll get 90 days in a house of correction for pimping and pandering, doing the exact same thing that a domestic sex victim is charged as sex trafficking will get 18 years. And I think that's a little bit ridiculous but again, it goes to exactly what the chief said. It's educating these people [local prosecutors] that this is serious and these guys [traffickers] are bad and we need to put them away is gonna be huge.
> *Basic Legislation-Task Force-Midwest, Law enforcement 6*

While a reluctance to prosecute human trafficking cases on the part of prosecutors may be the result of a lack of awareness or training about human trafficking as noted in the quote above, local law enforcement in sites where awareness was higher such as task force sites, also indicated a reluctance to prosecute human trafficking case albeit for different reasons.

> In the federal system, before a federal officer can actually charge someone, they have to run everything by the U.S. Attorney's Office, and what I find is they like slam dunk kind of cases. They want it all wrapped up ahead of time before they even charge

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> anyone and sometimes these cases aren't like that, sometimes you've got to work them, and sometimes you get what you get. You have witnesses that are messed up, they're not perfect, and so sometimes they opt not to go with cases, and I understand. They opt, in my opinion, sometimes not to go with the more difficult cases.
> *Basic Legislation-No Task Force-South, Law enforcement 4*

Other sites also expressed similar sentiments about taking cases forward to federal prosecution. Describing the standards that federal prosecutors want to file case one law enforcement official stated: "They [federal prosecutors] want kind of a smoking gun case. They want everything laid out. And you know, there's certain things that are always usually going to be a grey area in these cases, that's going to be a little tougher to prove" (*Comprehensive Legislation-Task Force-South, Law enforcement 3).*

A reluctance to prosecute human trafficking cases may have more to do with a lack of resources than interest by individual prosecutors to take cases. Even in sites with state human trafficking legislation, including the site referenced below, human trafficking cases are not prioritized over other types of criminal cases that may not take as long to prosecute.

> What we constantly run into here, at the state, even at the federal-level, is just resources, you know. There's not enough attorneys. There's too many cases. So you have to pick and choose, you know. They've got to prioritize, and so…maybe some cases that need a lot of…need some more work , may not get prosecuted just because there are other cases out there that are ready to go. And so, it's a prioritization. And that's across the board. That's not just a sex case, or a human trafficking case, that's across the board…in all criminal matters.
> *Basic Legislation-Task Force-Midwest, Law enforcement 9*

An alternative goal to bringing cases forward to prosecution that is reported by some law enforcement agencies is the goal of restoring victims or making victims whole. One law enforcement agent who reported taking more of a victim-centered approach to investigating

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trafficking cases acknowledged that while they still try to make a case for prosecution, their number one priority is keeping the victim safe and making sure the victim has time to heal.

> Our most important focus is the victim. We want to get her out of that situation, we want to get her safe and we want get her on the way to healing. So that is our first focus. Then later on we determine whether one we have got the pimp identified, two whether there's enough information and evidence to prosecute the guy, and three whether she's willing to cooperate or not. So whether we go after the pimp or not, the focus is on those three things.
> *Basic Legislation-Task Force-Midwest, Law enforcement 2*

Other agencies echoed that while they prioritized victim rescue in the future they hoped they could also focus on taking down the trafficking organizations to prevent future victimization.

> You want to rescue the victim, I mean that's key. But let's get the bad guy. Not just the bad guy, but the bad guy's boss. And his boss. Take down the whole organization. Because it… it…the first task force grant went to that level, rescue the victim. That's our purpose.
> *Comprehensive Legislation-Task Force-South, Law enforcement 6*

While some agencies reported more of a victim-centered approach to investigating human trafficking cases a primary goal that has traditionally been engrained in law enforcement is getting criminal cases to the point where they are ready for prosecution. The following section highlights strategies for improving the investigation of human trafficking cases that emerged from our interviews with law enforcement.

Strategies Reported for Improving the Investigation of Human Trafficking Cases

In the sections above, we describe various challenges to investigating cases of human trafficking. One of the most significant challenges to investigating cases of human trafficking as reported by law enforcement is securing victim cooperation for the purpose of providing

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testimony during a criminal trial. Victim testimony is often critical for bring trafficking cases forward to prosecution even in sites with agencies that had gathered sufficient evidence to corroborate a victim's story. Based on our interviews across sites, we have identified the following as key strategies for improving the investigation of human trafficking cases: 1) Provision of victim services; 2) Need for adequate shelters; 3) Need for long term plan for helping victims reintegrate into society; 4) Law enforcement training/Techniques for interviewing victims of trafficking; and 5) Building good working relationships between law enforcement and prosecutors.

Provision of Victim Services

Trafficking victims often need a variety of services to deal with physical and emotional trauma that they suffer from as a result of their trafficking situation, and law enforcement agencies are generally ill-equipped to provide the types of services, including medical and psychiatric care, that victims often need before they are ready to cooperate with authorities in an investigation and provide testimony against the trafficker(s)at trial. Building strong relationships with victim service providers who law enforcement can call on to assist victims during the course of an investigation is often critical in building a successful case.

> [Name of county] has outstanding public or county sponsored victims services as far as shelter, and rehabilitation…the faith based and other NGOs are particularly critical because they can provide housing, they can provide transitional services, and they can provide stabilization services.
> *Basic Legislation-No Task Force-South, Law enforcement 5*

Law enforcement who participated with victim service providers in sites with federally funded task forces reported they could rely on those providers to service victims and that service

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providers were often available around the clock, which is particularly important for victims suffering from severe emotional trauma.

> We're working with service providers to try to [provide services to victims]….cause right now the detectives are having to play investigator, service provider, counselor, you name it. That's what makes our cases so burdensome because our detectives have to check in with our victims practically every day and make sure yes they're still going to cooperate and what do you need? Okay I need housing, I need this, I need that. Okay. The federal government has been great with being on the task force. That's one thing that they definitely bring to the table is the advocates and the victim specialist and the availability of services. We can direct services to them [victims]. But ya' know, they [victims] are psychologically very damaged as a result of this and that's traumatic for us. Having someone that's available at 2 o'clock in the morning. Ya' know. To come out [is important].
> *Comprehensive Legislation-Task Force-West, Law enforcement 5*

In other sites with a new federally funded enhanced task force model, law enforcement reported that they will now be able to direct services to domestic victims of trafficking whereas prior to the enhanced model victim service providers received federal funds for foreign national victims.

> So not only do you have to keep the victim safe from themselves which is [to keep the victim from doing] drugs, but now in order to work a case you're going to have to keep her clean. You're going to have to start rehabilitating them [victims], you're doing all this stuff. So now with this new grant that we received, which is the enhanced collaborative, the international institute has to do both, they have to assist with the international victims as well as the domestic victims. On the international cases, I can do those cases all day long because I have services to support my victims. With the domestic cases, there are no services for the victims unless she has come up with the miraculous cure within the last 3 to 6 months which she now says that she has all of these services so we have not had a case yet to test out that.
> *Comprehensive Legislation-Task Force-Northeast, Law enforcement 1*

Sites without federally funded human trafficking task forces also acknowledged their law enforcement agencies are generally not prepared to provide the types of services victim need and

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thus relied on non-governmental organizations, NGOs, to help them keep the victims safe and provide victims with services like counseling.

> There are some things, literally, that we cannot do, like say, for example, some of the juvenile prostitutes that we've arrested; a lot of those girls are from out of state, they're not from here, and the police department; we can't; we don't have; we can't really arrest them. We try not to charge them with crimes and if we did charge them we could hold them, but that's not really, that's not really what we're trying to do, so we don't really; other than that we don't have a reason to hold them, so we need places to house them and put them where they can be; where they can get counseling until we can either get them home or get them somewhere safe, and so again, the police department doesn't have those resources and the NGOs do, so we work pretty close [with the NGOs] in [county]. Although the county has, the county; this is a fairly wealthy county, so we have a; there is a crisis center and we have housing for victims of domestic violence, and often they've helped us in those situations. They've just said listen it's not necessarily domestic violence, but we've got somebody who really needs the housing at least temporarily and they'll help us out on that, so. *Basic Legislation-No Task Force-South, Law enforcement 4*

While having services is important, one law enforcement agent reported that they could do more harm than good if the service provider is located in neighborhoods that are high in crime or where victims are at risk of running into their trafficker.

> You know they have a program here called the [name of program] program. But they put it in the worst side of [name of city]. Which is the east side of [name of city] and that's where the pimps live. That's where it's the worst community, shootings happen there every night so it's not the place I want to go and take these girls too. Especially since some of my victims are from wealthy suburban families, I'm not going to now take them to the worst part of the world and get them killed. So to me, even that program doesn't clean them up, they can use that as an address for reference but they have to go and get de-toxed somewhere else first before they can come back there…before they do this, before they do that. So we know that's not…it's a place that I'm not going to take them. Because I don't want to come back the next morning and find out my girl is missing and she's got a bullet in her head. *Comprehensive Legislation-Task Force-Northest, Law Enforcement 1*

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Need for Adequate Shelters

A continuing theme that emerged across the sites was the lack of adequate shelters for victims of trafficking. In some cases, law enforcement reported housing victims in domestic violence shelters; however, human trafficking victims may not qualify for housing in domestic violence shelters or they may need to be housed in a more secure setting to prevent them from disappearing and in some cases returning to their trafficker.

Some agencies reported that while they prefer to treat victims as victims by putting them in shelters, or in the case of minors, foster care, rather than using arrest as a means to secure victims they run the risk of victims disappearing.

> If we go back to minor girls, a lot of times they aren't locked up and the best approach with them is to just treat them as victims. That involves taking them and putting them in foster care or with some kind of shelter. [It] does not involve incarceration and [that] makes it easier for them to walk out or walk away. If you have a 16 year old who's been involved with prostitution, putting her in a foster care and expecting her to go back into school is hard. [It is] hard to be socialized back into that environment. And commonly they flee, which means the end of the investigation.
> *Comprehensive Legislation-Task Force-West, Prosecutor 1*

However, arresting victims is often a short term solution and can often fuel victim distrust of law enforcement since victims who are locked up are seen as and are treated like criminals. Thus, having secure housing that is designed to address the unique needs of trafficking victims is often critical for securing victim testimony and bringing trafficking cases forward to prosecution.

Victims Need Alternative Means of Survival

In addition to providing services and housing for victims of trafficking during the course of the investigation, law enforcement agents we interviewed discussed the importance of providing viable alternatives for victims once the criminal justice system process was over. Since

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victims of human trafficking often feel as though their only means of long-term survival is through their trafficking situation, they not surprisingly are less willing to cooperate with investigators without some avenue for them to survive away from the trafficker.

> Some of the ones we thought we helped are right back out there because once they got out there is nothing in place to get them out if they don't have the skills to go back and get a regular job plus there is that stigma because somebody has dragged it up and said weren't you the one [engaging in prostitution] and so they figured what else can I do.
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

Law enforcement reported that they need to be able to provide victims with opportunities for education and job training in order to increase the likelihood of victim cooperation

> You can sit here and talk to this girl and I'll ask, "What would it take for you to get out of this right now, today?" She goes, "500 a week. I need a job where I can make 500 a week." Well, you've got someone with a tenth grade education and three kids… She's right. I can't get her a 500 dollar a week job. So, how do we retrain her?
> *No Legislation-No Task Force-Midwest, Law enforcement 2*

The ability to provide opportunities to victims to improve their situation after leaving their trafficker necessitates strong relationships between law enforcement and victim service providers in local communities who could provide these resources. Despite recognizing the importance of these services, law enforcement interviewees commonly lamented that there were limited options for victims to receive such services in their local community.

Law Enforcement Training/Interviewing Victims

Having appropriate services and adequate shelters in place for victims are important elements in helping to move human trafficking investigations forward to prosecution since victims who feel safe and secure are more likely to cooperate with authorities. However, law

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enforcement that is not trained on how to interview victims of trafficking or on how to investigate cases of human trafficking may end up hindering prosecution of cases.

Law enforcement unfamiliar with the types of evidence needed to collect in order to corroborate victim statements, or law enforcement that do not know how to talk to victims and gain victim trust and cooperation are unlikely to bring forward successful investigations that lead to successful prosecutions. One law enforcement agent describes how, like other crimes, you need to know what types of evidence to look for when investigating human trafficking.

> It's an investigative awareness you know just like any other crimes…you gotta be able to read the signs. You and I can go out on the scene and I'll start to see this and that and you are still trying to figure out what address we are at.
> *Comprehensive Legislation-Task Force-South, Prosecutor 1*

Investigators expressed that having a clear understanding of the elements of human trafficking could increase the likelihood that cases would be prosecuted.

> And I think the most important thing is understanding you know, the elements of the law and particularly with forced labor it's what were the elements that encouraged you to continue your employment, not why'd you stay. There's a difference. And so that's where I'm gonna be able to make an intake at the U.S. attorney's office. It's in those elements that encouraged that victim to [stay] and that's the whole story from how they got here and what happened to them. You know they got their cheeks pinched everyday or whatever. I mean that's part of the story but what we're really getting at is that nugget.
> *Basic Legislation-No Task Force-South, Law enforcement 5*

A critical challenge that law enforcement faces which could ultimately impair an investigation and reduce the likelihood of prosecution is the ability to successfully interview victims. Investigators suggested that questions for trafficking victims should establish elements of human trafficking.

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> We're not there to go, "AHA! You're under arrest, you're going to the federal detention center for being an illegal alien." What we're trying to do is say, "Are you here lawfully? Are you, and if not, are you permitted to move about freely? Or are you under the control of this person? Do you have any papers, or does the person that you work for have the control of all of your documents whether it's a national ID card or whatever? I don't know what kind of ID Mexico has, or different countries have. Are they holding your passport? Are they holding your Green Card? Are they holding your B… H…your visa?" Those are questions that we can ask because we do have to establish, "Are you being here held against your will, or are there restrictions placed on you?"
> *Comprehensive Legislation-Task Force-West, Law enforcement 1*

Law enforcement described how the interviewer and the interview setting both play a big role in making the victim feel safe. In some cases, they may choose not to discuss the case initially in order for the victim to feel more at ease and more likely to cooperate with authorities.

> On the first meeting it's wherever the victim wants to be interviewed [and] generally she's most comfortable with her attorney advocate…So generally we like to interview at a place where they are comfortable. [We may spend] about 40 minutes on [just getting the victim to feel comfortable]. For instance, [during an interview with] a Rwandan I was particularly interested in how she makes her grass baskets so we didn't talk at all about what happened to her [and instead] she taught me how to make a basket. And so we do we spend a lot of time with that [making the victim comfortable].
> *Basic Legislation-No Task Force-South, Law enforcement 5*

Often multiple interviews are necessary to establish a sense of trust between law enforcement and victims. In cases that involve foreign national victims one prosecutor indicated that law enforcement must also contend with victim's fear of police.

> You've got to understand that you've got to have patience, but you've got to be persistent. You know, we'll get a quicker truthful insight from a domestic victim because they generally understand that the police are not to be feared where the international victims generally fear the police. You've got to establish A. You're not telling the truth, but we understand why. Here's how we can help

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> you so you lose that fear and you can help us. It's a skill that the agents develop over time.
> *Comprehensive Legislation-Task Force-Northeast, Prosecutor 1*

One federal prosecutor we interviewed discussed the challenges of interviewing foreign national victims of trafficking and offered some interviewing techniques that could improve the outcome of a case.

> There are numerous challenges interviewing victims. Good interpreters are the key. They need young, female interpreters for sex trafficking cases. For cases that they have investigated with Asian women it was most effective to have a translator that can help the government build credibility and trust with the victim. If the victim would be uncomfortable telling her situation to a man, and she is already probably uncomfortable talking with a male prosecutor, having a young female translator can help because she is seen as less judgmental.
> *No Legislation-Task Force-Northeast, Prosecutor 3*

Working with Prosecutors

Finally, law enforcement reported that having good working relationships with prosecutors is invaluable to moving trafficking cases forward to prosecution. For example, one local law enforcement agent reported how he often worked with his District Attorney's Office to build a case against a perpetrator whereas federal prosecutors often wanted cases that were wrapped up and ready for prosecution, which is often difficult to do with human trafficking cases.

> Oh, yeah. Our DA's office here is really cooperative. They will sit down and listen to you and they will look through the crime at the individual. So you may be a huge drug dealer and I mean, you're just a high value target, but we just can't make the drug charges on you, but I've got you for prostitution. They'll sit down and they'll look at that. "You know, I'm going to prosecute this because that way I can get you on paper for that violation. Then we can bird dog you and get you for violation after violation, after violation and just nitpick you. The federal government won't do that. They want the prosecution and that's it, it's off to the bureau of prisons.

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> The DA's office here is really good about taking new stances on things and looking at, you know they have ways to prosecute and get criminal targets off the street.
> *No Legislation-No Task Force-Midwest, Law enforcement 1*

Despite the difficulty that law enforcement reported in getting human trafficking cases prosecuted federally, some law enforcement agents suggested that they worked at maintaining good working relationships with federal prosecutors since crimes prosecuted federally often resulted in more severe penalties and longer sentences.

> I don't like to complain. I think we have complained once or twice, but you like to keep a good working relationship, because you know, federal prosecution is a good option for us, especially on the narcotics side; it really is, because they carry the big stick.
> *Basic Legislation-No Task Force-South, Law enforcement 4*

While law enforcement reported a general reluctance on the part of state and local prosecutors to prosecute trafficking cases using state human trafficking legislation, they also suggested that it would be easier to prosecute cases locally or at the state level since there are fewer restrictions.

> It's [human trafficking] not been pushed enough at the state level, in my opinion. The reason I say that, and why it's important for me is because, you know, the U.S. attorneys and the federal…a lot of the federal law enforcement and AGs, they have particular guidelines that make it difficult [to prosecute cases]…we like having them, don't get me wrong, but it makes it particularly difficult to kind of weave through certain things. And they have certain procedures that make it [prosecuting cases] very difficult, whereas sometimes at the state that's not the case, or it's different, or it's easier. Um, whatever the case may be. But it definitely needs to be pushed at the state level more.
> *Comprehensive Legislation-Task Force-South, Law enforcement 3*

Having a local prosecutor who is willing to invest the time and energy into human trafficking cases is also very important in getting these cases prosecuted as one law enforcement agent suggests below.

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> I think [it is important] having a DA, an aggressive DA that's willing to put a significant amount of time that they need to prosecute one of these cases. Just to draft the criminal complaint…a lengthy complaint, I can only imagine a significant amount of late nights at work not getting paid, not getting compensated in case prep getting ready for that case. I can't think of many DAs that have that time available even if they wanted to with families and other obligations. I know [name of prosecutor] had formally been just kind of the most aggressive prosecutor in the sensitive crimes section of the DA's office. She still is aggressive; I think she is prosecuting a sexual assault case that might get upgraded to a state level human trafficking case. But for the most part I think there are relatively few DA's that have the luxury of that time. I can only imagine there's a significant hours outside of work that their putting in to case prep.
> *Basic Legislation-Task Force-Midwest, Law Enforcement 3*

Conclusion

Given the unique trauma associated with human trafficking victims, services that provide a holistic approach are often recommended, including but not limited to adequate shelter, physical and psychological therapy and education (Smith, et al., 2009). Additionally, having a long-range plan in place for victims whose only means of survival has been with their trafficker is equally important. Law enforcement agents indicated that victims who believed they had no viable alternatives to their trafficking situation were less likely to want to cooperate with authorities.

Investigators trained in investigating cases of human trafficking and interviewing trafficking victims reported that they had more success with building cases and bringing cases forward to prosecution. Additionally, law enforcement agencies that had developed good working relationships with prosecutors indicated that they had a greater likelihood of bringing cases forward for prosecution, particularly at the state level although state prosecutors appear more likely to prosecute cases on charges other than human trafficking.

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While having strategies in place to secure victim cooperation is important in building human trafficking investigations that could ultimately be prosecuted, a significant challenge that law enforcement often struggles with is an over-reliance on the victim to make a case of human trafficking.

While some law enforcement agencies have reported utilizing investigative techniques that do not rely as much on victim testimony, investigators report that victim statements remain a central component of human trafficking investigations and often are the deciding factor in whether a case is ultimately prosecuted. As a result, victims suffering from trauma related symptoms are thrust into a role where they are forced to recount their victimization, often during multiple interviews with law enforcement and prosecutors. In cases that do go to trial, victims are often faced with the difficult duty of testifying against their trafficker, particularly if they are a key witness.

Victims of trafficking are often reluctant to cooperate with authorities due in large part to fear of retaliation by their trafficker, fear of deportation or victim distrust of police. In cases where there is little or no evidence to corroborate a victim's story, law enforcement may resort to tactics that are commonly used with criminal suspects to get them to cooperate in an investigation. Law enforcement interviewed for this study that reported not having secure housing for victims often resorted to arresting victims as a means to detain them and secure their cooperation in an investigation against their trafficker. Law enforcement agencies that approached human trafficking investigations with the goal of prosecution as opposed to a victim-centered approach indicated that investigators may have pressured victims in order to secure their cooperation.

While some law enforcement agencies have reported approaching cases with the number

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one priority being the victim's safety and well-being, this is often not the case. Some investigators have reported using investigative techniques that involve securing evidence to corroborate victim testimony thus taking the burden off of the victim; however, even agencies that indicated they are successful at securing physical and digital evidence, for example, also reported that prosecutors prefer victim testimony thus investigators continue to rely primarily on securing credible victim statements during the course of their investigation. The next chapter discusses the prosecution of human trafficking cases, including the challenges that prosecutor face bringing trafficking cases forward.

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CHAPTER 6
STATE AND LOCAL PROSECUTION OF HUMAN TRAFFICKING CASES

Once a case is identified, investigated and suspects have been identified and arrested local communities face a host of challenges ensuring that these cases are prosecuted effectively.

In this chapter, we discuss the challenges identified by state and local prosecutors, law enforcement, and service providers of prosecuting human trafficking offenses, both under new human trafficking statutes and under previously existing laws. Our findings on the challenges encountered by state and local prosecutors parallel much of the previous literature on prosecuting new crimes discussed in detail in Chapter 1. As a result, our discussion of findings is organized according into three main types of challenges: 1) legal uncertainty challenges (e.g. ambiguous and untested laws); institutional challenges (lack of specialization or institutional awareness within local prosecution agencies); and challenges related to individual factors (prosecutor attitudes, training and experience). Finally, this chapter concludes with a discussion of strategies local communities can employ to address the challenges of prosecuting human trafficking cases.

Chapter Overview

Major findings:

- State prosecutors were reluctant to utilize new human trafficking laws, commonly charging offenders with offenses where they were more familiar such as rape, kidnapping, or pandering.
- No state prosecutor in this study had prosecuted a labor trafficking case.
- The characteristics of human trafficking victims influenced prosecutor decisions about charging.

Challenges to state prosecution of human trafficking cases:

- Lack of precedent and case law on human trafficking was cited as a major deterrent to prosecuting a case using local human trafficking statutes.
- Victim reluctance to testify or cooperate was overwhelmingly reported as a challenge to prosecution.
- Most state and local prosecution agencies lacked an institutional infrastructure, such as a specialized unit, dedicated to human trafficking.
- Potential labor trafficking cases were often immediately forwarded to the Department of Homeland Security, never coming to the attention of state or local prosecutors.
- There was a lack of training in how to investigate and litigate human trafficking cases.

Strategies to improve state and local prosecutions:

- Awareness raising training
- Use of corroborating evidence to buttress the testimony of victims and witnesses
- Use of expert witness testimony
- Use of local victim services, most importantly housing

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Challenges to State and Local Prosecution of Human Trafficking Cases

Legal Uncertainty Challenges

Currently, forty-nine states have laws criminalizing human trafficking offenses. Although the TVPA was passed in 2000, the majority of state human trafficking laws are less than five years old and many are untested. Despite a majority of states having human trafficking legislation, few states have prosecuted human trafficking cases using state anti-trafficking laws. Prosecutors we spoke with cited a host of legal challenges to the prosecution of state human trafficking cases including: untested laws and unclear legal standards, lack of guidance or training on how to use state anti-trafficking laws, and a lack of model prosecutorial tools specific to the anti-trafficking statute, such as jury instructions. As noted in much of the prior research on local prosecutors, these individuals are not likely to invest time and resources in cases unless there is a high likelihood of convictions either at trial or more often via a plea. This overarching orientation strongly influences the decision to accept and take forward a human trafficking case.

As demonstrated in the literature, new laws are challenging for prosecutors because the specific elements of the crime necessary to establish a prima facie case are often ambiguous until tested in court. Some local prosecutors cited a lack of precedent and case law on human trafficking as a major deterrent to prosecuting a case using human trafficking statutes. Other local prosecutors interviewed had very little knowledge of the elements or existence of their state (or even the federal) human trafficking law. When asked about prosecutor reluctance to accept cases for prosecution, a law enforcement officer working in a Southern state with comprehensive state legislation and a federally-funded task force expressed:

> These are not laws that a prosecutor would deal with on a regular basis. Most prosecutors have never touched one of these

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> cases.[…]There isn't a whole lot of case law on it so just like anything else if you haven't done something you aren't sure of it and you really don't want to stick your neck out and do something you are unsure of. These are high-profile cases, the last thing you want to do is stick your neck out and wind up getting an egg on your face because you failed in your prosecution. Even though everyone fails when they do things time and again, nobody wants to fail on a grand scale, which sometimes these cases turn out to be.
> -*Comprehensive Legislation-Task Force-South, Law enforcement*

A prosecutor in a task force jurisdiction in a Western state reinforced the above law enforcement officer's perception when he described his experience using the anti-trafficking law and his reluctance to use the state law in the future due to legal ambiguity.

> It's not the best written statute I've seen. It is a combination of portions of federal statute that delineate how you prosecute labor cases, how you prosecute sex crimes cases or sex trafficking cases, and it's sort of mushed together. And so it's a very high evidentiary standard to prove it up. So, early on, and frankly my office had, I think it's fair to say that there were groups, interest groups and the like who were somewhat critical that my office or frankly no other prosecutor's office in the state had ever charged [using the state anti-trafficking law]. Well as a prosecutor, who, you know you have to file legal analyses to the cases that you charge, I can say I wouldn't want to, I really wouldn't want to touch it.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

In line with the findings of Newton, et al (2008), if state prosecutors accept human trafficking cases for prosecution, they are more likely to prosecute cases using existing laws they (and judges and juries) are more familiar with such as rape, kidnapping, pandering, or promoting prostitution. In some states, prosecutors may have felt comfortable or willing to go with state anti-trafficking charges, but decided against it if other non-trafficking charges (such as rape or promoting prostitution) carried higher penalties than state anti-trafficking charges. This reliance on more familiar charges was also noted as a significant challenge to the prosecution of human

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trafficking cases by the Advocates for Human Rights in their 2008 report on sex trafficking in Minnesota. As will be explained later, this was the case for the prosecutor quoted above in the task force jurisdiction in the West with a comprehensive anti-trafficking law. Prosecutors often expressed a motivation to get offenders off of the street for the longest time possible and to use any applicable charge to further this. In interviews with prosecutors, two strong motivations became apparent – the prosecutor's desire to get an offender off of the street for the longest time possible (and to use any applicable charge to further this) and a desire to win the case (as a result, prosecutors may be reluctant to utilize new statutes in favor of existing more familiar statutes or to suggest federal prosecution).

Even with the barriers and challenges listed above once a local prosecutor takes the time to look into the details of a particular human trafficking case they often find themselves moved by the incredible level of violence involved to push forward to charge the case. Often the prosecutors we spoke with were the first in their state to prosecute a case using state anti-trafficking laws. When describing how she decided to prosecute the first state case of human trafficking, one local prosecutor with no prior knowledge of her state's comprehensive anti-trafficking law described accidentally happening upon the statute when another retiring prosecutor's cases were given to her:

> They kind of piled together some of the more difficult cases and passed them on. But this was one of them. And it originally was charged as pandering, which under [state] statute is connected to prostitution…and my boss gave the case to me and I read through it, just real quick to kind of get a feel for it, and my immediate reaction was, there has to be something else we can charge here. Pandering, I think it was pandering is maybe a D felony. But anyway, it just didn't seem enough for me. So I started bouncing it around with a few colleagues and I'll be completely honest and I'm embarrassed to say it, but none of us were really aware of the [state] human trafficking law. It was pretty new at the time and it's

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> one of those things where you start flipping through the code to see what you can find (laughs) and my boss was like, hey what about this? And I'm like okay! And once I read through it, I was like this is perfect. I mean, it's exactly what it is.
> *Comprehensive Legislation-No Task Force-Midwest, Prosecutor 1*

Another local prosecutor described being influenced by a speech made by a service provider/advocate to use his untested state's anti-trafficking law to prosecute a case of sex trafficking of minors and adults:

> I was there [at a DOJ conference], and he [service provider/ advocate] made a really impassioned pitch, "These are the laws that states have written and the federal government has written for human trafficking. Why aren't people charging it?" Um, now I don't want to say that that was the dispositive reason for me wanting to charge it, but it was something that was in my mind, and I, and I thought much more critically about why not charge this in this case, and the factors again that led me to do it is it was egregious in my mind that this was a gang who was exploiting these young girls, it was egregious in my mind the number of victims, it was egregious in my mind the violence that was being used. And, to answer your question, um, you know the violence might not have risen to the level of broken bones, which means you really can't charge a felony, but it's beatings, it's fear, it's intimidation used over an extended period of time to get these girls to sell their bodies and expose themselves to the very guy that I spent two years prosecuting --types like the [serial killer prosecutor had previously prosecuted] who wanted nothing more than to rape, rob or steal or kill these girls [victims of trafficking], right, and it was all of that added up in my mind to mean, hey, this is too light, this would be too light of a sentence just to charge him with promoting prostitution because at the end of the day what they really are doing is modern day slavery, and they are trafficking the flesh of these young girls for their profit, and they don't give a damn about what happens to the girls, and they didn't…didn't give a damn, and so that was my motivation.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

Even though the prosecutor above successfully prosecuted the first case using his state's human trafficking statute, he explained that he would be unlikely to use the state human trafficking law again (particularly to prosecute a sex trafficking of a minor case). The prosecutor

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believed that the state's anti-trafficking statute carried an usually high evidentiary burden—unlike the federal law which does not require a prosecutor to establish "force, fraud or coercion" for the sex trafficking of a minor, the state anti-trafficking law he used did. Recent changes strengthening the penalties under the "promoting prostitution" state law that did not include a requirement to prove "force, fraud, or coercion" was deemed by the prosecutor as being a more favorable law to charge future cases of sex trafficking of minors.

> The laws in [state] have changed for the better – primarily the law as it relates to […]the prostitution of juveniles. So if you are a pimp now in [state] and you have a juvenile in your midst and you ah take her to a motel room and put her online and the like and you're caught doing that you face, if you're a first time offender and you don't have any criminal history, you face a prison sentence of eight and a half to 20 years right off the bat. That's no prior points [criminal history]. And that is fantastic because my evidentiary burden is way low. I don't have to show that she was scared. I don't have to show that he beat her. All I have to do is show that this guy was either profiting from her or helping her in some way or encouraging it, and he is cooked. I should add it's what we call a Level A sex offense. It is the equivalent of committing rape in the first degree which would be rape with a firearm, rape with a knife, our most serious sex offenses. So the legislature has supercharged this crime, kept the evidentiary burden for me very manageable, and I would be hard-pressed to charge human trafficking again because there are other things I think I could do to not make my case hard and not have the ambiguity of the human trafficking statute as it's written in [state]. *Comprehensive Legislation-Task Force-West, Prosecutor 2*

Although the local prosecutor was happy with the strengthening of the juvenile law, he was unhappy with the resulting disparate treatment of adult victims of sex trafficking. He explained how this plays out in real terms:

> In [state], traditionally if you're a juvenile that's been pimped out or if you're an adult victim who's been beaten, we've treated you the same. The punishment's the same, but now the juvenile punishment is much higher. So if you're 17 and a half years old ,

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> the pimp doesn't lay a finger on ya, but he takes you to the motel room and puts your ads online or helps you post your ads online; that' when you look at the eight and a half to 10 years. If your 18 years old and the pimp beats you up, threatens to kill you, isolates you, you're [pimp/trafficker] only looking at 21 to 27 months in prison. So there is a huge disparity now […] and I went to them [lawmakers] and said, "Why don't you just bring the adults up to where the juveniles, how you treat juvenile victims? Treat adult victims who are the victims of violence or force or fear and coercion the same as you've done all along." Because what's the difference?
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

Despite a successful outcome using his state human trafficking law for the first time (prison terms of 4 to 17 years for the defendants), the prosecutor above is still deterred from using the law in the future due to its ambiguity.

Other prosecutors who used their state law for the first time did not have successful case outcomes (a real fear that prevents many prosecutors from using a new law in the first place). A law enforcement official from a task force jurisdiction explained how after getting no support from federal prosecutors to prosecute a large human trafficking case, they took the case to their state attorney who prosecuted the case as the state's first human trafficking case.

> I: And you know, they've [federal prosecutors] got the "human trafficking prosecutor" title but they're not doing anything. They're not doing anything! There's no communication, there's no effort, there's no case development, there's nothing.[…]They're not showing up at these quarterly meetings. We have investigative meetings where we kind of talk about what case we're going to work and there's none of that. There's nothing.
> Q: And then on the state side, so you had a good relationship on the state side, with the state's attorney's office? But you've recently had this situation where you've had the first case go forward, and the result for the first defendant, at least, wasn't particularly positive?
> I: Right. For everybody, all key players in this, yeah, it was it was a punch to the face.…And the prosecutor at the state level, I mean she had so much involvement in this, and you're asking on the prosecutor's side, especially the state, to step out on a limb with

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> you, because there's not a lot of case law. And you know, that once you pull the trigger on this, it's going be a big huge media splash. Which it was… And so she's really stepping on a limb with us. She poured her heart and soul into this, she really, really did. And, you know, at the end of the trial, I mean off to the side she was, you know, crying. She was, it was really hard. Upset. So, first thing I did is the next day, I called her up and said "Listen, we lost the battle, we didn't lose the war. You still have our 100% support. We really think you did a good job. It just didn't go our way. And we'll continue to fight."
> *Comprehensive Legislation-Task Force-South, Law enforcement*

Like those above, the few prosecutors who received support from their office to prosecute human trafficking cases using untested state laws were often met with challenges when trying to explain and prove the facts of a new crime to judges and juries. Many state and local prosecutors were operating on their own with little to no source of legal guidance they could refer to for things such as prosecutorial techniques, how to handle common defense tactics, or sample jury instructions. In every site, when prosecutors who had taken human trafficking cases to trial using state anti-trafficking laws were asked where they went for guidance on jury instructions, they said that most often they created them themselves and had wished they had a resource or fellow state prosecutor to consult.

The legal ambiguity surrounding state anti-trafficking laws, as well as the lack of resources and guidance on how to use the laws, was quoted by some law enforcement and prosecutors interviewed for this study as a deterrent to prosecuting cases using state anti-trafficking laws. A lack of prosecutor awareness and experience establishing the legal elements necessary to charge human trafficking may be translated into case declination, which in turn may serve to discourage case referral from law enforcement. Prosecutorial case declination affected law enforcement investigation and case referral in both task force and non-task force jurisdictions. For task forces, we often heard law enforcement officials focusing their

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investigative energies on a specific type of case (e.g., multiple minor sex trafficking cases) that state prosecutors were more likely to accept. For non-task force jurisdictions, when the few cases that do make it forward for prosecution are declined, it may discourage law enforcement from investing the resources to investigate and charge cases of human trafficking in the future. This is true for both labor and sex trafficking, but is particularly acute for labor trafficking.

State labor trafficking laws are particularly ambiguous and a preliminary review of state and local labor codes in our study sites, revealed watered-down labor codes that in essence, legalized or sanctioned certain elements necessary to prove labor trafficking according to state or federal law. We heard stories from stakeholders across sites of unscrupulous businesses taking advantage of labor laws that did not cover the use of contractors so that contractors could be used as middle-men in labor trafficking thus removing legal culpability from companies or individuals involved in schemes of labor exploitation and potential labor trafficking. Additionally, some states exempt certain industries or types of employees from certain protections under labor law (e.g., migrant farm workers, domestic caretakers or nannies, restaurant employees and/or contract workers). Many of these industries and types of workers are exactly the type that are vulnerable to exploitation and labor trafficking. At the state level, remedies to address potential labor trafficking exist through either civil labor codes for unpaid wages or safety violations or a criminal labor trafficking law. Additional industries, such as massage parlors, escort services, strip clubs, and restaurants often provided a "legalized" front for suspected or confirmed sex and labor trafficking in every site in our study. No site was immune from massage parlors operating as legally licensed businesses and suspected fronts for prostitution and sex and labor trafficking (and some sites noted a dramatic increase in massage parlors into the hundreds of businesses for even the smallest jurisdictions visited). The legalized nature of massage parlors, however, made

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it particularly difficult to investigate, let alone charge and prosecute these cases at the state and local level. However, some jurisdictions were beginning to experiment with changes in local licensing to attempt to curb the glut of certain types of businesses in their cities. No state prosecutors we spoke with had prosecuted a case of labor trafficking. Some prosecutors believed that these cases were better handled federally, even if they had a state labor trafficking law.

> The international labor trafficking is probably going to go federal because of the immigration paperwork and keeping that and there are a bunch of crimes that you can charge that way. If it's forced labor, at the state level, you know you have someone picking cherries east of the mountains, and they're being beaten, the workers are being beaten and maybe they're U.S. citizens you could go human trafficking at the state level. But my guess is the federal government would probably pick that one up and have less of an evidentiary hurdle. […]They've got the laws for it. At the state level we really, aside from aforementioned human trafficking statute, we really are not equipped to handle those types of cases, and the federal government ought to prosecute those.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

Even if prosecutors in other states would be open to prosecuting an identified labor trafficking case, not having a state labor trafficking law would prevent them from doing so. For example, in a wealthy section of a Southern state included in our study, a local law enforcement officer accidentally happened upon a case of domestic servitude while patrolling the highway and being approached by a service provision organization for assistance on their way to rescue a victim of labor trafficking. The victim who responded to an ad for a housekeeper, was then transported by the family to their home in a remote area, forced to work without pay, threatened with deportation if she tried to leave and physically abused. The victim saw a TV commercial by a local anti-trafficking organization describing the elements of labor trafficking and encouraging people to call if they were in a situation of trafficking, or knew someone that was. The victim convinced a child of the family to allow her to borrow her cell phone and called the number for

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help. When a member from the organization first responded to the home, they were threatened by the family and left. After a few days, the organization gathered volunteers, made signs protesting against labor trafficking and modern-day slavery, and brought video cameras to stage an intervention and remove the victim from the home. On their way to rescue the victim, they spotted the police officer and asked if he would provide back-up. The police officer observed the chaotic scene unfold. The victim was removed from the home and no one was injured. The police officer conducted an investigation and in an email to the police department's legal counsel stated that he suspected it to be a case of labor trafficking (he had just attended a national training on it a few months prior). The attorney counseled the officer that he did not believe the case to be one of labor trafficking and that the most they could do was bring a civil case for back wages. Although the case may have met the elements of labor trafficking included in the TVPA, this particular state did not define labor trafficking in its anti-trafficking statute. Federal prosecutors declined that case. As such, this case and an unknown number of labor trafficking cases like it have not been prosecuted at the state level.

Those prosecutors that do accept cases for prosecution, may feel more comfortable prosecuting human trafficking cases using long-established charges more familiar to judges and juries or with lower evidentiary burdens, such as pandering, promoting prostitution, or in the case of labor trafficking, civil labor violations. While the human trafficking offender may still be prosecuted, doing so under lesser charges serves to further hide the prevalence of human trafficking within the justice system and sends a message to offenders and victims that the crimes of labor and sex trafficking are not viewed as serious or severe by the criminal justice system. After reflecting on numerous human trafficking cases that have been prosecuted using non-

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trafficking charges, one service provider poignantly stated the effect this has on society's understanding of the prevalence of human trafficking and specialized resources to address it:

> If there are multiple [non-human trafficking and human trafficking] charges [for a human trafficking case], if it's a criminal sexual conduct case or a kidnapping or some other thing, they'll get charges on other things but not as trafficking. And we see that as a problem because if they don't get acknowledged as trafficking then the victim isn't getting acknowledged as a victim of trafficking. Maybe that [charging trafficking cases with non-trafficking charges] limits resources, that limits our idea and our understanding of what's happening in [state].
> *Basic Legislation-Task Force-Midwest, Victim service provider*

In addition to the hurdles inherent in prosecuting previously untested or rarely tested human trafficking statutes, prosecutors commonly expressed fighting (sometimes unsuccessfully) against their own agency's institutional bias against using state anti-trafficking laws, as will be discussed in the next section.

Institutional Challenges

The challenges described in the earlier section on identification and investigation of human trafficking cases directly affects the number and quality of human trafficking cases referred for prosecution. As demonstrated in this report, it is not enough to criminalize human trafficking and assume that local law enforcement has the knowledge, training, resources, tools, and institutional support to investigate cases and bring them forward to prosecution. As such, it is still rare, even in jurisdictions with federally-funded human trafficking task forces, for local prosecutors to be referred human trafficking cases for prosecution. As a result, local prosecutors are less aware of the problem and do not prioritize the institutional resources such as training and specialized units that may be needed to successfully prosecute cases. In turn, the reticence of local prosecutors to accept human trafficking cases, due to lack of training and resources, further

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discourages law enforcement from investing resources into the investigation of human trafficking cases and bringing them forward for prosecution, as was described in the previous chapter. Instead, law enforcement funnels resources towards investigating the types of cases prosecutors are more likely to accept for prosecution, which may include only specific types of human trafficking offenses such as sex trafficking cases involving minors. This serves to further perpetuate myths and misunderstanding over the extent to which human trafficking is a problem in many communities. The section below describes institutional barriers within prosecutor's offices to the prosecution of human trafficking cases in our study sites.

Although rare across sites, if prosecutors had received training or attended a conference, they were more likely to be from a state with a federally-funded human trafficking task force. However, local prosecutors explained that trainings at these conferences are often led by federal prosecutors. Although this has been useful, many prosecutors suggested it would be more helpful to network with and learn from other local prosecutors about how to use state-specific anti-trafficking laws. Others described many conferences and events dedicated to general awareness-raising about human trafficking, but a dearth of specific legal training necessary for prosecutors and law enforcement to identify cases and bring cases forward to prosecution.

> I think there can be a disconnect when there are trainings on human trafficking at conferences and stuff. I will be frank with you I have observed people kind of blow it off and I think it is because they don't see how it connects to their life as a prosecutor. They view it as something that happened somewhere else, something that if it is prosecuted at all it is prosecuted at the federal level. They are not being trained… There was a disconnect [at conferences the prosecutor attended] in explaining how can I identify what is a potential human trafficking case and then you know what do investigators need to do and what do I need to do as a prosecutor to prosecute it successfully. And there are trafficking situations that happen locally and maybe a little different than the international type stuff that is what people sort of think of when they say human trafficking and I think the image people get in their

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> heads are people in a far-off land being held in vehicles and then being transported into this country. And basically held as sex workers or some sort of forced labor of some variety and that that's basically human trafficking, which it is but there are other types.
> *Basic Legislation-Task Force-Midwest, Prosecutor*

In another jurisdiction, a prosecutor attempting to prosecute his state's first sex trafficking case described going into the prosecution with minimal to no specific training or guidance, despite attending several Department of Justice-sponsored conferences.

> It was a coincidence, like a month before our trial was to start, I actually attended a conference again sponsored by DOJ on human trafficking back in South Carolina, and so I got to hear about a bunch of federal cases where they do human trafficking, and a lot of it was immigration-based and how people withhold papers and coercion of that nature, and there were actually not very many domestic prostitution examples. There were examples out of LA where they prosecuted a husband-wife-sister team that brought up young girls from Guatemala…That prosecutor, in fact I did I send an email [asking] "hey, do you want to send me your briefing?" He did. He was kind enough to do that. Um, that was about the extent of reaching out to others.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

In both task force and non-task force jurisdictions, local law enforcement described bringing cases forward for prosecution that were declined for a number of reasons. In nearly every site, local (and federal) prosecutors expressed difficulty in prosecuting cases with a single victim due to the lack of corroborating testimony. One police officer described this situation.

> I can just remember interviewing this one girl. I got her to confess, to cooperate and I was all motivated, excited, and I got my charges all done. I go down to the DA's office and she said, well, you know he has a case where a defense attorney made it look like the girl was just pissed off at the guy because he came in late. It was just his word against hers. She is saying he is a pimp. He is saying that she's just my jealous girlfriend and because of that you have to have someone now to corroborate what she is saying. That was really a blow for me you know.
> *No Legislation-No Task Force-Midwest, Law enforcement*

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In other instances prosecutors explained that because human trafficking victims are highly traumatized it is likely that any one victim may not be able to testify when it comes time for trial due to lack of emotional stability or in many cases because they have runaway and cannot be located. As a result, prosecutors wanted to have a few victims available in case one of the victims is unable to testify.

Institutional push-back regarding which types of human trafficking cases prosecutors should accept was prevalent even in jurisdictions with federally-funded task forces. The presence of federal prosecutors who express a willingness to take certain types of human trafficking cases reduces the pressure on local prosecutors to prioritize human trafficking offenses. When asked how he thought his supervisors would react if he was referred a case of labor trafficking for state prosecution, a local prosecutor responded:

> I think [my supervisor] would push back on it because he wants to make sure he can win a case… Especially since most of our labor trafficking involves immigrants…It sits better that the federal government would handle those cases.
> *Comprehensive Legislation-Task Force-West, Prosecutor*

In one of our study sites, a local prosecutor who was the first in her state to prosecute a sex trafficking case, did not receive push-bask from her supervisors; however, she did not necessarily receive support either. Other prosecutors may have dropped the case under these circumstances; however she pushed forward and eventually gained buy-in from her agency when the prosecution resulted in a high profile conviction. Had it not been successful, as has happened in other states, she may not have been encouraged to continue prosecuting these cases.

> Q: Did you get pushback from folks in your office around this as a human trafficking case?
> I: No. And you know, I say that, and I don't even think anybody in the office even knew that we filed the case until you know, it started trial.
> Q: And what was the reaction after the trial?

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> I: Yeah. I mean honestly, once we got finished they realized this was kind of exciting and yeah, they did quite a bit of press work.
> *Comprehensive Legislation-No Task Force-Midwest, Prosecutor*

Institutional push-back caused some prosecutors to decline cases. In other jurisdictions where prosecutors accepted human trafficking cases for prosecution, institutional push-back over using the state human trafficking law influenced well-intentioned prosecutors to charge human trafficking cases with non-human trafficking statutes. As one local prosecutor explained,

> I want to say that was sort of the unwritten policy of the office: 'Why bother with this goofy human trafficking statute, just charge other crimes that you are more comfortable with and that you have used in the past,' and really I think that again is practical. I think some people view the statute as sort of a publicity thing like 'oh there is a human trafficking statute, do we really use it?' Like [it's just] an awareness raising statute if you will.
> *Basic Legislation-Task Force-Midwest, Local Prosecutor*

These findings underscore earlier research by Cole (1984) which demonstrated that when prosecutors decide not to file charges in cases where law enforcement make arrests, the number and quality of cases referred by police will eventually decline, ultimately leading to fewer cases being prosecuted. The local prosecutor quoted above described working in a prosecutor's office that does not encourage the use of the human trafficking statute and working among colleagues who did not share her willingness to use the statute. This was a common reason state and local prosecutors offered to decline cases or charge trafficking cases with non-trafficking statutes. However, the local prosecutor had an outlook rarely communicated during our interviews:

> But using it [the statute] sends a message about reframing the debate, about what is it. I mean it is trafficking and what we are struggling with is looking at this as a separate and non-distinct type of offense that occurs and when you reframe how you look at it, it helps how people view things differently and maybe view them more seriously. You know there is something to this awareness raising when you can get people to practice. I mean yeah, you can use the other offenses but you can also use a human trafficking

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> statute, and why not use it if you can? I mean I think sometimes [prosecutors] are intimidated that juries will be like how do I convince the juries about this law? If you can communicate clearly with them, it isn't rocket science.
> *Basic Legislation-Task Force-Midwest, Local Prosecutor*

Stakeholders in one state slow to pass an anti-trafficking law learned from the mistakes of other states and included funding in the state law for prosecutors to train law enforcement in human trafficking identification and investigation. Additionally we heard that one-shot trainings were less effective than trainings that included some level of follow-up such as technical assistance or some other level of ongoing involvement.

> Okay the challenge of 2008 is we've passed a new law, is it going to be just a law in the books and no one is going to enforce this law? Learning from mistakes of other states, training was imperative, key. We did get a small appropriation to allow us to do training around the state, and that's myself and my legal assistant, we did the road-trip around the state. We trained, trained, trained awareness, awareness, awareness; and we had a pretty good response, and we set up the regional work groups, and we closely collaborated with the vice out of [study site] to say okay, look at the prostitutes differently, and work with them. Our initial meeting with them was that 'oh no, these prostitutes are all working on their own, they're just out for drugs, they're just doing their own thing, there really isn't human trafficking happening.' We met with them again, we worked with them again, and we really kind of trained them to see these indicators. This is what you're going to see. We really developed a real close working relationship with them. We offered to screen some of their cases where they may have been missing something, talked about their interview skills; what are you missing when you're interviewing these women that they may not want to be open to speak to you about and little by little a case came.
> *No Legislation-No Task Force-West, Prosecutor 1*

During the prosecution of the first state sex trafficking case in one jurisdiction, the prosecutor described an unusual level of involvement in the investigation of the sex trafficking case than we heard in other sites (or is typically common for the prosecution of most state-level offenses). The

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involvement of the prosecutor interpreting the ambiguous legal standards of the sex trafficking statute to investigators for the collection of evidence proved critical in this case.

> We always send the cops wish lists. "Oh God, the prosecutor wants this again…are you kidding me?" I think there's probably a joke, you know, the worst wish list from a prosecutor - 20 pages long. We send these to them because there are some things that we need to get, but everybody was on board. We pared it down to the bare essentials and it really worked.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

It should be noted, that this was rare, and that most often state and local prosecutors do not work with law enforcement on securing the evidence necessary to build a strong human trafficking case early on in the investigation. As such, prosecutors rely on the types of cases and existing evidence brought to their attention to prosecute. When asked if she had prosecuted any human trafficking cases, one local prosecutor described being aware of potential labor trafficking, but unable to direct law enforcement to bring cases to her attention.

> Our office has not indicted any at this point. I have never had any of them brought to me by law enforcement. I've met with a couple of people who were referred to me by immigration attorneys, but they had not yet reported it to law enforcement and since we're not an investigative agency, I met with them, but then referred them to law enforcement and I've never had any follow-up.
> *Basic Legislation-No Task Force-South, Prosecutor*

In addition to institutional resistance (formally or informally) regarding whether and which types of human trafficking cases to prosecute, it's not surprising that all state and local prosecution agencies lacked an institutional mechanism, such as a specialized unit, dedicated to human trafficking, though in some sites there was a specific prosecutor assigned to human trafficking cases. This was true for task force and non-task force sites and both labor and sex trafficking. With respect to sex trafficking, if a trained and dedicated prosecutor was assigned to handle these

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cases, they were more likely to be situated within a sexual assault unit or to handle child sex crimes cases. Otherwise, prosecutors described handling a very large caseload spanning a variety of crimes. In a task force jurisdiction with law enforcement officials who had brought forward well-investigated cases covering long periods and involving multiple victims and suspects, the local prosecutor described how she struggles with a lack of institutional priority and inability to solely focus on human trafficking cases.

> In regards to the trafficking cases, they tend to be pretty serious. They can be a real chore. They can be very discouraging because you lose victims, and they recant and the cases are you know it's sort of like you know please don't disintegrate. It takes a lot of work to put them together and they are important or we are trying to focus on them and take them very seriously. Ideally, I wish there could be some level of focus you know from the other DA's but they are focusing on their caseloads so it is probably not going to happen. So I have a whole pan of things from cooperative teenage sex cases to child sexual assault to certain forms of child abuse or neglect cases, you know adult sexual assaults, the human trafficking... so I handle all those types of cases.
> *Basic Legislation-Task Force-Midwest, Prosecutor*

When asked about labor trafficking, local prosecutors repeatedly acknowledged that although they believed it existed; cases were not being investigated and forwarded to their attention. This was the situation in both task force and non-task force jurisdictions. As one local task force prosecutor stated:

> That stuff [labor trafficking] is really hard to uncover because I think it is really kept under wraps and it might be in newer communities like with newer immigrants but I am guessing. Based on my general knowledge where they are sort of isolated and where it is easier for it to go on, where they may not draw the attention of law enforcement and I bet it goes on in our communities to a degree but I haven't been presented with any cases.
> *Basic Legislation-Task Force-Midwest, Local Prosecutor*

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However, even if a labor trafficking case was referred, she did not know of any local prosecutors with the knowledge or experience to prosecute a labor trafficking case. Prosecutors in non-task force jurisdictions also described a lack of training and specialized units to handle labor trafficking cases, despite thinking cases existed in their communities.

Prosecutors described the time and resources necessary to prosecute human trafficking cases often conflicted with other cases in their caseload and created barriers to prosecution. In many jurisdictions, prosecutors described cases taking upwards of two years to be prosecuted. Specifically with respect to sex trafficking cases, prosecutors would often lose contact with victims or victims would become involved with another trafficker leading the prosecutor to drop the case due to a perceived lack of victim credibility.

Some prosecutors felt that the amount of time and resources necessary to investigate and prosecute both labor and sex trafficking cases was more suited to federal prosecution. State and local prosecutors in nearly every study site indicated that labor trafficking cases should be prosecuted federally given the international nexus that might be involved in certain cases and the tendency, perceived or real, for potential victims to be in the United States illegally. More often than not, potential cases of labor trafficking, in particular cases where local law enforcement suspected suspects or victims were illegal immigrants (real or suspected), were immediately forwarded to the Department of Homeland Security by local law enforcement, and therefore never came to the attention of state or local prosecutors. While there are important jurisdictional issues that may arise in cases involving alien victims or suspects, there is a perceived lack of resources and ability to handle these cases locally that also supports immediate referral to federal agencies. For example, one prosecutor noted the local agencies were not equipped to conduct

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these investigations since human trafficking cases involving foreign national victims or suspects often require interpreters.

> Other counties in the state, they don't even have the resources for interpreters so you know in order to deal with victims if they don't speak English, or are out of the state it's next to impossible to get them to coordinate a large scale prosecution with a lot of victims who have needs like interpreters and social service needs and stuff like that.
> *Basic Legislation-No Task Force-South, Prosecutor*

In our review of human trafficking cases, it was common for victims and suspects to have crossed state lines in the perpetration of the offense. As demonstrated earlier, our case review revealed both a large number of runaway/throwaway youth being sex trafficked across the country, as well as expansive circuits traversing several states and often coasts that traffickers use to move victims (in an effort to evade detection of law enforcement). Although crossing of state lines (or any movement) is not a required element of human trafficking under the TVPA, it is used currently and has been used in the past to prosecute sex trafficking cases under Mann Act violations. As will be discussed in the next chapter on federal prosecution, transportation across state lines, though not required for federal prosecution was cited in nearly every jurisdiction as an informal federal policy guiding which cases are accepted and declined for federal prosecution. State and local prosecutors, and law enforcement, particularly in non-task force jurisdictions described numerous cases of sex trafficking falling apart when they were unable to travel to other states to collect evidence or interview witnesses, due to a lack of resources or institutional buy-in. Stakeholders also described gaining cooperation necessary to support case prosecution from law enforcement, prosecutors, or service providers in other jurisdictions as "hit-or-miss." As a result, many stakeholders believed that since sex trafficking often involves the crossing of state lines, federal authorities had the resources and jurisdiction to better prosecute these cases.

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However, even in task force jurisdictions, federal prosecutors are not always willing to take human trafficking cases (e.g., they may not take cases that involve a low number of victims or suspects) and as a result, cases may fall through the cracks. One local prosecutor in a state with no anti-trafficking legislation explained the challenges of working with federal prosecutors:

> It would appear that; there was some resistance, some hesitation, in particularly seeking the partnership for the task force funding; we had to do a lot of explaining for our U.S. Attorney's Office to understand that it wasn't contrary to their mission to support human trafficking, again because of immigration issues. You know, we did that type of explaining, and it seems to be getting somewhat better, but we're still working. […]Now again, our cases are all state prosecutions right now. I know Florida just had their, I mean as many cases as they have, they've only had their first state prosecution now, and we're the opposite so. We're hoping to get some of the federal penalties. We're working with one case; it may go federal. We're hopeful, because they have higher penalties, typically for the adults on sex trafficking, so we'd like them to be; it's just that it's difficult at best, and I'm not sure if it's the resources or the understanding or knowledge at the federal level [providing resistance to prosecuting human trafficking cases], particularly at the U.S. Attorney's Office."
> *No Legislation-No Task Force-West, Prosecutor*

Since the state did not have an anti-trafficking law, federal prosecution was the only option to charge the traffickers appropriately and bring them to justice. However, given the U.S. Attorney's Office's lack of priority for human trafficking and reluctance to take cases, human trafficking offenders were prosecuted under lesser non-trafficking charges at the state level. As a result, the true prevalence of identified human trafficking cases is hidden by the criminal justice system as identified cases are dropped or move forward under non-trafficking charges and are never counted as true human trafficking cases. This was not because they weren't cases of human trafficking but because they were not cases prosecutors believed would result in a conviction on a human trafficking charge.

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As stated earlier, many potential cases of labor trafficking are automatically shifted to federal authorities and never prosecuted by state prosecutors. A local prosecutor we spoke with in a Southern state without a task force believed that the rural community where she practiced had a lot of labor trafficking, but offered why she thought federal prosecutors were not interested in these cases:

> They [federal prosecutors] do a lot of the larger drug cases and financial crimes. There's a huge amount [of farming in state] and there's also horse racing. It is a huge industry so we have the horse farms and honestly, I would say that one of the biggest employers here of illegal immigrants are the horse farms and the tobacco farms are also huge so I think that they want to be very careful in prosecuting trafficking cases because they don't want to damage an important industry in [state] so I think that they avoid prosecuting some of them because they don't want to have those kinds of consequences on the local farmers and even the horse track…I guarantee if they went in there, a lot of those people that work there aren't documented and are probably being taken advantage of.
> *Basic Legislation-No Task Force-South, Prosecutor*

A local task force prosecutor in a large jurisdiction in the South was also asked whether he had handled any labor trafficking cases. He responded:

> I: I may be in error but I don't think that this task force has worked very many cases that would involve labor violations. But, as far as labor cases in this area, we could work those all day long. I mean there is so much of it out there. I can just sit and drive around and identify a dozen places we could target.
> Q: Why do you think labor trafficking hasn't been targeted as much?
> I: I think it is the resources. The investigative effort. You know but let's be honest about, you got two [local] full-time investigators who are working [all human trafficking cases] in this area. Now they are supplemented occasionally with other agencies. Now you know how many millions of people we got?
> *Comprehensive Legislation-Task Force-South, Local Prosecutor*

When pressed further about what the potential challenges this prosecutor would face prosecuting a labor trafficking case in the future, the prosecutor responded:

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> I think the challenges that exist are pretty universal to human trafficking charges. I think you are still gonna have victim issues and you are still gonna have issues of the general public and not understanding or caring. It's [labor trafficking] not as sexy or compelling to some people.
> *Comprehensive Legislation-Task Force-South, Local Prosecutor*

In this agency, getting the resources that would be needed to prosecute a challenging labor trafficking case would be exacerbated since the agency and the community do not prioritize these prosecutions.

Victims of human trafficking in the United States without legal status are afforded protection through the TVPA to stay legally in the United States and receive services while their cases are investigated and prosecuted. Findings from our research suggest that this is more complicated in practice and does not always happen. When asked what happens to human trafficking victims in the United States illegally, a local prosecutor in a Midwest state candidly replied: "The majority of them are deported administrarily. […] We don't have the resources to deal with every illegal alien case. Usually if it is just one victim, ICE [Homeland Security] will just deport them." He went on to say that housing illegal aliens in jail or detention and getting services is expensive so "sometimes it makes more sense to just deport them and get them on their way." This statement was made with respect to cases of potential human trafficking. Although federal law enforcement is supposed to be trained to identify signs of trafficking among victims in the United States illegally, as has been demonstrated earlier, the extent to which this happens varies by jurisdiction. As a result, the combined lack of resources at the state and local level to prosecute cases involving illegal aliens (some of whom may be victims of trafficking) coupled with spotty screening of potential victims of trafficking at the federal level, guides the number and type of cases prosecuted at the state level (or at all). When cases of both sex and labor trafficking are referred by law enforcement for prosecution, institutional barriers,

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such as a lack of a specialized labor or sex trafficking unit or designated prosecutor, and formal or informal policies guiding whether and which cases prosecutors are allowed to prosecute and how (using trafficking or non-trafficking statutes), the prevalence of human trafficking in the United States is further disguised.

Individual Challenges

Institutional challenges alone, such as a lack of a specialized labor or sex trafficking unit or resources, are insufficient to explain whether and which human trafficking cases are prosecuted. As presented earlier, prior research on sexual assault by Steffensmeir et al (1998) found that prosecutor "focal concerns" regarding what constitutes a credible victim was the most influential factor explaining why certain cases moved forward to prosecution. Cases where victims were perceived to have engaged in "risk taking" behavior or have a questionable "moral character" were routinely declined. Prior research also finds that in the case of newly defined crimes, prosecutors are less able to assess legal factors necessary to successfully prosecute a case, and as such prosecutorial decision-making is more likely to be influenced by the race, class, and gender of suspects and victims (Kerstetter, 1990; Stanko, 1988; Spears and Spohn, 1997; Spohn, Gruhl and Welch, 1987).

Findings from our study support and extend this research. As presented in the section below, background characteristics of victims of both labor and sex trafficking, appeared to influence the prosecution of human trafficking cases. In some instances, a victim's background may cause prosecutors to dismiss or overlook human trafficking cases. In instances where prosecutors accept human trafficking cases for prosecution, a victim's background may directly impact whether a case moves forward or is amended to lesser non-trafficking charges. The existence of a task force alone was not sufficient to eliminate the extent to which extralegal

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factors influenced the prosecution of human trafficking cases. When asked about challenges prosecuting cases, one local task force prosecutor acknowledged prosecutor bias against victims in her own office.

> Well, there are a lot of potential challenges. I think a lot of it lies with the person who is looking at "am I going to have the insight to identify the case as being important or being serious?" Some of the trafficking situations and sexual assaults have been looked over by the DA staff because I guess what one person may see as warning signs of a serious potential situation, others might not. I don't know if training is a solution to that and it may help but like I said a significant issue could be biases against the types of victims.
> *Basic Legislation-Task Force-Midwest, Prosecutor*

Below is an example of how a case of sex trafficking of two teenage U.S. citizens fell through the cracks for both state and federal prosecution. A law enforcement officer in a Southern state with basic anti-trafficking legislation described how he spent months investigating a case of sex trafficking of U.S. citizen minors who were runaway youth from broken homes and forced into prostitution by a trafficker. When first asked about whether state prosecutors would take the case, he responded:

> Well, the prosecutors, at least the state level they don't look at prostitution, it's not looked on as anything. You might as well go shoplifting, that's about it. Until we get some kind of asset forfeiture. But there again you have to convince the judge that the guy [trafficker], is serious enough. But until you can show the kind of money they are making, ya' know…[you won't be able to convince judges or prosecutors that human trafficking is serious].
> *Basic Legislation-No Task Force-South, Law enforcement 4*

The law enforcement officer was very concerned about the victims in the case so when it was declined at the state level, he took the case to the U.S. Attorney's Office. However, after not working on the case for two years, federal prosecutors declined the case since they thought the backgrounds of the victims made them bad witnesses and since by that time they had turned 18 and were deemed no longer young enough to warrant federal prosecution (informal federal

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policies on accepting human trafficking cases of minors will be discussed in the next chapter on federal prosecution). The law enforcement officer described the situation:

> Q: Did they [State Attorney's Office and Federal Prosecutor] have any specific reason why they didn't want to go forward?
> I: I don't know, and I suspect that a lot of it had to do with the girls being not very good witnesses, […]Last I heard, one of the girls ended up getting pregnant and the other girl was a runaway, and again, almost all of these girls are damaged goods. They come from, you know, really abusive backgrounds. They've been abused physically or sexually.
> Q: But those girls were 16.
> I: Yes, they were 16. One might have actually been 15 when they started, but I think they were 16. They were 16 once we started, but by the time everything happened, shucks, both of them were 18. It took a while to get that squared away.
> Q: It is surprising though with that young of women that the federal prosecutors didn't want to take it?
> I: Well, you know something, sometimes they're [federal prosecutors] looking for even younger girls than that.
> *Basic Legislation-No Task Force-South, Law enforcement 4*

When the criminal justice system creates obstacles or denies justice for victims, as in the case above, it results in another form of trauma and re-victimization. One local prosecutor from a task force explained how even if a trafficking victim cooperates and gives statements, the fact that a victim's associates or family members may not be credible may often work against them and cause the prosecutor to settle or dismiss a case since they feel juries would not believe the victim or witnesses.

> I've had a few [cases], but they've either settled or been dismissed. There have not been that many cases in our office. Well, I remember one. The evidence just in the end wasn't strong. Probably because there were a lot of inconsistencies with the victim's statements and us not being able to prove the case beyond a reasonable doubt to a jury…Typically it would be she [victim] gave an initial statement and as the investigation progresses that statement becomes something that we can't corroborate with other evidence and you need more than just one person saying this is what happened, so oftentimes, and times not of the fault of the victim that things cannot be corroborated. Other witnesses that will

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> corroborate the event are gone or not credible, so you have to weigh the credibility of all the witnesses that will be testifying to see if a jury is going to believe them or not, and that consists of their background, their criminal histories, their age, their relationship to the parties, you know whether they have a stake in the outcome of the case, things like that.
> *Basic Legislation-Task Force-Midwest, Prosecutor*

The quotes above illustrate what is known as "downstream orientation" where prosecutors focused on securing convictions evaluate evidence based on how they believe it will be received by judges and juries (Frohmann, 1997). This is particularly problematic in light of all of the descriptions offered to us by state and local prosecutors about the community's lack of understanding about human trafficking, and in the case of labor trafficking, lack of political will and resources – in both task force and non-task force jurisdictions.

Prosecutors across sites described how victims of trafficking do not make good witnesses for prosecution precisely because some of the factors that led to their vulnerability to be victimized may be held against them by judges and juries or may prevent them from fully cooperating in the prosecution of the case. With respect to both minor and adult victims of sex trafficking, factors that often affect prosecutorial decision-making or prevent victims from fully participating in a prosecution include: runaway/throwaway minors (often not reported as such by parents/guardians), past physical and sexual abuse, past involvement in prostitution/trafficking (even if a minor) or other criminal history, difficult personalities, choice of clothing (prosecutors described how sex trafficking victims dressing provocatively would send the wrong message to the jury), substance abuse, mental or physical disabilities, parental involvement in the criminal justice system or substance abuse. With respect to labor trafficking cases, factors prosecutors believe will be held against victims by judges and juries most often include a person's status as an illegal alien, potential willing participation in being smuggled, a person being from a country

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where they would be paid less than what they were paid in the United States (even if it was against the law it was thought that jurors would not be sympathetic), and language barriers. Prosecutors described how the backgrounds of victims of trafficking, specifically domestic minor victims of sex trafficking, resulted in their victimization as well as presented barriers to prosecution as follows:

> These kids aren't coming from the most stable homes. Yeah, you know the initial reactions are you're police…middle finger. Then they want to protect the kid [and ask] "why do you have to have her testify? What's going to happen to her? Is she going to get killed?" And it's a legitimate concern when you're dealing with a violent street gang. Or they don't return your phone calls or they got legal troubles, and you know, "I don't want to come in for an interview because I have a warrant." See these are all sort of inconveniences that stack up.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

> I was a child abuse prosecutor, and I prosecuted many cases of sexual abuse and physical abuse in the home, and these are kind of like the next level graduating from these homes are the girls out in the streets or you know. And it's troubling, because it's like they were children from an at-risk home, now they're at risk at school, they don't make it or they're on the street, and they're looking for the love, and they've got this pimp telling them this, you know, so they're vulnerable.
> *No Legislation-No Task Force, West, Prosecutor*

> He [serial killer and trafficker] described in excruciating and horrific detail how he would take advantage and kill these young girls and how he took advantage of frankly them being sort of on the margins of society and people really not caring for them whether it was their own family or social services or police, and he truly leveraged that in how he targeted these girls and killed them, so that was something that of course will live for me the rest of my life working on that case.
> *Comprehensive Legislation-Task Force-West, Prosecutor 2*

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Passing an anti-trafficking law alone is not sufficient to bring cases of trafficking forward to prosecution, specifically when victims of trafficking are often perceived as difficult or unwilling witnesses. A prosecutor from a state that more recently passed anti-trafficking noted:

> Prosecution of cases has been its own challenge unto itself, because we're prosecuting cases with difficult witnesses, victims; we don't have the perfect cases; we're dealing with a lot of the trauma; and deciding do we use her as a witness or not, does it help our case or hurt our case. Are we going forward? How do we do this? Do we plea? How long do we plea on? What are our strengths in or case? Taking that forward all of the way to sentencing, so a lot of changes that we're seeing, progressing from drafting an actable law to whole phases of doing the training, investigation, prosecution, and then on the periphery we have a huge awareness campaign, which is helping to hopefully elevate the awareness to bring more awareness and possibly more investigations.
> *No Legislation-No Task Force-West, Prosecutor*

Prosecutors in every jurisdiction included in our study described victim reluctance to testify or lack of cooperation as the biggest challenge they face prosecuting human trafficking cases. One local law enforcement official described his struggles getting victims of sex trafficking to cooperate.[24]

> Getting a girl to personally turn on her pimp is virtually impossible. When you do, the next obstacle is to actually get that young lady to show up in court. All of these girls are afraid of being hurt or of their families being hurt because this is what the pimp tells them …It's the fear tactic that I'm going to murder your whole family or I'll murder your baby but in reality, you know it's not so easy for me to sit across from this young female and tell her the pimp won't hurt her. I can't tell her that I will guarantee that this guy isn't going do anything. Most of them [pimps] are wimps and they know the pandering charge is nothing, but intimidating a state witness, that's a whole different ball game.
> *No Legislation-No Task Force-Midwest, Law enforcement*

A law enforcement official in another jurisdiction in the Northeast similarly explained:

[24] It is also interesting to note that the state's pandering law resulted in a misdemeanor and was thus perceived as having no teeth by law enforcement, prosecutors and traffickers. The law enforcement officer refers to the use of the "intimidating a state witness" charge against traffickers to result in stiffer sentences.

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> The whole victim cooperation thing, whether it's due to loyalty, you know, the prostituted youth is in love with her pimp, to fear, from the foreign national, that either feels they're complicit in their illegal entry into the country, fear of direct retaliation against family, fear of being deported, all of those things. Like, it's I think, that's the biggest thing, is getting the victims comfortable …there's a lot of cultural barriers, all sorts of things that, that are gonna prevent foreign nationals, even for U.S.-born Americans, getting these young ladies to come forward is very difficult.
> *No Legislation-Task Force-Northeast, Law enforcement*

As outlined in previous sections, a host of factors leads to a human trafficking victim's unwillingness to cooperate with both law enforcement and prosecutors in the prosecution of a trafficking case. These challenges, specifically with sex trafficking prosecutions, are not unlike challenges faced when prosecuting domestic violence cases. In the past, prosecutors were able to proceed with domestic violence cases even if victims were unwilling to cooperate, through the use of corroborating evidence (such as victim statements and 911 calls). However, the 2004 Supreme Court ruling in *Crawford v. Washington (541 U.S. 36)* found that allowing such evidence in court without the ability of the accuser to be cross-examined and present in court violated the Confrontation Clause of the Sixth Amendment, and amounted to hearsay (it was previously argued that such evidence met hearsay exemption standards). A few prosecutors referred to this ruling when asked if it would be possible to prosecute human trafficking cases without a victim's testimony. As one prosecutor stated:

> It's not just a necessity, it's a legal requirement. *Crawford* is the case that says hearsay. If I don't have her [trafficking victim], I got no case. If you have testimony of hearsay, and in this case anything that the girl would say to a cop in almost any setting, is going to be testimony hearsay, I had nothing that I could get in the court around *Crawford*, and that's the *Washington vs. Crawford* decision from '04-'06 somewhere in there. That would have prevented me from even getting out with a plea, so you have to have 'em [victims testify].
> *Basic Legislation-No Task Force-Midwest, Prosecutor*

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The ability of law enforcement to use victim statements varied across study sites. As one law enforcement official noted, in their jurisdiction they have been able to apply domestic violence standards to victim testimony and overcome some of the challenges that the Crawford decision presents.

> It's just the ability to contact victims, or to get them to actually get to the point of testifying. We try to treat them the same as domestic violence victims and that's why we try to get a statement immediately after we arrest them because we know that they'll probably recant at a later time. And if we can equate them to domestic violence victims under the battered women syndrome type of thing, we can use their original statement, even though the defense will argue that it's hearsay. We can use their original statement as testimony, because we know they're going to say, "I didn't really mean that." Or, "I lied." Or, "I was afraid." Or something like that. […]So, that is truly our biggest hurdle with our victims.
> *Comprehensive Legislation-Task Force-West, Law enforcement*

When victims run away or refuse to cooperate, cases do not move forward to prosecution or prosecutors must drop cases that have already moved forward. The impact of this ruling was particularly apparent in a site, that unlike many other study sites, did a very thorough job in identifying domestic minor sex trafficking. Local law enforcement officials working in a specialized missing and exploited children's unit were trained to identify and work with runaway and exploited youth (the only site that had a law enforcement unit dedicated to runaway youth). In this relatively small city without a federal human trafficking task force, the unit had also implemented a protocol to identify signs of potential sex trafficking among the children contacted by the unit. Our research team combed through numerous cases meeting the legal threshold of sex trafficking under the TVPA, only to learn that very few of those cases made it forward to prosecution on human trafficking charges primarily due to a lack of victim cooperation. In nearly every study site, prosecutors and law enforcement acknowledged having

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knowledge about other victims in the community who refused to cooperate in the prosecution of human trafficking cases that went forward to prosecution. This finding indicates that the number of victims associated with prosecuted cases is generally an underestimate of the total number of all persons victimized by a trafficker(s).

There were instances where victims who may have initially cooperated with prosecutors and law enforcement refused to cooperate, ran away or went missing as the case progressed. When asked about the biggest challenge he faced when an ultimately successful state sex trafficking case went forward to prosecution, one law enforcement officer explained:

> Victims. Finding willing victims, or just relocating victims. Sometimes they go back home. Sometimes they just disappear into the wind. There's no real way to say ok, for the next six months, because that's how long it takes to prepare a case, you've got to stay here. We don't have a way to house them in like a safe house. Well, if you have a foreign victim of trafficking, or even a victim here, a domestic victim without a cell phone or way of contacting them, they're like gypsies. They move all over the place. Sometimes they go back home. Sometimes they run away again, they end up hooking up with someone else[trafficker/pimp]. We end up with a whole different case, with a different exploiter because they hooked up with another exploiter. Or, they go back to their original exploiter. Victim cooperation is our biggest stumbling block. It's certainly not the prosecutor telling us, "Oh, I absolutely need this element." Or anything like that because [local prosecutor] has been very good with us. Victims, that's the biggest thing.
> *Comprehensive Legislation-Task Force-West, Law enforcement*

In many of the cases we reviewed, charges were dropped or lessened and traffickers went free when victims could no longer be located or refused to cooperate. In a few cases, prosecutors attempted to use the criminal justice system in a creative manner to hold traffickers accountable. For example, in one state, a victim ran away to another state during trial. The local prosecutor

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tried to issue a material witness warrant[25], but it was difficult to do and since it requires each state to officially recognize the acts of another state, they often have little binding effect and are difficult to enforce. At this point, the local prosecutor mentioned that having assistance from the federal government would have been helpful in working across state lines. However, federal prosecutors did not want to take the case since it had a small number of victims. As a result, the prosecutor argued with the defense attorney to be able to charge the defendant with a person felony. Even though the defendant pleaded guilty and only received probation, the prosecutor used the tactic to create criminal history against the defendant (a known local trafficker) so that if he was arrested again in the future, his history could be used against him.

Below is an example of another case where the prosecutor made a decision to allow the defendant to plea to charges resulting in a lesser sentence in a case of domestic/U.S. citizen minor sex trafficking where the victim did not cooperate. It should be noted that although it was a case of sex trafficking, the state did not have an anti-trafficking law.

> One case we had a victim-witness who did not want to cooperate at all. She cooperated to give her initial disclosure and we were able to get her stabilized in services; however, she was re-victimized at least twice following that, which you know made her even more fragile, and I don't think that she would have been able to be on the stand or to be even under direct examination; it was a judgment call that a plea was best in order to do that.
> *No Legislation-No Task Force-West, Prosecutor*

Prosecutors in states with anti-trafficking laws are not immune to the issue of victim cooperation. The following quote demonstrates another reason why many human trafficking cases,

[25] This prosecutor, as well as numerous stakeholders in other study sites described difficulties getting other states or jurisdictions to cooperate in identifying runaway juveniles known to have fled to a certain city or state. As a result, law enforcement and prosecutors sometimes try to charge victims with a crime or issue material witness warrants since these stakeholders have found that other jurisdictions are more likely to follow-up and cooperate in these cases.

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specifically sex trafficking cases, across the country are prosecuted under non-trafficking charges.

> It was very hard to deal with it. It's a lot like domestic violence prosecution in that regard. I had one where I had to amend begrudgingly to a misdemeanor pimping/pandering. It wasn't exceptionally aggravated but she was a juvenile at the time. He [offender] was basically pimping her out but she was completely uncooperative and she had all sorts of issues and didn't want to come to court and when she took the stand at the testimony, it was just awful. She was clearly trying to protect him [offender] and you know that can make for a difficult situation.
> *Basic Legislation-Task Force-Midwest, Prosecutor*

Even when victims are willing to cooperate in the prosecution of a case, prosecutors across all sites described further challenges with how to handle issues surrounding victim/witness credibility. Some of the most common issues we heard from prosecutors involved victims, specifically domestic minor sex trafficking victims, who would initially cooperate with law enforcement and prosecutors (usually after a physical assault by the trafficker) and would later recant.

> Another case we have, we have a good witness-victim; she's got some issues with possibly her testimony and we have a kidnapping charge where the door was locked, but there's no lock on the door. Why did she feel she couldn't leave? And explaining that to juries. So here at this point we look at can she explain that adequately or do we use an expert and what other corroborative evidence do we have to support that. We're always looking for corroborative evidence, so that we're taking the burden off of her.
> *No Legislation-No Task Force-West, Prosecutor*

When victims are present to testify in court, their statements alone are not enough to convict the trafficker—corroborating evidence, such as telephone records, hotel receipts, the testimony of other witnesses (including Johns/customers) and at least one other victim—is key. As we discussed in more detail in Chapter 4 on the challenges of investigating human trafficking cases,

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law enforcement knows they must corroborate everything victim-witnesses tell them, even if the victims are willing to testify.

In many of the study sites, a victim recanting would be grounds to dismiss a case. However, in both task force and non-task force jurisdictions with more experience prosecuting these cases, local prosecutors have begun to try to use a victim recanting to their advantage during a trial. Prosecutors have adopted a model used in some domestic violence cases including the use of expert testimony (usually a law enforcement officer or psychologist/psychiatrist) that explains to the judge and jury the psychological dynamics, threats and coercion, involved in a situation of trafficking. This can be critical to a case, especially in light of findings from the case data analysis chapter that indicated human trafficking (particularly sex trafficking) cases may not contain elements of direct physical restraint and debilitation of the victim. As a result, when a victim recants when they face their trafficker during trial, the judge and jury are able to see the dynamics of the coercion play out in real time, and it helps the jury understand how victims might be psychologically coerced into staying with a trafficker. In many sites we heard prosecutors grapple with juries over understanding why a sex trafficking victim felt she couldn't leave if there wasn't a lock on the door and she had a cell phone (a scenario in many cases). However, the use of expert testimony in human trafficking cases does not occur in many study sites – either because prosecutors do not think to use this tactic or because judges do not allow prosecutors to use expert witnesses. One prosecutor explained how using an expert during sex trafficking cases has been critical to success:

> The other thing I utilize in this trial and in subsequent trials am using, and we will see how this plays out in our state now. Our

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> state is going to adopt a *Daubert* standards[26] on expert testimony. But, I think it is along the lines of drug- related investigations where you have seasoned investigators testifying as to practices in drug-trade. Well I have the investigators testify as to terminology and practices in the trafficking and prostitution trade and I think people are just startled and I think it is really shocking to jurors how degrading it is. I don't think they realize how this whole pimp-prostitute relationship and how it really dehumanizes the women, even the terminology and the practices and the rules that are employed to keep the women. Basically these pimps take all the money and then they will just pay for incidentals for these women and I mean I don't know how that isn't akin to forced labor, especially if he is utilizing violence. There is generally rules they have to follow that are degrading and demoralizing and juries find that shocking …and when juries hear [the expert testifying] works with the human trafficking task force and works with the FBI and is trained in these areas and knows all about this and investigates this and these are the terms of the trade, this is how it functions. This is why it is informative and the juries really don't know it. They just hear the pop-culture of sort of pimps are cool. They don't realize that it is generally pretty demoralizing and the sexism is really in this day and age is like overwhelming like wow I can't believe that so.
> *Basic Legislation-Task Force-Midwest, Prosecutor*

The availability of specialized services for victims of labor and sex trafficking and the existence of a case manager/victim-witness coordinator either within the prosecutor's office, or law enforcement to connect and coordinate service provision for victims during the prosecution of a case was listed as a critical factor among all prosecutors we spoke with that had prosecuted a human trafficking case. Unfortunately, as has been detailed at length in prior chapters, the availability of specialized services for victims of trafficking, particularly domestic minor victims of sex trafficking, is minimal at best across all study sites. In some of the study sites, identified victims of trafficking, including children, willing to cooperate in the prosecution of a case were moved out of state to receive specialized services – this was either due to a lack local services,

[26] The *Daubert* standard refers to the ruling in *Daubert v Merrell Dow Pharmaceuticals* (1993) regarding the admissibility of expert witness testimony under Federal Rules of Evidence. Pursuant to this ruling, a party in a federal legal action may raise a motion to exclude the presentation of unqualified evidence to the jury.

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the need to move victims to keep them safe if traffickers had threatened them or to return runaway youth to their home state . Having to move victims outside the jurisdiction while a case was being prosecuted presented further logistical and resources challenges to state and local prosecutors. In other cases, victims were referred to non-specialized local services. The victim service provision need most often cited by prosecutors was secure, specialized and long-term housing for domestic minor victims of trafficking. If shelter was available at all, it usually consisted of a youth shelter or shelter for victims of domestic violence that was unsecured. Much more often victims were arrested or sent to juvenile detention as a mechanism to keep them in a secure facility long enough to get them to cooperate (this finding communicated by stakeholders and was supported by the data analysis of law enforcement investigative files presented earlier). Service providers, prosecutors and law enforcement described the legal inability to hold these victims in a secure and locked facility resulted in many of them running away or being recruited by additional traffickers who targeted these facilities. It is an interesting conundrum to note that while the federal anti-trafficking law and most state laws hold that if a victim is under the age of 18, they are considered inherently forced into prostitution (sex trafficked) because they are too young to consent, yet victims under the age of 18 are deemed competent enough to independently make decisions affecting their protection and services. As was communicated across many sites, minor victims may often be more attracted to the lifestyle offered by the trafficker or living on the street, than the services (if any) offered to them.

The few state prosecutors in our study who felt compelled to test (sometimes for the first time) their state anti-trafficking laws and were able to secure victim cooperation, were then met with challenges in the form of judge and jury misunderstanding, bias, and lack of knowledge about human trafficking.

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In some jurisdictions prosecutors were able to navigate the challenges of explaining the elements of a newly defined crime such as human trafficking to judges and juries and felt that once they understood, they did not present any serious impediment to the prosecution of the case. Prosecutors in a few states have been testing a variety of strategies to educate judges and juries. Some prosecutors have introduced expert witnesses, such as police officers, to explain the dynamics of human trafficking, particularly sex trafficking. Other prosecutors and law enforcement see it as part of their duty to educate judges and juries. For example, one law enforcement officer stated "it's the DA's office and it's our job as law enforcement to educate the jury as we go through a case. It's not just about presenting facts" (Basic Legislation-No Task Force-Midwest, Law Enforcement). Similarly, a prosecutor in another state mentioned, "it was educating the judge as to how someone else's actions could be relevant to this defendant's prosecution so that was our biggest challenge and I think the judge in the end did come around on our side of that and allowed us a lot of leeway" (Comprehensive Legislation-Task Force-South, Prosecutor).

In other jurisdictions prosecutors had a more difficult time working with judges and juries. Service providers in one state described how a state prosecutor from a nearby state (the first in her state to use the state anti-trafficking law) provided training to local prosecutors on how to educate juries, but that challenges still exist with respect to overcoming misperceptions of the definition of trafficking.

> I mean we go out all the time and people have no idea what sex trafficking means and that's an issue in [state], and that it can happen in [state]. If women are involved in prostitution there's this sense that they of course you know consented to it, culpable themselves.[Nearby state prosecutor] talked about how she addressed that very clearly up front with the jury before the case went to them. And she just said that you may not like these girls [victims]. I mean they may have done something you don't agree

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> with, just have all those discussions. Get in on the table, talk about that for a while then put that over here and then talk about the conduct of the defendant…And I think it was a piece we definitely needed to provide some guidance on…Especially with the [state] law because you don't have "forced upon and coercion" [for a minor] it doesn't mean that your juror isn't going to be waiting for some showing that this person was chained to the radiator and kept there. And if they don't see that, they're just going to see this person as a prostitute and not as a victim of trafficking. And so it is a huge issue and it's something we addressed in our training, we needed to address it; we would love to be able to do more because I think that it's a barrier.
> *Basic Legislation-Task Force-Midwest, Victim service provider*

One prosecutor described how a sex trafficking case of a U.S. citizen was lost when a judge allowed the defense attorney to claim human trafficking only happens to illegal immigrants smuggled across borders. Although the prosecutor objected, he felt that the fact that the judge allowed this to happen biased the jury's decision with the final result an acquittal for the trafficker. We also heard stories of judges in other jurisdictions who allowed irrelevant factors regarding a victim's past to be legally admissible during trial, as one prosecutor (who was ultimately successful prosecuting her state's first sex trafficking of a minor case) explained:

> Our trial judge was what I like to call a good ol' boy, and he wasn't going for this. And he made life extremely difficult during trial…At one point during the trial, because we had asked for a lot of stuff to be kept out [related to the minor victims' pasts], you know we did our standard motion of limiting and this stuff isn't relevant and we shouldn't be allowed to talk about it and at one point during the trial, just after the girls testified and the judge said, "Well I don't care about the rulings I made before. Anything is coming in because I think your girl is a lying little 'you-know-what.'[derogatory word] And I said, okay, well, and that's where we are. And please don't think it's indicative of [state], but there are some things like that. And I mean he'd probably be the same way on a sexual abuse case.
> *Comprehensive Legislation-No Task Force-Midwest, Prosecutor*

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State prosecutors were interviewed perceived that judges often do not think trafficking is serious for a variety of reasons – either because they are uninformed and have never presided over a trafficking case before, or because they are biased against the victims who they see as prostitutes (sex trafficking victims) or illegal immigrants complicit in their smuggling or exploitation (labor trafficking victims). In a few jurisdictions, we heard about resistance from judges who may have been involved in trafficking themselves. When asked whether judges have provided any resistance to the prosecution of human trafficking cases, one law enforcement officer offered the following,

> Well here's one of the things we do now is that we tap in, once we get onto somebody [potential trafficker] we grab their e-mails and we're able to see they're talking to attorneys and there is no doubt there is going to be some judges and some cops involved [in human trafficking, particularly sex trafficking as customers].
> *Basic Legislation-No Task Force-South, Law enforcement*

In some jurisdictions prosecutors and other stakeholders have been trying to address the lack of knowledge and experience of judges with respect to human trafficking by offering training. However, they are often met with resistance.

> We've been attempting to get into the judicial conclave, which is their annual training, and there's a waitlist to attend, so we've been attempting for two years, and we're hoping that at some point they'll be space for us to do a presentation to at least initially train the judges, because I think the trauma-informed issues should be awareness to the judge that they're working with this type of typology victims that they think they can't leave, this is why, and an understanding of the way that the defense plays it out; you know that we have a victim that's not credible should not be their lead.
> *No Legislation-No Task Force-South, Prosecutor*

A law enforcement officer in another jurisdiction explained:

> Well what I'm finding is that some of the people that own some of these businesses [that are profiting from human trafficking] are

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> wealthy business men. They have a lot of money to hire good attorneys. That's one. Number two is, I don't think the judges know the law. I don't think a lot of them have taken the classes. I know for a fact they haven't taken my class because it's been offered to them several times in different opportunities for CLE credits or different purposes throughout the county and you will get limited people coming to the class. In the beginning I thought it was because they were mad we had taken down a judge [in a human trafficking sting] which I can understand you're angry but now let's get past the anger. Let's talk about your job and what you're supposed to know and not know in the courtroom. So now we're past that and you get some judges who always are the ones that want to learn, but then you have the judges that should be there, like family court judges, city court judges, county court judges that should be listening to this and you have judges in rural farm counties that should be coming to this. And yet you don't see a response. If they're not forced to learn about it, they're not going to learn about it and therefore they're going to keep perceiving it as no major crime. It's no big deal.
> *Comprehensive Legislation-Task Force-Northeast, Law Enforcement*

In addition to judges, prosecutors in every study site (task force and non-task force, states with laws and without laws, big cities and small) described the challenges they faced with educating juries about human trafficking. Below are a few of many similar descriptions of juries we heard.

> You have to get over this contention that it is…human trafficking…the perception from jurors is, well this is slavery, they go a ball, iron ball attached to their leg, and they're wearing rags and sleeping in a shipping container. All right, real perception issues that you have to battle on human trafficking. They don't want anybody, you know, they think well they don't speak English and they're being whipped. Um, it's hard, it's hard. And the facts that fit that circumstance don't come along all the time.
> *Comprehensive Legislation-Task Force-West, Local Prosecutor*

> I think it's really hard to make the general public realize just how much these people are being victimized. I think it's really hard for people to understand the [labor trafficking-domestic servitude] victims being forced into servitude when they can come and go to some extent. Most people can't really accept that they're fearful for their families in another country. I don't think they realize how

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> these traffickers are actually networked and so I don't think they believe that there could be genuine fear that your family's gonna be attacked in South America if you're here not doing what you're told to do. I still think in sex offences, there's still such a huge gender bias as far as victim blaming goes and then when you add the element of you know they use the opportunity to get into the country illegally, I think that there's a lot of bias and I think people really have—you know you watch TV and all the TV shows, it's a truckload of girls trapped in the back and they're being hauled back and forth and I really think that's what people imagine.
> *Basic Legislation-No Task Force-South, Prosecutor*

Attorneys who had successfully prosecuted state trafficking cases, offered guidance on the tactics they used to select and instruct juries. The following quote illustrates how one prosecutor avoided from talking too much about the phenomenon of human trafficking, even when prosecuting the state's first human trafficking offense.

> Q: Were you concerned about picking the jury and how they would respond to a case like this?
> I: Yeah, originally I was but once I started jury selection I wasn't because, it just…that may sound weird but if you're a trial attorney, you kind of, when you get in front of a jury after about five minutes you kind of get a feel for who you've got and it was just…it was a good, down to earth, local people kind of jury. And so there wasn't anyone that I was too concerned about, um, once we got everybody picked.
> Q: In terms of educating them about this thing called human trafficking, did you feel you had to do a lot of that? In trying to understand what is this new kind of crime and slavery?
> I: You know what? No, I didn't. Because…and that was purposeful. I spent the majority of my time, I mean I did all my standard stuff. But I spent the majority of my time talking about what I just said—of who is really responsible. Um, I had a lot of different scenarios that I'd go through with the jurors about […] basically I'd give them a scenario where this teenager does this thing and keep walking through different…keep adding on to the facts and just kind of getting a feel for where people were at with, you know, although the teenager is responsible for their choices, but in the end, this adult that was giving them this or telling them to do that, is truly responsible. I just spent a lot of time on that. The human trafficking charge itself, the elements are pretty simple. So I didn't want to spend a lot of time on going into modern day slavery and all that because it just doesn't play on a real jury. I just don't think it would have been a good idea.

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Comprehensive Legislation-No Task Force-Midwest, Prosecutor

Another prosecutor offered the following guidance on how he worked with juries to prosecute a state case of sex trafficking of adults and minors:

> So what I do with the jury is, I have an example that I've used in quite a few cases um because I start them out by asking them, you know, "Who here has firsthand knowledge of or knows someone firsthand who's been involved in prostitution? Well, the number of hands that go up maybe is one or two. Okay, so then I say, "Where do you get your information about prostitution and what it's like? People look around and they say, "Well, TV, magazines." And of course we've already had a previous discussion about who watches TV. Well everybody does. "Who here believes everything they see on TV?" [Laughs] No one raises their hand for that. Well then you get to the point, "Where are you getting your information about what it's like to be involved in prostitution?" "TV." "Oh, okay. So, who believes everything they see on TV?" Well, nobody. Well, then we start exploring, you know, some of the reasons, "How does Hollywood treat prostitution?" "Well, they sort of glamorize it." "Well, how do they glamorize it?" "Oh, Pretty Woman." "Oh, okay. Well how do you think real life is different from Pretty Woman or shows like that?" Okay, and then you get all these great examples, and people start thinking about how rotten it must be to be out prostituting and talk about pimping in vernacular with, "Now, how does Hollywood treat pimps?" "Well, they glamorize it." "Well, what's a pimp?" "Well, gosh, I don't really know. Someone who protects the girls?" And, so you get them primed for this to be presented to them and then I have the benefit of having an expert on pimping come in [one of two sergeants from the human trafficking task force] to come and testify about sort of realities. We start with talking about vernacular terms used in the subculture, different stages of the pimp-prostitute relationship, how coercion is used on girls, how girls can be on something called autopilot, why they might be on autopilot, why a girl may go back to their pimp, and that's how I prime the jury. I can't be over the top with it, and really what I'm trying to do when I do that is I want to, I want to get the nuts out of there who say, "Oh no one could ever be forced in prostitution or prostitution should be legalized or being in a gang is okay" or the like. You want to ferret that out, as a prosecutor I want to ferret that out.
>
> *Comprehensive Legislation-Task Force-West, Prosecutor*

State-level prosecutions of human trafficking cases face innumerable challenges—from the ambiguity of new state laws to prosecutorial agency barriers against using anti-trafficking laws, to hurdles over victim cooperation, evidence corroboration, and judge and jury bias. Despite

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these challenges, some cases have been successfully prosecuted under state human trafficking laws. However, findings from our study indicate that the great majority of cases have either not moved forward to prosecution under any laws (trafficking or non-trafficking), or have been prosecuted using non-trafficking statutes. Below are a few recommendations that may aid law enforcement, prosecutors and service providers, in overcoming the challenges of state prosecution of human trafficking cases.

Strategies to Overcome Challenges to State and Local Prosecution of Human Trafficking Cases

The section below provides a summary of the innovative strategies and techniques state and local prosecutors have been using to prosecute cases of human trafficking using state human trafficking laws. The section also incorporates a few recommendations, many of which were suggested by the prosecutors we interviewed, regarding how to improve and increase state prosecution s of human trafficking.

Human trafficking awareness-raising has been a focus of past funding efforts, however, it is usually targeted to educate the general public about indicators of potential labor and sex trafficking. Past conferences, mostly attended by prosecutors in task force jurisdictions, were described as focusing on federal-level prosecution rather than state prosecution. While necessary, state and local prosecutors, law enforcement and judges cited a need for state-specific training on the specific legal elements necessary to prosecute a human trafficking case using the state law. Involving local law enforcement in the training would enable prosecutors to work closely with law enforcement on interpreting the legal human trafficking statute into the specific evidence collection necessary to corroborate victim testimony. In a jurisdiction where prosecutors worked closely with law enforcement during the investigative process (rare among sites); they were able to bring strong evidence forward to support case prosecution using the human trafficking statute.

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It is also recommended that state and local trainings on state human trafficking laws involve federal prosecutors so that discussions can be had and protocols can be formalized regarding which human trafficking cases should be referred for federal versus state prosecution (in both task force and non-task force jurisdictions). Even in some sites with task forces, these protocols and conversations did not always occur. This is especially critical for labor trafficking cases—none of which have been prosecuted at the state level in our study sites. In some jurisdictions, a single case may involve multiple defendants that are charged with state and federal laws necessitating the cooperation among state and federal prosecutors and law enforcement.

Many we spoke with recommended that state and local trainings be offered to a large variety of stakeholders; for example, not just involving designated "human trafficking" investigators or prosecutors, but a large variety of stakeholders that may already be coming into contact with trafficking victims or offenders but may be failing to identify them (e.g., domestic violence prosecutors, patrol officers, gang unit investigators, juvenile court judges, local and county judges, etc.). The use of mock trials involving judges, prosecutors, law enforcement and service providers may be a useful tool for education and training at the local level. Additionally, implementing an online system for state and local prosecutors to share things such as case law, sample jury instructions, and charging documents, as well as contact information, would be a useful tool to encourage state prosecutors to use relatively new and untested human trafficking statutes.

Separately, more research is needed on a state-by-state level to determine how differences between existing anti-trafficking laws and affiliated laws such as state and local labor codes, pimping and pandering laws, age of consent laws, and child exploitation laws, etc. may

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sanction and conflict with the prosecution of state human trafficking cases. For example, if a state's age of consent law is 16 years of age, victims of sex trafficking between 16 and 17 years old may not be identified and treated as such even though the state and federal laws consider a minor to be anyone under the age of 18. Additionally, although the federal and some state laws do not require the elements of force, fraud or coercion to be proven for victims of sex trafficking under the age of 18, prosecutors may only accept and prosecute those cases where these elements can be presented to judges and juries who may be biased against victims. Some states have also rushed to strengthen pimping and pandering laws such that penalties under these laws may be higher than penalties under state human trafficking laws. In addition, these laws may also carry a lower evidentiary burden and may be more preferable for prosecutors to use. In other states, these laws may carry a lesser penalty, but still be used by prosecutors who are more comfortable charging with them. Legal analysis is needed to determine how the legal elements and evidentiary standards of related laws may conflict with state human trafficking laws and influence prosecutorial decision-making.

Human trafficking case prosecutions are often lengthy and resource intensive. If a prosecutorial agency lacks a specialized unit and dedicated prosecutor trained on the nuances of prosecuting human trafficking cases, and supported institutionally to spend the time and resources to prosecute a case, cases are unlikely to be accepted for prosecution, either at all, or using human trafficking charges. Designated and training a prosecutor or group of prosecutors on the state human trafficking law and making these prosecutors known to local law enforcement – for both labor and sex trafficking – could help increase the number of cases brought forward by law enforcement for prosecution. This was rare to occur in many of our study sites.

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The few prosecutors included in our study who overcame the legal ambiguity and institutional challenges to accepting and prosecuting a human trafficking case under state laws used a variety of tactics to overcome challenges encountered during case prosecution. The most common challenge cited by law enforcement and prosecutors with respect to sex trafficking cases was a lack of cooperation from victims. Specialized services for victims, most importantly secure, long-term housing, and the involvement of a victim services coordinator or case manager was a key factor influencing whether or not a victim would cooperate during prosecution. Unfortunately, most of our study sites (including task force sites) still struggle with a lack of comprehensive, specialized and coordinated services for victims of trafficking, particularly U.S. citizen adults and minors. Existing service systems, particularly child welfare, are not usually coordinated and leveraged to deal with the complex service needs of this population.

Victim testimony is crucial (and legally necessary) to the prosecution of a human trafficking case. When victims runaway, refuse to cooperate or recant, prosecutors and law enforcement in many jurisdictions have declined or dropped the investigation or prosecution of a case. In a few jurisdictions, however, prosecutors and law enforcement have begun introducing expert witnesses to testify on the psychological dynamics and coercion involved in sex trafficking so that when a victim recants, judges and juries are better able to understand and not use it against the victim.

Some stakeholders believed that adding asset forfeiture provisions to state human trafficking laws could help strengthen cases by enabling judges and juries to see the amount of money involved in human trafficking (potentially causing them to take these cases more seriously). Other stakeholders believed that adding asset forfeiture provisions to the state anti-trafficking law would help bring resources to their units and/or funnel resources to help fund

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specialized services for victims. In addition, asset forfeiture would also serve to elevate the perception of severity of the crime within the law enforcement agency. For example, we often heard about how units such as narcotics get all of the resources, attention and respect from fellow law enforcement officials because they are able to seize assets. While asset forfeiture is clearly a tool for increasing institutional buy-in to accept human trafficking cases, the expectations about how many resources asset forfeiture will yield should be tempered. Some prosecutors and law enforcement officials in states with asset forfeiture for human trafficking offenses spoke about the difficulty with seizing assets because the majority of street-based/internet sex traffickers tend to spend money as soon as they make it and often rent or lease cars and property precisely to avoid asset seizure. According to one federal prosecutor:

> The locals wanted to forfeit property –they think this is the golden egg. I think they get waylaid by delusions of monetary grandeur, but the fact of the matter is that most traffickers don't have the property you are looking for. Most traffickers spend what they earn, but that doesn't mean they aren't traumatizing people.
> *Basic Legislation-No Task Force-South, Prosecutor*

It is important to note that this comment refers to street (and internet) level sex traffickers. Those involved in investigations and prosecutions of massage parlors, escort services and other businesses operating as fronts for sex trafficking have found these laws to be useful in dismantling these organizations. These laws may also prove useful in cases of labor trafficking, most often prosecuted at the federal level, as will be described in the following chapter.

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Chapter 7
Federal Prosecution of Human Trafficking Cases

Despite a push from the Department of Justice to support the prosecution of human trafficking cases at the local and state level, a majority of human trafficking cases identified by local law enforcement agencies are still being prosecuted federally. As we discussed in more detail in the previous chapter, local and state prosecutors often lack training on human trafficking, have more limited resources to pursue these types of cases, and have less punitive sentencing options. Additionally, most state human trafficking legislation is new and "un-tested" when compared to the federal TVPA; thus, federal authorities are more experienced with moving these cases forward to prosecution, and there is a substantial body of federal case law to guide the prosecution of both sex and labor trafficking cases. Although there are a number of advantages to prosecuting human trafficking cases federally, there are also challenges. Many of these challenges are similar to the ones facing local and state prosecutors; however, there are some unique challenges to prosecuting human trafficking cases federally. In this chapter we examine the challenges and potential strategies to overcome these challenges identified through our interviews with federal law

Chapter Overview

Major findings:
- Most human trafficking cases identified by local law enforcement were prosecuted federally.
- A benefit of taking a case forward to federal prosecution is the possibility of offenders receiving more severe penalties.

Challenges to the federal prosecution of human trafficking:
- Prosecutors are sometimes unwilling to take time- and resource-intensive cases.
- Proving human trafficking requires gathering much additional evidence.
- Prosecutors have to contend with errors made early in the investigation.
- Victims are often unwilling to cooperate and their credibility is commonly challenged.
- The period of time between when a cases is initially referred by law enforcement and sentencing can be very lengthy.
- Prosecutors perceive ambiguity in federal law, particularly with providing fraud or coercion.
- Even if prosecutors are successful in moving a case forward to the plea stage or trial, they still sometimes encounter judge and/or jury reluctance.

Strategies to improve federal prosecution of human trafficking:
- Corroborating victim testimony with "hard" evidence (e.g. cell phone or hotel records)
- Applying multiple charges to the case
- Using criminal complaints to remove the defendant from the streets, in order to aid victim cooperation and educate the public about human trafficking

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enforcement and prosecutors as well as local authorities. Our discussion of the challenges to the federal prosecution of human trafficking cases is divided into three main sections: 1) the unique role of federal prosecution; 2) legal and case specific factors inherent to the crime of human trafficking, 3) and organizational factors.

The unique role of federal prosecution

In the U.S., local and state governments have traditionally been responsible for crime control. The federal government pursues criminal prosecution in cases that affect federal interests such as interstate commerce or when crimes cross jurisdictional boundaries, crimes that occur on federal property or violations of specific federal statutes. As a result, a much smaller number of cases are prosecuted federally each year than those prosecuted at the local or state level. For example, in 2008 approximately 78,000 criminal cases were filed in U.S. federal courts compared to over 21 million criminal cases filed in state courts (U.S. Census Bureau, 2011).

Since the passage of the TVPA in 2000, the limits of state prosecutorial authority have provided incentives to prosecute human trafficking offenses in the federal system. For example, the federal government had the authority to prosecute human trafficking offenses in 2000, three years earlier than the adoption of state legislation criminalizing human trafficking offenses. The TVPA created a specific offense in the U.S. Code for sex trafficking, sex trafficking of minors and labor trafficking. It was not until 2003 that the first state passed legislation criminalizing human trafficking offenses giving state and local prosecutors the authority to bring criminal charges against offenders for a crime of human trafficking. A majority of states did not pass legislation criminalizing human trafficking until 2006 and two states still today do not have any criminal offenses specific to human trafficking. As a result, at certain times and in certain

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places, the federal government has held the only authority to prosecute cases as human trafficking offenses. More recently in a number of states, state and federal prosecutors have shared the authority to prosecute human trafficking offenses and often local law enforcement authorities must determine the appropriate jurisdictional venue for the prosecution of specific incidents. In the following sections, we discuss the specific strengths and challenges to the prosecution of human trafficking cases at the federal level.

A clear strength of taking a case forward to federal prosecution is the possibility of offenders receiving more severe penalties. The offenses codified in the TVPA carry strong penalties as delineated in the federal sentencing guidelines. For example, labor trafficking offenses (18 U.S.C.1589 and 18 U.S.C. 1590) begin at a base offense level of 22 (out of 42 levels in the guidelines), meaning depending a defendant's criminal history they could face a sentence between 41 months and 105 months in federal prison. Sex trafficking offenses (18 U.S.C. 1591) involving a child or through force, fraud or coercion are codified in the federal guidelines at a base offense level of 34 which carries a term of imprisonment between 151 months and 327 months in federal prison (USSC, 2011). This penalty structure is much more severe than most state human trafficking laws and certainly more severe than the types of state offenses such as pandering or promoting prostitution that human trafficking offenders are often charged with at the local level. When asked about how they decide whether to take cases to state or federal prosecution, one law enforcement officer confirmed the value of the federal penalty structure, stating

> Federal every time. Through the state level, they're only looking at I think maximum three to five years for human trafficking where we can get upwards or ten or twenty years at the federal level. And it's not that I like the FBI better than I do the [state] AGs office, I just would like to see…you want to see big time come out of a case like this.

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No Legislation-No Task Force-West, Law enforcement 1

Despite the benefits of prosecuting a human trafficking case federally, there are a number of challenges to federal prosecution. First, federal prosecutors are often unable to accept human trafficking cases due to a number of challenges. Human trafficking cases pose substantial and unique challenges for federal prosecutors including the need for more evidence than might be necessary for a state prosecution. Federal prosecutors we interviewed commonly suggested that they did not proactively look for human trafficking offenses to prosecute within their jurisdiction. Instead, prosecutors waited for local authorities to bring them cases. As one prosecutor noted, "We're not looking for cases to charge; they kind of come to us. We're not going to shelters, the greyhound station, and things like that" (*Basic Legislation, Task Force, Midwest, Prosecutor 1*). Other federal prosecutors indicated that they did not regularly receive referrals of cases from local authorities and when they did receive referrals, they were often not appropriate for federal prosecution. One federal prosecutor went as far as asking members of the research team to refer cases if we heard about them during the course of our research, stating: "Do you know of any human trafficking cases in the area? We are "open for business" (*No Legislation, Task force, Northeast, Prosecutor 3*).

Local law enforcement officials expressed concern about referring cases federally since federal prosecutors often took too long to make a decision about whether or not to accept the case for prosecution resulting in "good" cases being dropped. One law enforcement officer illustrated this point:

> They have to run everything through the U.S. Attorney's office which just brings stuff to a screeching halt. One of the other cases back there, we had a girl over here. There was a group of them right behind us. The one girl was a 17 year old, there's her, 2 other

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> girls, we got a pimp, we got a bodyguard and that was right after this trafficking task force started in (state) of August of 2008. I called the woman in the U.S. attorney's office and said what do you think? She said "yep, we like that case we'll take it." Well, she assigns it to someone else in the office down here. While I'm waiting for some type of assistance from them, cause' I went through the phones and I'm finding girls all up and down the east coast, Philly and all this that we can go talk to. I'm waiting, waiting, waiting…nothing happens. So finally I start, and I go out to Philly, Pittsburgh, I go out to Ohio tracking down girls. Then when I'm done…she says "yea…we'll get to it." She was telling our prosecutor "yea, we'll have a warrant for this guy." The day came that we had to drop her charges, you know you have to do something. So we dropped the charges and I get a call from the U.S. Attorney's Office saying "is there something you can do to charge him?" I'm like no.
> *Basic Legislation-No Task Force-South, Law enforcement 3*

Federal prosecutors clarified that they would only be willing to accept particular types of cases for prosecution. As one federal prosecutor explained,

> Well I try to take the bigger cases, because we have so much more resources than the state has. So I try to take the bigger ones, the badder guys. With multiple victims. When you're saying multiple victims, you are also saying multiple witnesses, because they are all witnesses, so that's key too, but there was an exception that you may know about. Yeah, my idea is to really target the biggest pimps, sex trafficking entrepreneurs is the politically correct terminology. You have to be careful when you say things like pimps.
> *Basic Legislation-Task Force-Midwest, Prosecutor 1*

In addition to describing a heightened level of severity that this prosecutor is looking for in human trafficking cases (e.g. "bigger and badder"), the interviewee clarifies that federal prosecutors do not want to prosecute "pimps" since those cases would be handled by state prosecutors, but rather they are looking at "trafficking entrepreneurs" whose behavior meets the standards specified in the TVPA. Another prosecutor clarified, "We made a couple of decisions.

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We did not prosecute prostitutes. Even 'bottom bitches'[27], with one exception: [name of case], who prostituted her own 14 year-old daughter" (*Basic Legislation-No Task Force-Midwest, Prosecutor 1*).

A local law enforcement official confirmed that the U.S. Attorneys have specific standards for human trafficking cases that may differ from traditional state prosecutions.

> I: Then we talk about [where to go state or federal], you know: one, does the case that we're investigating meet the criteria that we know the US Attorney's Office is going to want. They want more than one victim. They want a slam-dunk case. They don't want issues.
> Q: Can you describe a slam-dunk case?
> I: Where you have more than one cooperating victim, or witnesses, and then, you're cooperating evidence all meets. I mean, it's handed to you on a silver platter. And so all the ducks are in a line; you've got your victims, witnesses. They're all cooperators, they'll all go before the grand jury and say X, Y and Z. You've got hotel receipts, you've got, you know, medical records, you've got...pictures of injuries, you've got loaded guns, you've got the smoking gun from the grassy knoll. I mean, they want...they want it all pretty.
> *Basic Legislation-Task Force-Midwest, Law enforcement 9*

The need for substantial evidence of trafficking, even if there was one victim/witness willing to cooperate and testify in court, was a recurring theme in many of the interviews with both law enforcement and federal prosecutors. One prosecutor explained, "I really just ask two questions. Are any of them minors, and does he beat them, because that gets you into the federal statute; minors and fraud or coercion" (*Basic Legislation, Task Force, Midwest, Prosecutor 1*). A victim service provider confirmed the perception that federal prosecutors "cherry pick" their cases, stating

[27] "Bottom bitch" is a term commonly used by pimps to describe the girl/woman who manages the other women who are controlled by the pimp. The "bottom bitch" often has been involved in prostitution herself and may continue to be involved in prostitution while serving a managerial function. These individuals often set up "dates" with customers and post advertisements for women on online sites. Car leases, hotel room reservations and credit cards are often in her name to avoid detection of the pimp.

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> …[federal prosecutors] only do what is a big case with 50 or 100 victims, which looks like it is going to be a big high profile thing. Those are the ones they'll put two years of time into. They won't do it for individuals or family operations or small operations…you know they're just too busy.
> *Basic Legislation-No Task Force-Midwest, Victim service provider 1*

It is interesting to note that while law enforcement and service providers perceived that federal prosecutors "cherry picked" their cases based on being too busy, several AUSA's stated that they had little choice but to hand pick cases due to a lack of resources (see below).

In addition to federal prosecutors only accepting referrals with multiple victims, several AUSAs mentioned that in their jurisdiction the U.S. attorney would only accept human trafficking cases that involved juveniles. The consensus was that when juveniles were involved in a case, there was a stronger likelihood that the suspect would plea for a higher sentence, or if it went to trial, that the jury would be more likely to convict. One U.S. Attorney stated,

> We only took cases in which there was a child involved, although it's a federal crime to take an adult. We said we had limited resources, we're going to focus on child prostitution. And so those were the prosecutorial decisions we made early on. That would sort of be the way I would look at any case that came in now. Unfortunately, we have to, I think, devote our resources to children.
> *Basic Legislation-No Task Force-Midwest, Prosecutor 1*

Federal prosecutors also specified that even when cases meet a federal threshold, they might decide to reject cases based on errors that have occurred in earlier stages of the investigation. Because a majority of human trafficking cases are identified and initially investigated by local law enforcement, federal prosecutors receive these cases from local law enforcement agencies as opposed to federal law enforcement agencies. For many other types of federal cases (e.g. drug trafficking, gun trafficking, organized crime and money laundering), prosecutors work an investigation with federal law enforcement authorities up until the point of

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arrest. This allows the prosecutor to control a large part of the investigative process. However, as many local law enforcement officials we spoke with claimed, what they often experienced with human trafficking cases is that they would initiate the investigation and the case would be referred to the federal prosecutors after the point of arrest. This does not allow for the prosecutor to control what can very easily turn into a chaotic and complicated investigative process. Thus, a common complaint stated by federal prosecutors is that they are not receiving "good" referrals, whether it be because local law enforcement is referring cases with weak evidence and few (if any) witnesses, the overall standard of evidence for all federal cases is higher than for state and local cases or because local law enforcement is botching the initial investigation which leaves prosecutors with little evidence to work with. One federal prosecutor in a jurisdiction with a task force stated:

> It would be helpful to have a uniform policy on how to deal with these cases on the local level so the cases are not damaged before they get to the federal side. The first 24-48 hours are critical.
> *Basic Legislation-No Task Force-South, Prosecutor 2*

Across sites, some distinctions were made in the process through which federal prosecutors screen cases. As one federal prosecutor noted, they are willing to re-examine cases if law enforcement can secure evidence that would support federal prosecution.

> If a case comes in the door and is declined, they always tell the investigators that the door is open and that they should return if they get more evidence. She [federal prosecutor] doesn't think that ever happened, i.e. that a case was declined and then came back with more evidence and got prosecuted. There were many cases where the investigators came back with additional evidence, but they still could not address some significant gap in the case that had to be addresses in order for the case to be prosecuted.
> *Comprehensive Legislation-Task Force-Midwest, Prosecutor 2*

In one site a victim service provider who works collaboratively with federal prosecutors (though not as a federally funded task force), recognized the evidentiary hurdles that federal

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prosecutors face when they accept trafficking cases. This service provider suggested that prosecutors in her jurisdiction were eager to pursue human trafficking cases but more resources are necessary to help federal prosecutors devote the time necessary to properly prepare human trafficking cases for prosecution. When those resources are not available, the case might unfortunately be dropped.

> So, that is a real problem in that if you have lack of personnel and no dedicated personnel, then they can't take every little case and try to run it down. They have to, you know, prioritize. I hear from local law enforcement, the sheriffs, the police departments, is that those federal guys talk a good talk, but we can't get them to come and show up on any cases. So, to defend everybody, it's really about personnel and economics and the abilities, it's not their desire to respond, it's their lack of time and effort and funding to respond.
> *No Legislation-No Task Force-Midwest, Victim service provider 4*

Legal and case specific factors

Federal prosecutors cited a number of factors specific to the crime of human trafficking that posed important challenges to prosecuting these cases. These factors include victim cooperation and credibility; the length of the process from the initial referral by law enforcement to sentencing; and ambiguity in the federal law, particularly with proving fraud or coercion.

Length of the Process and Victim/Witness Cooperation

Similar to one of the main challenges identified by state prosecutors interviewed for this study, many of the federal prosecutors we interviewed asserted that gaining cooperation from victims and witnesses was one of, if not the largest hurdle to overcome when prosecuting human trafficking cases. Gaining victim/witness cooperation is difficult for many reasons, but the reasons most often cited were: victim's distrust of the judicial process; fear of retribution from the trafficker; unconditional love for the trafficker; trauma; and the victim's need/desire to move

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on with their life and avoid having to put themselves through a lengthy legal process. With regards to the last point, the federal prosecution process often takes much longer and is more complex than if the case is prosecuted at the state or local level. Several AUSA's stated that their human trafficking cases took upwards of two years to prosecute (from the referral stage through to sentencing). The length of the process takes its toll on the victims and witnesses, as one local law enforcement officer from a jurisdiction in the West pointed out:

> Because the court systems and defense attorneys want to do difference [different] hearings to contest the evidence, or the statement. You have your three-two hearings, your three-six hearings [these are in reference to specific evidence suppression statutes]. All of these different hearings where they make motions to suppress evidence or statements. In the mean time you have a victim that's going 'Nothing's happening. This is a waste of my time.'
> *Comprehensive Legislation-Task Force-West, Law enforcement 1*

Similar to the challenges described by state prosecutors, trying to get a victim, particularly one who has been traumatized and abused, to trust the prosecutor enough to be willing to provide a statement or testify in court is time consuming and often requires a lot of patience. As one Assistant U.S. Attorney from a jurisdiction in the Midwest stated,

> [Building a relationship with the victim] absolutely is [the most important part]. To get them to reveal the most embarrassing horrific details that have occurred in their life. I have 30-40 minutes unlike a psychologist who has maybe 15 sessions with the girl to build a relationship. I have 30-40 minutes or 60 minutes.
> *Basic Legislation-Task Force-Midwest, Prosecutor 1*

Without victim and witness cooperation and testimony, almost all of the federal prosecutors interviewed stated that they would be unable to continue with the case. As one AUSA stated,

> The U.S. Attorney and I spent hours trying to figure out a way to prove the cases without having to call the girls and we couldn't ever think of one. I mean, unfortunately, there's just no way to do it. Really, legally and practically, I think the jury is going to want to hear from the victim and I don't know how we'd satisfy all the

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> elements without calling them in most cases.
> *Basic Legislation-No Task Force-Midwest, Prosecutor 1*

Unlike other child sexual exploitation cases like those involving child pornography, there often times is not enough hard evidence to prove the case in court; thus, victim cooperation is often times crucial to a successful prosecution.

Victim/Witness Credibility

Similar to the challenges cited by state prosecutors, even if a victim or witness is willing to testify, federal prosecutors fear that the victim's credibility will be brought into question by the defense attorney, jury and judge, particularly in sex trafficking cases. In these cases, the victim is viewed as complicit in the crime and willingly prostituting herself for her own benefit. Many of the victims also suffer from mental health issues, drug and alcohol dependency and past sexual and physical abuse. The following is how one federal prosecutor described one of his witnesses:

> I had a victim, almost 18, runaway, drug addict, mother crack addict, lots of mental health issues, had been sexually abused, homeless and had fallen in love with the trafficker and lied to the police…These victims have checkered pasts which is why prosecutors don't want to take these cases – most of these cases are not "a child in a cage."
> *Basic Legislation-No Task Force-South, Prosecutor 2*

Another federal prosecutor from a jurisdiction in the Midwest "weighs the credibility of all the witnesses that will be testifying to see if a jury is going to believe them or not, and that consists of their background, their criminal histories, their age, their relationship to the parties, whether they have a stake in the outcome of the case, things like that…"*(Comprehensive Legislation-Task Force-Midwest, Prosecutor 1).* Federal prosecutors often find themselves in a catch-22 since they rely on victim and witness cooperation to move forward with a case; however, they must

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often defend the credibility of the victim(s) and/or witness(es) to the judge and jury to prove the legitimacy of the case.

Ambiguity in the Federal Law

In order for a suspect to be convicted of human trafficking, a prosecutor must prove that there was force, fraud ***or*** coercion, unless the victim was a minor in which none of these elements need to be proven. Yet, there were a number of federal (as well as state) prosecutors interviewed for this study that indicated they believed that all three elements need to be proved in order to proceed with a human trafficking charge. This point was illustrated in one interview with a prosecutor regarding a labor trafficking case:

> We need force, fraud and coercion. That's the main element that we look for. Would it be labor or sex trafficking? The restaurant case that I referenced today, I got ready for trial. The elements of coercion. There was no fraud. The workers bargained for their situation. It was very borderline, the degree to plead out the alien harboring, but the fraud and the coercion are the key aspects. *Basic Legislation-No Task Force-South, Prosecutor 1*

What is important about these statements is the fact that prosecutors generally realize that the law does not actually require all three elements, but rather they want to have all three elements to ensure the case isn't overturned on appeal. This prosecutor clarified that the best cases have all three elements of force, fraud and coercion and clear evidence of suspects "knowing" or engaging in "reckless disregard."

> If we have a case were the victim said she was 18 and he [suspect] believed it, even if it's not true, then we need to prove force, AND fraud AND coercion (emphasis original). Also, we need to get evidence for both elements of the law [prove the force and fraud and coercion element and prove the knowingly or reckless

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> disregard element] in case of an appeal. If appealed and they drop out one element, we can always prove the other element.
> *Basic Legislation-No Task Force-South, Prosecutor 2*

Even for those prosecutors who understood the law, there was still a level of confusion when it came to what evidence was needed to prosecute the case as human trafficking. Although the TVPA has been around longer than state human trafficking laws, it is still considered a new and somewhat untested law. "The law is young, not easy to navigate, confusing, requires evidence that prosecutors and law enforcement are not used to getting" *(Basic Legislation-No Task Force-South, Prosecutor 2).*

Of the three elements necessary to prove human trafficking, force was considered the easiest to prove since there was often times physical evidence (e.g. photographs of the abuse and medical reports) that could be submitted to the court. Fraud was a bit more difficult to prove, but several prosecutors had worked on cases where a "contract" was signed by the victim for work such as modeling, appearing in a rap music video, or domestic work and the contract was admissible in court as evidence. Coercion, however, was considered the most ambiguous of the three elements, and as a result, was rarely used. One prosecutor explained how he viewed the three elements:

> I have to prove the essential element that he used force, fraud or coercion. Force – physical beatings to keep them in line and keep them prostituting; fraud – he lied to them about what the life was going to be like; or coercion – which is kind of mushy.
> *Basic Legislation-Task Force-Midwest, Prosecutor 1*

Legal Uncertainty Challenges

As stated earlier, several of the prosecutors interviewed for this study found the federal law regarding human trafficking to be complicated and ambiguous. A lot of this has to do with

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how the statute is written; however, another issue is that there are unclear legal standards. Unlike RICO cases where the standards are clearly demarcated in the statute, the standards for human trafficking cases are not standardized and change by jurisdiction. According to one local law enforcement officer,

> No, no. RICO no. That's one problem with the U.S. Attorney's Office, and the FBI is probably better suited for that. But they…to do a RICO case, they obviously have to accept the case for prosecution and then they have to have a RICO panel that meets separately to review the case and it's a long process. So, and the feds can't use prostitution as predicate, so we would have to get other predicates. Not that that's hard, but you know, to me, you could make some really good cases state. And it's just starting…it's starting…I mean, somebody has to get the ball rolling somewhere. You know? I mean, so…
> *Comprehensive Legislation-Task Force-South, Law Enforcement Officer 3*

Another prosecutor discussed how the standards change depending on the evidence available:

> He needs to be convinced that they have enough evidence to prosecute before he will sign off on an indictment. It isn't just probable cause, it is having evidence beyond a reasonable doubt. This calculus changes depending on the facts of the case. In a case where there are assaults or beatings a single victim may be enough because there is other evidence to corroborate the victim's story (bruises or others physical signs of abuse). In other cases, they may want to have multiple victims who are providing the same story because there is little corroborating evidence.
> *No Legislation-Task Force-Northeast, Prosecutor 3*

Without knowing how to properly prosecute a human trafficking case there is often times a lack of personal will and motivation on part of the prosecutor to take on these cases. As a result, they will use charges that are easier to prove and that they have used before. According to one victim service provider,

> Even if law enforcement were to go to the [U.S.] attorney's offices and say, 'I think there might be a trafficking element, I think a lot of attorneys feel uncomfortable with the trafficking statute because they haven't used them before. So, they are going to use other

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> charges; they are going to go with the rape charge or some sort of immigration violation or the Mann Act or some other statute they are more comfortable with or that they think they can get a successful conviction on.
> *No Legislation-No Task Force–Midwest, Victim service provider 1*

Because the legal standards are not uniform across the federal districts, despite the existence of the TVPA, law enforcement and even state prosecutors struggle with referring cases to federal prosecutors. They would like to see the traffickers receive higher penalties, but debate whether it is worth trying to elevate even human trafficking cases that appear to be "slam dunks" to the federal level. As one state prosecutor stated,

> We're hoping to get some of the federal penalties. We're working with one case; it may go federal. We're hopeful, because they have higher penalties, typically for the adults on sex trafficking, so we'd like them to be; it's just that it's difficult at best, and I'm not sure if it's the resources or the understanding or knowledge…the federal level, particularly at the U.S. Attorney's Office.
> *Basic Legislation-No Task Force-West, Prosecutor 1*

Challenges Regarding Organizational Factors

The individual case and legal challenges listed above are often compounded by organizational challenges, such as lack of prioritization within the agency. Without agency support, few cases will move beyond the referral stage. Agency support is expressed in a variety of different ways, including: allowing the prosecutor the time needed to gather evidence and develop the case; providing the necessary resources (e.g. investigator time) to gather evidence; and reducing the prosecutor's caseload to allow for him/her to devote more time to develop the human trafficking case (which often turn out to be complex and time consuming). However, as stated by several of the federal prosecutors interviewed for this study, there is little institutional support to prosecute human trafficking cases, and prioritization is often given to cases involving terrorism, white collar crimes and organized crime.

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Prioritization of human trafficking cases

The President and the Attorney General have made the prosecution of human trafficking cases a national priority, focusing specifically on the victim-centered approach. They have tasked the Human Trafficking Prosecution Unit (HTPU) in the U.S. Department of Justice's Civil Rights Division's main office in Washington D.C. with prosecuting these cases on their behalf. The HTPU provides assistance to the U.S. Attorneys in federal districts and promotes a victim-centered approach to human trafficking cases. In such an approach, the focus is on rescuing and seeking justice for all victims, regardless of the size of the illegal enterprise or number of victims. However, many U.S. Attorney's offices in the districts have not adopted the same approach. The reauthorizations of the TVPA have tried to rectify this problem by requiring US Attorneys to designate a point person for human trafficking investigations and prosecutions. Yet, despite the push from Congress, human trafficking is still not considered a "priority crime" in many federal district offices. The benefits to prosecuting a case federally include more punitive sentences and the resources to take on the bigger, more complex cases (e.g. multiple victims, suspects with long criminal histories, multiple state involvement, etc.). This does not mean, however, that these are the only types of cases that should be prosecuted federally. The prioritization of these cases needs to come not only from federal prosecutors but federal law enforcement as well. One federal prosecutor stated,

> The FBI…they want to do the right thing. They recognize human trafficking is a problem, but since 9/11 they've been focused on national security. I think this it is a national security issue as much as anything. I mean it has to be number one. But, we get mortgage fraud, white-collar, economic crisis, it's sort of the flavor of the day and those are tough, tough cases that take lots and lots of effort and hundreds of thousands of pages of documents.
> *Basic Legislation-No Task Force-Midwest, Prosecutor 1*

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Another federal prosecutor in a state without a federal task force confirmed the challenges of U.S. Attorneys Offices prioritizing human trafficking.

> Oh, it's high [where prioritization of cases comes from]. There are national initiatives and national priorities, human trafficking being one of them and trafficking children more specifically. However, we don't always march to the same drummer. And what I mean by that is our priorities as a U.S. Attorney's Office and the DOJ—and the FBI priorities aren't always the same. I've talked [about this] in my short time about trying to marry those up as much as we can. Because, otherwise, we're really just giving lip service to it.
> *No Legislation-No Task Force-Midwest, Prosecutor 1*

Although human trafficking cases are a high priority for the central administration of the U.S. Department of Justice (Main Justice), they are not, as one federal prosecutor claimed, the "U.S. Attorney's Office's 'bread and butter'" *(Basic Legislation-No Task Force-South, Prosecutor 2).* Another prosecutor from a jurisdiction in the Northeast went on to say,

> In the past civil rights in the U.S. Attorney's Office was not as receptive since there was not a big push by the U.S. Attorney to take trafficking cases. The new U.S. Attorney has put together a team of Assistant USAs to investigate human trafficking cases, so now when a case comes forward the U.S. Attorney has a group of people or AUSAs that he can assign cases to. The Department of Justice [Main Justice] has a huge role in civil rights. They tend to micromanage. Consequently, our investigator has to look into every allegation of human trafficking that comes in, even outlandish ones.
> *No Legislation-Task Force-Northeast, Prosecutor 1*

Thus, despite the push from Main Justice to make human trafficking cases a priority for all federal district offices, the follow through on this request still remains to be seen in a number of US Attorney's offices across the country.

Attitudinal Challenges

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Even if a prosecutor overcomes many of the challenges discussed this far, and succeeds in moving a case forward to either the plea stage or trial, there are still challenges related to judges' reluctance to accept/rule on human trafficking cases and jury bias. Local law enforcement will refrain from taking cases to federal prosecutors for fear of giving the wrong impression to federal judges by bringing cases that some may feel are inappropriate. Many federal judges view human trafficking cases as local problems, not issues worth bringing to the federal level. As one federal law enforcement officer stated,

> "I'll consider it. OK." What if I get two girls, one's over eighteen and one's under eighteen. "I'll take charges on the eighteen year old and then they'll have to come to state charges on this." I said, but it's all one organization, why? "Because we don't want the judges to think we're ….. the pimp police." And that's coming from Western district. So that's what we're up against when we…when we're using charges. I mean, I even told him, you know, again, sometimes we got a bad, bad, bad guy and we just happen to catch him bringing a whore over and we can get him ten years federal or five years federal. "Nope, because unless it's a juvenile we won't consider it."
> *No Legislation-No Task Force-Midwest, Law enforcement 1*

Several of the prosecutors interviewed for this study spoke about their perceptions that in sex trafficking cases federal judges tended to sympathize with the Johns. They did not view human trafficking as a serious crime, but rather a form of prostitution unless there was a stereotypical situation in which there were several victims locked in a basement or shipped around in containers.

> …I think there are judges that are perhaps more sympathetic to people soliciting sex over the internet or people who are engaged in profiting from human trafficking as long as there aren't; you know like I said earlier when people say the typical, oh these people are living in a shed at gun point and they've been shipped around…
> *Basic Legislation-No Task Force-South, Prosecutor 1*

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Prosecutors attributed the perceived negative attitude of federal judges to human trafficking cases to their lack of understanding and knowledge of the TVPA. Trainings are offered to judges all over the country, not only by the Department of Justice but also by local law enforcement and prosecutors. However, judges are not required to take part in the trainings, which perpetuates the idea that human trafficking is not a major crime.

> I don't think the judges know the law. I don't think a lot of them have taken the classes. I know for a fact they haven't taken my class because it's been offered to them several times in different opportunities for CLE credits or different purposes throughout the county and you will get limited people coming to the class. If they are not forced to learn about it, they're not going to learn about it and therefore they're going to keep perceiving it as no major crime. It's no big deal.
> *No Legislation-Task Force-Northeast, Law enforcement 1*

Jury instructions are a very important tool in explaining the nature of the crime to the jury. It helps to reduce confusion when there is a charge with a complicated legal framework, such as human trafficking, and helps to prevent defense attorneys from manipulating the law to their advantage. There is no uniform set of jury instructions that are used in federal courts for human trafficking cases. As a result, many defense attorneys have used this to their advantage by explaining to the jury that all three elements (force, fraud **and** coercion) must be present, and that there must be movement over state borders for the case to be truly human trafficking. Also, there is still the public perception that human trafficking entails a victim, usually foreign born, being held captive by a trafficker and being forced into sexual slavery. Particularly in the case of domestic sex trafficking, where the victims often times have some level of freedom, the jury does not view them as victims. The following quotes illustrate both of these points.

> The jury doesn't understand why victims just don't walk away. 'How can they just stay sitting in his apartment for three days

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> smoking cigarettes while he's away in another state?'
> *Basic Legislation-Task Force-Midwest, Prosecutor 3*

> Just because you don't have forced upon and coercion, it doesn't mean that your juror isn't going to be waiting for some showing that this person was chained to the radiator and kept there. And if they don't see that, they're just going to see this person as a prostitute and not as victim of trafficking.
> *Basic Legislation-Task Force-Midwest, Victim Service Provider 2*

Judges and juries are the ultimate deciders of whether a trafficker is found guilty and sentenced accordingly. Without the proper training and instructions, human trafficking will continue to be looked at as a minor crime and a local issue.

Strategies to address the challenges of prosecuting human trafficking cases federally

In spite of all these challenges, there are a number of innovative techniques being employed by federal prosecutors in order to overcome several of these issues. Some of these techniques include: establishing trust and relationship building with the victims, which often requires building cases over space and time; corroborating victim testimony with "hard" evidence, including hotel, phone, e-mail and text records and recordings of jail calls; applying multiple charges to the case, including gang enhancements and money/asset laundering; and, drafting a lengthy criminal complaint and using it to remove the defendant from the streets in order to aid victim cooperation and educate the public about human trafficking.

Securing Victim Cooperation through Trust

Creating trust and relationship building with victims is often paramount to a successful prosecution. Because U.S. Attorney's offices tend to have more resources than local and state prosecutorial offices, they are more likely to employ a victim witness coordinator to help build rapport and trust with the victims. The coordinators also refer the victims to services, and sometimes even send them to programs in other states that specifically serve victims of human

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trafficking (of which there are few). Although sending the victim, and in some cases witnesses, out of state to receive services is not ideal when a prosecutor is trying to build the case, it does serve as a form of witness protection. It also provides the prosecutor with the opportunity to build the case over space and time, since s/he is able to locate the victim/witness to answer questions and assist with the investigation. Because a large number of federal human trafficking cases involve crossing state lines, it takes time and resources to gather the necessary evidence. As the prosecutor explains below, working with the victim to gather that evidence not only strengthens the case, but can also be a cathartic experience for the victim.

> One thing [FBI Agent] and I did was took [the victim] to [another state] and found the hotel room and the truck stops where she had worked and took pictures and video and, in some ways, it was…a good thing for her. I hope it was. But, it was a very good thing for our case. The other two [victims] were back in [the state where the prosecution was occurring] and the FBI agent and I were up there a lot and spent hours with them, with their parents, and I mean, when it came to trial, they could trust me…and I did all of their direct examinations.
> *No Legislation-Task Force-Midwest, Prosecutor 1*

Another prosecutor explained the importance of the victim service coordinator at the U.S. Attorney's office.

> The victim coordinator with the US Attorney's office and the victim witness coordinator for the FBI have been effective in building a trusting relationship with the traumatized and difficult victims. Victims need constant affirmation that they are doing the right thing by testifying. The AUSAs are limited in their ability to do counseling for a number of professional and ethical reasons as a result the victim witness coordinators are key.
> *No Legislation-Task Force-Northeast, Prosecutor 2*

One of the challenges to prosecuting human trafficking cases is gaining victim cooperation, which is why gathering as much "hard" evidence as possible is extremely important, especially when it comes to corroborating victim testimony. Some examples of hard

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evidence that federal prosecutors try to gather include: hotel, phone, e-mail and text records; jail call recordings; and documentation on where the trafficker has traveled based on car tracking devices. As one federal prosecutor stated,

> I tell them [law enforcement] (when I do trainings) to treat the hotel room like a crime scene, like a rape just happened, instead of like picking up a juvenile in a hotel room who is out after curfew and not preserving the evidence (go through the trash, get condoms if in there, hotel receipts, cash, etc. – corroborating evidence). I want everything.
> *Basic Legislation-No Task Force-South, Prosecutor 2*

Another prosecutor not only relied on victim testimony and corroborating evidence, but also expert testimony. Experts can be used in court to explain to the judge and jury the psychological abuse that a victim of human trafficking can endure, which may result in her staying with the trafficker despite having the freedom to come and go as she pleases.

> [The jury] wanted to believe, I think, the girls but I think it was critical that we had the corroborating evidence that backed them up. It was important that we had the expert, and I looked over at the jury during the victim's testimony and they were deeply affected by it.
> *No legislation-No Task Force-Midwest, Prosecutor 1*

Strategies Related to the Issuance of Charges

Another strategy that prosecutors can employ to ensure a conviction is stacking multiple charges that can enhance the human trafficking charge. For example, for those traffickers that purchase real estate or cars or set up businesses (e.g. record labels or restaurants) money and asset laundering charges can be used as a way to increase the federal minimum and maximum sentences. Although it requires more evidence and charges, the RICO Act (Racketeer Influenced and Corrupt Organizations Act) has been used in a few cases where human trafficking has been the main crime committed. In those cases, the pimp was the "leader" in the organization and had his main girl (aka bottom bitch) run the daily operations. This would include posting the ad(s)

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online, fielding phone calls from johns, driving the girls to their "dates", and in some cases, signing the car or apartment lease in their name. This allowed the pimp to be far enough removed from the situation so that it was hard to pin the evidence back to him. However, the RICO Act focuses specifically on racketeering, and allows for the pimp to be tried for the crimes which they ordered others to do.

Having a case go before a grand jury increases the likelihood of cooperation from the victim. This is because it is early enough in the prosecutorial process that the victim might still be engaged in the process and willing to testify against her trafficker. This testimony can be used later on in the trial if the victim is no longer cooperative and either recants her story or lies about the victimization. As one federal prosecutor noted,

> If you have a grand jury transcript, the jury is going to see what is happening for the most part. If you are in the middle of the trial and the girl goes funny on you, and you've got this transcript, the jury is going to say, well, we can figure this out, and begin glaring at the pimp even more. See, you need to put almost all of them [victims] in the grand jury.
> *No Legislation-No Task Force-Midwest, Prosecutor 1*

Another tactic that can be employed by federal prosecutors is the drafting of a descriptive and detailed criminal complaint. A criminal complaint grants the prosecutor 30 days to indict; allows defendants to be taken off the street which helps establish trust with the victim(s); and acts as a form of press/public education. With regards to the last point, the information presented in the criminal complaint can be used in press releases issued by the Department of Justice to inform the public and press about the case, in addition to highlighting the key aspects and indicators of human trafficking.

For law enforcement agencies in states where there is no state human trafficking legislation or the legislation is so new that there is little training or case law to guide local or state prosecutors, federal prosecution is often the only option for human trafficking offenders.

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While prosecutors in the federal courts generally have more knowledge about the problem of human trafficking and a body of case law that has been tested and more established than most state human trafficking laws, there are numerous challenges bringing human trafficking cases forward to federal prosecution. Challenges such as the evidentiary problems and difficulties securing victim cooperation mirror the obstacles faced by state prosecutors, but surprisingly federal prosecutors and law enforcement and victim service provider stakeholders with experience working with federal prosecutors emphasized that a lack of institutional prioritization to address human trafficking offenses in local communities remained a major challenge for securing federal prosecution.

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CHAPTER 8
CONCLUSION AND RECOMMENDATIONS

In the previous chapters, we discuss in depth the challenges local, state and federal officials face identifying, investigating and prosecuting human trafficking cases that arise from local communities. There are challenges specific to each point of the process from identification to adjudication that makes these types of cases particularly difficult. There are also challenges that are more universal and appear in every point in the criminal justice system process. We discuss some of the more prominent challenges that we identified through the law enforcement investigative case review and qualitative interviews with stakeholders in an effort to develop strategies to help improve the investigation and prosecution of human trafficking cases.

The investigation and prosecution of human trafficking cases is still a new process for criminal justice practitioners. In the twelve primary study counties and three comparison counties, human trafficking cases are infrequently identified and investigated and very few cases are prosecuted (either at the state or federal level) for human trafficking offenses. In every study site stakeholders from law enforcement, prosecution and victim services indicated that there were likely numerous additional human trafficking circumstances and victims in their jurisdiction that were not currently being identified. Interviewees identified some common explanations for this disconnect described below.

Lack of awareness among practitioners and the broader community: There is a tremendous lack of understanding of the crime of human trafficking among police, prosecutors and judges and juries. Often, members of the public and local officials think human trafficking only involves international victims and is not a problem in their community. When cases that involve elements of human trafficking victimization do come to the attention of actors in the

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criminal justice system, due to this lack of understanding they are often not recognized and prosecuted. Even when the police respond to a criminal incident that involves elements of human trafficking they may not identify the crime. For example, our review of non-trafficking incident reports confirms that across sites with varying levels of awareness about human trafficking and legal and organizational capacities to respond to such cases, approximately 9% of incident reports for prostitution and extortion include elements of human trafficking and are not recognized as such. This is a conservative estimate of the degree of misclassification in our study sites since our review only included the information available in incident reports, which may not have included trafficking indicators if officers were not trained to look for them.

Reliance on reactive identification strategies: Most of the law enforcement officials in the study counties relied on traditional reactive strategies to identify cases of human trafficking. These strategies include waiting for victims to come forward and report their victimization or relying on non-governmental agencies or other law enforcement agencies to provide tips. Our analysis of 140 human trafficking investigations revealed that fewer than 10% of cases involved a victim coming forward to report their victimization to local police. A majority of cases were identified through tips from non-governmental agencies or hotlines. When cases (most often sex trafficking cases) were identified proactively, it was normally through ongoing Vice operations into suspected incidents of prostitution, not necessarily intended to identify human trafficking incidents. Universally, law enforcement lacked good intelligence about underground illicit operations or networks, particularly in ethnic segments of the community where law enforcement did not have access. Some agencies utilized tips from confidential informants to help provide information in places where law enforcement did not have access. Surprisingly, in most agencies

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law enforcement responsible for human trafficking operations did not have any personnel with foreign language skills or a history of experience with or connections to ethnic communities.

Prosecutors similarly relied on law enforcement to bring forward cases of human trafficking. Prosecutors often indicated they had not received cases from law enforcement or the cases they received lacked evidence necessary to precede with prosecution. Law enforcement and prosecutors in all study sites were unclear of where labor trafficking cases would be referred for state prosecution. Law enforcement officials commonly expressed frustration when the human trafficking cases they brought to prosecutors were rejected due to evidentiary concerns. This was common with single victim, adult or foreign victim cases. Law enforcement was reluctant to investigate human trafficking cases when they perceived prosecutors were disinclined to charge offenders.

Focus on sex trafficking: An overwhelming majority of the cases of human trafficking that have come to the attention of the criminal justice system thus far are cases of sex trafficking. Of the cases reviewed in our study, 86% were sex trafficking cases. Labor trafficking cases are particularly difficult to identify due to the lack of experience (and lack of criminal authority) dealing with violations of labor codes on the part of law enforcement. Adding to this lack of familiarity is the fact that most human trafficking investigators are located in the sex crime or Vice units of area police and prosecutors' offices. Across study sites investigators and prosecutors identified labor trafficking as a problem in their communities, however, in most study sites they suggested that these types of cases were outside their realm of responsibility.

Victim fear: Victims of labor and sex trafficking are afraid to report to criminal justice authorities and when identified are often reluctant to provide information to assist in investigations and prosecution. This fear is reasonable in that it is based on threats of violence

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against them or their families by the trafficker, prior negative experiences with law enforcement both in this country or in other countries or in the case of many international victims, a fear of deportation. Some victims of sex trafficking may also have feelings of love or protection towards their traffickers. This fear results in victims denying their own victimization particularly in early statements to the police.

Unmet victim needs: Victims of human trafficking suffer from a number of trauma-related conditions, including Post Traumatic Stress Disorder and require significant support from victim service providers including health and mental health services. Housing was the primary unmet need of victims after they come forward to authorities in every study site. Victims need both short and long-term housing that will keep them safe from retaliation from their traffickers and in many cases, which will accommodate their families. Traditional housing strategies for victims such as domestic violence shelters or group homes for juveniles were largely ineffective for meeting the needs of human trafficking victims in the study sites. In some study sites, law enforcement arrested and detained victims in an effort to keep them safe.

Prosecutors overwhelmingly described victim reluctance to testify or lack of cooperation more generally as the biggest challenge they faced prosecuting human trafficking cases. Often prosecutors reported that without cooperating victims they could not proceed with a prosecution. Yet, few services existed within prosecutors' offices or many local communities to provide coordinated and specialized support and assistance to meet the unique needs of human trafficking victims.

Negative attitudes towards human trafficking victims: Despite statements by law enforcement officials indicated a general understanding that those being traumatized in human trafficking cases were victims, many state and federal law enforcement officials expressed

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sentiments that victims were to some degree responsible for their victimization and would not be considered "good victims" or "good witnesses." Sometimes law enforcement justified these opinions based on how they perceived others (e.g. prosecutors, judges or juries) would view human trafficking victims. The perception that certain classes of victims are not "worthy" is not a new phenomenon (see Frohmann 1991 for examples of negative perceptions of sexual assault victims). Unlike other crimes where particular groups of victims were seen as "less worthy" than other victims, in human trafficking cases the vulnerabilities that put nearly all victims at risk for exploitation makes them appear less stable and credible as victims or witnesses. The results of these negative perceptions can lead to numerous negative outcomes in addition to failure to bring cases forward to prosecution. In some situations, victims in cases we reviewed were treated like offenders, arrested, detained, and denied services.

Federal and state prosecutors similarly viewed human trafficking victims themselves as a major barrier to prosecution. Prosecutors expressed that prior criminal acts of victims such as unlawful immigration or engagement in prostitution makes them less credible witnesses. They suggested that that the time it takes to mount a successful prosecution, often one to two years, is too long to keep unstable victims involved in the cases. In multiple study sites, these beliefs resulted in prosecutors accepting a trafficker's plea to a lesser offense, or dropping the prosecution of a case altogether.

Lack of awareness about human trafficking laws: We found a surprising lack of awareness about the existence and requirements of both state and federal human trafficking legislation on the part of police and prosecutors. Police and prosecutors we interviewed were often unaware of local laws in their jurisdiction and when they knew of laws, they often provided incorrect information about the legal requirements to achieve a conviction under a human

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trafficking statute. For example, a number of state and federal prosecutors interviewed for this study indicated that they needed to prove force, fraud and coercion in order to obtain a human trafficking conviction that would not be overturned on appeal. While these sentiments may reflect criminal justice system stakeholders' perceptions about the realities of the types of evidence they believe prosecutors or judges will demand in an area where the law is relatively untested, sometimes their perceptions did not comport with the legislative definitions or existing case law.

Lack of experience using new state human trafficking laws: Respondents cited a lack of precedent and case law on human trafficking as major deterrents to prosecuting a case using state human trafficking statutes. We encountered local prosecutors who were unaware that their state had human trafficking laws or were unfamiliar with the elements of the crime. Prosecutors in our study were often the first in their state to prosecute a human trafficking case using state anti-trafficking laws. No state prosecutors in our sample prosecuted a case of labor trafficking. When state prosecutors accepted human trafficking cases for prosecution, they normally used existing laws such as rape, kidnapping, pandering, or promoting prostitution. Prosecutors cited a variety of reasons for charging human trafficking cases with non-trafficking offenses including: perceived lack of judge and jury familiarity of human trafficking, legal ambiguity of new statutes, lack of awareness about the human trafficking statute, lack of victim cooperation, and fear of losing high-profile cases.

State and local prosecutors were often operating on their own with little or no source of legal guidance to draw on for things such as human trafficking-specific prosecutorial techniques, how to handle common defense tactics, or human trafficking specific case documents such as motions or jury instructions. In every site, when prosecutors who had taken human trafficking

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cases to trial using state anti-trafficking laws were asked where they went for guidance on processes such as jury instructions, they said they created them themselves and had wished they had a resource or fellow state prosecutors to consult.

Lack of institutional resources and infrastructure: Most state and local law enforcement and prosecution agencies lacked specialized units or personnel dedicated to human trafficking. If a trained and dedicated prosecutor was assigned to handle sex trafficking cases, they were often responsible for child sex crimes cases or sexual assault. As a result, some law enforcement officials stated that they did not know where to refer human trafficking cases, especially labor trafficking cases.

Variation in the prioritization of human trafficking prosecutions: Generally, state prosecutors did not believe prosecution of human trafficking cases was a top priority in their agency. While we identified a number of local champions who were particularly concerned with prosecuting offenders who exploited particularly vulnerable groups such as children, human trafficking cases in general did not garner a great deal of institutional support. Local and state prosecutors suggested that a lack of pressure from the general community to address this problem helps explains the lack of prioritization. While human trafficking convictions are a stated priority for the U.S. Department of Justice, we found wide variation in the prioritization of human trafficking cases among prosecutors in the federal districts. Some U.S Attorneys we interviewed explained that human trafficking is not a problem in their district and is not a priority of their office. Others were committed to prosecuting human trafficking cases but described problems of institutional prioritization.

Focus on convictable cases: Law enforcement and prosecutors from both the state and federal systems prioritized, and in some cases only accepted those cases they believed were most

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likely to result in a conviction. Prioritized cases include those with minor victims and cases involving multiple victims. In some federal districts, this was an unwritten but generally understood policy. As a result, it was difficult for law enforcement to justify investigating cases involving single adult victims, particularly if there was no alternative mechanism to prosecute offenders in the state system if the case was denied by federal prosecutors.

Securing evidence necessary to support prosecution: In every study site, law enforcement and prosecutors relied heavily on victim testimony. In fact, testimony from victims was the primary source of evidence in most cases we reviewed. With the reliance on victim statements, interviewing victims is a crucial step in the process of investigating and prosecuting cases of human trafficking. Due to fear and trauma, victims often give contradictory statements over the course of a lengthy investigation. These conflicting statements can pose a credibility problem at trail. The best investigators are trained in proper interviewing techniques for traumatized victims and carefully plan and limit the number of victim interviews. At the state and local level, the need for high quality interpreters is frequently a significant problem. The acquisition of corroborating evidence such as hotel receipts, cell phone records and surveillance video can help buttress a victim's statements at trial. Attempts to acquire this corroborating evidence often involves travel to other jurisdictions that is less available to local law enforcement due to recent budget reductions.

Recommendations

Throughout the report, we identify a number of recommendations specific to improving the identification, investigation and prosecution of human trafficking cases. Here we discuss some recommendations that transcend specific segments of the criminal justice system process.

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- **Prioritization and awareness raising:** Education and awareness raising is needed from national organizations that support law enforcement and state attorneys generals and district attorneys about the need to prioritize the problem of human trafficking and its impact on local communities. Federal law enforcement and prosecutors have uneven awareness about the problem of human trafficking and its prioritization. A message from the U.S. Department of Justice to every U.S. Attorney's office reiterating the desire to handle human trafficking cases as a priority would help provide consistency in responses. In addition, performance measures should be developed to regularly measure and highlight the number and success of human trafficking prosecutions in each federal district.
- **Problem solving approach to human trafficking identification and investigation**: The research conducted for this project demonstrates the need for a more proactive approach for investigating and prosecuting cases of human trafficking. Waiting for cases to present themselves has not been an effective strategy in most jurisdictions. Agencies should consider adopting some techniques from organized crime investigations for developing cases against traffickers. Alternatively, a problem solving approach to human trafficking could be promising. Under a problem solving approach, police, prosecutors and service providers would collectively work to identify problems of human trafficking in a local community. Law enforcement and prosecutors would then proactively target investigations toward these areas of risk; ensuring sufficient evidence to support prosecutions was collected throughout the course of the investigation. Very few cases of labor trafficking are being uncovered using existing reactive strategies. Law enforcement should develop partnerships with local regulatory agencies the Department of Labor to

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better identify and prosecute cases of labor trafficking. Additionally, law enforcement agencies need to identify the areas of risk for labor trafficking victimization in local communities and develop the skills among their personnel that are necessary to gather intelligence about potential victimization in these areas. To accomplish such a strategy it will often be necessary to expand the responsibility for human trafficking investigations beyond Vice Units.

- **Comprehensive victim protection and empowerment:** Once victims are identified, police, prosecutors and victim service providers should commit to long-term support for victims. These services include health, mental health, and most importantly housing. Since most human trafficking prosecutions take between one and two year to complete, a corresponding long-term victim support plan will increase the number of successful prosecutions. Victim testimony is critical to human trafficking cases, while law enforcement and prosecutors can work to develop other sources of evidence, there will likely always be a reliance on victims to provide some type of testimony. Understanding the challenges associated with victim cooperation and participation in investigations and prosecutions, prosecutors should consider employing strategies that have been found effective for domestic violence cases to improve the prosecution of cases. Demonstration projects with evaluation components could help us understand what kinds of victim support services are most effective in helping the survivors heal and in keeping them involved in the prosecution of their victimizer. In study sites, we found there was often a conflict between these two goals. Informed by research in other similar crimes such as sexual assault and domestic violence, demonstration projects with an evaluation

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component could help identify strategies that empower victims through the process of assisting with the prosecution of criminal cases.

- **Improved understanding of the victim experience**: While law enforcement and prosecutors recognize that victims of human trafficking face numerous vulnerabilities, they commonly expressed sentiments that either blamed victims for their own victimization or dismissed victims as un-credible. A new orientation that understands the consequences of the fear, violence and overall negative situation for these victims and how much of a victim's illegal activity is the consequence of force, fraud and coercion would help law enforcement effectively contextualize victim experiences in both investigating cases of human trafficking and presenting those cases to prosecutors and for prosecutors to present cases to juries.
- **Training:** A number of officials interviewed for this research had participated in some kind of human trafficking training. These trainings were often awareness raising and frequently sponsored by the U.S Justice Department. A number of state-level investigators and prosecutors felt the trainings would have been more helpful if they included strategies for prosecuting cases under state statutes. A new series of human trafficking training needs to be developed and offered by those organizations that support state law enforcement and prosecutors. These trainings should address:
    - Information about state human trafficking statutes. Summaries of legal strategies and human trafficking case law.
    - Best practices for acquiring and utilizing corroborating evidence in human trafficking cases including improving interviews with human trafficking victims.

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- The impact of trauma and violence on victim behavior including criminal behavior and testimony and techniques for presenting evidence at trial even with a victim who may be perceived as less credible.

- **Institutional resources and infrastructure:** Specialized investigators and prosecutors or units of specialized personnel should be assigned to handle sex and labor trafficking cases. These prosecutors should be responsible for leading proactive human trafficking investigations. The designation of specialized personnel requires resources that may not initially seem justified by small number of human trafficking cases, but identification of such cases is not likely to occur without such institutional investments. Additional, specialized personnel need the resources to effectively conduct interviews and secure evidence. Protocols also should be developed between state and federal prosecuting authorities to guide law enforcement in their decisions to refer cases to federal authorities.
- **Legal resources**: State-specific toolkits should be developed to provide prosecutors with information on updated state human trafficking laws, as well as legal strategies and common legal impediments in human trafficking cases. Additionally, the toolkit should include documents such as model motions or jury instructions, and contact information for local prosecutors in each state with experience prosecuting trafficking cases who could be called for guidance.

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Appendix A - State Anti-Trafficking Laws and Provisions (2003-2007)

State	First Effective Date	Criminal Provisions	Law Enforcement Training	Victim Services	Task Force	Data Collection or Study
Alabama						
Alaska	2006	X				
Arizona	2005	X		X		
Arkansas	2005	X				
California	2005	X		X	X	X
Colorado	2006	X			X	X
Connecticut	2006	X	X	X	X	X
Delaware	2007	X				X
District of Columbia						
Florida	2004	X	X	X		
Georgia	2007	X				
Hawaii						
Idaho	2006	X		X		X
Illinois	2006	X		X		
Indiana	2006	X	X	X		X
Iowa	2006	X		X	X	
Kansas	2005	X				
Kentucky	2007	X		X		
Louisiana	2005	X				
Maine						
Maryland	2007	X				
Massachusetts						
Michigan	2006	X				
Minnesota	2005	X			X	
Mississippi	2006	X				
Missouri	2004	X		X		
Montana	2007	X				
Nebraska	2006	X				X
Nevada	2007	X				
New Hampshire						
New Jersey	2005	X		X		
New Mexico						
New York	2007	X		X	X	X
North Carolina	2006	X		X		
North Dakota						
Ohio						
Oklahoma						
Oregon						

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State	First Effective Date	Criminal Provisions	Law Enforcement Training	Victim Services	Task Force	Data Collection or Study
Rhode Island						
S. Carolina	2006	X				
S. Dakota						
Tennessee						
Texas	2003	X		X		X
Utah						
Vermont						
Virginia						
Washington	2003	X		X	X	
West Virginia						
Wisconsin						
Wyoming						

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Appendix B: State Legislation at 2007 and Federally Funded Human Trafficking Task Force Strata

Comprehensive Legislation		*Basic Legislation*		*No Legislation*	
Federally Funded Task Force	***No Federally Funded Task Force***	***Federally Funded Task Force***	***No Federally Funded Task Force***	***Federally Funded Task Force***	***No Federally Funded Task Force***
California	Iowa	Alaska	Arkansas	Hawaii	Alabama*
Connecticut		Arizona	Delaware	Massachusetts	Maine
Florida		Colorado	Georgia	Utah*	New Hampshire
Indiana		Illinois	Idaho*	Wisconsin	New Mexico
New York		Louisiana	Kansas*	Oregon	North Dakota
Texas		Minnesota	Kentucky		Ohio
Washington		Missouri	Maryland		Oklahoma
		North Carolina	Michigan*		Rhode Island
		New Jersey*	Mississippi		South Dakota
		Nevada	Montana		Tennessee
			Nebraska		Vermont
			Pennsylvania		Virginia
			South Carolina		West Virginia
					Wyoming

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Appendix C: Screening Letter

Northeastern University
College *of* Criminal Justice

URBAN INSTITUTE
Justice Policy Center

March 2, 2010

Chief name
Agency
Address
City, State, Zip

Dear [Personalize],

We are writing to invite you and your agency to participate in a national study funded by the U.S. Department of Justice, National Institute of Justice that seeks to improve our understanding of the challenges local law enforcement agencies face investigating and prosecuting human trafficking crimes. Since the passage of the Trafficking Victims Violence Prevention Act (TVPA) in 2000, federal prosecutions of human trafficking cases have risen substantially. Yet, despite federal support and new state legislation, few human trafficking cases have been prosecuted under state anti-trafficking statutes. This study hopes to learn from the experiences of local law enforcement agencies in an effort to improve the identification and prosecution of human trafficking cases nationally. Your agency has been selected as a potentially promising site for participation in this important study.

In order to select the final sites for our study, we are screening a number of prospective agencies to determine availability and eligibility for inclusion in the study. Your agency is one of a few across the U.S. with experience identifying and investigating cases of human trafficking. We hope to learn promising practices from agencies such as yours and to transmit those practices to the broader law enforcement community.

In the next few weeks, we will be contacting you to determine your interest in participating in the project. With your assistance, we will identify the person in your agency most knowledgeable about human trafficking for a follow-up interview to learn more about the human trafficking cases that your agency has identified in the last several years. Based on this information, we will select twelve final sites to participate in the study.

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Once those sites are selected, we will be contacting you again to secure your final permission to participate in the study. We anticipate that the study methodology will include interviews with personnel involved in the investigation of trafficking cases and a review of closed human trafficking case records. We also plan to conduct a review of a sample of incident reports for a set of cases where indicators of human trafficking may be present, but were not investigated or prosecuted as such. Data resulting from this study will only be presented in the aggregate and no study sites or their corresponding data would be identified by name in any reports or publications.

We sincerely hope that you will take part in this important study. If you have questions about the project or the screening interviews, please do not hesitate to contact the Principal Investigators, Drs. Amy Farrell (am.farrell@neu.edu, 617-373-7439), Jack McDevitt (j.mcdevitt@neu.edu, 617-373-3482) at Northeastern University or William Adams (BAdams@urban.org, 202-261-5506) at Urban Institute. If you have questions about the role of the Department of Justice in sponsoring this study, you may contact Karen Bachar, Senior Social Scientist at that National Institute of Justice (Karen.Bachar@usdoj.gov, 202-514-4403).

We look forward to working with you or designees in your agency in the coming weeks to learn more about the innovative work your department has been doing to identify and investigate cases of human trafficking.

Sincerely,

Amy Farrell, Ph.D.	Jack McDevitt, Ph.D.	William Adams, M.P.P.
Assistant Professor	Associate Dean	Senior Research Associate
College of Criminal Justice	College of Criminal Justice	Justice Policy Center
Northeastern University	Northeastern University	Urban Institute

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Appendix D: Screening Telephone Interview Questions

Background: The telephone screening is designed to gather basic information about the number and type of human trafficking cases investigated by each agency in the study county, including information about the outcome of these cases and key personnel involved in the investigations, prosecutions and resolution of the cases. This information will be used to select the final counties for study and provide the research team with background information to help prepare for the onsite interviews and case reviews.

Hello, my name is XXXX, I am a researcher from Northeastern University in Boston, Massachusetts/Urban Institute in Washington DC.

I am working on a project that is funded by the Department of Justice that is trying to better understand the challenges of investigating and prosecuting state and local human trafficking cases. Your agency is among a select group of agencies that has been chosen for potential study. You may have received a letter from us recently that described the goals of the study. Did you receive this letter? [Note: letters were sent to the chief/ sheriff/ superintendent. If they did not receive the letter indicate that you will explain the reason for the contact now].

The Department of Justice has tasked us with gathering information about the challenges local law enforcement agencies face investigating human trafficking cases and bringing them forward to prosecution. Your agency is one of a select few agencies across the country that has been identified as participating in human trafficking investigations. As a result we would like to find out some basic information about the cases of human trafficking that have been investigated by your agency since 2000. The purpose of gathering this general information is to help us select the final jurisdictions that would be most appropriate for a more detailed study of human trafficking investigations and prosecutions. None of the information provided by you during this call will be published or reported externally. This is for internal use only to help us screen for counties that would be included in the more detailed study.

I anticipate that answering these questions should take about 15 to 30 minutes. Would you be able to help us answer some questions, or is there someone else within your agency who may have experience investigating cases of human trafficking that you would recommend we should speak with instead?

If the interviewee agrees to go ahead with the interview, continue to the next line.

If the interviewee does not want to do the interview, try and set up another date and time to call back and complete the interview.

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If the interviewee suggests someone else would be more appropriate for the interview, get that person's name and contact information and follow up with him/her.

I know that you may already be familiar with the definition of human trafficking, but to review, for the purposes of this interview, human trafficking is defined as:

> The recruitment, harboring, transportation, provision, or obtaining of a person for one of three following purposes; (1) labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or (2) a commercial sex act through the use of force, fraud, or coercion; or (3) if the person is under 18 years of age, any commercial sex act, regardless of whether any form of coercion is involved. *Note: These definitions do not require that victims be physically transported from one location to another.*

Do you have any initial questions about this definition of human trafficking before we start the interview?

If no, continue to the next line.
If yes, refer to the Frequently Asked Questions page.

1. Have members of your agency undergone training on human trafficking identification and investigation?

O Yes O No

If yes, do you know whether all sworn officers were trained or whether the training was limited to a smaller group of officers or investigators?

2. Does your agency have a written protocol or policy about human trafficking investigations?

O Yes O No

If yes, prompt to ask approximately when the policy went into effect, and generally what does it cover? [Note: don't force interviewees to provide detailed information about the policy if they seem unsure]

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3. Are there any members of your agency designated to specifically respond to human trafficking cases?

O Yes O No

Prompt to ask approximately how many members and if possible their names and their ranks.

4. Do you participate in any type of human trafficking task force with other police agencies or victim service providers in your region?

5. Since 2000, has anyone in your agency identified or participated in the investigation of a case of human trafficking?

O Yes O No

If yes, continue to next question.

If no, record as no, but prompt to ask about commercial sexual exploitation of children cases or labor exploitation cases and include notes in the Box below (respondent might lack of understanding of definition of human trafficking)

If still no, skip to question 16 to complete screening interview

6. Since around 2000, approximately how many human trafficking cases (both sex trafficking and labor trafficking) has your department identified or investigated?

7. Of those cases identified or investigated by members of your agency, approximately how many involved labor trafficking?

8. Of those cases identified or investigated by members of your agency, approximately how many involved sex trafficking?

9. Of those human trafficking cases identified or investigated by your agency, were there other agencies involved in the investigations?

Prompt for information about other law enforcement (local, county, state, federal) agencies involved or victim service agencies

10. Of those cases identified by your agency, approximately how many resulted in an identified suspect or group of suspects? (Note: identification does not need to have resulted in an arrest).

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When no suspects were identified, skip to question 17

11. Thinking back on those cases where suspects were identified, approximately how many of those cases resulted in an arrest?

If no cases resulted in an arrest, skip to question 15

12. For the approximately xxx cases that resulted in an arrest, how many were referred to the prosecutor's office for prosecution?

When no cases were referred for prosecution, skip to question 15

13. Can we get some basic information on those cases that were referred for state and/or federal prosecution? For the purposes of this interview, we only need to know general information.

For cases that were referred for prosecution, approximately how many resulted in formal charges?
Were the majority of these cases charged in state or federal court?

What were the types of charges for these cases? *(Possible examples: state or federal human trafficking, kidnapping, RICO/organized crime, involuntary servitude, Mann Act, prostitution/pandering charges, other types.*

Were there specific lead investigators who were involved in these cases? Could you provide their name(s)? *(prompt: same investigator for all cases or different investigators, did all the investigators work for your agency or were other agencies involved)?*

Were there specific prosecuting attorneys involved in these cases? Could you provide their name(s)?

What was the outcome of the prosecution? *(prompt: were the majority convictions via plea, convictions via trial, dismissals of charges, acquittals)?*

Note: It is possible that the person we are speaking with does not know the outcome of the case. If so, we should ask if there is someone at the prosecutor's office that they recommend we contact for more information.

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14. For those cases that did not go forward to state and federal prosecution, were there particular reasons that you know of that may have prevented them from moving forward? Reasons may include, for example, non-cooperation on the part of the victim or victims, unwillingness on the part of the prosecutor to take the case).

15. Is there any additional information about the human trafficking cases your agency investigated that you think made them particularly challenging?

16. Is there any addition information about the human trafficking cases your agency investigated that you think made them particularly successful (e.g. innovative investigations, good partnerships)?

17. Is there anyone else within your organization or who used to work for your organization who would have information on potential human trafficking investigations or cases?

If yes, prompt to ask for contact information, including phone number and email address.

Thank you very much for taking the time to answer these questions. In the next few weeks we will be using the information you provided to help us make final decisions about the sites that will be selected for this study. We will be back in touch within a month to let you know more about the study process. At that time we would be seeking approval from your chief/sheriff about participation in the study.

Use the closing time to gauge their interest and response to the study.

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Appendix E: Study Site Descriptions

In order to protect the identity of our study sites we have provided demographic data in broad categories. These categories are:

Population:	(0-500,000) (500,001-1,000,000) (1,000,001-2,000,000)
Poverty:	(0-5%) (5.1%-10%) (10.1-20%)
Percent Hispanic:	(0-5%) (5.1%-10%) (10.1-20%)
Percent foreign born	(0-10%) (10.1-20%) (20.1%-30%) (30.1%-40%)
Family income	($0-50,000) ($50,001-100,000) ($100,001+)
Violent crime rate	(0-250) (251-500) (501-1,000) (1,001-2,000)

We have also grouped the dates of legislation into two categories early legislation (2003-2005) and late legislation (2006-2011).

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Site 1

Legislation type:	Basic legislation
Task force:	No federal task force
Region:	Northeast
Number of law enforcement agencies:	4 municipal, 2 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	0-5%	5.1-10%%
Percent Hispanic	10.1-20%	10.1-20%
Percent foreign born	20.1-30%	20.1-30%
Median family income	$50,001-100,000	$50,001-100,000
Violent crime rate	0-250	NA

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provisions	2006-2011	Establishes human trafficking as an offense that includes trafficking for the purpose of prostitution, performing sexual acts, and marriage. Delineates between felony trafficking (when a minor is involved) and misdemeanor trafficking (when an adult is involved). Establishes criteria for classifying labor trafficking.
	2006-2011	Amends the current law to include in the definition 'sexually explicit performance' and to prohibit the use of 'physical restraint or serious harm' that compels the victim to take part in a sexually explicit performance. In addition, the bill prohibits possessing, destroying, and concealing actual or purported immigration documentation that may be part of a human trafficking scheme.
Civil Provision	N/A	N/A
Law Enforcement Provision	N/A	N/A
Victim Services Provision	N/A	N/A

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Site 2

Legislation type:	Comprehensive legislation
Task force:	No task force
Region:	Midwest
Number of law enforcement agencies:	8 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	0-500,000	0-500,000
Percent in poverty	5.1-10%	10.1-20%
Percent Hispanic	0-5%	5.1-10%
Percent foreign born	0-5%	0-5%
Median family income	$50,001-100,000	$50,001-100,000
Violent crime rate	0-250	0-250

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes the felony offense of human trafficking to include provisions for both adult and minor victims.
	2006-2011	Expands the current definition of human trafficking to include sexually explicit performances as a form of commercial sexual activity.
Civil Provision	2006-2011	Includes an affirmative defense clause for victims as well as access to compensation funds.
Law Enforcement Training Provision	2006-2011	Includes provisions for the development of human trafficking training standards including curriculum that covers cultural sensitivity and how to deal effectively with victims.
Victim Services Provision	2006-2011	Trafficking victims are eligible for both special immigrant visas and federal benefits.

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Site 3

Legislation type:	Comprehensive legislation
Task force:	Federal task force
Region:	West
Number of law enforcement agencies:	28 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	1,000,001-2,000,000	1,000,001-2,000,000
Percent in poverty	5.1-10%	5.1-10%
Percent Hispanic	5.1-10%	5.1-10%
Percent foreign born	10.1-20%	10.1-20%
Median family income	$50,001-100,000	$50,001-100,000
Violent crime rate	251-500	251-500

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2003-2005	Establishes the felony offenses of sex and labor trafficking including punishment criteria—with harsher penalties assigned when victims are minors, when the act involves kidnapping, and/or in the event of victim death.
Civil Provision	2003-2005	Establishes that victims of human trafficking may sue for damages and the cost of bringing a civil suit against the trafficker with a civil fine of up to $250,000.
Law Enforcement Training Provision	N/A	N/A
Victim Services Provision	2006-2011	Amends an existing statute to include trafficking victims as eligible participants in an address confidentiality program.
	2006-2011	Requires the state to build a comprehensive database of victim service providers that assist with housing, health care, and employment.

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Site 4

Legislation type:	No legislation
Task force:	No federal task force
Region:	Midwest
Number of law enforcement agencies:	16 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	10.1-20%	10.1-20%
Percent Hispanic	5.1-10%	10.1-20%
Percent foreign born	5.1-10%	5.1-10%
Median family income	$0-50,000	$0-50,000
Violent crime rate	251-500	251-500

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes the felony offenses for trafficking in persons both in terms of forced labor and sexual exploitation with punishment of no less than 5 years in prison and/or a fine of up to $10,000.
Civil Provision	N/A	N/A
Law Enforcement Training Provision	N/A	N/A
Victim Services Provision	2006-2011	Provides rights and services for victims that include shelter, legal assistance, translation services, protection from traffickers, and immunity from prosecution.

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Site 5

Legislation type:	No legislation
Task force:	Federal task force
Region:	Northeast
Number of law enforcement agencies:	28 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	0-5%	5.1-10%
Percent Hispanic	0-5%	0-5%
Percent foreign born	10.1-20%	10.1-20%
Median family income	$50,001-100,000	$50,001-100,000
Violent crime rate	NA	NA

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	N/A	N/A
Civil Provision	N/A	N/A
Law Enforcement Training Provision	N/A	N/A
Victim Services Provision	N/A	N/A

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Site 6

Legislation type:	Comprehensive legislation
Task force:	Federal task force
Region:	South
Number of law enforcement agencies:	12 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	5.1-10%	10.1-20%
Percent Hispanic	0-5%	5.1-10%
Percent foreign born	5.1-10%	10.1-20%
Median family income	$0-50,000	$0-50,000
Violent crime rate	501-1,000	1,001-2,000

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes the felony offense of sex trafficking for parents or guardians with custody of a minor who have either attempted or successfully sold or transferred the minor for the purpose of sex trafficking or prostitution. Two further felony offense classifications for anyone who knowingly participates in trafficking for the purposes of obtaining forced labor or sex. Any sex trafficking activity that results in death or involves a minor under the age of 14 is first degree human trafficking.
	2006-2011	Expands the human trafficking definition to include forced labor or services that are the result of force, fraud, or coercion, certain debt practices, and the destruction or withholding a person's identification documentation. Establishes a felony class for any person who knowingly benefits from human trafficking.
	2006-2011	Amends the state statute that defines minor sex trafficking by removing the phrase "force, fraud, or coercion" as means of compelling a minor to engage in commercial sexual activity.
Civil Provision	2006-2011	Establishes a civil clause that allows victims to recover threefold profit gained as a result of their trafficking and redefines the current definition of racketeering to include human trafficking.
Law Enforcement Training	N/A	N/A

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Provision		
Victim Services Provision	2006-2011	The bill requires the Department of Children and Family services to provide services for trafficked victims who are immigrants, victims of domestic violence, and victims of other offenses. In addition, victims are eligible for local and state benefits with access to state-funded services. In order to receive the benefits, the victim must provide a sworn statement to law enforcement and one additional item of evidence that supports the victim's status as a victim of trafficking.

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Site 7

Legislation type:	No legislation
Task force:	No task force
Region:	Midwest
Number of law enforcement agencies:	61 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	1,000,001-2,000,000	1,000,001-2,000,000
Percent in poverty	10.1-20%	10.1-20%
Percent Hispanic	0-5%	0-5%
Percent foreign born	5.1-10%	5.1-10%
Median family income	$0-50,000	$0-50,000
Violent crime rate	NA	NA

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes the felony offense of trafficking and defines it as an act that compels someone to perform labor (via involuntary servitude), engage in sexual activity, and/or sexually oriented performance through force, fraud, or coercion.
Civil Provision	2006-2011	The provision requires that any person found guilty of human trafficking must pay civil restitution to the victim(s) or any survivors of the victim(s).
Law Enforcement Training Provision	N/A	N/A
Victim Services Provision	N/A	N/A

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Site 8

Legislation type:	Basic legislation
Task force:	No federal task force
Region:	Midwest
Number of law enforcement agencies:	15 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	0-500,000	0-500,000
Percent in poverty	5.1-10%	10.1-20%
Percent Hispanic	5.1-10%	10.1-20%
Percent foreign born	5.1-10%	5.1-10%
Median family income	$50,001-100,000	$0-50,000
Violent crime rate	0-250	0-250

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2003-2005	The bill establishes provisions for level 1 and level 2 felony human trafficking offenses. The level 1 offense is defined as aggravated trafficking if it includes kidnapping or attempted kidnapping, the sexual gratification of the defendant or another person, death of the victim, and/or trafficking of a person under the age of 18. The level 2 offense is defined as trafficking if force, fraud, or coercion is present.
	2006-2011	The bill amends previous provision by renaming the offense of 'trafficking' and 'aggravated trafficking' to 'human trafficking' and 'aggravated human trafficking'. It also expands the current definition of human trafficking to include two additional methods: coercive employment and peonage.
Civil Provision	N/A	N/A
Law Enforcement Training Provision	N/A	N/A
Victim Services Provision	N/A	N/A

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Site 9

Legislation type:	Basic legislation
Task force:	Federal task force
Region:	Midwest
Number of law enforcement agencies:	19 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	10.1-20%	10.1-20%
Percent Hispanic	5.1-10%	10.1-20%
Percent foreign born	5.1-10%	5.1-10%
Median family income	$0-50,000	$0-50,000
Violent crime rate	501-1,000	501-1,000

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes felony offense levels for forced labor, sexual exploitation, trafficking of a child for the purpose of commercial sex acts, and/or sexually explicit performances.
Civil Provision	2006-2011	The bill also includes a civil clause that provides an affirmative defense and allows “any person who incurs an injury or death” to file a civil suit against the perpetrator.
Law Enforcement Provision	N/A	N/A
Victim Services Provision	2006-2011	The bill mandates that the victim be paid restitution in order to receive services necessary for rehabilitation.

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Site 10

Legislation type:	No legislation
Task force:	No task force
Region:	West
Number of law enforcement agencies:	2 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	10.1-20%	10.1-20%
Percent Hispanic	+20%	+20%
Percent foreign born	5.1-10%	10.1-20%
Median family income	$0-$50,000	$0-50,000
Violent crime rate	501-1,000	501-1,000

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes human trafficking as a felony offense with higher felony classes for those who traffic minor children. The provision also penalizes those who knowingly benefit from human trafficking.
Civil Provision	N/A	N/A
Law Enforcement Training Provision	2006-2011	Establishes criteria for developing and conducting training for law enforcement personnel.
Victim Services Provision	2006-2011	Affords victims eligibility rights to state and federal assistance programs, regardless of immigration status. In addition, the bill provides mandatory restitution for trafficking victims.

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Site 11

Legislation type:	Basic legislation
Task force:	Federal task force
Region:	Midwest
Number of law enforcement agencies:	7 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	0-500,000	500,001-1,000,000
Percent in poverty	5.1-10%	10.1-20%
Percent Hispanic	5.1-10%	5.1-10%
Percent foreign born	10.1-20%	10.1-20%
Median family income	$50,000-100,000	$0-50,000
Violent crime rate	NA	NA

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provisions	2003-2005	Establishes the felony offenses of sex trafficking, labor trafficking, and unlawful conduct (primarily with respect to documentation in furtherance of labor or sex trafficking).
	2006-2011	Expands the definition of labor and sex trafficking from the act of trafficking to having knowledge that the action will result in trafficking. Increases the penalty for trafficking of up to 25 years in prison and a fine of $60,000 in cases with multiple victims, held for longer than 180 days, and if the victim(s) suffered bodily harm.
Civil Provision	N/A	N/A
Law Enforcement Provision	N/A	N/A
Victim Services Provision	N/A	N/A

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Site 12

Legislation type:	Comprehensive legislation
Task force:	Federal task force
Region:	Northeast
Number of law enforcement agencies:	21 municipal, 1 county

Demographic Background of County

	2000	2010
Total population	500,001-1,000,000	500,001-1,000,000
Percent in poverty	5.1-10%	10.1-20%
Percent Hispanic	0-5%	0-5%
Percent foreign born	0-5%	5.1-10%
Median family income	$0-50,000	$0-50,000
Violent crime rate	501-1,000	0-500

Legislative Background

Legislation Status	Effective Date	Detail
Criminal Provision	2006-2011	Establishes felony classes for both sex trafficking and labor trafficking. The provision includes a clause that affords victims (of either type of trafficking) an affirmative defense during prosecution.
Civil Provision	N/A	N/A
Law Enforcement Training Provision	2006-2011	Establishes criteria to evaluate current human trafficking training protocols for law enforcement officers.
Victim Services Provision	2006-2011	The bill allows the Office of Temporary and Disability Assistance to help law enforcement and local prosecutors assist victims of human trafficking by providing them services.
	2006-2011	Allows motions to remove judgments for victims of trafficking on certain prostitution charges.

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Appendix F: Request to Participate Letter and Certification Form

Northeastern University
College *of* Criminal Justice

URBAN INSTITUTE
Justice Policy Center

April 15, 2010

Chief name
Agency
Address
City, State, Zip

Dear [*personalize]*,

We are writing to follow-up regarding a study we are conducting for the U.S. Department of Justice, National Institute of Justice to understand the challenges local law enforcement agencies face investigating and prosecuting human trafficking crimes. From the information provided during the screening interview conducted with the [*personalize agency and screening contact*] we believe that your agency offers tremendous opportunity to learn more about this important issue. We would like to formally invite your agency to participate in the national study.

This study would require a minimum of time and effort on the part of your agency. Over the next year, our research team would conduct a site visit to your community to understanding the challenges agencies face investigating and prosecuting cases of human trafficking. We will schedule our visit to your community at a time that is most convenient to the members of your agency. During our visit, we would specifically like to conduct interviews with key personnel involved in the investigation of human trafficking cases. These interviews would last between 30-60 minutes. In addition, we would like to access the case records for closed cases identified as human trafficking as well as access to a subsample of incident reports for cases not identified as human trafficking but with potential human trafficking indicators. We estimate that we would spend approximately three days on site at your agency in total.

The names of all agency personnel participating in this study will remain confidential; however, we may contact individuals interviewed for the study to prior to submission of the final report to ensure we have reported information about your agency's experiences accurately. A main goal of this project is to understand the investigative process as thoroughly as possible, and to make recommendations for other agencies about best practices for investigating human trafficking

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cases in each jurisdiction. Information from case records reviews and interviews will be reported in the aggregate and the name of your agencies or its personnel will not be specifically identified in any published reports.

We will be contacting your office within the next few days to discuss the details of this study. In the meantime, it would be very helpful if you could complete the attached certification of participation and designate a point person within your agency that we can contact with further inquiries about your agency's participation in this study. If you have any questions about this project, please do not hesitate to contact the Principal Investigators, Drs. Amy Farrell (am.farrell@neu.edu, 617-373-7439), Jack McDevitt (j.mcdevitt@neu.edu, 617-373-3482) at Northeastern University or William Adams (BAdams@urban.org, 202-261-5506) at Urban Institute. If you have questions about the role of the Department of Justice in sponsoring this study, you may contact Karen Bachar, Senior Social Scientist at that National Institute of Justice (Karen.Bachar@usdoj.gov, 202-514-4403).
We look forward to learning more about the innovative work of your agency. We are confident that your participation in this study will provide critical insight for national human trafficking policies.

Sincerely,

Amy Farrell, Ph.D.	Jack McDevitt, Ph.D.	William Adams, M.P.P.
Assistant Professor	Associate Dean	Senior Research Associate
College of Criminal Justice	College of Criminal Justice	Justice Policy Center
Northeastern University	Northeastern University	Urban Institute

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Certification of Participation

I acknowledge that [insert agency name] will participate in the project, *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases* conducted by researchers from Northeastern University (NU) and Urban Institute (UI). For this study, researchers from NU and UI will be granted access to:

- interview personnel involved in the investigation and prosecution of human trafficking cases,
- review records of closed human trafficking investigations, and
- review a subsample of incident reports for cases not identified as human trafficking offenses.

Signature

_____ _____

Chief XXXX Date

Point-person designation

The person indicated below has been designated to provide the requested information to the research project personnel and serve as the point-person for the coordination of the site visit.

_____ _____

Name Telephone

_____

Email address

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Appendix G: Closed Case Review Sheet

Incident Information			
How did the incident come to the attention of law enforcement? ___ Tip from community/victim service/hotline ___ Ongoing investigation, type:_____		PD entrapment/set-up Other, explain:_____	
Incident Date:	Incident Number:	Disposition Code:	
UCR Code:	Offense Code:	Offense Type(s):	
Reporting Officer Name:	Reporting Officer ID/Badge #:	Reporting Officer Unit:	
Other Officers Involved?*(circle one)* Yes (list below) No			
Officer Name	Role	ID/Badge #	Unit
Brief summary of incident:			
Check location(s) where incident occurred: ___Internet-based ___Residence ___Modeling Agency ___Hotel ___Massage parlor ___Commercial agriculture ___ Factory Work/Sweatshops ___Strip Club ___Restaurant or bar ___Nail/hair salon ___Custodial work/landscaping ___Retail store ___Construction ___Street ___Other (specify) _____			
Did the investigation involve: ___Sex trafficking only ___Labor trafficking only ___Both sex and labor trafficking ___Adult victims only ___ Child victims only ___Both adult and child victim			
Physical Evidence Collected? *(circle one)* Yes No			
If yes, list evidence:			
Other Agencies Involved? *(circle one)* Yes No			
If yes, list agency (ies) and explain role:			

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Offense involves evidence of:		Yes	No	Unclear	Notes about classification
1	Threatened or actual physical or non-physical (psychological, financial or reputational) harm which compels victim to perform or continue to perform labor or services to avoid harm				
2	Use or threatened use of law to exert pressure on another person to perform labor or services				
3	Demeaning and demoralizing the victim (verbal abuse, humiliation)				
4	Disorienting and depriving victim of alternatives (isolation, restricted communications, manipulation of debts, monitoring/surveillance)				
5	Diminishing resistance and debilitating (substandard living conditions, deny food, water, medical care, weaken with drugs or alcohol)				
6	Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)				
7	Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)				
8	Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)				
9	Knowingly benefited, financially or by receiving something of value, from participating in above venture				

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10	Knew [or recklessly disregarded] that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts **or**				
11	Victim under the age of 18				
12	Past involvement of suspect or victim in suspected human trafficking incidents				
13	Other				

Believe incident to be human trafficking: Yes No	*If yes, types of trafficking*: Sex Labor Sex and Labor
Reasons for suspecting this incident as one involving human trafficking:	

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Information about Suspects				
	Suspect 1	Suspect 2	Suspect 3	Suspect 4
Unique ID #				
State Residence/Drivers' License				
Citizenship status (Citizen,Non-Citizen,Unknown)				
Country of origin				
Race (White, Black, Asian, Native American, Other)				
Ethnicity (Hispanic, Non-Hispanic)				
Gender (Male, Female, Transgender)				
Age at date of offense				
Occupation				
Relationship to other suspects, victims, others				
Suspect originally identified as victim? (Y/N/U)				
Prior criminal activity listed and type				
Suspect arrested?				
If yes, arrest date				
If yes, arrest offense description				
If yes, arrest type				
If yes, bail status				
Notes				

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Information about Victims				
	Victim 1	Victim 2	Victim 3	Victim 4
Unique ID #				
State Residence/Drivers' License				
Citizenship status (Citizen,Non-Citizen, Unknown				
Country of origin				
Victim speaks English (Y/N/U)				
Race (White, Black, Asian, Native American, Other)				
Ethnicity (Hispanic, Non-Hispanic)				
Gender (Male, Female, Transgender)				
Age at date of incident/investigation				
Relationships to suspects, victims, others				
Victim originally identified as suspect? (Y/N/U)				
Prior criminal activity listed and type				
Victim interviewed? (Y/N)				
If yes, interview date and name of interviewer				
Victim housed in shelter/secure location (other than jail)?				
Victim detained in jail/detention?				
Notes				

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Information about Other Non-Classified Persons Listed in Incident				
	Other 1	Other 2	Other 3	Other 4
Unique ID #				
State Residence/Drivers' License				
Citizenship status (Citizen,Non-Citizen,Unknown)				
Country of origin				
Speaks English (Y/N/U)				
Race (White, Black, Asian, Native American, Other)				
Ethnicity (Hispanic, Non-Hispanic)				
Gender (Male, Female, Transgender)				
Age at date of incident/investigation				
Relationships to suspects, victims, others				
Originally identified as victim or suspect? (Y/N/U)				
Prior criminal activity listed and type				
Interviewed? (Y/N)				
If yes, interview date and name of interviewer				
Notes				

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Pre-Indictment Investigation				
Interviews (includes suspects, victims and witnesses)	Type of Interview	Name of interviewer	Date	Notes
	Suspect Victim Witness Other			
Types of evidence collected	Evidence type	Date	Description of evidence:	
	Written statements Physical evidence[28] Digital evidence Documents			
Were any victims willing to provide evidence and testimony?	Yes No	Details:		
Additional notes on pre-indictment investigation:				

[28] Examples of common types of physical evidence: Biological material - blood, semen or saliva , fingerprints, glass, fibers, paint chips, soil, accelerants, hair, narcotics, impression evidence (shoe prints, tire tracks)

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Indictment Information						
Suspect 1			**ID #:**			
Location of indictment (court name):			Date of indictment:	Lead prosecutor (name)	Defense attorney (*name and contact information*)	
Description of charges	State or Federal	Penal code violation	# counts	Description of overt acts	Description of count	Investigative officer cited in indictment
Offense 1						
Offense 2						
Offense 3						
Offense 4						
Offense 5						
Suspect 2			**ID #:**			
Location of indictment (court name):			Date of indictment:	Lead prosecutor:	Defense attorney (name and contact information)	
Description of charges	State or Federal	Penal code violation	# counts	Description of overt acts	Description of count	Investigative officer cited in indictment
Offense 1						
Offense 2						
Offense 3						
Offense 4						
Offense 5						

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Suspect 3			**ID #:**			
Location of indictment (court name):			Date of indictment:	Lead prosecutor:	Defense attorney (name and contact information)	
Description of charges	State or Federal	Penal code violation	# counts	Description of overt acts	Description of count	Investigative officer cited in indictment
Offense 1						
Offense 2						
Offense 3						
Offense 4						
Offense 5						

Suspect 4			**ID #:**			
Location of indictment (court name):			Date of indictment:	Lead prosecutor:	Defense attorney (name and contact information)	
Description of charges	State or Federal	Penal code violation	# counts	Description of overt acts	Description of count	Investigative officer cited in indictment
Offense 1						
Offense 2						
Offense 3						
Offense 4						
Offense 5						

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Adjudication and Sentencing					
		Suspect 1 ID#:	Suspect 2 ID#:	Suspect 3 ID#	Suspect 4 ID#:
Plea offered/ negotiation Y/N					
Disposition offense 1	Nol pros				
	Not guilty				
	Guilty- plea				
	Guilty – trial				
	Other				
Disposition offense 2	Nol pros				
	Not guilty				
	Guilty- plea				
	Guilty- trial				
	Other				
Disposition offense 3	Nol pros				
	Not guilty				
	Guilty- plea				
	Guilty- trial				
	Other				
Disposition offense 4	Nol pros				
	Not guilty				
	Guilty- plea				
	Guilty- trial				
	Other				
If no plea accepted, summary of trial proceedings	Motions				
	Evidence presented				
	Testimony				
	Court ruling				
Sentence	Months				
	Terms of (e.g. detention, probation)				
	Reductions (guideline adjustments/ departures)				

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Appendix H: Interview Consent Forms and Questions

Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases

Request to Participate in Research

We would like to invite you to take part in a research study. The purpose of this research is to identify common challenges criminal justice agencies face conducting human trafficking investigations and promising practices used in prosecuting these cases. Study findings will help us identify and overcome barriers to local prosecution of human trafficking and promote local practices that facilitate successful investigation and prosecution.

The interview will last approximately one hour and includes questions about your involvement in the investigation and prosecution of closed human trafficking cases in your jurisdiction and/or service provision to trafficking victims. Everything you report to us will be kept in confidence. Only the people doing the research will see any information that identifies you personally and your decision to participate in this study or the answers you provide will have no bearing on your employment or standing within your agency. Your name will never be used in any report. The answers you provide during an interview will be combined with answers from many individuals and will be reported in the aggregate without a link to your name. If you provide any information about specific suspects or victims that information will be redacted from the interview transcripts of notes or will be disguised using a unique indicator in place of a name or other types of identifies.

The information you provide to us is protected by federal statute. That statute protects all information we have about you from being turned over to anyone, even if ordered by a court, without your consent. That is, all information will be kept private like a medical record.

There are no foreseeable risks or discomforts to you for taking part in this study. There are no direct benefits to you for participating in the study. However, the results of this interview as well as the others will help us identify barriers to local prosecution of human trafficking and promote local practices that facilitate successful investigation and prosecution.

The decision to participate in this research project is up to you. You do not have to participate and you can refuse to answer any question. Even if you begin the study, you may withdraw at any time.

If you have any questions about this study, please feel free to contact the Principal Investigator, Amy Farrell, Ph.D., College of Criminal Justice, Northeastern University, Tel: 617-373-7439, Email: am.farrell@neu.edu.

If you have any questions about your rights in this research, you may contact Nan C. Regina, Director, Human Subject Research Protection, 960 Renaissance Park, Northeastern University, Boston, MA 02115. Tel: 617.373.7570, Email: irb@neu.edu. You may call anonymously if you wish.

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I am signing this form to show that I have read you this information and have promised confidentiality. If you agree to participate, please sign this form to show that I have explained this information to you and you agree to be interviewed.

_____
Interviewer's Signature and Date

I consent to participate in this study. I understand that my participation is voluntary and information on my participation will not be known to anyone. I understand that I can stop participating at any time or refuse to answer questions in any interview.

Please check **one**:
___ I agree to the interview being audio-taped
___ I do **not** agree to the interview being audio-taped

Name_____
(PLEASE PRINT)

Signature_____ Date _____

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IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING

LAW ENFORCEMENT INTERVIEW GUIDE

Position Title:
Location:
Interview Date:

Researchers at Northeastern University's Institute on Race and Justice and the Urban Institute's Justice Policy Center have been tasked by the Department of Justice to identify common challenges local, county and state criminal justice agencies face conducting human trafficking investigations and promising practices used in prosecuting these cases. To conduct the study, we will use a multi-method approach including reviews of closed law enforcement and court records of human trafficking and non-human trafficking cases, and interviews with primary stakeholders in 12 selected counties throughout the United States. These findings will help us identify and overcome barriers to local prosecution of human trafficking and promote local practices that facilitate successful investigation and prosecution. At the conclusion of the study, we will publish major findings in relevant scholarly and professional publications, and develop a series of briefing sheets about common challenges and promising practices for investigating and prosecuting human trafficking cases geared toward different interested groups including the police, prosecutors, court officials, and victim service providers as well as city officials and state legislators.

Thank you for participating in our study. Your participation is completely voluntary and your responses will be kept confidential. Moreover, your responses if cited will never be attributed to you will be reported only in the aggregate. This interview should last approximately 1 hour. Do you have any questions before we begin?

Part I: Background information

1. What is your current position/title? What unit/department do you reside within?

2. Please describe your current role and the role of your unit/department (in general and with respect to human trafficking).

3. How long have you been in your current position?

4. How would you define human trafficking?

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5. We are going to talk about specific investigations in a few minutes but can you briefly tell me how you and your agency first got involved in the investigation of human trafficking cases?

6. Has your agency offered any training on human trafficking

    a. Probe: identification or response?

7. Do you know if any federal, state or local human trafficking task forces operate in your state or jurisdiction?

    a. If yes, do your or your agency participate as members of the task force(s)? If yes, for how long?

    b. How often does the task force meet?

Part II: Specific Case Questions
(Prompt—Now we'd like to talk specifically about a certain case: X.)

8. Was X case the first case of human trafficking you investigated?

    a. If no, approximately how many cases of human trafficking or potential human trafficking did you investigate prior (month/year)?

9. How did X case first open as an investigation (tip from public, undercover investigation, investigated as another crime that turned out to be human trafficking, etc.)?

10. Was X case first investigated as potential human trafficking?

    a. If no, what was it first investigated as?

    b. If no, approximately when during the investigation did it become a case of human trafficking?

11. Were you involved in the investigation of X case from the beginning through the conclusion of the case?

    a. If no, who else was involved? What agencies were these investigators from?

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12. Were other state or local law enforcement entities involved in the investigation of X case?

    a. If yes, who and in what capacity?

13. Were any federal law enforcement agencies (FBI, ICE, etc.) involved in the investigation of X case?

    a. If yes, who and in what capacity?

    b. Probe: What role did ICE play (if any) in the initial investigation?

14. How long did it take to investigate X case?

    a. Was this length typical of other human trafficking investigations? Was this length typical of investigations into similar crimes (organized crime, prostitution, etc.)?

15. When in the process of investigation were potential human trafficking victims identified?

16. Were the victims interviewed by law enforcement immediately after identification?

    a. By whom were they interviewed?

    b. Where were they interviewed?

    c. Did you face any particular challenges interviewing victims?

17. How were (if at all) were service providers involved in the investigation of X case of human trafficking?

    a. Probe: which service providers and in what capacity?

18. Where did the victims go following identification and initial interviewing?

19. Approximately how many more times was the victim or victims interviewed?

20. Did you face any specific challenges keeping victims safe following the initial interview?

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21. Did you face any specific challenges keeping the victims engaged and trusting of law enforcement during in the investigation as the investigation moved forward?

22. Were you fearful that the victims would run away during the investigation process?

23. What types of investigative strategies were employed in this case beyond interviews of victims (e.g. wiretaps, surveillance, undercover work)?

24. What were some of the challenges that you encountered in the investigation of X case?

    a. Were these challenges unique to this particular case or typical of human trafficking investigations?

25. What were some of the strategies you or others employed to overcome these challenges?

    a. Prompt about the roles of partnerships with victim services providers, other law enforcement and prosecutors in overcoming these challenges.

26. Were suspects arrested in X case?

    a. If yes, were the arrests executed by state or federal officials?

    b. Can you tell me a little about how the arrests were executed? Were there any challenges specific to the execution of the arrests (e.g. obtaining warrants, etc)?

    c. If yes, what happened to the suspects following arrest? Were they detained (for how long) or booked and released?

27. When did the prosecutor become involved in the investigation of X case?

    a. *Clarify if it was a state or federal prosecutor and find out name and unit.*

    b. Did the case go before a grand jury before the execution of the arrests?

28. How was the decision made to take the case through the State or Federal System?

29. How were the suspect(s) in X case charged? (state, federal, both, human trafficking, non-human trafficking, both)

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a. Are there specific challenges you see to charging human trafficking cases (probe: charging under human trafficking statutes either state or federal)?

30. For X case, were there other potential victims associated with the case that are not represented in the charging document?

    a. If yes, how many? What prevented these victims from being identified/represented?

31. For X case, were there other potential suspects associated with the case that are not represented in the charging document?

    a. If yes, how many?

    b. What prevented these suspects from being identified/represented in charging?

32. What was your role in the case after the arrest?

    a. Did you work with the prosecutor to decide the charges to apply to human trafficking cases?

33. For X case, were other non-human trafficking charges applied?

    a. If yes, what were they?

    b. If yes, who made the charging decision and why?

34. Is it common to charge human trafficking cases with multiple charges?

    a. If yes, what other charges are common?

35. Are you aware of the prosecutorial outcome of the case?

    a. If yes, how did you learn about the outcome? (media, prosecutor contacted investigator, investigator contacted prosecutor, etc.)

36. Is it common to hear about the prosecutorial outcome of human trafficking cases?

    a. If yes, how do you commonly learn about the outcome? (media, prosecutor contacted investigator, investigator contacted prosecutor, etc.)

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Part III: General Human Trafficking Investigation Questions
(Prompt: Thank you for helping us better understand Case X. Now we'd like to talk to you about all of the human trafficking cases that you've known about in your jurisdiction.)

37. What types of human trafficking cases do you and/or your unit/department most often investigate?

38. How prevalent is each type of human trafficking in your jurisdiction (sex, labor, adult, child)?

    a. What is your estimate based on?

39. How many investigations have you conducted into ***potential*** human trafficking?

    a. *Working definition of potential cases:* where an individual is rescued from an environment, identified through investigation, where trafficking in persons is occurring or law enforcement intelligence that a suspect is involved in or benefitting from trafficking activities.

    b. Probe: How do you define a potential case of human trafficking?

40. How are potential sex trafficking cases most commonly brought to your attention and investigated?

    a. What are other ways these cases have come to your attention?

41. How are potential labor trafficking cases most commonly brought to your attention and investigated?

    a. What are other ways these cases have come to your attention?

42. In your experience what are the "best practices to identify human trafficking cases?

43. How many cases of ***actual/confirmed*** human trafficking have you investigated?

    a. Working definition of actual/confirmed: cases where a victim has received endorsement for continued presence or a t-visa or law enforcement has made an

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arrest of a trafficking suspect or confirms suspected persons would be eligible for arrest.

b. How do you define an actual case of human trafficking?

44. When is an investigation into potential human trafficking considered to be "open" and when is it considered to be "closed"?

    a. Is there a protocol in place to make this determination? If yes, who developed the protocol?

45. Is there a protocol that guides officers in your agency on how to investigate cases of human trafficking more generally?

    a. If yes, who developed the protocol and what does it state?

    b. If no, how are these decisions made and who makes these decisions?

46. At what point would an investigation into prostitution turn into a charge of sex trafficking? (*probe for both adults and juveniles*)

    a. Is involvement by a pimp and/or john a requirement to charge sex trafficking in cases of adult sex trafficking?

    b. Is involvement by a pimp and/or john a requirement to charge sex trafficking in cases of minor/child sex trafficking?

47. At what point would an investigation into a labor code violation turn into a charge of labor trafficking?

48. In addition to those we discussed with case X, what challenges do you encounter investigating human trafficking cases from the moment of first investigation to bringing the case forward to prosecution? (*probe for specific challenges based on type of human trafficking – adult, minor, sex, labor, foreign national, domestic*)

49. How are/can these challenges be overcome?

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50. Are there needs you or your department/unit or other partners have that would help overcome challenges investigating human trafficking cases?

51. Are certain types of human trafficking cases (sex, labor, adult, minor, etc.) more difficult to investigate, charge and prosecute than others?

52. How many cases of human trafficking have you (and/or your department/unit) referred to prosecution between 2003 and present?

    a. Of these, how many are referred to state prosecution vs. federal prosecution?

    b. Who are the prosecutors you most often refer human trafficking cases to?

53. Of the cases referred for prosecution, approximately how many are accepted?

    a. If there is a discrepancy in the number referred and accepted, why do you think this is?

54. In your experience, what elements or level of evidence is needed for the state or federal prosecutor to charge a case as human trafficking? (*probe for variation in elements by type of trafficking*)

55. Are state and/or federal prosecutors generally willing to prosecute cases of human trafficking?

    a. Are there certain types of human trafficking cases prosecutors are more willing to take on than others?

56. Are there specific things about your state law (if applicable) that help facilitate the prosecution of human trafficking cases?

57. Are there specific things about your state law (if applicable) that impede the prosecution of human trafficking cases?

58. In your opinion what would help improve the prosecution of human trafficking cases at either the state or federal level?

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59. Are there any differences in the investigation and prosecution of human trafficking cases involving US citizen victims and/or suspects vs. foreign national victims and/or suspects?

60. How are (if at all) service providers involved in the investigation and prosecution of a potential or actual case of human trafficking?

    a. Probe: which service providers and in what capacity?

61. Are there entities who are ***not*** involved during the investigatory or prosecution stages of a case of human trafficking that, if involved, would aid the investigation or prosecution of the case?

62. Thinking back over the last 7-8 years, approximately how many human trafficking cases did you present to prosecutors that were never charged or prosecuted as human trafficking?

    a. What are the main reasons for this? (*lack of sufficient evidence, issues securing victim testimony/cooperation, prosecutor unwillingness to try as ht, etc.)*

63. Have you attended training on investigative techniques specific to human trafficking cases?

    a. If yes, when, given by whom and on what topics?

64. Have you participated in joint trainings with other entities such as prosecutors, judges, victim service providers?

    a. If yes, when, given by whom and on what topics?

65. Are there any topics you would like to attend trainings on with respect to human trafficking?

66. Are there any other entities or groups that you think would benefit from additional training on human trafficking in your jurisdiction (probe: judges, prosecutors, victim service providers, public).

    a. Can you explain why additional training for these groups would be helpful?

67. Is there any other information you would like to provide about the investigation or prosecution of human trafficking in your jurisdiction?

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IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING

PROSECUTOR INTERVIEW GUIDE

Position Title:
Location:
Interview Date:

Researchers at Northeastern University's Institute on Race and Justice and the Urban Institute's Justice Policy Center have been tasked by the Department of Justice to identify common challenges local, county and state criminal justice agencies face conducting human trafficking investigations and promising practices used in prosecuting these cases. To conduct the study, we will use a multi-method approach including reviews of closed law enforcement and court records of human trafficking and non-human trafficking cases, and interviews with primary stakeholders in 12 selected counties throughout the United States. These findings will help us identify and overcome barriers to local prosecution of human trafficking and promote local practices that facilitate successful investigation and prosecution. At the conclusion of the study, we will publish major findings in relevant scholarly and professional publications, and develop a series of briefing sheets about common challenges and promising practices for investigating and prosecuting human trafficking cases geared toward different interested groups including the police, prosecutors, court officials, and victim service providers as well as city officials and state legislators.

Thank you for participating in our study. Your participation is completely voluntary and your responses will be kept confidential. Moreover, your responses if cited will never be attributed to you . This interview should last approximately 1 hour. Do you have any questions before we begin?

Part I: Background Information

1. How long have you been in your current position?

    a. What positions have you help before your present position

2. To the best of your knowledge do any federal, state or local human trafficking task forces operate in your state or jurisdiction?

    a. If yes, are you a member of a task force? If yes, for how long? What is your role?

    b. How often does the task force meet? What type of activities is the task force engaged in?

3. Approximately how long have you been working the cases of human trafficking?

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4. Approximately how many cases of human trafficking are brought to your attention per year?

    a. Are cases brought to you as human trafficking cases or is that determination made during the investigation?

5. Of the [above number] of cases brought to your attention, approximately what percentage are prosecuted as human trafficking or as some other type of crime?

Part 2: Specific Case Questions

(*Prompt—We will come back to talk about human trafficking prosecutions in your jurisdiction more generally but first we would like to talk specifically about X case)*

6. Was case X the first human trafficking case you prosecuted?

    a. If no, approximately how many human trafficking cases did you prosecute prior?

    b. Were these cases prosecuted in this jurisdiction, and in your current role?

7. When did X case come to your attention?

8. Who or what entity brought this case to your attention?

9. Were you the lead prosecutor throughout X case?

    a. If no, who else prosecuted this case? When?

    b. Were there other counsel involved in the prosecution of this case?

10. How long did the prosecution of X case take?

    a. Is this typical of any previous human trafficking cases? Is this typical with crimes similar in severity? (rape, for example)

11. Can you walk us through the decision to go forward with criminal charges in this case.

    a. Was evidence presented to a grand jury in advance of indictments?

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b. How were charging decisions made? What factors were important in your or other members of "X" US Attorney/District Attorney office's calculation to file charges?

c. How did the type of evidence available at indictment facilitate or inhibit the charging process?

d. Were there any types of evidence that were particularly important in your decision to file charges or charge under particular criminal codes?

12. Were the suspects in custody when formal charges were filed? If not, how were they served with notice?

    What was the feeling in this office about going forward with this human trafficking case?

13. Can you tell us a bit about the experience after the indictment in this particular case?

    a. Was additional information collected? Were additional victims and/or witnesses interviewed?

    b. Was a plea offered?

    c. Were motions made?

    d. Who was the lead investigation agency, Did other agencies assist in the investigation?

14. How was the case resolved?

Part III: General Human Trafficking Prosecuting Questions
(*Thank you for helping us better understand Case X. Now we'd like to talk to you about all of the human trafficking cases that you've known about in your jurisdiction.*)

15. Have you prosecuted both sex and labor trafficking cases?

    a. What types of human trafficking cases do you and/or your colleagues most often prosecute?

16. Is there a protocol you use to decide whether or not to accept a case of human trafficking for prosecution in "X" district or county?

    a. If yes, who developed the protocol? What is the protocol?

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b. If no, how do you decide which cases of human trafficking you accept for prosecution?

17. Is there a protocol you use to decide whether or not to prosecute a case of human trafficking at the state or federal level?

    a. If yes, who developed the protocol? What is the protocol?

    b. If no, how do you decide which cases of human trafficking you prosecute at the state or federal level?

18. What specific elements do you need to prosecute a case of human trafficking in "X" state or district?

    a. Do these elements vary based on whether a case is prosecuted at the state or federal level?

    b. Do these elements vary based on type of trafficking? (sex, labor, adult, child, foreign national, US citizen)

19. Are there certain elements that, if missing, would prevented you from prosecuting a case (e.g., victim witness)?

    a. Do these elements vary based on whether a case is prosecuted at the state or federal level?

    b. Do these elements vary based on type of trafficking? (sex, labor, adult, child, foreign national, US citizen)

20. Are there certain elements that, if present, lead to a more favorable prosecution or increase the chances of winning the case?

    a. Do these elements vary based on whether a case is prosecuted at the state or federal level?

    b. Do these elements vary based on type of trafficking? (sex, labor, adult, child, foreign national, US citizen)

21. Are there other non-human trafficking charges you commonly prosecute human trafficking cases under at the state or federal level?

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a. If yes, what are they?

b. Do the added charges vary based on type of trafficking case (sex, labor, adult, child, foreign national, US citizen)

22. How do you decide whether to take a case Federal or through the State syatem?

23. Have you undergone specialized training on the prosecution of human trafficking cases under the TVPA? [If state human trafficking law], have you undergone specialized training on the prosecution of human trafficking cases under your state law?

a. If yes, training given by whom? When? Duration?

24. What challenges do you as a prosecutor typically face ***during*** the prosecution of a case of human trafficking? Do these challenges vary by type of trafficking? (prompts: lengthy court case processing, judge unfamiliar with human trafficking cases, lack of sufficient evidence from investigator, no victim participation)

a. How are you able to overcome these challenges?

25. What steps do you generally take to secure and support the victim?

a. What was done in the case cited above?

26. In your experience (or opinion if no firsthand experience) how do judges and/or juries respond to human trafficking cases?

27. What challenges do you as a prosecutor typically face ***after*** the prosecution of a case of human trafficking? Do these challenges vary by type of trafficking?

28. In your opinion, are relevant anti-human trafficking laws (TVPA and reauthorizations as well as any state laws) being implemented/applied as intended?

a. If no, please explain.

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VICTIM SERVICE PROVIDER INTERVIEW GUIDE

Position Title:
Location:
Interview Date:

Researchers at Northeastern University's Institute on Race and Justice and the Urban Institute's Justice Policy Center have been tasked by the Department of Justice to identify common challenges local, county and state criminal justice agencies face conducting human trafficking investigations and promising practices used in prosecuting these cases. To conduct the study, we will use a multi-method approach including reviews of closed law enforcement and court records of human trafficking and non-human trafficking cases, and interviews with primary stakeholders in 12 selected counties throughout the United States. These findings will help us identify and overcome barriers to local prosecution of human trafficking and promote local practices that facilitate successful investigation and prosecution. At the conclusion of the study, we will publish major findings in relevant scholarly and professional publications, and develop a series of briefing sheets about common challenges and promising practices for investigating and prosecuting human trafficking cases geared toward different interested groups including the police, prosecutors, court officials, and victim service providers as well as city officials and state legislators.

Thank you for participating in our study. Your participation is completely voluntary and your responses will be kept confidential. Moreover, your responses will be reported only in the aggregate. This interview should last approximately 1 hour. Do you have any questions before we begin?

1. What is your current position/title?

2. How long have you been in your current position?

3. Were you involved in service provision for victims of trafficking prior to joining your current organization?

4. Please describe your current role.

5. What are the goals of your organization?

6. What services and/or activities does your organization provide?

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7. What other stakeholders working to address human trafficking does your organization collaborate with?

8. How and in what capacity does your organization interact/collaborate with other stakeholders working to address human trafficking?

9. Do you know of any federal, state or local human trafficking task forces operating in your state or jurisdiction?

    a. If yes, are you a member of a task force? If yes, for how long?

    b. How often does the task force meet?

10. How would you define human trafficking?

11. Approximately how many human trafficking victim clients do you serve per month/year? Are these unique clients (or include some recurring clients)?

12. Does your organization have any restrictions on the number or type of human trafficking victims that can be served? *(probe for only adult, child, sex trafficking, labor trafficking)*

    a. Do you know of other victim service providers in your jurisdiction for different populations of trafficking victims, other than those you primarily serve?

13. Can you describe the general characteristics of the types of human trafficking victims you and/or your organization most often work with?

14. Do funding streams prohibit working with certain types of trafficking victims (e.g., foreign national versus U.S. citizen)?

15. How prevalent is human trafficking in your jurisdiction (sex, labor, adult, child)?

    a. What is your estimate based on?

16. What service provision needs do the human trafficking clients you work with have? *(probe for variations in needs by type of victim – adult, child, citizen, foreign national, sex trafficking, labor trafficking)*

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17. Are these needs adequately met by the existing social system?

18. How does the state human trafficking law (or lack thereof) affect your ability to identify and provide services to victims?

19. What challenges do you face as a service provider for victims of trafficking?

20. How are these challenges overcome?

21. Are there needs you or your organization or other partners have that would help overcome challenges meeting the needs of human trafficking victims?

22. Do you have cases where victims come directly to you without having gone to the police? If so, do you report them or only report them if the victim agrees to speak with law enforcement? Do you encourage the victim to speak with law enforcement?

23. Are certain types of human trafficking clients more difficult to work with/meet needs of than others?

    a. Probe: which types of clients? Why are there needs more difficult to meet?

I the following questions we would like to ask some questions related to the role of victim service providers and victims in the investigation and prosecution of criminal human trafficking cases.

24. Do you or your organization collaborate with local, state and/or federal law enforcement during investigations of human trafficking?

    a. If yes, which law enforcement entities do you most often interact with?

    b. If yes, please describe the nature of your collaboration. Does a formal MOU guide this collaboration?

    c. If yes, are there challenges to this collaboration? Please describe.

25. Of you and/or your organization's caseload of human trafficking clients, approximately what percentage of clients are provide information to law enforcement and are involved in the prosecution of the criminal cases against traffickers?

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26. Do you or your organization collaborate with state or federal law enforcement or prosecutors during human trafficking case prosecutions?

    a. If yes, which law enforcement entities do you most often interact with?

    b. If yes, please describe the nature of your collaboration. Does a formal MOU guide this collaboration?

    c. If yes, are there challenges to this collaboration? Please describe.

27. Is encouraging client involvement in the investigation or prosecution of a criminal case related to their trafficking experience encouraged by your organization?

    a. If yes, how? What are the benefits of clients participating in criminal cases?

    b. If not, why not? What are the risks of clients participating in criminal cases?

28. What are the main barriers or challenges your human trafficking clients face during the investigation or prosecution of a case?

29. If one of your clients has a case that goes forward to prosecution, are your privy to information and updates about the case?

    a. If yes, how?

30. Are there other remedies outside of the criminal justice system that you think could be utilized to help restore victims?

    a. Probe: have your clients utilized any civil remedies to hold traffickers accountable for their victimization?

31. What is your assessment of how well law enforcement in your jurisdiction is doing investigating cases of human trafficking?

    a. If unfavorable, how can it be improved?

32. What is your assessment of how well prosecution (state and federal) is at prosecuting cases of human trafficking in your jurisdiction?

    a. If unfavorable, how can it be improved?

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Appendix I: Thematic Codes

Community Background

- Local human trafficking problems
    - General prevalence issues
    - Risk factors
        - Prostitution
        - Drug abuse
        - Runaways
        - Poverty
        - Gangs
    - Immigration
        - Legal
        - Illegal
    - Smuggling
    - Exploitive industries/labor practices
    - Modes of exploitation
- Routes or patterns of movement
- State human trafficking legislation
- Human trafficking task force
- Training/awareness raising
- Prioritization of human trafficking in community/ political will
- Key actors in local human trafficking movement

Law Enforcement Agency Responses to Human Trafficking

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- General agency characteristics/background/approach
- Individual characteristics/background
    - Experience with human trafficking
- Prioritization/political will to investigate human trafficking within
    - Local law enforcement (police department or Sheriff)
    - State law enforcement
    - Federal law enforcement
- Leadership
- Attitudes of law enforcement toward human trafficking
- Training
- Procedures and techniques (general information about)
- Definitions of human trafficking
- Prior experience investigating human trafficking
- Specialization within agency
- Identifying human trafficking (challenges or facilitators)
    - Cooperation of victims and witnesses
    - Evidence that supports identification of HT
    - Identification of labor trafficking
    - Key actors
    - Locating victims
    - Procedures/techniques
        - Flipping victims to provide evidence
        - Undercover operations
    - Referrals
    - Resources

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    - Victim/witness fear
        - Deportation
        - Retaliation
        - Fear of police
- Investigating human trafficking (challenges or facilitators)
    - Resources
    - Procedures/techniques
        - Information uncovered in interviews of suspects
    - Intelligence gathering
    - Elements of the crime
    - Corroborating/securing evidence
    - Key actors
    - Cooperation of victims and witnesses
    - Cooperation of suspects
    - Language barriers
    - Credibility of victims/witnesses
    - Length of time for investigation/delays
    - Victim/witness fears
        - Fear of law enforcement generally
        - Deportation
        - Retaliation
    - Support of prosecutors
- Providing victim services
    - Requesting/securing CP or T-visa
- Collaboration

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    - Within agency
    - Across agencies
    - Overcoming stereotypes/perceptions of agencies
- Communication
    - Within agencies
    - Across agencies

Victim Service Agency Responses to Human Trafficking

- General agency characteristics/background
- Individual characteristics/background
- Prioritization/political will to investigate human trafficking
- Attitudes of victim service agents toward human trafficking
- Training
- Prior experience serving victims of human trafficking
- Specialization within agency
- Challenges identifying victims of human trafficking
    - Procedures/techniques
    - Referrals
    - Key actors
    - Language barriers
    - Lack of outreach to or service in particular communities
    - Victim fears
        - Deportation
        - Retaliation
        - Fear of being turned in to the police

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- Challenges serving victims of human trafficking
    - Procedures/techniques
    - Key actors
    - Building trust with victims
    - Funding
    - Language barriers
    - Credibility of victims/witnesses
    - Length of time for investigation
    - Victim fears
        - Deportation
        - Retaliation
        - Fear of being turned in to the police
- Collaboration
    - Within agency
    - Across agencies
- Communication

Cases

- Method of identification
    - Informants
    - Referral
- Case characteristics
    - People
        - Victim
            - E.g. Race, gender, age, place of origin, general background

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        - Suspect
            - E.g. Race, gender, age, place of origin, general background
        - Key agencies and actors
            - Law enforcement
            - Victim Services
            - Prosecution
    - Offense
        - Background
            - Smuggling
        - Modes of exploitation/victimization
        - Gang involvement
- Features of investigation
    - Evidence gathered
- Arrests
- Charges
- Case outcomes
    - Sentences
- Cooperation
    - Victims
    - Witnesses
    - Suspects
- Victim services
    - Housing/shelter
    - Immigration advocacy
        - T-visa

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- Trauma/mental health services

Prosecution Agency Responses to Human Trafficking

- General agency characteristics/background
- Individual characteristics/background
- Prioritization/political will to prosecute human trafficking
- Attitudes of prosecutors toward human trafficking
- Training/awareness
- Prior experience prosecuting human trafficking
- Prosecutor led collaboration
- Specialization within agency
- Referral of cases to prosecutor
- Recommended charge from law enforcement/charge on arrest/original charge
- Factors in the decision to pursue prosecution
    - State
        - Human trafficking
        - Other charges
    - Federal
        - Human trafficking
        - Other charges
- Case factors that informed prosecution decisions
    - Discovery method
    - Evidence supporting prosecution
- Bond
- Prosecution strategies

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    - Timing of arrests
    - Arresting or detaining victims/securing victim location
    - Corroboration of evidence
    - Testimony
- Key actors
- Challenges prosecuting human trafficking cases
    - Lack of political will
    - Credibility of victim/witness
    - Length of time for prosecution/delays
- Plea offers/negotiations
- Victim or witness protection
- Jury
- Voir Dire
- Trial strategies
    - Addressing/educating the jury about human trafficking
    - Presentation of evidence
    - Expert testimony
    - Witness/victim testimony
- Defense strategies
- Reaction of judges
    - Motion/admissibility issues
    - Judges instruction
- Case outcomes

Additional Codes

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- Race
    - White
    - Black
    - Hispanic
    - Asian
    - Other racial groups
- Prices
- Tattoos
- Anti-Demand
- Time/Length
- Federal human trafficking legislation
- Federal immigration policy
- Personal relationships

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Appendix J.: Non Trafficking Case Review

Non-Trafficking Case Review Introduction

When law enforcement in local communities does not believe that human trafficking is a problem or is not trained to identify and respond to such cases they are much less likely to identify incidents of human trafficking during their routine operations (Farrell et al., 2008). This study has primarily focused on the challenges law enforcement and prosecutors face investigating a human trafficking case and brining suspects forward to prosecution, but to help us understand the challenges local agencies face identifying cases of human trafficking, a key first step to the investigation and prosecution of such cases, we reviewed cases not originally classified as human trafficking. This analysis, referred to as the non-trafficking review, involved collecting and analyzing a set of incident reports in each study site for other types of crimes to determine if they included indications of human trafficking. This review was intended to help us identify how often and under what circumstances incidents with indications of human trafficking are found in cases that are not identified or investigated as such. Additionally, we were interested in understanding whether the level of under-identification varied by the local context. A similar methodology was used to estimate the degree of under-identification of hate crimes (McDevitt et al., 2002) and in a study of four local jurisdictions, a case review methodology was used to identify cases with signs of human trafficking (Newton et al., 2008).

To conduct the non-trafficking review, in each site we requested access to the last 50 incidents involving the crime of prostitution to help us identify potential sex trafficking cases among prostitution incidents. We also requested access to the last 50 incidents involving

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extortion or alien harboring to help us identify potential labor trafficking cases.[29] The number of incidents available for us to review varied by agency. Not all agencies had 50 incidents involving prostitution or 50 incidents involving extortion or harboring since 2000.[30] Additionally, one agency (*comprehensive legislation-task force-west*) was not able to provide the requested incident records even after agreeing to participate in the study and providing access to closed human trafficking cases. In total, we reviewed 530 incident reports, 396 of which involved prostitution offenses and 134 of which involved extortion, harboring or other offenses[31].

To guide our review of each non-trafficking case, we developed a list of indicators of human trafficking based on the elements of the crime as specified in the TVPA and its reauthorizations. These included twelve separate elements of human trafficking offenses.[32] For example, we reviewed incident reports to identify whether during the course of the incident as described in the narrative, the victim was threatened with or a victim of actual physical or non-physical (psychological, financial or reputational) harm which compelled them to perform or

[29] Identifying incidents that potentially contained indicators of labor trafficking was extremely challenging. At the outset of the project, the advisory board provided a number of recommended crime types where they suggested labor trafficking cases might be misclassified. These included kidnapping, extortion, harboring and assault. After reviewing a preliminary set of incident reports from a broad array of incident types we decided that extortion and harboring cases were conceptually closest to the elements of labor trafficking. Most sites had only a few incidents of harboring or extortion during the study period. As a result, we reviewed a smaller number of incidents that could potentially contain elements of labor trafficking as compared to those that could con. In many cases, the study sites were confused about why we were requesting access to extortion or harboring cases because they claimed that they did not have any labor trafficking cases and it would be unlikely that the elements of such cases would be found in other crime types. The challenges that we faced identifying incidents that contained potential labor trafficking elements and accessing information from study sites about potential labor trafficking is indicative of the lack of knowledge local law enforcement agencies have about labor trafficking and the lack of systems in place within agencies to correctly identify and classify such incidents.

[30] We bounded the incidents that we wanted to review at 2000 since this was the year that the TVPA was passed and therefore it would be unlikely that cases would be recognized as human trafficking prior to 2000.

[31] In some cases agencies included incident reports where one of the offenses was extortion or harboring but the primary offense type was some other type of offense such as

[32] Multiple sources of information helped inform this list of indicators including existing human trafficking training materials, reports, and informational interviews with human trafficking task force members experienced identifying such cases. Additionally, the project advisory board provided feedback on the preliminary list of indicators.

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continue to perform labor or services to avoid harm (element 1). For each of the twelve elements, we identified whether there was clear evidence of the element (yes); some evidence of the element, but no clear evidence (unclear); or no evidence of the element (no). An incident was considered to have clear evidence supporting human trafficking when one or more elements was coded as "yes". We classified incidents as "unclear" when no elements were coded "yes" but one or multiple elements were coded as "unclear." We identified evidence of indicators of human trafficking from the narrative of incident reports. It is possible, and in some cases likely, that elements of human trafficking actually existed but law enforcement did not recognize them and as a result, information supporting a human trafficking identification was never recorded in the incident narrative. Therefore, our review represents a conservative estimate of the degree of under-identification of human trafficking in the study sites. We review all incidents to determine the degree of under-identification and examine the degree of under-identification across sites with different legislative and task force contexts.

In addition to reviewing prostitution and extortion and harboring incidents to determine whether there was evidence of elements of human trafficking, we collected information on the characteristics of suspects and victims identified in the incident reports. We use that information to determine whether or not there are differences in suspect and victim characteristics in those cases that are identified as human trafficking in an agency (from the closed case review, chapter 3) and similar incidents that were not identified as human trafficking.

Identification of Elements Supporting Human Trafficking

Across the eleven study sites that took part in the non-trafficking case review, 6.1 percent of the incident reports not classified as human trafficking had clear evidence of human

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trafficking elements. Another 2.8 percent had some evidence of human trafficking, but it was less clear and 91.1 percent of the incident reports we reviewed had no evidence of indicators of human trafficking (Table 1). There were more elements of human trafficking found in the prostitution incident reports compared to the extortion and harboring incident reports. Nearly ten percent of the prostitution incident reports contained some evidence of human trafficking elements (7.4 percent clear and 3.3 percent unclear) compared to 4 percent of the extortion and harboring incident reports (2.2 percent clear and 1.5 percent unclear).

Table Appendix J1: Trafficking Elements Identified Across Case Types

	Yes	Unclear	No	Total (n)
All incident reports	6.1	2.8	91.1	100% (527)
Prostitution reports	7.4	3.3	89.3	100% (393)
Extortion and harboring reports	2.2	1.5	96.3	100% (134)

While these findings are by no means representative of the degree of under identification of human trafficking nationally, there are some interesting similarities between the results reported here and those identified in other studies using similar methodologies. In a four-jurisdiction study of cases that could potentially involve human trafficking conducted by the National Opinion Research Center (NORC) (Newton et al., 2008), researchers concluded that 9 percent of the reviewed cases showed signs of potential human trafficking. While the specific criteria researchers in the NORC study used to select cases for review[33] or to identify a "sign of potential trafficking" is not specified, the general approach of the methodology appears to be quite similar to the non-trafficking case review. Similarly, an eight jurisdiction study using a similar case review methodology to identify potentially un-identified bias motivated crimes from a sample non-domestic violence assault cases, identified indications of bias motivation in three percent of the cases reviewed, though the range of cases with bias-motivation indicators ranged from zero to eight percent across the study sites.

[33] The NORC study report (Newton et al., 2008) indicates that researchers requested access to 20-25 cases in each study site from a "a list of statutes provided by the researchers." It is not clear what specific offense types were reviewed. Interestingly, the NORC study authors reported similar challenges identifying cases that involved potential incidents of labor trafficking. As a result, it appears that their study focused on the under-identification of sex trafficking cases.

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For each of the incident reports reviewed for the present study we collected information about twelve separate potential indicators of human trafficking. As with the overall designation for the incident report, we identified whether evidence of each element was clearly present (yes), present but less clear (unclear) or not present (no). For all incident reports, the most common element of human trafficking that was identified (in 7.6 percent of the incident reports) was "knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act" which was often designated by the clear presence of a pimp in the offense. The presence of a minor victim (identified in 2.5 percent of the incident reports), evidence of actual physical or non physical harm (identified in 2.3 percent of incidents) and knowingly benefitting from participating in a venture that involved human trafficking (identified in 2.3 percent of incidents) were the next most commonly identified indicators.

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Table Appendix J2: Elements of Human Trafficking Identified in All Incidents

Offense involves evidence of:		Yes	Unclear	No	Total (n)
1	Threatened or actual physical or non-physical (psychological, financial or reputational) harm which compels victim to perform or continue to perform labor or services to avoid harm	2.3	1.2	96.5	100% (515)
2	Use or threatened use of law to exert pressure on another person to perform labor or services	0.2	0.8	99	100% (516)
3	Demeaning and demoralizing the victim (verbal abuse, humiliation)	0.2	1.0	98.8	100% (516)
4	Disorienting and depriving victim of alternatives (isolation, restricted communications, manipulation of debts, monitoring/surveillance)	0.8	0.8	98.4	100% (515)
5	Diminishing resistance and debilitating (substandard living conditions, deny food, water, medical care, weaken with drugs or alcohol)	0.2	0.8	99	100% (516)
6	Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)	0.6	0.8	98.6	100% (515)
7	Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)	1.4	1.0	97.7	100% (514)
8	Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)	7.6	3.7	88.7	100% (514)
9	Knowingly benefited, financially or by receiving something of value, from participating in above venture	2.3	1.7	95.9	100% (513)
10	Knew [or recklessly disregarded] that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts **or**	0.6	1.2	98.2	100% (513)
11	Victim under the age of 18	2.5	0.4	97.1	100% (513)
12	Past involvement of suspect or victim in suspected human trafficking incidents	0.4	1.9	97.7	100% (483)

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When we separated the potential sex trafficking incident reports (prostitution offenses) from the potential labor trafficking incident reports (extortion or harboring offenses) we found slightly different patterns of identified human trafficking elements. For the incident reports involving prostitution offenses (Table 3), the most common indicator of human trafficking was the presence of a pimp, identified in 9.7 percent of all prostitution incidents. The second most common indicator was a victim who was a minor (2.3 percent) and knowingly benefitting financially from human trafficking (2.1 percent).

For the extortion or harboring offenses (Table 4), the most common indicator of human trafficking was threatened or actual physical or non-physical harm (6.8 percent of incidents). Three percent of incidents involved a minor victim (not necessarily a legally proscribed element of labor trafficking). Another three percent of incidents involved someone knowingly benefitting from human trafficking. Disorienting and depriving victims of alternatives was present in 2.3 percent of incidents and an offender dominating, intimidating and controlling victims through displaying of weapons or rules and punishment was present in another 2.3 percent of extortion or harboring incidents.

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Table Appendix J3: Elements of Sex Trafficking Identified in Prostitution Incidents

Offense involves evidence of:		Yes	Unclear	No	Total (n)
1	Threatened or actual physical or non-physical (psychological, financial or reputational) harm which compels victim to perform or continue to perform labor or services to avoid harm	1.6	1.6	97.6	100% (382)
2	Use or threatened use of law to exert pressure on another person to perform labor or services	0.0	0.0	99	100% (3383)
3	Demeaning and demoralizing the victim (verbal abuse, humiliation)	0.0	0.0	98.7	100% (383)
4	Disorienting and depriving victim of alternatives (isolation, restricted communications, manipulation of debts, monitoring/surveillance)	1.0	1.0	98.7	100% (382)
5	Diminishing resistance and debilitating (substandard living conditions, deny food, water, medical care, weaken with drugs or alcohol)	1.0	1.0	98.7	100% (383)
6	Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)	0.0	0.0	99	100% (382)
7	Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)	1.3	1.3	97.4	100% (382)
8	Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)	5.0	5.0	85.3	100% (382)
9	Knowingly benefited, financially or by receiving something of value, from participating in above venture	2.4	2.4	95.5	100% (382)
10	Knew [or recklessly disregarded] that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts **or**	1.6	1.6	97.6	100% (381)
11	Victim under the age of 18	0.3	0.3	97.4	100% (381)
12	Past involvement of suspect or victim in suspected human trafficking incidents	2.3	2.3	97.4	100% (351)

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Table Appendix J4: Elements of Labor Trafficking Identified in Extortion/Harboring Incidents

Offense involves evidence of:		Yes	Unclear	No	Total (n)
1	Threatened or actual physical or non-physical (psychological, financial or reputational) harm which compels victim to perform or continue to perform labor or services to avoid harm	6.8	0.0	93.2	100% (133)
2	Use or threatened use of law to exert pressure on another person to perform labor or services	0.8	0.0	99.2	100% (133)
3	Demeaning and demoralizing the victim (verbal abuse, humiliation)	0.8	0.8	98.4	100% (133)
4	Disorienting and depriving victim of alternatives (isolation, restricted communications, manipulation of debts, monitoring/surveillance)	2.3	0.0	97.7	100% (133)
5	Diminishing resistance and debilitating (substandard living conditions, deny food, water, medical care, weaken with drugs or alcohol)	0.0	0.0	100	100% (133)
6	Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)	2.3	0.0	97.7	100% (133)
7	Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)	1.5	0.0	98.5	100% (133)
8	Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)	1.5	0.0	98.5	100% (132)
9	Knowingly benefited, financially or by receiving something of value, from participating in above venture	3.0	0.8	96.2	100% (133)
10	Knew [or recklessly disregarded] that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts **or**	0.0	0.0	100	100% (132)
11	Victim under the age of 18	3.0	0.8	96.2	100% (132)
12	Past involvement of suspect or victim in suspected human trafficking incidents	0.8	0.8	98.5	100% (483)

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Variation in the under-identification of human trafficking across county context

The existence of criminal incidents with elements of human trafficking but not identified as such varied across the study sites. In sites in states with comprehensive legislation, 7.7 percent of the incidents had clear (5.2 percent) or unclear (1.5 percent) evidence of human trafficking elements. In those sites with basic legislation 8.4 percent of the incidents had elements of human trafficking (4.0 clear and 4.4 unclear). In those sites with no legislation, 11.3 percent of the incidents had elements of human trafficking (9.5 percent clear and 1.8 percent unclear). When we break down the under identified incidents by state legislation and type of incident we find additional differences across the legal context of the study counties. In counties with comprehensive states legislation only 8.5 percent of prostitution incident reports and 2.5 percent of the extortion or harboring incident reports contained evidence of human trafficking elements. In counties with basic state legislation, 11 percent of the prostitution incident reports had elements of human trafficking, though none of the extortion or harboring incidents reports had such elements. In counties with no state legislation, 11.9 percent of the prostitution incident reports had elements of human trafficking and 9.6 percent of the extortion or harboring incidents had elements of human trafficking. These patterns suggest there may be a relationship between the legal context of the county and the ability of law enforcement agents to identify human trafficking cases when criminal incidents come to the attention of the police. This pattern should be interpreted cautiously. The non-trafficking case review suggests that the degree of under-identification of human trafficking is relatively small across all types of counties. The review described here involved a small number of counties and thus variation in a single county may drive trends across categories of county context. Additionally, it only assesses the ability of law enforcement to classify correctly human trafficking cases among those criminal incidents that

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come to their attention. It does not provide any information about the effectiveness of the police in uncovering instances of human trafficking victimization that exists in their communities. Despite these limitations, the non-trafficking case review suggests future research would be warranted to understand the degree to which the legal context, represented here as state anti-trafficking legislation, affects the identification of human trafficking cases.

Table Appendix J5: Elements of Human Trafficking Identified by Legal Context

Trafficking Suspected by Legislation type	Yes	Unclear	No	Total (n)
Basic legislation	4.0	4.4	91.6	100% (225)
Comprehensive legislation	5.2	1.5	93.3	100% (134)
No legislation	9.5	1.8	88.7	100% (168)
Trafficking Suspected by Case Type and Legislation Type	Yes	Unclear	No	Total
Basic legislation				100%
Prostitution	5.2	5.8	89.0	100%
Extortion	0.0	0.0	100	100%
Comprehensive legislation				100%
Prostitution	6.4	2.1	91.6	100%
Extortion	2.5	0.0	91.5	100%
No legislation				100%
Prostitution	11.1	0.8	88.1	100%
Extortion	4.8	4.8	90.5	100%

Numerous other factors may affect the ability of the police to correctly identify human trafficking cases among those criminal incidents to which they respond. Previous research suggests that the existence of a federally funded human trafficking task force in a jurisdiction

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increases the readiness of local law enforcement to identify human trafficking in terms of training and designation of specialized personnel. As a result, those agencies that can access task force resources are better able to identify human trafficking cases (Farrell et al., 2010). Table 6 illustrates the distribution of incidents with evidence of human trafficking elements broken out by the existence of a federally funded human trafficking task force the state. The relationship between task force context in terms of task forces and the under-identification of human trafficking is similar to that observed for county context and state legislation. It is important to note that while a federally funded task force may exist in a state local law enforcement agencies in the study county may not have always had direct access to task force resources.

Table Appendix J6: Elements of Human Trafficking Identified by Federally Funded Task Force

Trafficking Suspected – Task force	Yes	Unclear	No	Total
Task Force	5.2	1.5	93.3	100%
No Task Force	6.4	3.3	90.3	100%
Trafficking Suspected by Case Type and Task Force	Yes	Unclear	No	Total
Task Force				100%
Prostitution	6.4	2.1	91.5	100%
Extortion	2.5	0.0	97.5	100%
No Task Force				100%
Prostitution	7.7	3.7	88.6	100%
Extortion	2.1	2.1	95.7	100%

There are some complexities when we examine the combination of state legislation and task forces. We would expect the least under-identification of human trafficking in those counties

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with comprehensive state legislation and federal task forces, but that is not the case. The lowest rates of under identification are in counties with basic legislation and task force (clear designation of zero) and comprehensive legislation and no task force (clear designation 1.5 percent and less clear 1.5 percent). However, based on the site visit in the comprehensive legislation, no task force county, the low rate of under-identification is surprising as this was not a study site that was well equipped to identify human trafficking cases.

Alternative Table 6: Identification of Human Trafficking Elements Across Counties Types

Trafficking Suspected by Site Type Combined	Yes	Unclear	No	Total
Basic legislation_no task force (2)	7.1	2.4	90.6	100% (127)
Basic legislation_task force (2)	0.0	7.1	92.9	100% (98)
Comprehensive legislation_no task force (1)	1.5	1.5	97.0	100% (66)
Comprehensive legislation_task force (2)	8.8	1.5	89.7	100% (68)
No legislation_no task force (3)	7.2	2.0	90.8	100% (153)
No legislation_task force (1)	33.3	0.0	66.7	100% (15)

Demographic Comparisons of Suspects and Victims

In addition to collecting information about the degree to which human trafficking elements were under-identified in the studied counties, we collected data on the characteristics of suspects and victims identified in the incident reports. Incident reports generally identified whether the police considered an individual to be a suspect or a victim. In the few cases where the identities of suspects or victims were unclear, we made subjective judgments about how to classify individuals based on the description in the incident report narrative. Table 7 provides a breakdown of the demographic characteristics of all identified suspects and then separates

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prostitution incident report suspects and extortion or harboring incident report suspects. Overall suspects are most likely to be white and non-Hispanic. Sixty six of the prostitution suspects were female compared to 40 percent of the extortion or harboring suspects. Just over 50 percent of the prostitution suspects were U.S. citizens compared to only 27.6 percent of the extortion or harboring suspects, though classification of citizenship was unclear for both offense types in a majority of cases. Suspects in prostitution and extortion or harboring incidents were similar in age. Proportionately more prostitution suspects were arrested (88 percent) compared to extortion or harboring suspects (44.8 percent).

Table Appendix J7: Characteristics of Suspects in Non-Trafficking Incident Reports

	Overall Suspects (590)	Prostitution Suspects (474)	Extortion/Harboring Suspects (116)
Race			
White	63.1	63.0	63.4
Black	32.1	32.5	30.1
Asian	4.3	3.8	6.5
Other	0.6	0.7	0
Ethnicity			
Hispanic	17.5	17.9	15.6
Non-Hispanic	82.5	82.1	84.4
Gender**			
Female	61.5	66.0	40.2
Male	37.7	33.1	59.8
Transgendered	0.7	0.9	0.0
Citizenship**			
Citizen	48.5	53.6	27.6
Non-Citizen	5.8	7.2	1.8
Unknown	45.6	39.2	70.7
Age			
Under 16	1.1	0.6	3.7
16-17	2.4	1.7	6.2
18-20	7.7	8.2	4.9
21-29	32.2	34.4	19.8
30-39	23.8	23.4	25.9
40+	32.8	31.6	39.5
Average Age	38.9	33.62	34.7
Arrested**	80.2	87.6	44.8

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** indicates differences between prostitution incident reports and extortion or harboring incident reports are statistically significant at .01

Similar analyses were conducted to identify the characteristics of victims in non-trafficking incident reports. Like suspects, the majority of victims identified in the non-trafficking incident reports were white and non-Hispanic, though prostitution incident victims were proportionately more likely to be black (26.9 percent) compared to extortion or harboring incident victims (5.9 percent). Prostitution incident report victims were more likely to be female (66.7 percent) compared to the extortion or harboring incident victims (52.9 percent). Citizenship status information was not available for three fourths of victims, though where available extortion or harboring victims were more likely to be citizens. The average age of prostitution and extortion or harboring incident report victims was similar, though a larger proportion of prostitution victims fell into the under 18 years of age categories (36 percent) compared to extortion or harboring (8.8 percent). Somewhat surprisingly, roughly a third of those individuals identified as victims in both types of incident reports were arrested.

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Table Appendix J8: Characteristics of Victims in Non-Trafficking Incident Reports

	Overall Victims (116)	Prostitution Victims (27)	Extortion/Harboring Victims (89)
Race**			
White	82.9	61.5	89.4
Black	10.8	26.9	5.9
Asian	0.9	11.5	3.5
Other	5.4	0.0	1.2
Ethnicity			
Hispanic	9.4	3.8	11.2
Non-Hispanic	90.6	96.2	88.8
Gender			
Female	56.3	66.7	52.9
Male	43.8	33.3	47.1
Transgendered	0.0	0.0	0.0
Citizenship**			
Citizen	25.4	14.7	28.7
Non-Citizen	4.4	11.1	2.3
Unknown	70.2	74.1	69.0
Age**			
Under 16	8.6	24.0	3.8
16-17	6.7	12.0	5.0
18-20	6.7	4.0	7.5
21-29	16.2	8.0	18.8
30-39	22.9	12.0	26.3
40+	39.0	40.0	38.8
Average Age	35.8	35.7	35.8
Arrested	31.6	29.6	32.2

** indicates differences between prostitution incident reports and extortion or harboring incident reports are statistically significant at .01

In addition to providing overall demographics of suspects and victims identified in all non-trafficking incident reports, we broke down the suspect and victim characteristics to compare those individuals in cases without indicators of human trafficking and those cases that were identified to have clear or less clear indicators of human trafficking. Table 9 illustrates these relationships.

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Table Appendix J9: Characteristics of Suspects and Victims in Non-Trafficking Cases with and without Indicators of Human Trafficking

	No Trafficking Indicators Suspects (539)	Trafficking Indicators Suspects (51)	No Trafficking Indicators Victims (110)	Trafficking Indicators Victims (6)
Race**				
White	62.8	65.3	86.0	33.3
Black	32.6	26.5	10.3	16.7
Asian	3.9	8.2	2.8	50.0
Other	0.6	0.0	0.9	0.0
Ethnicity				
Hispanic	17.4	18.8	9.8	0.0
Non-Hispanic	82.6	81.3	90.2	100
Gender				
Female	61.3	64.0	55.6	83.3
Male	37.9	36.0	43.6	16.7
Transgendered	0.8	0.0	0.0	0.0
Citizenship**				
Citizen	49.7	35.3	26.4	16.7
Non-Citizen	5.1	15.6	1.8	50.0
Unknown	45.7	52.9	71.8	33.3
Age				
Under 16	1.2	0.0	8.9	0.0
16-17	2.2	4.0	6.9	16.7
18-20	7.7	8.0	6.9	0.0
21-29	32.3	32.0	16.8	16.7
30-39	23.7	24.0	22.8	16.7
40+	32.9	32.0	37.6	50.0
Average Age	33.8	33.4	35.4	38.0
Arrested	80.1	81.6	29.1	66.7

** indicates differences between prostitution incident reports and extortion or harboring incident reports are statistically significant at .01 for suspects only.

Finally, we compare the demographics of suspects and victims in non-trafficking incident reports with those suspects and victims identified in the closed human trafficking case review (details found in chapter 3). Table 10 illustrates the differences between suspect and victim

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characteristics in both prostitution and extortion or harboring incidents compared to suspects and victims in closed human trafficking cases identified in the study sites.[34]

Table 10: Characteristics of Suspects and Victims in Non-Trafficking Cases Compared to Closed Human Trafficking Cases

	Non-Trafficking Case Suspects (590)	Closed Trafficking Case Suspects (n=372)	Non-Trafficking Case Victims (116)	Closed Trafficking Case Victims (n=117)
Race				
White	63.1	39	82.9	48
Black	32.1	39	10.8	30
Asian	4.3	19	0.9	14
Other	0.6	3	5.4	8
Ethnicity				
Hispanic	17.5	33	9.4	15
Non-Hispanic	82.5	66	90.6	85
Gender				
Female	61.5	30	56.3	88
Male	37.7	70	43.8	12
Transgendered	0.7	0	0.0	0
Citizenship				
Citizen	48.5	55	25.4	74
Non-Citizen	5.8	23	4.4	20
Unknown	45.6	22	70.2	6
Age				
Under 16	1.1	0	8.6	25
16-17	2.4	15 (combined)	6.7	30
18-20	7.7		6.7	23
21-29	32.2	37	16.2	13
30-39	23.8	21	22.9	10 (combined)
40+	32.8	27	39.0	
Average Age	38.9	Need data	35.8	19.8
Arrested	80.2	Need data	31.6	Need data

[34] The demographics of victims and suspects in the closed human trafficking case review figures do not perfectly match those described in chapter 3 as one of the sites where the closed case review was conducted did not provide incident information for the non-trafficking case review. A s a result, the demographics presented here represent the findings from only 11 of the 12 study sites.

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