

Assembly Public Safety Committee

Honorable Nick Schultz, Chair



INFORMATIONAL HEARING

*Sex Work-Related Crimes
and Efforts to Combat Human Trafficking*

Wednesday, October 15, 2025
Pomona City Council Chambers
505 South Garey Avenue, Pomona, CA 91767
9:30 a.m. – 12:00 p.m.

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Sex Work-Related Crimes and Efforts to Combat Human Trafficking

Agenda

Wednesday, October 15, 2025

9:30 a.m. to 12:00 p.m.

505 South Garey Avenue, Pomona, CA 91767

- **Introduction and Opening Remarks: 9:30 a.m. – 9:45 a.m.**
- **Understanding the Issue: Data, Research, and Perspectives: 9:45 a.m. – 10:25 a.m.**
 - Tunua Thrash-Ntuk, Councilmember, Long Beach City Council
 - Tiffany Suzs, Supervising Deputy Attorney General, California Department of Justice
 - Hannah Garry, Clinical Professor of Law and Director for the International Human Rights Clinic, USC School of Law
 - Minouche Kandel, Senior Staff Attorney, ACLU Southern California
- **Policing Sex Work and Efforts to Combat Human Trafficking: 10:25 a.m. – 10:55 a.m.**
 - Tiffany Suzs, Supervising Deputy Attorney General, California Department of Justice
 - Michael Ellis, Chief of Police, City of Pomona
 - Jess Torres, Director of Programs, Rising Worldwide
- **Sex Work-Related Crimes in the Courtroom: 10:55 a.m. – 11:25 a.m.**
 - William Robinson, Managing Deputy District Attorney, Riverside County District Attorney's Office
 - TBD, Defense Counsel
 - Leigh LaChapelle, Associate Director of Survivor Advocacy, Coalition to Abolish Slavery & Trafficking
- **Public Comment: 11:25 a.m. – 11:45 a.m.**
- **Closing Remarks: 11:45 a.m. – 12:00 p.m.**



PPIC

PUBLIC POLICY
INSTITUTE OF CALIFORNIA



BLOG POST · FEBRUARY 15, 2023

Human Trafficking in California

Heather Harris

In late January, a statewide task force made hundreds of arrests in conjunction with National Human Trafficking Prevention Month. Sustaining such efforts throughout the year requires understanding the scope of human trafficking and how to combat it. The available data suggest that California accounts for a shrinking share of the trafficking incidents that occur nationally. However, detecting human trafficking is challenging—and the state can do more to contribute to national efforts to gather and disseminate information aimed at helping trafficked people and punishing those who traffic them.

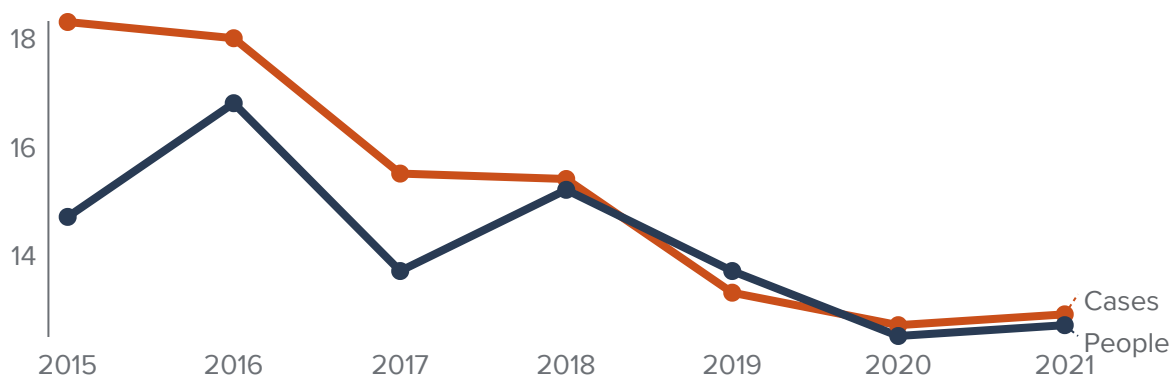
Human trafficking refers to the commercial exploitation of people through force, fraud, or coercion. Policy and research focus on two forms of trafficking: labor and sex trafficking, which ensnare people in modern forms of slavery or debt servitude. Labor trafficking is broad in scope and includes forced work in any industry. Sex trafficking refers specifically to forced sex work.

Understanding the extent of human trafficking is challenging for several reasons. Trafficking typically happens through clandestine networks. Individuals, families, and businesses who enslave others often seem legitimate. People who experience trafficking are often among the most socially and economically vulnerable. Even if they have opportunities to report their situation, they may not for fear of retaliation.

The United States operates a national hotline through which people can report suspected trafficking or seek help. The hotline publishes data on human trafficking cases and trafficked people that have been identified from hotline reports.

Hotline data spanning 2015 through 2021 indicate that the reported number of people experiencing trafficking nationwide rose from 12,000 in 2015 to more than 22,200 in 2019 and then fell to 16,700 in 2021. In California, these numbers peaked a year earlier and more modestly, so that California now accounts for smaller shares of trafficking cases and trafficked people. In 2015, 18% of trafficking cases and 15% of trafficked people were in California. By 2021, 13% of both cases and people were in California.

The share of human trafficking cases that occur in California has fallen



SOURCE: National Human Trafficking Hotline.

NOTES: These data represent cases identified after the hotline received a report about human trafficking.

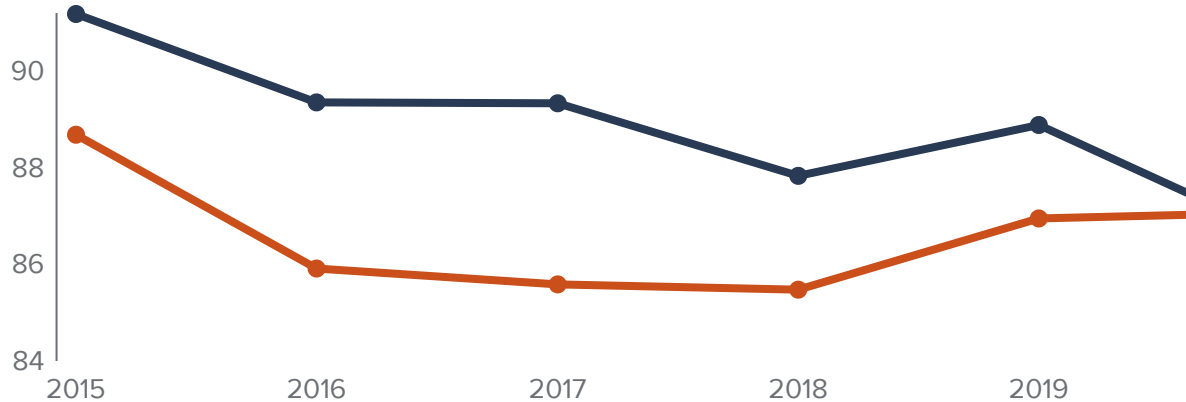
FROM: PPIC Blog, February 2023.

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Nearly nine in ten reported human trafficking cases involve sex trafficking—and that share has risen. Between 2015 and 2021, the share of human trafficking cases that involved sex trafficking grew from 87% to 89% in California and from 85% to 88% nationally. Statewide and nationally, sex trafficking is most common in pornography, massage parlors, and hotels. Among those trafficked for their labor, about one in five work in private homes.

People who experience trafficking overwhelmingly identify as female. However, the share of trafficked people who are female has decreased, nationally and statewide. In 2015, 91% of trafficked people in California and 89% nationally were women. By 2021, those shares had fallen to 86% and 85%, respectively.

The share of trafficked people who identify as female has fallen



SOURCE: National Human Trafficking Hotline.

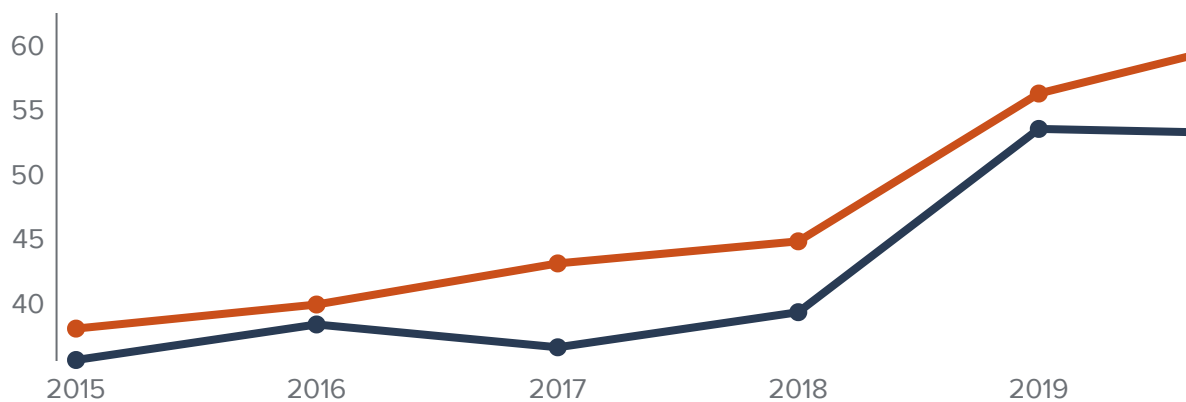
NOTES: These data represent characteristics of people involved in identified cases after the hotline received a report about human trafficking. Callers to the hotline self-report. Numbers reported are not necessarily cumulative, so we report shares.

FROM: PPIC Blog, February 2023.

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Nearly half of people trafficked in California are US citizens. However, the foreign-born share of trafficked people has risen dramatically. In California, the share of trafficked people born outside the US rose from 36% in 2015 to 54% in 2021. Nationally, the share of trafficked people who were born elsewhere escalated from 38% to 62%.

The share of trafficked people who are not US citizens has escalated



SOURCE: National Human Trafficking Hotline.

NOTES: These data represent characteristics of people involved in identified cases after the hotline received a report about human trafficking. Callers to the hotline self-report. Numbers reported are not necessarily cumulative, so we report shares. US Citizens also include permanent residents.

FROM: PPIC Blog, 2023

The first federal law to address human trafficking was passed in 2000. California followed suit in 2005. Nearly all states now have laws prohibiting sex and labor trafficking. Yet the Bureau of Justice Statistics has only recently begun to produce national data about trafficking cases and how state attorneys general handle them. Although the California attorney general has made combatting human trafficking a top priority, the state has not yet contributed to this national effort.

Limited state and national data on human trafficking and how it is handled hamper efforts to address it. In 2021, the Biden Administration updated the National Action Plan to Combat Human Trafficking to include a four-part strategy of prevention, protection, prosecution, and partnership. Ensuring the success of each of these arms will require gathering and disseminating information about traffickers, people experiencing or at risk of experiencing trafficking, and evaluating whether individual practices and policy interventions reduce human trafficking.

TOPICS

Criminal Justice

Immigrants in California



OVER-POLICING SEX TRAFFICKING: HOW U.S. LAW ENFORCEMENT SHOULD REFORM OPERATIONS

NOVEMBER 15, 2021

BY THE **International
Human Rights Clinic**

USC Gould
SCHOOL OF LAW

About USC Gould International Human Rights Clinic (IHRC)

The IHRC was established in 2011 to address some of the most pressing human rights concerns of our day. In 2012, the IHRC partnered with the Coalition to Abolish Slavery and Trafficking (“CAST”) and, under the supervision of founding Director Professor Hannah Garry, student attorneys have represented dozens of forced labor and sex trafficking survivors and their family members. The IHRC has achieved a near-100 percent success rate in important efforts such as procuring T visas and cooperating with law enforcement to identify and prosecute survivors’ traffickers. Moreover, the Clinic has designed trauma-informed anti-trafficking trainings for law enforcement, judges and immigration officials in Uganda, and published a report examining bilateral labor agreements between countries on migrant workers with recommendations on how terms can be improved to prevent human trafficking. The Clinic’s anti-human trafficking work spans the globe, serving clients from Ethiopia, Honduras, Guatemala, Mexico, Peru, and the Philippines.



Acknowledgements

USC Gould International Human Rights Clinic Authors:

Hannah Garry (*Clinical Professor of Law and IHRC Director*) and Maura Reinbrecht (*Student Attorney 2020-21*) were the primary authors of this report. Under the supervision of Professor Garry, Maura conducted the majority of interviews and report analysis. Mairin McQueen, *Student Attorney 2021-22*, helped finalize the report. Preliminary report research, public records requests and several interviews were conducted by the following student attorneys: Mirelle Raza, *2019-20*; Shayna Jackson, *2019-20*; Anissa Ghafarian, *2018-19*; Julie Kvedar, *2018-19*; and Kaili Lynn, *2018-19*. This report represents the views and perspectives of the authors and the IHRC. It does not represent an institutional position of the USC Gould School of Law.

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Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) served as pro bono counsel to the Clinic. Our sincere thanks to the whole team, including: Matthew Jones, *Partner*; Kelsey McGregor, *Senior Associate*; Nicole Peart Andre, *Senior Paralegal*; Nancy Tillotson, *Senior Paralegal*; Jane Kim, *Paralegal*; Gina Gaytan, *Legal Secretary*; as well as former Senior Associate Athena Katsampes and former Summer Associate Chief Coleman.

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The background is an abstract composition of soft, out-of-focus light spots (bokeh) in various colors including white, yellow, orange, red, and purple. These spots are scattered across the frame, with some appearing as bright, circular highlights and others as elongated, horizontal streaks. The overall effect is a dreamy, ethereal atmosphere with a gradient from light at the top to darker tones at the bottom.

EXECUTIVE SUMMARY

Sex trafficking is a crime that occurs in all parts of the world, including all 50 U.S. states.¹ Traffickers target women, men, non-binary individuals, minors, U.S. citizens and foreign nationals. Individuals who are Black² or LGBTQ are disproportionately at risk of being sex trafficked.^{3,4,5}

Sex trafficking occurs when a minor performs a commercial sex act or an adult performs a commercial sex act as a result of force, fraud, or coercion.

In 2000, the passage of the Trafficking Victims Protection Act (“TVPA”) authorized the Federal Bureau of Investigation (“FBI”) and other law enforcement agencies to investigate human trafficking, including sex trafficking.^{7,8} Since then, federal, state, and local law enforcement operations have been a central component of the U.S. Government’s anti-sex trafficking efforts.⁹ These operations—commonly referred to as “raids,” “stings” or “sweeps”¹⁰—involve law enforcement working undercover or investigating private establishments to identify sex trafficking victims and perpetrators. Operations take many forms, ranging from ad hoc local efforts to formal, coordinated federal-local operations, such as the Innocence Lost National Initiative (“ILNI”) and Operation Independence Day (formerly Operation Cross Country, or “OCC”). They are funded in part through appropriations authorized by the TVPA.

Through media releases and press conferences, law enforcement agencies generally laud operations as effective anti-sex trafficking tools that protect victims, prosecute traffickers, and prevent trafficking.¹¹ Yet there are widespread accounts from survivors, advocates, and scholars criticizing the ineffectiveness and traumatizing nature of operations.

One survivor says operations involve “rough handling, handcuffs on too tight, a lot of verbal abuse, put downs, [and] hurtful and violent screaming.”

To assess these claims, we reviewed relevant literature, interviewed 42 professionals in the anti-trafficking field,¹² and filed sixteen public records requests.¹³ In part, we found that specific information on the outcomes and funding of operations is largely unavailable to the public; eleven of our sixteen public records requests were denied. We also found that reported shortcomings of operations range from a remiss lack of trauma-informed training and victim services, to egregious reports that law enforcement—the very individuals tasked with protecting victims—physically and sexually abuse victims. One public health advocate describes sexual abuse by law enforcement as “part of the trauma.” Survivor advocates¹⁴ consistently describe rough handling by law enforcement, who would tightly hand-

1 18 U.S.C. § 1591 (2000); 22 U.S.C.A. § 7101(b)(9) (2000); Michaela Anderson, *Child Trafficking Hits Close to Home*, UNICEF USA (Jan. 12, 2021), <https://www.unicefusa.org/stories/child-trafficking-hits-close-home/36189>.

2 DUREN BANKS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, NCJ 233732, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010 6 (Apr. 2011), <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

3 *The Victims*, Nat’l Human Trafficking Hotline, <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims> (last visited Sept. 16, 2021); *Myths, Facts, and Statistics*, THE POLARIS PROJECT <https://polarisproject.org/myths-facts-and-statistics/> (last visited Sept. 16, 2021); JOHN VANEK, THE ESSENTIAL ABOLITIONIST: WHAT YOU NEED TO KNOW ABOUT HUMAN TRAFFICKING & MODERN SLAVERY 47-48 (2020 ed. 2016).

4 Other factors that increase vulnerability to sex trafficking include involvement with the child welfare system; being a runaway or homeless youth; poverty, economic need, or lack of employment opportunities; recent migration or undocumented status; mental health concerns; substance use or addiction; lack of family support; young age; and a history of domestic violence or sexual abuse.

5 While the TVPA’s definition of human trafficking encompasses both sex trafficking and labor trafficking, this report focuses solely on sex trafficking.

6 FBI, *Human Trafficking*, <https://www.fbi.gov/investigate/violent-crime/human-trafficking>.

7 For additional acronyms, see App. A: Acronyms.

8 In particular, the TVPA Reauthorization of 2003 “called for the nation’s 21,000 law enforcement agencies to become more involved in cases of human trafficking with regard to investigations and working with victims.” Moreover, the TVPA Reauthorization of 2005 “placed a greater focus on providing Federal and local law enforcement with increased investigative powers . . . The Federal government has furthered these efforts by funding anti-human trafficking task forces across the United States.” Heather J. Clawson et al., *Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned*, at 9 (Caliber Dec. 2006), <https://www.ojp.gov/pdffiles1/nij/grants/216547.pdf>.

9 Melissa Ditmore & Juhu Thukral, *Accountability and the Use of Raids to Fight Trafficking*, 1 ANTI-TRAFFICKING REV. 134 (2012); Amy Farrell et al., *Understanding and Improving Law Enforcement Responses to Human Trafficking: Final Report*, Northeastern University Institute of Race and Justice (Dec. 2008), <https://www.ojp.gov/pdffiles1/nij/grants/222752.pdf> (“The federal government has prioritized human trafficking prosecutions and expects local law enforcement to become 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,’” citing U.S. Dep’t of Justice, 2004 Anti-Trafficking News Bulletin.).

10 For additional details about types of operations, see App. B: Operations.

11 22 U.S.C.A. § 7101 (2000) (stating the purpose of the chapter is to “combat trafficking in persons,” “ensure just and effective punishment of traffickers,” and to “protect their victims.”).

12 Interviewees include federal and local law enforcement, federal and local prosecutors, law enforcement advocates, nonprofit advocates, experts, and survivors. (See App. D: Interviewee Chart).

13 Our public record requests include requests to federal and California law enforcement agencies, including prosecutors, under the California Public Records Access (“CPRA”) and Freedom of Information Act (“FOIA”). (See App. E: FOIA/CPRA Chart).

14 By “survivor advocates,” we refer to individuals who have experienced sex trafficking and are now working at a nonprofit organization to assist victims. (See

Sexual abuse of victims by law enforcement “is definitely something that survivors share with me on a regular basis.”
—State prosecutor

cuff survivors, “throw [them] into a bathtub in zip ties,” and ensure they were uncomfortable in order to get them to talk. Other survivors report law enforcement yelling and screaming in their faces, calling them names such as “bitch,” “disgusting,” and a “disease.” One law enforcement investigator recounts chasing victims down a hotel hallway during an operation. Other interviewees emphasize that victims are pressured to divulge information; for example, a survivor advocate explains, “[law enforcement] just said: since you’re not talking, we’ll charge you.”

In light of such consistent, distressing reports, this report seeks to answer: do anti-sex trafficking law enforcement operations further the goals of the TVPA: to protect victims, to protect victims, prosecute traffickers, and prevent trafficking?¹⁵ Or do operations do more harm than good?

Based on literature and our qualitative and quantitative research, we conclude that operations are a form of over-policing that re-traumatizes victims, perpetuates systemic racism, and undermines the aims of the TVPA.¹⁶

App. D: Interviewee Chart).

¹⁵ The goals of the TVPA directly reflect the goals of the 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”), a human rights treaty that has been ratified by 178 countries.

¹⁶ Cheryl Nelson Butler, *The Racial Roots of Human Trafficking*, 62 UCLA L. Rev. 1464, 1499 (2015), <https://www.uclalawreview.org/racial-roots-human-trafficking/>. This perception, along with the reality that Black individuals are generally at greater risk of being sex trafficked, results in Black women and children accounting for a disproportionate number of prostitution arrests. Annie Gilbertson, Aaron Mendelson & Angela Caputo, *Collateral Damage: How LA’s Fight Against Sex Trafficking is Hurting Vulnerable Women*, LAIST (Aug. 7, 2019), <https://laist.com/projects/2019/collateral-damage/>; Table 43B: Arrests by Race and Ethnicity Under 18, Crime in the United States 2019, FBI: UNIFORM CRIME REPORTING, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-43>. The overcriminalization of Black Americans is, of course, not unique to the treatment of trafficking victims. See generally Nazgol Ghandnoosh, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*, The Sentencing Project (Feb. 2015), at 6-9, <https://www.sentencingproject.org/wp-content/uploads/2015/11/Black-Lives-Matter.pdf>.

¹⁷ Nelson Butler, *supra* note 16, at 1499.

¹⁸ Law enforcement undermines rapport with victims in the ways we discuss in Conclusion 1, including: handcuffing, arresting, threatening to arrest, questioning during operations, doubting, blaming and misgendering suspected victims.

Our conclusions, specifically, are as follows:

1 OPERATIONS FAIL TO PROTECT SEX TRAFFICKING VICTIMS.

Anti-sex trafficking operations identify few victims or traffickers and instead result in the arrests of many victims and sex workers—a disproportionate number of whom are people of color, particularly Black women and minors.¹⁶ Due to racial bias, among other factors, law enforcement officials “are more likely to perceive a prostituted child of color as a criminal, as opposed to a victim of sexual assault or abuse.”¹⁷ Law enforcement officers frequently forgo a victim-centered approach and instead traumatize and criminalize, arresting, threatening to arrest, interrogating, doubting, blaming, and misgendering suspected victims. The few victims identified during operations often face imprisonment on the basis of a material witness warrant or criminal charge.

2 OPERATIONS DO NOT CONSISTENTLY RESULT IN SUCCESSFUL PROSECUTION OF SEX TRAFFICKERS.

A lack of public data, including the number of trafficking prosecutions resulting from operations, makes it nearly impossible to evaluate their effectiveness. Anecdotal, however, interviewees report that operations fail to result in the prosecution of traffickers because operations identify few or no traffickers; are executed without sufficient evidence to arrest traffickers; and undermine rapport with victims,¹⁸ which is often crucial to secure testimony necessary to prosecute traffickers.

3 OPERATIONS ARE NOT EFFECTIVE TOOLS TO PREVENT SEX TRAFFICKING.

Operations do not address factors that make people vulnerable to being trafficked, and routinely fail to connect survivors with the short- and long-term services that are critical to their stabilization and the prevention of re-trafficking. Instead, operations exacerbate trafficking victims’ vulnerabilities, distrust of law enforcement, and reliance on their traffickers.

ToC Guided by these conclusions, we urge law enforcement to reconsider the use of operations to combat sex trafficking. Anti-trafficking efforts are trending away from use of operations, focusing instead on community involvement; public health and harm-reduction strategies; and investment in poverty relief, anti-discrimination initiatives, and opportunities for education and employment. We implore law enforcement to join this trend by drastically reforming and curtailing the scope of operations.

We acknowledge the likelihood that operations will continue in some capacity. If so, we strongly recommend the following reforms to advance the aims of the TVPA and minimize collateral harm to victims:

RECOMMENDATIONS

- 1 Drastically limit the use of operations while supporting community and public health approaches to identify victims and traffickers outside of the criminal justice system;
- 2 Redirect funding to evidence-based victim identification methods that are more effective and less harmful to victims, and to the extent operations continue, implement strict policies and training that increase the efficacy of victim identification while minimizing trauma to victims;
- 3 Increase the transparency of operations to support more effective oversight;
- 4 Strengthen prevention efforts that reduce the vulnerability of potential victims;
- 5 Increase services available to victims and systematically offer comprehensive services to every suspected victim;
- 6 Improve communication between nonprofit service providers, prosecutors and other law enforcement agencies, community organizations and sex workers.



According to our analysis of relevant literature, 42 interviews with professionals in the anti-trafficking field, and responses to our public records requests, we conclude that, in spite of improvement in recent years, anti-sex trafficking law enforcement operations are largely ineffective in achieving the aims of the TVPA and are particularly harmful to victims.

Our research also indicates that law enforcement's understanding of sex trafficking and attitudes towards victims vary greatly based on individual and department. There are many law enforcement officers who are sincerely motivated to address sex trafficking and better serve victims. We call on these officers to reexamine their use of operations and instead support anti-sex trafficking efforts that do not harm victims. Ultimately, we recommend that law enforcement drastically reform and limit the use of operations. At the very least, we recommend law enforcement commit to a series of reforms that would help operations further the aims of the TVPA and minimize collateral harm to victims.

A note about terminology:

We use the term “victims” to refer to persons who are being sex trafficked, and are, therefore, victims of crime. However, we recognize that not all individuals who have experienced sex trafficking wish to identify as such.

We use the term “survivors” to refer to persons who were sex trafficked, but this term is also reductive. The survivors we interviewed are accomplished experts and advocates in the trafficking field. As one survivor explained, “At this point in my life I hate to be a survivor. Now I’m a thriver. I want to impact others and let them see how to thrive.”



ToC I. BACKGROUND

In this section, we define sex trafficking, describe anti-sex trafficking law enforcement operations, and discuss the lack of government oversight of operations that prompted this report. Next, we outline our methodology (Section III), provide a comprehensive literature review (Section IV), summarize our qualitative and quantitative findings (Sections V and VI), and conclude with a series of conclusions and recommendations (Section VII).

A. Sex Trafficking

The TVPA defines sex trafficking as a commercial sex act¹⁹ that is induced by force, fraud, or coercion, or when a person under the age of 18 performs a commercial sex act.²⁰ Contrary to popular misconceptions, sex trafficking rarely involves kidnap by a stranger, and instead, often involves grooming²¹ by an intimate partner or friend.²²

B. Anti-Sex Trafficking Law Enforcement Operations

The TVPA authorized the FBI²³ and other law enforcement agencies to investigate human trafficking, including sex trafficking.²⁴ In 2003, the FBI launched ILNI,²⁵ which in 2019 conducted 161 operations across the U.S.²⁶ ILNI has inspired similar operations at the state and local levels, such as Operation Reclaim and Rebuild (ORR) in California.²⁷

Such law enforcement operations—commonly referred to as “stings” or “raids,”—are the U.S. Government’s primary means of identifying sex trafficking victims.²⁸ (See [App. B: Operations](#)). Operations often involve “a collabo-

orative, multi-agency approach,” including federal law enforcement—such as the FBI, Homeland Security Investigations (“HSI”), Immigrations & Customs Enforcement (“ICE”), and the U.S. Attorneys’ Offices—local law enforcement, and victims service providers.²⁹ (See [App. C: Task Forces](#)). Operations vary greatly, but research indicates most operations share certain concerning elements: law enforcement officers surprising and/or deceiving prospective victims, the use of handcuffs, the presence of guns, and the arrest of victims.

C. Lack of Government Oversight of Operations

Law enforcement agencies generally present operations as effective anti-sex trafficking tools that protect victims, prosecute traffickers, and prevent trafficking.³⁰ Yet there is no public data to support the claim that operations identify many victims or traffickers. There is little public information about the outcomes and federal funding of operations in general. (See [Section V](#) for more about our public records requests about the outcomes of operations).

19 A commercial sex act is the exchange of sex for something of value. 22 U.S.C.A. § 7102 (2000).

20 22 U.S.C.A. § 7101(b)(9) (2000). The TVPA models international legal definitions of sex trafficking.

21 Grooming is a process in which a trafficker identifies a vulnerable individual, gains their trust, meets their needs with gifts and affection, then isolates, controls, and abuses the victim. *4 Signs Someone is Being Groomed for Trafficking*, 3rd Millennial Classrooms (Jan. 2018), <https://id49000027.schoolwires.net/cms/lib/ID49000027/Centricity/domain/45/sdfs/4SignsSomeoneisBeingGroomedforTrafficking.pdf>.

22 See Jessica Contrera, *Sex-Trafficked Kids are Crime Victims. In Las Vegas, They Still go to Jail*, WASH. POST, Aug. 26, 2021, <https://www.washingtonpost.com/de-md-va/interactive/2021/vegas-child-sex-trafficking-victims-jailed/>.

23 FBI, *Human Trafficking*, <https://www.fbi.gov/investigate/violent-crime/human-trafficking>.

24 Clawson et al., *supra* note 8, at 9.

25 Press Release, U.S. Dep’t of Justice, Innocence Lost National Initiative and Operation Independence Day 2019 (Aug. 6, 2019), <https://www.justice.gov/opa/pr/innocence-lost-national-initiative-and-operation-independence-day-2019>.

26 *Id.*

27 See Riverside Sheriff’s Dep’t, *Operation Reclaim and Rebuild 2021*, (Feb. 2, 2021), <https://www.riversidesheriff.org/CivicAlerts.aspx?AID=2051&ARC=3365>.

28 Ditmore & Thukral, *supra* note 9, at 134.

29 FBI, *What We Investigate*, <https://www.fbi.gov/investigate/violent-crime/human-trafficking> (last visited Apr. 9, 2021).

30 22 U.S.C.A. § 7101 (2000) (stating the purpose of the chapter is to “combat trafficking in persons,” “ensure just and effective punishment of traffickers,” and to “protect their victims.”).

Further, public reports offer an incomplete picture of how anti-trafficking funds are used.³¹ The Attorney General's Trafficking in Persons Report provides information about the amount of federal anti-trafficking funds going to states as well as who states subgrant to, but it does not detail how the money is spent.³² Moreover, the Department of Justice ("DOJ") has not submitted a Trafficking in Persons Report since FY 2018.

Lack of transparency about federal anti-trafficking funds is particularly troubling given that the TVPA mandates certain oversight: Section 401 of the 2017 reauthorized TVPA requires the FBI to publish and submit to Congress a status report on the Innocence Lost National Initiative.³³ Additionally, the TVPA requires that the DOJ publish and submit to Congress a report on efforts by the National Institute of Justice to help assess the prevalence of human trafficking in the United States.³⁴ The FBI and DOJ had 180 days after the Act passed on December 21, 2018 to submit these reports.³⁵ To date, no public information indicates that the FBI or DOJ have done so.

A typical sting operation, as described by local law enforcement:

1. Posing as a sex buyer, an undercover cop lures a prospective victim into a hotel room, where an "arrest team" of approximately four other officers wait in the bathroom.
2. When signaled, the arrest team rushes into the room and handcuffs the prospective victim.
3. Armed security surrounds the room, and "guns are out, but they're usually not pointed at anybody unless they have to be." According to one officer, the victims "think they are going to get killed."

The officer fails to describe what happens between arriving to the hotel room and signaling the arrest team, which generally includes the undercover officer soliciting and/or progressing to the sex act. In some cases, this phase of the operation leads to sexual abuse of the victim.

31 Publicly reported funding information typically includes anti-trafficking grants, such as a September 21, 2020, press release in which the Department of Justice announced an award of almost \$101 million to combat human trafficking, including \$22.7 million in ECM grants. Press Release, U.S. Dep't of Justice, Justice Department Awards Nearly \$101 Million to Combat Human Trafficking (Sep. 21, 2020), <https://www.justice.gov/opa/pr/justice-department-awards-nearly-101-million-combat-human-trafficking>. This press release and its predecessors offer some insight into the magnitude of ECM grants, making it theoretically possible to track the efficacy of these funds. *Id.* However, ECM grants are only received by *state and local* law enforcement agencies and service providers, and there is no publicly available information regarding the funding of *federal* law enforcement efforts (such as the CEHTTFs), through annual appropriations to the FBI or ICE.

32 U.S. DEP'T OF JUSTICE, *Attorney General's Trafficking in Persons Report* (updated May 13, 2020), <https://www.justice.gov/humantrafficking/attorney-generals-trafficking-persons-report> [hereinafter U.S. Att'y Gen.'s Trafficking in Persons Reports].

33 S. 1312 115th Cong. § 401 (Dec. 21, 2018)

34 *Id.*

35 *Id.*

II. METHODOLOGY

A. Threefold Research Design

First, we conducted a thorough literature review assessing the efficacy of law enforcement operations in regard to the three TVPA aims (protection, prosecution, prevention), including analysis from recent academic articles, advocacy pieces, critical trafficking studies, government and regulatory publications, and investigative reports. (See [Section IV](#)).

Second, we interviewed 42 professionals in the anti-trafficking field—including federal and local law enforcement, federal and local prosecutors, law enforcement advocates, nonprofit advocates, experts, and survivor advocates (see [App. D: Interviewee Chart](#))—many of whom had firsthand experience with anti-sex trafficking law enforcement operations. (See [Section IV](#)). Prior to conducting interviews, we researched ethical interviewing best practice, and in the case of survivors, compassionate and victim-centered techniques.³⁶ We identified interviewees primarily through open source research as well as from recommendations from other interviewees. We conducted interviews virtually between February 2020 and April 2021, with at least two team members present, and through open-ended, narrative discussion. Interviewees, who are located primarily in California,^{37,38} provided insight about the training, planning and execution of operations, as well as how operations impact victims.³⁹ In part due to ethical considerations, we have maintained the anonymity of all interviewees throughout the report.⁴⁰

Third, in February 2020, we filed sixteen FOIA and CPRA requests to federal and California law enforcement agencies. (See [App. E: FOIA/CPRA Chart](#)).

We focused our data collection on California because the report authors are located in Los Angeles, and because California has modeled its statewide anti-trafficking operation, ORR, after federal operations such as ILNI. The requests sought information from 2003 to present about departmental guidelines relating to ILNI, OCC, Operation Independence Day,⁴¹ and ORR operations, including:

- Training for participants in operations;
- Funding of the operations;
- Execution of the operations;
- Demographic information of the victims and perpetrators who are identified during operations; and
- Arrests, charges and convictions that result from operations.⁴²

As of October 2021, eleven of the sixteen government agencies denied our request for documents. Only one agency provided new, substantive information about the topics we requested.⁴³ (See [Section VI](#)).

³⁶ This research included speaking to experts, including Thomas Lyon, a Professor of Law and Psychology at USC Gould School of Law who specializes in questioning children about abuse and violence, and Emily Ryo, Professor of Law and Sociology at USC Gould School of Law.

³⁷ Interviewees from California were located in Fresno, Los Angeles, Orange County, Sacramento, San Diego, San Francisco, San Jose, and Santa Clara.

³⁸ Interviewees outside of California were located in District of Columbia, Florida (Miami Dade County and Sanford), Georgia, Louisiana, Michigan, North Carolina, Ohio, Oklahoma, and Washington.

³⁹ Standard interview compensation was available to survivor advocate interviewees on request.

⁴⁰ Many interviewees disclosed sensitive information on the condition of anonymity. Anonymizing interviewees not only protects their information, but also ensures we can report freely and accurately on interviewees' various perspectives.

⁴¹ What was formerly Operation Cross Country is now referred to as Operation Independence Day.

⁴² When filing our FOIA and CPRA requests, we consulted with Ian Head, a Senior Legal Worker and Coordinator of the Open Records Project at the Center for Constitutional Rights, who has expertise in FOIA and open records requests.

⁴³ Other responses were unhelpful because they mostly reported information from public press releases and duplicate information from another response. One response consisted of a single paragraph summarizing the department's anti-trafficking efforts.

B. Research Limitations

Our report is subject to the following shortcomings: (1) the limited number and diversity of survivors we were able to interview; (2) the lack of qualitative or quantitative data on specific law enforcement operations, such as ILNI, Operation Independence Day, OCC, and ORR; and (3) our use of narrative evidence from disparate geographic locations to extrapolate conclusions about operations at a broader level. (See [App. F: Research Limitations](#)).

Despite these limitations, we believe that the information we gathered from interviews, as a whole, communicates a valuable and reliable account of law enforcement opera-

tions for the following reasons: (1) the accounts of unrelated interviewees are consistent with one another as well as with our literature review; (2) our analysis and conclusions are based on recurring themes and patterns from interviews, not reports from a single interviewee;⁴⁴ and (3) data we collected from the interviews are largely consistent with CPRA data we analyzed, as well as data from other studies on sex trafficking and anti-sex trafficking law enforcement operations.

⁴⁴ We do, however, include perspectives from individual interviewees that are particularly striking and/or illustrative of common themes. We accordingly recognize when an opinion or comment is attributed to a single interviewee.





III. LITERATURE REVIEW



The following is a summary of our literature review findings organized by each of the three TVPA aims (protection, prosecution, prevention), including analysis from recent academic articles, advocacy pieces, critical trafficking studies, government and regulatory publications, and investigative reports. Like our qualitative and quantitative data, our literature review suggests that operations are not as successful in identifying victims and traffickers as federal and local law enforcement agencies claim them to be.

A. Protection of Victims

According to the literature, law enforcement operations generally fail to protect sex trafficking victims because they a) identify few or no trafficking victims, b) utilize methods that traumatize victims and undermine their trust in, and willingness to cooperate with law enforcement, and c) fail to connect victims with the short- and long-term services that are critical to stabilize the victim and prevent the victim's re-trafficking.

1. Law enforcement operations identify few or no trafficking victims.

The U.S. government reports identifying high numbers of sex trafficking victims through various law enforcement operations,⁴⁵ but scholars and journalists suggest that the FBI and DOJ often inflate the statistics in these reports.⁴⁶

45 E.g., PRESIDENT'S INTERAGENCY TASK FORCE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, REPORT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS 12 (Oct. 2020), <https://www.state.gov/wp-content/uploads/2020/10/2020-PITF-Report.pdf> ("DOJ's Office for Victims of Crime (OVC) grantees providing services to human trafficking victims reported 8,375 open client cases from July 1, 2018 to June 30, 2019, including 5,090 new clients"); Press Release, FBI Denver, Innocence Lost National Initiative and 2019 FBI Denver Operation Independence Day Results in Recovery of Child Victims from Commercial Sex Trafficking (Aug. 6, 2019), <https://www.fbi.gov/contact-us/field-offices/denver/news/press-releases/innocence-lost-national-initiative-and-2019-fbi-denver-operation-independence-day-results-in-recovery-of-child-victims-from-commercial-sex-trafficking> (claiming the Innocence Lost Initiative has led to the recovery or identification of more than 6,600 child victims); Press Conference, Sheriff Villanueva and the Los Angeles Regional Human Trafficking Task Force Announce Arrests and Rescues by California Law Enforcement, L.A. CNTY. SHERIFF'S DEP'T (Feb. 4, 2020), <https://lasd.org/operation-reclaim-and-rebuild-2020/> (last visited Mar. 21, 2021) ("Operation Reclaim and Rebuild was widely successful in its endeavor with 76 adult and 11 minor victims being recovered; 266 males arrested for the charge of Solicitation; and 27 suspected traffickers and exploiters were arrested. In total, 518 arrests were made."); Melissa Ditmore, *The Use of Raids to Fight Trafficking in Person*, SEX WORKERS PROJECT, 9 (2009), <http://sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>, (explaining that law enforcement officers claim that raids are useful in identifying trafficking victims).

46 E.g., Glenn Kessler, *Loretta Lynch's False Claim on Sex Trafficking Arrests*, WASH. POST (Nov. 24, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/11/24/loretta-lynchs-false-claim-on-sex-trafficking-arrests/> (noting that DOJ and FBI cannot provide evidence that "hundreds of sex traffickers" have been arrested through Operation Cross Country); Eli Rosenberg, *Infant and Her 5-Year-Old Sister, Allegedly on Sale for \$600, Rescued in FBI Sex Trafficking Sweep*, WASH. POST (Oct. 19, 2017), <https://www.washingtonpost.com/news/true-crime/wp/2017/10/19/infant-and-young-child-among-the-more-than-80-victims-rescued-in-major-fbi-sex-trafficking-sweep/>.

47 Press Release, FBI Washington, Innocence Lost National Initiative and Operation Independence Day 2019 (Aug. 6, 2019), <https://www.fbi.gov/contact-us/field-offices/washingtondc/news/press-releases/innocence-lost-national-initiative-and-operation-independence-day-2019>.

48 Ditmore, *supra* note 45, at 10 ("service providers reported that the majority of trafficked persons who accessed their services were not identified as a result of raids.").

49 Ditmore, *supra* note 45, at 10 (explaining law enforcement arrests, handcuffs, fingerprints, and interrogating victims); id. at 9 ("Law enforcement agents use interrogation techniques, including intimidation, that are entirely incompatible with an approach that prioritizes the needs of trafficked persons"); Kimberly Mehlman-Orozco, *What Happens After a Human Trafficking Victim is 'Rescued'?*, THE HILL (Oct. 29, 2016 4:28 PM EDT) ("[S]ex trafficking survivors continue to be erroneously criminalized . . . following identification."); see Kelle Barrick et al., *Law Enforcement Identification of Potential Trafficking Victims*, 44 J. CRIME & JUST. (forthcoming 2021), <https://doi.org/10.1080/0735648X.2020.1837204> ("Racial bias due to the adultification of [B]lack girls within the criminal legal system has led to their incarceration as young as 13-14 when active in sex trade.").

50 Ditmore, *supra* note 45, at 7, 54-55 (explaining that trafficking and prostitution are conflated, which impedes anti-trafficking efforts); Ditmore & Thukral, *supra* note 9, at 134, 137; Corinne Schwarz & Trevor Grizzell, *Trafficking Spectacle: Affect and State Power in Operation Cross Country X*, 41 FRONTIERS: J. WOMEN STUD., no. 2, 2020 at 57.

51 See Ditmore, *supra* note 45, at 36 (explaining that law enforcement investigation sometimes stems from a "tip or an anonymous tip."); id. at 54 (explaining that anti-trafficking operations are conducted without "the preparation necessary to produced cooperative witnesses in trafficking cases."); See also U.S. DEP'T OF STATE, FACT SHEET: THE BENEFITS OF SMART RAIDS V. BLIND SWEEPS (2012), <https://2009-2017.state.gov/j/tip/rls/fs/2012/194723.htm> (describing "smart" raids as those that are "based on real evidence, have a well defined goal grounded in anti-trafficking laws, and are well planned to ensure the safety of individuals. They should include arrangements to segregate traffickers from victims, to conduct victim-centered interviews, to cross-reference victims' accounts, and to quickly transition to post-rescue care and shelter for identified victims.").

For example, the FBI reports that, as of July 2019, ILNI operations have identified more than 6,600 child victims and led to more than 2,750 convictions.⁴⁷ However, the FBI does not report whether all of the convictions were of traffickers, or whether this number includes adults voluntarily buying and selling commercial sex. Moreover, it is unclear whether all 6,600 child victims mentioned above received the services they needed.

In contrast, the literature indicates that law enforcement operations identify few trafficking victims,⁴⁸ emphasizing that operations primarily target sex work; too often treat victims—particularly Black victims—as criminals;⁴⁹ are conducted by officers who are insufficiently trained to identify victims; and are usually conducted with insufficient pre-operation investigation.

Critics posit that these law enforcement operations are merely anti-sex work efforts rebranded as anti-sex trafficking interventions.⁵⁰ This mischaracterization purportedly begins in the earliest stages of an intervention: the genesis of an operation is often a complaint or tip about sex work or patrolling an area known for sex work, rather than a thorough sex trafficking investigation.⁵¹ Operations are often conducted without evidence that there is either a minor involved or that there is force, fraud, or coercion (the elements that are required to establish that a

person over the age of 18 is a sex trafficking victim under the TVPA).⁵²

Moreover, the literature suggests that law enforcement often assumes that an individual engaged in commercial sex is a sex worker unless the individual states otherwise.⁵³ This assumption frequently results in victims of trafficking being miscategorized by law enforcement as voluntary sex workers.⁵⁴ For example, the National Survivor Network conducted a 2016 survey on the long-term impact of criminal arrests and convictions on survivors of human trafficking, and found that 90.8% of 130 trafficking survivor respondents reported having been arrested (over 40% reporting being arrested 9 times or more) and over half of the respondents (50.6%) reported that their arrests occurred because of the trafficking.⁵⁵ Notably, immigrant victims, regardless of whether they are undocumented, could face deportation due to a misdemeanor prostitution charge.⁵⁶

More recently, a 2020 study evaluated 541 incident reports in San Francisco that involved someone selling sex and found that, consistent with other studies,⁵⁷ minors, persons of color,⁵⁸ and females are the individuals most likely to be under-identified and improperly arrested for selling sex.⁵⁹ In particular, the researchers observed:

Racial bias due to the adultification of [B]lack girls within the criminal legal system has led to their incarceration as young as 13–14 when active in sex trade. Through the process of adultification, [B]lack girls become stereotyped as uncontrollable and unable to regulate their developing emotions and bodies. . . . As such, the combination of our quantitative and qualitative findings evoke concern that those most in need of connection to services are being under-identified and are more likely to be labeled as criminals.⁶⁰

Sources in the literature argue that law enforcement officials “are more likely to perceive a prostituted child of color as a criminal, as opposed to a victim of sexual assault or abuse.”⁶¹ To wit, according to the FBI’s own reporting, Black children comprised a full 50% of all sex work arrests for minors in 2019—more than any other racial group.⁶² In a two-year review by the Bureau of Justice Statistics (“BJS”) analyzing human trafficking cases, 40% of victims of sex trafficking were identified as Black.⁶³ In Los Angeles County, data from 2010 indicate that 92% of female children in the juvenile justice system identified as trafficking victims were Black.⁶⁴ The literature emphasizes that racism has played a significant role in making children of color particularly vulnerable to domestic sex trafficking, and law enforcement’s current approach does not appropriately address—and sometimes even exacerbates—this vulnerability.⁶⁵

52 22 U.S.C.A. § 7101 (2000).

53 See Erin Bistricher, Note, “U” Stands for Underutilization: The U Visa’s Vulnerability for Underuse in the Sex Trafficking Context, 18 CARDOZO J.L. & GENDER 449, 473 (2012) (explaining that it is imperative for law enforcement to re-adjust their view of who is a criminal and who is a victim).

54 Kessler, *supra* note 46 (explaining Operation Cross Country sweeps “result in far more adult prostitutes being arrested than children being located”).

55 *Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking*, NAT’L SURVIVOR NETWORK (Aug. 2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSNVacate-Survey-2018.pdf> (last visited Mar. 21, 2021) (note that the majority, but not all, of respondents were survivors of sex trafficking).

56 Elizabeth Nolan Brown, *Feds ‘Rescue’ Women from Freedom and Money in 11th ‘Operation Cross Country’*, REASON (Oct. 18, 2017, 11:25 AM), <https://reason.com/blog/2017/10/18/fbi-operation-cross-country-xi>.

57 See, e.g., HUMAN RIGHTS PROJECT FOR GIRLS, *Domestic Child Sex Trafficking and African American Girls*, RIGHTS4GIRLS (Feb. 2015), <https://rights4girls.org/wp-content/uploads/r4g/2015/02/African-American-Girls-and-Trafficking.pdf> (last visited Mar. 21, 2021).

58 We acknowledge the limitations of race-related terminology, including this term. Recognizing the constant evolution of language and constraints of adopting ideal descriptors, we have selected this phrase at this time because we understand it to be the preferred identifier by many persons of color. We note that there is evidence that, among persons of color, Black and Asian women may be particularly adversely impacted by sex trafficking.

59 Barrick et al., *supra* note 49.

60 *Id.*

61 Nelson Butler, *supra* note 16, at 1499.

62 Table 43B: Arrests by Race and Ethnicity Under 18, *Crime in the United States 2019*, FBI: UNIFORM CRIME REPORTING, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-43> (last visited Mar. 22, 2021).

63 DUREN BANKS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, REP. NCJ233732, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010 6 (Apr. 2011), <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

64 Bettina Boxall, *Campaign to Halt Child Sex Trafficking Launched in LA County*, L.A. TIMES (May 31, 2012), <https://latimesblogs.latimes.com/lanow/2012/05/sex-trafficking.html>.

65 See, e.g., Nelson Butler, *supra* note 16; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 591 (June 2021), https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf [hereinafter U.S. 2021 TIP REPORT].

The problem of under- and misidentifying victims also impacts individuals involved in sex work who entered the industry as minors—and therefore, *de facto* sex trafficking victims—and then continued in the industry after they turn 18.⁶⁶ The literature highlights the challenges this can pose for law enforcement, who must consider complex factors in identifying whether these individuals still qualify as victims of trafficking once they are identified as adults.⁶⁷

Compounding the problem, the literature indicates that law enforcement officers generally receive insufficient training—or no training at all—regarding sex trafficking. Training inconsistently covers topics such as the signs of exploitation and trauma-informed interviewing strategies, which can help elicit responses from apprehended individuals that facilitate accurate victim identification.⁶⁸ The 2020 study that evaluated 541 incident reports in San Francisco that involved someone selling sex found that only 17% of those reports mentioned screening for human trafficking.⁶⁹ Researchers further concluded that there were only 11 cases that included elements of trafficking that were correctly identified by law enforcement, whereas there were 54 cases that were incorrectly identified.⁷⁰ Another study suggests that law enforcement’s lack of language proficiency and cultural knowledge of local immigrant groups inhibits the identification of im-

migrant victims.⁷¹

Without training to successfully identify victims, officers rely heavily on victims’ self-identification. However, this approach is generally ineffective because trafficking victims often do not self-identify as having been trafficked.⁷² Even when law enforcement asks questions designed to identify exploitation, trafficking victims are unlikely to disclose relevant information due to a myriad of factors, including distrust of or past negative experiences with law enforcement; fear of discipline by their trafficker; and the impacts of trauma.⁷³ For example, in 2017 in Flushing Queens, an undocumented Chinese immigrant with previous prostitution charges fell out a window to her death in an attempt to avoid an NYPD massage parlor raid and subsequent arrest and possible deportation.⁷⁴ This lack of willingness to engage with law enforcement amplifies the importance of providing sufficient training to law enforcement regarding trauma-informed approaches and inspecting for unspoken signs of coercion.⁷⁵

2. Law enforcement operations can traumatize victims and undermine their trust in and willingness to cooperate with law enforcement.⁷⁶

The literature consistently reports issues of victim coercion and trauma during law enforcement operations. Trafficking survivors have described raids as “chaotic”

66 Nadine M. Connell et al., *Arrest as a Way Out: Understanding the Needs of Women Sex Trafficking Victims Identified by Law Enforcement*, 33 J. CRIME & JUST. 351 (Feb. 12, 2015).

67 *Id.*

68 See, e.g., Joseph Berger, *Despite Law, Few Trafficking Arrests*, N.Y. TIMES (Dec. 3, 2009), <https://www.nytimes.com/2009/12/04/nyregion/04trafficking.html> (attributing low number of trafficking arrests to lack of law enforcement training to recognize signs of exploitation and ask the right questions at the right time); Emi Koyama, *Operation Cross Country VII Roundup and Comments*, EMINISM BLOG (July 30, 2013), <http://eminism.org/blog/entry/387> (explaining that anti-trafficking advocates neglect developments in the anti-domestic violence movement that can and should inform our approach to dealing with youths and adults in the sex trade). Note, however, that “there are few studies evaluating the effect of specialized human trafficking training on police attitudes and behaviors. Some of the research seems to indicate that much of the training has limited effect on the effectiveness of police response to human trafficking. At least, by the standard of whether training actually improves the detection of victims, it would seem that effect of professional training remains limited.” Yvon Dandurand, *Human Trafficking and Police Governance*, 18 POLICE PRAC. & RES. 322, 329 (Feb. 16, 2017).

69 Barrick et al., *supra* note 49.

70 *Id.*

71 Amy Farrell, et al., *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME LAW SOC. CHANGE 139, 158 (2014) [hereinafter Farrell et al., *New Laws*].

72 See, e.g., DIGNITY HEALTH, HUMAN TRAFFICKING RESPONSE PROGRAM SHARED LEARNINGS MANUAL 11 (ed. Oct. 2019), <https://www.dignityhealth.org/content/dam/dignity-health/pdfs/updated-dignity-health-http-sharedlearningsmanual-oct-2019.pdf> (Sex trafficking victims, especially youth, may not self-identify because due to prior abuse they do not realize they are being manipulated or exploited); Ditmore, *supra* note 45, at 10 (explaining victims forced into prostitution by a boyfriend or a husband may not realize this qualifies as trafficking).

73 Berger, *supra* note 68 (“[V]ictims . . . are ‘taught, trained and manipulated by their exploiters not to cooperate with nor trust law enforcement’”). E.g. Schwarz & Grizzell, *supra* note 50, at 67 (“The FBI Salt Lake City press release offers an example of failed disclosure and, subsequently, failed rescue of adult women identified during a raid: ‘Some of the women may have been forced into engaging in prostitution since they were juveniles or trafficked but it’s not uncommon for them to refuse to disclose that information to authorities.’”); Jennifer L. Brinkley, *A Path Forward: Florida’s Efforts to Combat Human Trafficking*, 71 S. C. L. REV. 639, 663 (2020).

74 Elena Shih, *The Trafficking Deportation Pipeline: Asian Body Work and the Auxiliary Policing of Racialized Poverty*, 33 FEMINIST FORMATIONS, Spring 2021, at 56.

75 NAT’L ADVISORY COMM. ON THE SEX TRAFFICKING OF CHILDREN & YOUTH IN THE U.S., U.S. DEP’T OF HEALTH & HUMAN SVCS., BEST PRACTICES AND RECOMMENDATIONS FOR STATES 18 (2020), <https://www.acf.hhs.gov/otip/resource/national-advisory-committee-report-best-practices-recommendations> (“Training should also emphasize the importance of detecting the indicators of trafficking despite the child or youth being unlikely to use the word ‘trafficking’ to describe what they have experienced”); U.S. 2021 TIP REPORT, *supra* note 65, at 587.

76 Cyra Choudhury, Moderator, *Panel on Sex Trafficking*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 445, 451 (2015) (noting that raids are often more traumatizing for survivors than the trafficking itself); Ditmore & Thukral, *supra* note 9 (describing survivor experiences of raids as traumatizing and humiliating).

and “often traumatic events that [leave] them frightened and confused, with no sense of what was happening or would happen to them.”⁷⁷ Scholars report that in the aftermath of both raids and stings, law enforcement seek to coerce suspected victims into disclosing information by threatening them with arrest or deportation.⁷⁸ In a 2014 study by *Farrell et al.*, when researchers interviewed law enforcement officials about the challenges of investigating human trafficking, officers reported that in order to secure victim testimony⁷⁹ they needed to “put pressure on victims to convince them to participate in the investigation.”⁸⁰ When officers use these techniques to deceive and extract information from victims, they often mirror the methods used by traffickers to trick victims into selling sex for the traffickers’ monetary gain.⁸¹ Indeed, one officer in *Farrell et al.* explained, “We almost have to do the same grooming process that the pimp did. A lot of times [the victims] are very angry, you know. They don’t want to be picked up.”⁸² Another investigator, expressing frustration with victims’ reluctance to give information, “admitted that they will question victims until they ‘break.’”⁸³

These behaviors have an intense impact on victims: in one study, survivors of sex trafficking consistently reported that “the lack of awareness and trauma-informed approach among front-line professionals such as law enforcement . . . alienated and hurt survivors and increased

their feelings of distrust.”⁸⁴ Indeed, survivors reported that “the sole focus of law enforcement on interrogation and information gathering at the time of reporting without consideration of the emotional wellbeing of survivors further traumatized them.”⁸⁵ One survivor explained:

It’s no longer that you are a victim or anything else. You are the information center, and they [law enforcement] want all your information, and it doesn’t make a difference about torment and anything else. . . .⁸⁶

Frequently, unless victims disclose to law enforcement that they are being trafficked, they are handcuffed, interrogated, fingerprinted, and generally treated as criminals.⁸⁷ They might be stripped of their possessions, separated from other individuals they were brought in with, and prohibited from contacting their family.⁸⁸ Some reports indicate that they are rarely offered food, water, or clothes, even if they are dressed in their work clothes.⁸⁹ Ultimately, they may be arrested or forced to spend the night in jail.⁹⁰ Moreover, undocumented victims face the threat of deportation; the 2014 study by *Farrell et al.* found that victims rarely benefit from the TVPA provisions that, in theory, protect them from deportation.⁹¹

Most disturbing of all are the accounts of law enforcement officers verbally, sexually, and physically abusing trafficking victims during operations.⁹² In one study,

77 Ditmore & Thukral, *supra* note 9, at 141.

78 E.g., Kate D’Adamo, *Can Anti-Trafficking Be Rescued?* REFRAME HEALTH & JUSTICE (June 17, 2020), <https://reframehealthandjustice.medium.com/can-anti-trafficking-be-rescued-5688c3221173> (“Vital supports, such as temporary immigration relief for undocumented victims require law enforcement cooperation for a person to avoid deportation”). Notably, non-white victims are more likely to be arrested than white victims. Gilbertson, Mendelson & Caputo, *supra* note 16 (“While [Black women make up around 9% of the city’s female population, they account for nearly 65% of the LAPD’s female prostitution arrests”).

79 Successful prosecution of traffickers often hinges on victim testimony, and courts have the power to compel unwilling victims to testify through material witness warrants. Henry Wu & Alexandra Yelderman, *Prosecution at Any Cost? The Impact of Material Witness Warrants in Federal Human Trafficking Cases*, The Human Trafficking Legal Center (Apr. 2020), https://www.htlegalcenter.org/wp-content/uploads/Material-Witness-Report-FINAL-FOR-PUBLICATION_April-2020.pdf.

80 Farrell et al., *New Laws* *supra* note 71, at 158.

81 *Id.*

82 *Id.*

83 *Id.*

84 Shireen S. Rajaram & Sriyani Tidball, *Survivors’ Voices – Complex Needs of Sex Trafficking Survivors in the Midwest*, 44 BEHAV. MED. 189 (2018).

85 *Id.*

86 *Id.*

87 Ditmore, *supra* note 45, at 10 (explaining law enforcement arrests, handcuffs, fingerprints, and interrogating victims); *id.* at 9 (“Law enforcement agents use interrogation techniques, including intimidation, that are entirely incompatible with an approach that prioritizes the needs of trafficked persons”); Mehlman-Orozco, *supra* note 49 (“[S]ex trafficking survivors continue to be erroneously criminalized . . . following identification.”).

88 E.g., Ditmore & Thukral, *supra* note 9, at 135 (“Research conducted by one of the authors has documented the ways that law enforcement approaches to human trafficking can fail trafficked persons, including through arrest, detention, and prevention of contact with the trafficked person’s family.”).

89 Ditmore, *supra* note 45, at 16 (quoting a survivor: “[law enforcement] take you in your work clothes”).

90 Ditmore & Thukral, *supra* note 9, at 135.

91 Farrell, et al., *New Laws* *supra* note 71, at 157.

92 See Ditmore, *supra* note 45, at 10 (“Raids create circumstances facilitating police misconduct, including sexual misconduct, against trafficked persons”); *id.* at 43

“fourteen percent of [victims] surveyed claimed they had ‘experienced incidents of police violence, and . . . felt they had no recourse,’” and sixteen percent of those surveyed claimed to “have been involved in sexual situations with the police.”⁹³ In another recent study interviewing sex trafficking survivors in Hawaii, participants reported a variety of abusive and corrupt encounters with law enforcement:

[Study participants] reported being in stings where everyone else was arrested and with no referrals or support the police told her to just leave. She had “hooked up with cops regularly and sold sex to many of the officers doing the stings.” Another participant had dated an undercover cop and he would tell her when the stings would be at the strip club where she worked. Another stated, “It is really easy to sell sex here and it is like they don’t care because cops date. I know because they had their gun, badge and hat with them and would say, ‘okay let’s go date.’ The same people that are charging you for prostitution are the people turning around and buying it from you.”⁹⁴

Experts suggest that the only way states can prevent law enforcement from using sex acts as an investigative tool

is to legally prohibit law enforcement from engaging in sexual conduct while on duty, however, recent reporting indicates that Michigan is the only state with such a law.⁹⁵

3. Law enforcement operations fail to connect victims with the short- and long-term services they need to help them avoid being trafficked again.⁹⁶

The literature suggests that law enforcement operations are primarily motivated by a focus on fighting crime, with victim service providers and advocates often looped in as an afterthought.⁹⁷

Operations are likely to measure their success by the number of arrests, charges, prosecutions, and convictions, rather than the number of victims who received services and successfully left their trafficking situation.⁹⁸ As a result, efforts to build a prosecutable criminal case take center stage, and the wellbeing of the victim is frequently de-prioritized. Advocates have called this “the disposable witness syndrome.”⁹⁹

After identification, victims require immediate services including, but not limited to, counseling, medical care, housing, legal services, immigration services, financial

“One interviewee, Jin, described being pistol-whipped by an officer in plainclothes during a raid on a brothel by local police, and knocked unconscious. She subsequently awoke to find a uniformed female officer strip searching her in front of others present to see if she had anything hidden in her underwear”; HOWARD CTR. FOR INVESTIGATIVE JOURNALISM, Arizona Homeland Security Agents Engaged in Sex Acts with Suspected Trafficked Victims, SAN PEDRO VALLEY NEWS-SUN (May 12, 2020), https://www.myheraldreview.com/news/benson/arizona-homeland-security-agents-engaged-in-sex-acts-withsuspected-trafficking-victims/article_b4b910e7-a3de-50d8-bc46-46547d38042a.html (“Over a nearly five-month period, the HSI undercover agents documented in graphic detail 17 sexual encounters with women working in eight massage parlors.”); U.S. 2021 TIP REPORT, *supra* note 65, at 586.

93 Bistricher, *supra* note 53, at 474-75.

94 DOMINIQUE ROE-SEPOWITZ & KHARA JABOLA-CAROLUS, SEX TRAFFICKING IN HAWAII: THE STORIES OF SURVIVORS 8 (Jan. 2019), <https://ncjtc-static.fvtc.edu/resources/RS00009136.pdf>.

95 Raleigh News and Observer, *Will SC Politicians Change the Law After Investigator Paid for Sex Acts at Horry Spas?*, DAILY MAGAZINE (Apr. 1, 2021), <http://www.dailymagazine.news/will-sc-politicians-change-the-law-after-investigator-paid-for-sex-acts-at-horry-spas-nid-1486358.html>. See also Cara Kelly, Erin Mansfield, & Brenna Smith, *The Atlanta Shootings Put a Spotlight on the Vulnerability of Spa Workers. Many Are Still Routinely Arrested Across Georgia*, USA TODAY (Apr. 5, 2021 12:43 PM), <https://www.usatoday.com/story/news/investigations/2021/03/31/georgia-spa-shootings-highlight-worker-vulnerability-threat-arrest/4802368001/>.

96 Ditmore, *supra* note 45, at 7 (explaining that law enforcement fails to “refer large numbers of trafficked persons to supportive services”). Justice for All Act and Victims’ Rights Act requires that the FBI provides services to federal crime victims, *FBI Victims’ Specialist Discusses Her Role*, FBI (June 23, 2014), <https://www.youtube.com/watch?v=G5lHgtkOgbw>. FBI’s Victim Services Division is responsible for ensuring that victims receive services required by law and the Attorney General Guidelines. *Victim Services*, FBI, <https://www.fbi.gov/resources/victim-services> (last visited Mar. 22, 2021).

97 E.g., Ditmore & Thukral, *supra* note 9, at 135 (“[M]ost services and legal protections that trafficked persons can access in the United States are related to efforts to cooperate with law enforcement. This prioritises raids and prosecution-oriented legal procedures rather than rights-based, survivor-centred approaches necessary for full recovery from a trafficking experience.”); U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (June 2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf> [hereinafter U.S. 2020 TIP REPORT] (applying a criminal justice framework in the evaluation of anti-trafficking efforts of foreign nations); INT’L WOMEN’S HUMAN RIGHTS CLINIC, ET. AL., CRIMINALIZATION OF TRAFFICKING VICTIMS (2015), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/hrg/publications/Criminalization-of-Trafficking-Victims.pdf> (Even where trafficking victims are identified, federal and state initiatives to combat human trafficking often prioritize prosecution of perpetrators at the expense of victims. Victims are often seen primarily as “instruments of criminal investigation, rather than as holders of rights.”); Amy Farrell et al., *Failing Victims? Challenges of the Police Response to Human Trafficking*, 18 CRIM. & PUB. POL. 649, 666 (2019) [hereinafter Farrell et al., *Failing Victims?*] (“Interviewees indicated that law enforcement is starting to recognize the importance of connecting victims to services, yet their primary focus continues to be on criminal justice system outcomes (i.e., engaging victims to facilitate collection of evidence and make arrests).”); POLICE EXEC. RESEARCH FORUM, HOW LOCAL POLICE CAN COMBAT THE GLOBAL PROBLEM OF HUMAN TRAFFICKING: COLLABORATION, TRAINING, SUPPORT FOR VICTIMS, AND TECHNOLOGY ARE KEYS TO SUCCESS 4 (Aug. 2020), <https://www.policeforum.org/assets/CombatHumanTrafficking.pdf> (“[W]hen police agencies are planning an antihuman trafficking operation, it can be beneficial to incorporate victim services into the overall plan, so that help is immediately available to victims who are rescued. But because police agencies work 24/7, service providers need to be prepared to adjust their work schedules, so they can respond immediately when police encounter victims at any time of the day or night.”).

98 Bistricher, *supra* note 53, at 473-74 (noting that raids focusing on prosecution of criminals rather than victim protection leads to arrests of trafficking victims); D’Adamo, *supra* note 78 (“Neither healing from victimization nor fighting exploitation inherently involves law enforcement”).

99 *Legal Options to Stop Human Trafficking: Hearing Before the Subcomm. On Human Rights and the Law of the S. Comm. On the Judiciary*, 110th Cong. 76 (2007) (statement of Martina E. Vandenberg).

assistance, and job training.¹⁰⁰ Yet victims frequently do not receive services for a variety of reasons.¹⁰¹ The literature suggests that many law enforcement operations lack a trauma-informed victim advocate to assess victims' needs and connect them to resources.¹⁰² Often there is a shortage of available services, especially housing.¹⁰³ Moreover, even where services are provided, law enforcement sometimes uses them with the ultimate aim of building a criminal case. For example, law enforcement officials may rely on services as a tool to engage victims in the criminal justice process,¹⁰⁴ or at worst, the provision of services can be made contingent on a victim's willingness to cooperate with law enforcement.¹⁰⁵ Additionally, trafficked persons who are undocumented may refuse services because they are distrustful of law enforcement and fear deportation.¹⁰⁶ Without the provision of critical short- and long-term services, victims are likely to be re-trafficked, as the law enforcement operations have only exacerbated their vulnerability.¹⁰⁷

B. Prosecution of Traffickers

1. Despite consistent reports of operational focus on investigations and prosecutions, the literature also identifies minimal evidence that operations result in successful prosecutions of sex traffickers.

According to the Human Trafficking Institute ("HTI"), which compiles data related to federal prosecutions of sex trafficking, in 2019, only a small portion of new sex trafficking cases under the TVPA resulted from sting operations (12.4%).¹⁰⁸ Similarly, of the 547 federal sex trafficking cases active in 2020, approximately 12% resulted from a sting operation involving a law enforcement officer posing as a potential buyer seeking to purchase commercial sex.¹⁰⁹ Other investigative methods were much more effective in leading to prosecutions; for example, in 2020, HTI found that "Self-reporting by a victim was the most common way that a case was reported to law enforcement . . . Over one-third of case referrals that resulted in a prosecution involved a victim who contacted law enforcement for assistance, either directly or through the support of a non-

100 E.g., Rajaram & Tidball, *supra* note 84; Dana M. Kaplan, et al., *Domestic Minor Sex Trafficking: Medical Follow-up for Victimized and High-Risk Youth* 26, R.I. MED. J. (May 2018) (explaining sex trafficking victims often have histories of substance abuse, sexually transmitted infections, and pregnancy).

101 U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-555, HUMAN TRAFFICKING: AGENCIES HAVE TAKEN STEPS TO ASSESS PREVALENCE, ADDRESS VICTIM ISSUES, AND AVOID GRANT DUPLICATION 21 (2016) [hereinafter U.S. GAO REPORT 2016] ("Officials in 15 of the 32 interviews we conducted with law enforcement officials and prosecutors reported limited availability of services in their area of responsibility.").

102 See, e.g., Rajaram & Tidball, *supra* note 84; Mehlman-Orozco, *supra* note 49 ("The care that was available to [one survivor] wasn't trauma informed to the complex needs of sex trafficking victims and law enforcement wasn't able to incapacitate her trafficker, so about six months after her initial rescue, she was revictimized."); Kimberly Mehlman-Orozco, *Why We Should Question the FBI's Recent Human Trafficking Sting*, THOMPSON REUTERS FOUND. (Oct. 24, 2017, 4:19 PM), <https://news.trust.org/item/20171024161910-x96o5> (describing one survivor who was taken to a juvenile detention center where she was sexually assaulted, not provided therapy, and likely re-trafficked afterwards).

103 Mehlman-Orozco, *supra* note 49 (explaining the difficulty of connecting a victim to services, because "[r]esidential placement centers for human trafficking victims were at capacity with long waiting lists or denied services because she wasn't a juvenile or because she didn't technically reside in Virginia. For months, she ended up moving between domestic violence shelters (some with bed bugs), a mental health facility, hotels paid for from the discretionary funds of anti-trafficking organizations, and homeless shelters"); U.S. GAO 2016 REPORT, *supra* note 101, at 21 (highlighting that U.S. law enforcement officials have reported limited availability of short- and long-term assistance for trafficking survivors, with shelter and housing presenting particular challenges in both forms of assistance).

104 Farrell et al., *Failing Victims?*, *supra* note 97, at 664 (citations omitted).

105 Ditmore, *supra* note 45, at 10 (explaining the U.S. Government requires "that trafficked persons cooperate with law enforcement in order to obtain services, benefits, and immigration status."); NAT'L SURVIVOR NETWORK, *Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (August 2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf> (22.2% of survivor respondents reported that they felt they had to testify against their trafficker to get help or services).

106 Ditmore & Thukral, *supra* note 9, at 135 ("A person in a coercive situation, not necessarily aware of his or her legal rights, typically fears and does not trust law enforcement agents.")

107 Mehlman-Orozco, *supra* note 49 ("The care that was available to [one survivor] wasn't trauma informed to the complex needs of sex trafficking victims. . . . so about six months after her initial rescue, she was revictimized"); Mehlman-Orozco, *Why We Should Question the FBI's Recent Human Trafficking Sting*, *supra* note 102 (describing how one survivor who was taken to a juvenile detention center where she was sexually assaulted, not provided therapy, and likely re-trafficked afterwards); Bistricher, *supra* note 53, at 473 (explaining how law enforcement failed to identify a sex trafficking victim, and the victim was returned to her trafficker.); Rajaram & Tidball, *supra* note 84 (Interviewed sex trafficking survivors reported that "the risk of going back to the sex trafficked life, increases without a safe house followed by further support such as education, job placement, having access to mental healthcare, and the like").

108 HUMAN TRAFFICKING INST., 2019 FEDERAL HUMAN TRAFFICKING REPORT (2020), <https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report-Low-Res.pdf>. HTI also has some sting information published for 2018 and 2017. Of the criminal sex trafficking cases active in 2018, 8.8% (57) were sting cases with no identified victims. In 2018, federal courts sentenced 27 buyer-defendants, and among those, ten (37%) were in a sting case where law enforcement posed as the victim and there were no real victims exploited in the case. HUMAN TRAFFICKING INST., 2018 FEDERAL HUMAN TRAFFICKING REPORT 29 (2019), <https://www.traffickinginstitute.org/wp-content/uploads/2020/04/2018-Federal-Human-Trafficking-Report-Low-Res.pdf>. Of the 661 active criminal sex trafficking cases in 2017, 65.8% (435) involved only child victims; among those, there were 39 sting cases. HUMAN TRAFFICKING INST., 2017 FEDERAL HUMAN TRAFFICKING REPORT 14 (2018), <https://www.traffickinginstitute.org/wp-content/uploads/2020/04/2017-Federal-Human-Trafficking-Report-WEB-Low-Res.pdf>.

109 HUMAN TRAFFICKING INST., 2020 FEDERAL HUMAN TRAFFICKING REPORT (2021), <https://www.traffickinginstitute.org/wp-content/uploads/2021/06/2020-Federal-Human-Trafficking-Report-Hi-Res.pdf>.

profit or hotline.”¹¹⁰ Some data are also available in the DOJ US Attorney General’s Office annual publication *The Attorney General’s Annual Report to Congress and Assessment of the US Government Activities to Combat Trafficking in Persons*, which “describes the U.S. Government’s comprehensive campaign to combat human trafficking including efforts to carry out the 3Ps.”¹¹¹ For example, six DOJ Anti-Trafficking Coordination Teams (“ACTeams”) “proactively coordinate and plan significant federal trafficking investigations and prosecutions,” and in fiscal year 2018, “ACTeams saw significant prosecution results, including increases of 10 percent, 75 percent, and 106 percent, in cases filed, defendants charged, and defendants convicted.”¹¹² According to a 2018 Special Report from BJS, in 2015, 21% of federal human trafficking suspects were referred from the 12 districts with ACTeam task forces.¹¹³

However, significant data gaps remain—the reporting on trafficker arrests and convictions rarely, if ever, specify the origins of those arrests, *i.e.*, whether they resulted from stings, raids, etc.¹¹⁴ We were unable to identify any public sources that track the national number of sex trafficking prosecutions that result from raids as opposed to stings. We were also unable to identify sources that analyze trends in the number of state sex trafficking prosecutions, an important data point given that over the last two decades states have been implementing new laws to combat human trafficking.¹¹⁵

The results of public case studies, where available, have not been favorable to law enforcement operations. For example, Los Angeles’s 2016 ORR—led by the Los An-

geles Police Department’s (“LAPD”), the Los Angeles County Sheriff’s Department, and the FBI—was praised by law enforcement leaders and certain media as a great success, at least in part due to “the quantity of arrests send[ing] a strong message to the community that Human Trafficking is not tolerated.”¹¹⁶ But an analysis by KPCC/LAist reported that not a single sex trafficking prosecution resulted from any of the arrests made during the operation.¹¹⁷

Part of the difficulty in linking prosecutions to law enforcement operations is that prosecutors do not always charge traffickers with violations of the TVPA. Sex trafficking cases are notoriously difficult to prosecute due to myriad challenges, including: victim cooperation; limited availability of victims services; distinguishing sex trafficking from labor trafficking and/or sex work; and proving force, fraud, or coercion in a commercial sex situation.¹¹⁸ In one recent study, human trafficking investigators “lamented that despite their securing victim statements and corroborating evidence, prosecutors were reluctant to charge in human trafficking cases because the legal process is complicated and human trafficking cases take longer to resolve than other crimes.”¹¹⁹ In reviewing data provided by the Executive Office for U.S. Attorneys, the U.S. Government Accountability Office (“GAO”) found that “the most common reasons that U.S. Attorney Offices reported declining human trafficking cases were ‘insufficient evidence’ and ‘matters being referred to another jurisdiction.’”¹²⁰ However, state prosecutors may also be reluctant to use newer human trafficking laws, instead opting to charge offenders with offenses they were more familiar with, such as rape, kidnapping, or pande-

110 *Id.*

111 U.S. Att’y Gen.’s Trafficking in Persons Reports, *supra* note 32.

112 U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2018 57-58 (2020), <https://www.justice.gov/humantrafficking/page/file/1276166/download>.

113 Mark Motivans & Howard N. Snyder, *Federal Prosecution of Human-Trafficking Cases*, 2015, BUREAU OF JUSTICE STATISTICS, REP. NCJ 251390, 5 (June 2018), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6286>.

114 ATT’Y GEN.’S ANN. REP. TO CONGRESS: FY 2018, *supra* note 112, at 27.

115 Anne Teigen, *Prosecuting Human Traffickers Recent Legislative Enactments*, Nat’l Conf. of State Legis., 1-2 (Sept. 2018), https://www.ncsl.org/Portals/1/HTML_LargeReports/Prosecuting_Traffickers_091818_32767.pdf (“By 2013, every state had enacted laws establishing criminal penalties for traffickers seeking to profit from forced labor or sexual servitude.”).

116 News Release, L.A. Police Dep’t, 198 Arrested in County-Wide Sex Trafficking Operation (Jan. 28, 2016), <https://www.lapdonline.org/newsroom/198-arrested-in-county-wide-sex-trafficking-operation-nr160261p/>.

117 Gilbertson, Mendelson & Caputo, *supra* note 16.

118 See, e.g., Luke Barr, *Prosecuting Human Traffickers Poses Significant Challenges*, Top Prosecutor Says, ABC NEWS (Aug. 11, 2019 10:34 AM), <https://abcnews.go.com/US/prosecuting-human-traffickers-poses-significant-challenges-top-prosecutor/story?id=64882178>; U.S. GAO 2016 REPORT, *supra* note 101, at 18, 23; NAT’L INST. OF JUST., *Improving the Investigation and Prosecution of State and Local Human Trafficking Cases*, (Aug. 31, 2016), <https://nij.ojp.gov/topics/articles/improving-investigation-and-prosecution-state-and-local-human-trafficking-cases>; Farrell, et al., *New Laws*, *supra* note 71, at 142.

119 Farrell et al., *Failing Victims?*, *supra* note 97, at 663 (citations omitted).

120 U.S. GAO 2016 Report, *supra* note 101, at 31.

ing.¹²¹ As a result, prosecutors will often charge traffickers with crimes that do not require proof of the victim's state of mind or with seemingly unrelated charges (such as a firearms charge or tax evasion).¹²² Human trafficking cases also often present prosecutors with the choice of pursuing a victim as either a victim or an offender (for example, through involvement in sex work or as an undocumented migrant), further complicating the prosecution process.¹²³

HTI synthesizes these data at the federal level and reports that, in 2019, 52.1% (49) of the 94 federal districts in the United States charged a human trafficking case outside of the TVPA.¹²⁴ In total, federal prosecutors charged 100 sex trafficking cases outside of the TVPA in 2019: nearly half (45%) of these cases were sting operations that involved only fictitious victims; 19% involved child victims only; and 15% involved at least one adult victim.¹²⁵ For the remaining 21% of cases, there was limited information regarding the age of the victims exploited.¹²⁶ In synthesizing these data, HTI noted that it only included cases with clear signs of trafficking or where federal prosecutors directly informed HTI that the case involved trafficking.¹²⁷ As one might expect, the practice of charging outside of the TVPA has complicated efforts by researchers to identify sex trafficking prosecutions.

In sum, the current lack of transparent data renders it effectively impossible to systematically track the connection between specific law enforcement operations and any resulting sex trafficking prosecutions, which, in turn, makes it essentially futile to attempt to evaluate the pros-

ecutorial effectiveness of specific operations.

2. Law enforcement's lack of rapport with victims makes a successful trafficking prosecution unlikely.

Scholars emphasize that in order for operations to successfully facilitate sex trafficking convictions, they must be tailored to ensure that prosecutable evidence is gathered.¹²⁸ By contrast, operations are often reported to be *ad hoc* and chaotic, creating an environment of fear that impedes efforts to gather evidence at the scene.¹²⁹ Indeed, proving force, fraud, or coercion typically requires a victim's testimony, which is difficult to obtain without the cooperation of the victim.¹³⁰ In a 2016 report, the GAO found that 25 of 32 interviewed U.S. law enforcement and prosecutorial officials "reported that they faced challenges with victim cooperation. In general, officials stated that obtaining the victim's cooperation is important for human trafficking investigations and prosecutions because the victim is generally the primary witness and source of evidence."¹³¹ For example, in *Farrell et al.*, an interviewed prosecutor emphasized, "Victim testimony is not just a necessity. It's a legal requirement. If I don't have her, I got no case."¹³²

Of course, as noted above, there are numerous reasons why a victim might not be comfortable cooperating with a prosecution, including "fear of reprisal, loyalty and/or love toward the trafficker(s), concern for personal and/or familial safety, and need for housing" to name a few.¹³³ Further, because trafficking victims are so often taught by their trafficker to fear law enforcement, a traumatic arrest

121 NAT'L INST. OF JUST., *supra* note 118; Farrell et al., *New Laws*, *supra* note 71, at 142, 152.

122 See, e.g., Barr, *supra* note 118; Amy Farrell, et. al., *The Prosecution of State-Level Human Trafficking Cases in the United States*, 6 ANTI-TRAFFICKING REV. 48 (2016).

123 Farrell et al., *New Laws*, *supra* note 71, at 142, 152.

124 2019 FEDERAL HUMAN TRAFFICKING REPORT, *supra* note 108, at 52.

125 *Id.*

126 *Id.*

127 *Id.*

128 FACT SHEET: THE BENEFITS OF SMART RAIDS V. BLIND SWEEPS, *supra* note 51 ("Even when trafficking victims are found, a poorly planned raid can make it difficult to gather evidence and mount effective prosecutions to ensure that traffickers serve significant time behind bars.").

129 Ditmore & Thukral, *supra* note 9, at 141 ("Overall, participants reported that raids were chaotic and often traumatic events which left them frightened and confused, with no sense of what was happening or would happen to them."); *id.* at 135 (Raids "are rarely executed on the basis of in-depth investigation that elicits reliable evidence and witness testimony.").

130 2019 FEDERAL HUMAN TRAFFICKING REPORT, *supra* note 108, at 52 ("[T]he government may be unable to prosecute an offense under the TVPA because the requisite evidence to prove the coercion element—usually, a victim's testimony—is unavailable for trial."); Donna Gavin & Cassandra Thomson, *Sex Trafficking in One US City: Traditional Policing and Boston's Shift to a Survivor-Centered Response*, in HUMAN TRAFFICKING IS A PUBLIC HEALTH ISSUE: A PARADIGM EXPANSION IN THE UNITED STATES 325, 339 (Makini Chisolm-Straker & Hanni Stoklosa eds., 2018); Dandurand, *supra* note 68, at 330.

131 U.S. GAO 2016 Report, *supra* note 101, at 18.

132 Farrell et al., *New Laws*, *supra* note 71, at 157.

133 Gavin & Thomson, *supra* note 130, at 336; Farrell et al., *Failing Victims?*, *supra* note 97, at 651 (citations omitted).

and detention is likely to reinforce a victim's already antagonistic or fearful perspective of law enforcement.¹³⁴ In a recent study of police interactions with victims of trafficking, one officer explained, "Most people associate us with criminal prosecution. They don't see us as rescuers as much as they see us as a threat to their civil liberties."¹³⁵ As noted in *supra* Section III(A)(2) at p. 13, law enforcement officers have been reported to pressure victims for testimony until the victims "break."¹³⁶ Besides re-traumatizing the victims, this "use of emotional manipulation, fear, and intimidation can create situations where victims actively protect those who are exploiting them due to a sense of misguided loyalty."¹³⁷ If law enforcement allows—whether intentionally or inadvertently—poor treatment of victims during law enforcement operations, they further impede survivors' likelihood of disclosing information about their trafficking situation or self-identifying as trafficking victims (see *supra* Section III(A)(1) at p. 11 for additional discussion).¹³⁸ Whereas, when law enforcement treats survivors respectfully, survivors "are more likely to report crimes, cooperate with police, and participate in the criminal justice process."¹³⁹

That said, while victim testimony can be critical to a successful prosecution, successful law enforcement efforts recognize that reliance on survivor testimony alone is insufficient for a strong case.¹⁴⁰ Officers and prosecutors must collaborate diligently to secure comprehensive evidence, including financial evidence, to build a well-founded case. Prosecutors should work with both "survivors and service providers as early as possible to both support the survivor and develop the case."¹⁴¹

C. Prevention of Trafficking

The literature also indicates that law enforcement operations are not effective tools to prevent sex trafficking, sometimes even serving to undermine prevention efforts and facilitating sex trafficking.

Ill-planned operations that are not trauma-informed are likely to *perpetuate*, rather than *prevent*, sex trafficking. As noted above, traffickers rely on demonization of law enforcement to exert control over the victim and to ensure that the victim does not report the trafficker to law enforcement. Law enforcement operations that do not prioritize the well-being of the victim and allow the victim to choose whether, when and how they interact with law enforcement can unintentionally reinforce the trafficker's narrative and contribute to undermining the mental, emotional, and physical stability of the victim. All these factors contribute to indirectly supporting the trafficker's ability to control and coerce the victim.

As a result, it is not uncommon that after being identified in a law enforcement operation, victims return to their trafficker out of fear or as a means to survive.¹⁴² Victims who fail to self-identify are often arrested, and the enduring nature of criminal records—and the long-term impacts they can have on access to housing, employment and other services—makes it even more unlikely that a trafficking victim will ever gain the stability needed.¹⁴³

134 INT'L WOMEN'S HUMAN RIGHTS CLINIC, ET AL., *supra* note 97 ("Criminal arrests are traumatic experiences that reinforce fear and distrust of police and authorities instilled by traffickers.").

135 Farrell et al., *Failing Victims?*, *supra* note 97, at 662 (citations omitted).

136 Farrell, et al., *New Laws*, *supra* note 71, at 158.

137 Connell et al., *supra* note 75.

138 Ditmore, *supra* note 45, at 9 ("Service providers also noted that treatment during raids bears directly upon whether a person who has been detained will speak frankly about their experiences, or self-identify as having been coerced or otherwise abused."); Courtney Desilet, *Stopping Human Trafficking on the Law Enforcement Front Lines*, HOMELAND SECURITY TODAY (Feb. 7, 2019), <https://www.hstoday.us/subject-matter-areas/education-and-training/stopping-human-trafficking-on-the-law-enforcement-front-lines/>; Farrell et al., *Failing Victims?*, *supra* note 97, at 662-63 (citations omitted).

139 Farrell et al., *Failing Victims?*, *supra* note 97, at 650 (citation omitted).

140 Gavin & Thomson, *supra* note 130, at 337.

141 *Id.*

142 Ditmore, *supra* note 45, at 10 ("[R]aids uproot trafficked persons from their communities and can effectively render them homeless"); Mehlman-Orozco, *supra* note 49, (quoting a survivor unable to acquire stable housing: "[A]t least [with my trafficker] I had a roof over my head, even if I was getting my ass whipped before I went to sleep").

143 Mehlman-Orozco, *supra* note 49 (explaining that even though a survivor was connected with vocational training, "[h]er previous arrests for crimes related to her victimization have yet to be expunged"); POLICE EXEC. RESEARCH FORUM, *supra* note 97, at 34 ("Having a criminal record can prevent the victim from obtaining employment, housing, immigration relief, loans, and other resources they may need for recovery.")







IV. QUALITATIVE FINDINGS: INTERVIEWS

We interviewed 42 professionals in the anti-trafficking field, including federal and local law enforcement, federal and local prosecutors, law enforcement advocates, nonprofit advocates, experts, and survivor advocates. (See [Appendix D: Interviewee Chart](#)). Many interviewees’ accounts closely mirror the Literature Review findings. More specifically, interviewees report that law enforcement operations, including federal initiatives such as ILNI and OCC, fall short of the aims of the TVPA—to protect victims, prosecute traffickers, and prevent trafficking—for the following reasons:

1. Operations do not protect victims because they identify few or no traffickers and victims; operations can traumatize and criminalize victims and undermine their trust in law enforcement; and operations often fail to connect victims with short- and long-term services necessary to successfully rehabilitate victims.

2. Operations rarely lead to the prosecution of traffickers because they identify few or no traffickers; they are often executed without enough evidence to arrest traffickers; and they do not facilitate rapport with victims, whose testimonies are often necessary to prosecute traffickers.

3. Operations do not successfully prevent trafficking because they do not prevent the victim’s return to the trafficker; indeed, they further marginalize sex work which exacerbates the risk of trafficking; and they do not address the root causes of trafficking.

A. Protection of Victims

According to one expert, “operations are in direct opposition to everything we train on trauma and victim centeredness. They’re about output not outcome; there are collateral harms inflicted, especially if arrest is involved.” Consistent with this view, interviewees generally describe operations as an ineffective tool for protecting victims. They describe shortcomings at all stages of the operations, including i) training and policies of law enforcement, ii) planning of operations, iii) execution of operations, and iv) post-operations.

“Operations are in direct opposition to everything we train on trauma and victim centeredness. They’re about output not outcome; there are collateral harms inflicted, especially if arrest is involved.”
-Anti-trafficking expert

1. Law enforcement training and policies

Interviewees indicate that law enforcement personnel receive varying degrees of training about a) sex trafficking generally, b) victim identification, and c) trauma-informed methods of interacting with victims, including interview techniques. Alarming, law enforcement agencies do not universally maintain clear policies prohibiting sexual contact with victims. Insufficient training about these topics can inhibit law enforcement’s ability to identify and assist sex trafficking victims during operations.

a. Training about sex trafficking generally

Different departments provide different levels of training about sex trafficking. A former FBI officer shares, “I can’t say there’s any phenomenal [FBI] training [about sex trafficking].” Some law enforcement officers report that there is no mandatory, specialized sex trafficking training for officers participating in operations. Others report that departments rely on general law enforcement training to teach officers to participate in operations and to engage with victims. For example, some officers who participate in operations receive training about trafficking through Vice or the Special Victims Unit (“SVU”), such as those who participate in the California-based operation ORR. Several interviewees, however, do not believe such general training adequately prepares officers to address sex trafficking. Interviewees are especially critical of relying

“I can’t say there’s any phenomenal [FBI] training [about sex trafficking].”
-Former FBI officer

on Vice training, which traditionally focuses on sex work arrests, gambling, and drug-related crimes.

Where they do exist, the design and depth of specialized sex trafficking training programs vary from district to district. One state prosecutor describes the sex trafficking training received by officers as “extensive,” while other law enforcement officers state that such training is available only to those officers who actively pursue it. An HSI agent explains, “There is training available [for HSI personnel], but unless you really look at the curriculum once or twice a year, it becomes dated very quickly.” Law enforcement personnel may not be encouraged to actively pursue up-to-date training, however, where sex trafficking training is considered “additional training,” and not a component of officers’ required basic training.

b. Victim identification training

Successful protection of victims first requires successful *identification* of victims, which rarely happens during or immediately after operations. Victims are reluctant to self-identify, and law enforcement lacks sufficient training about how and when to identify adult victims.¹⁴⁴

Interviewees explain that law enforcement too often places the onus on victims to self-identify as a means of establishing force, fraud, or coercion.¹⁴⁵ Doing so burdens the victim with disclosing difficult information before they may be ready and potentially subjecting themselves to danger. Moreover, victims rarely self-identify.¹⁴⁶ “Most people won’t say, ‘I’m being trafficked.’ Most people don’t even know they’re being trafficked,” says a survivor advocate. A

“Most people won’t say, ‘I’m being trafficked.’ Most people don’t even know they’re being trafficked.”

-Survivor advocate

public health advocate explains that undocumented victims are reluctant to self-identify due to fear of consequences related to their immigration status. An HSI agent, who has participated in anti-sex trafficking operations for five years, does not recall a single instance of a victim self-identifying during a first encounter with law enforcement. A survivor told a former state prosecutor that admitting she is a victim

takes away “her last shred of agency.” Moreover, if she asks for help, “she will be known in the streets she trusts as a snitch, [and] if services fall through, she can’t go back to the street.”

Nonetheless, several interviewees state that absent victim self-identification, law enforcement generally categorizes individuals engaged in commercial sex as sex workers. Law enforcement officers may simply ask if victims are “independent,” or who their pimp or boyfriend is. As one survivor advocate put it, “When the cop says, ‘Do you have a man?’ You say ‘No.’ That’s their only line of questioning. [It’s] minimal and not very creative.” Another survivor advocate explains that, “If the victim doesn’t disclose [that] she is coerced, then the crime sits on the victim.”

“If the victim doesn’t disclose [that] she is coerced, then the crime sits on the victim.”
-Survivor advocate

One nonprofit advocate explains that officers would be better served listening for comments such as, “I didn’t have a choice,” or “I owed money,” rather than asking about victims’ traffickers. Accordingly, in recent years some officers have learned to ask circumstantial questions; a law enforcement advocate recounts asking victims open-ended questions like, “How did you end up here today?” Similarly, a prosecutor reports inquiring about elements of control and whether victims had freedom of movement.

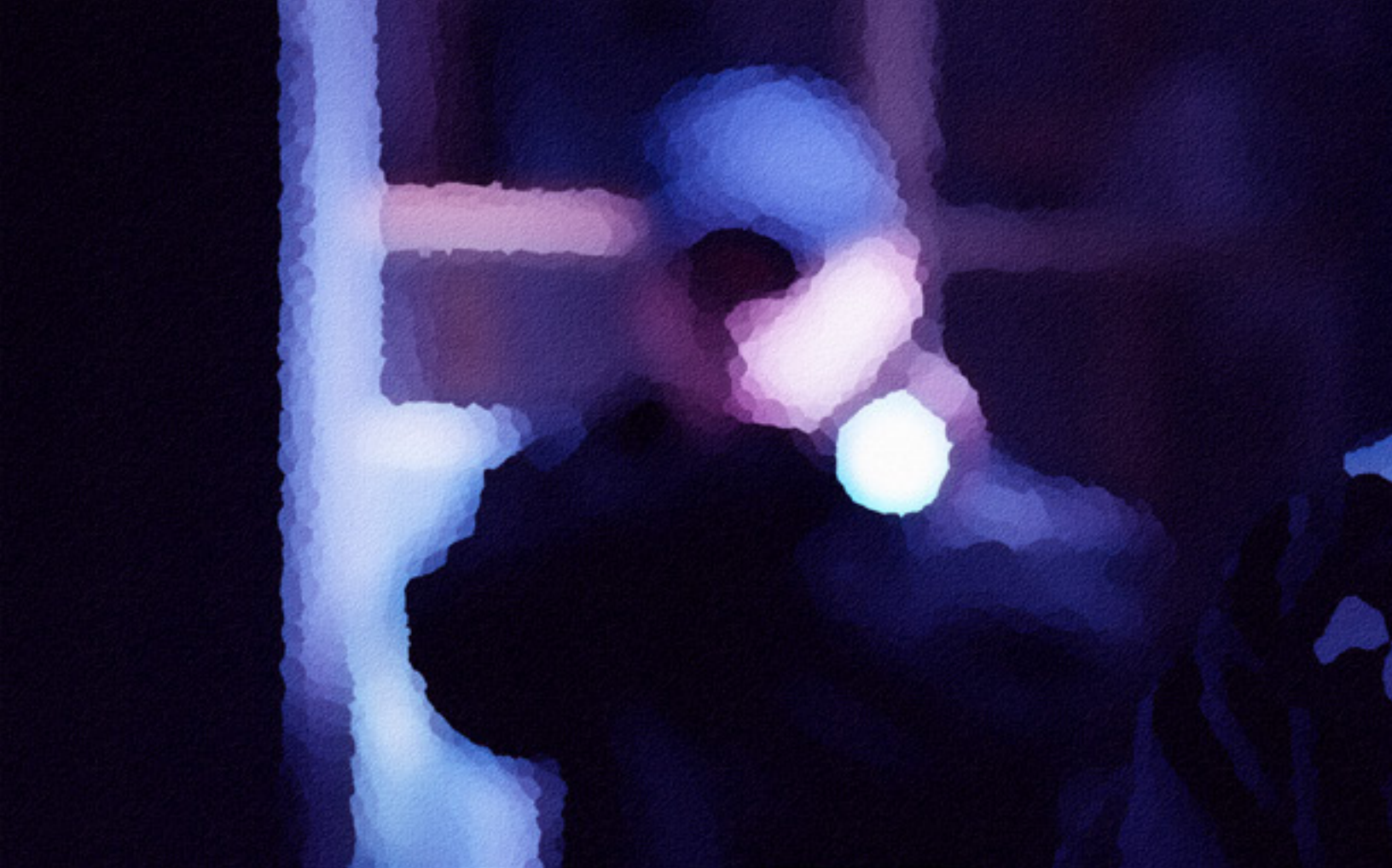
Questioning a victim, besides gathering basic information, is only appropriate once the victim is no longer in an excited state from the operation; has the support of a nonprofit advocate; and has been provided with basic needs such as food, water, and clothing.

While circumstantial questions can be more useful than asking victims to self-identify, according to an expert, they should not be asked during or immediately after an operation. Questioning a victim, besides gathering basic information, is only appropriate once the victim is no longer in an excited state from the operation; has the support of a nonprofit advocate; and has been provided with basic needs

144 Notably, a person under the age of 18 who performs a commercial sex act—even absent force, fraud, or coercion—is a trafficking victim under the TVPA. 22 U.S.C.A. §7101(b)(9) (2000). Stakeholders report that as a result, operations often focus on recovering minor victims, since identifying adult victims often takes longer. However, according to some interviewees, even minors engaged in commercial sex are not always treated as victims by law enforcement; while local law enforcement may not arrest minors on prostitution charges, they arrest them on different charges, such as breaking curfew.

145 During operations, law enforcement are tasked with distinguishing between sex trafficking and sex work, the latter of which involves the exchange of a commercial sex act between two adults without force, fraud or coercion.

146 Victims are usually unwilling to self-identify for various factors, including loyalty to their trafficker, distrust of law enforcement, or impacts of trauma. *See infra* Section V(B)(1) at p. 38.



such as food, water, and clothing. An expert explains that even with the best, most trauma-informed questioning protocols, self-identification of victims during or immediately after operations remains unlikely, whether because of the acute stress of the situation or distrust of law enforcement. Questioning during this time can also be traumatizing for victims, in addition to proving ineffective.

c. Trauma-informed training for interacting with victims

Interviewees provide numerous examples of how law enforcement's behavior during operations is not trauma-informed. For example, one local officer self-reported misgendering a victim: "you have fun on these ops. Like we arrested a tranny, it was one of the most drop-dead gorgeous females I've ever seen but it was a dude. Did we have fun with that? Yeah we had fun like guys have fun." A survivor

"[Y]ou have fun on these ops. Like we arrested a tranny, it was one of the most drop-dead gorgeous females I've ever seen but it was a dude. Did we have fun with that? Yeah we had fun like guys have fun."

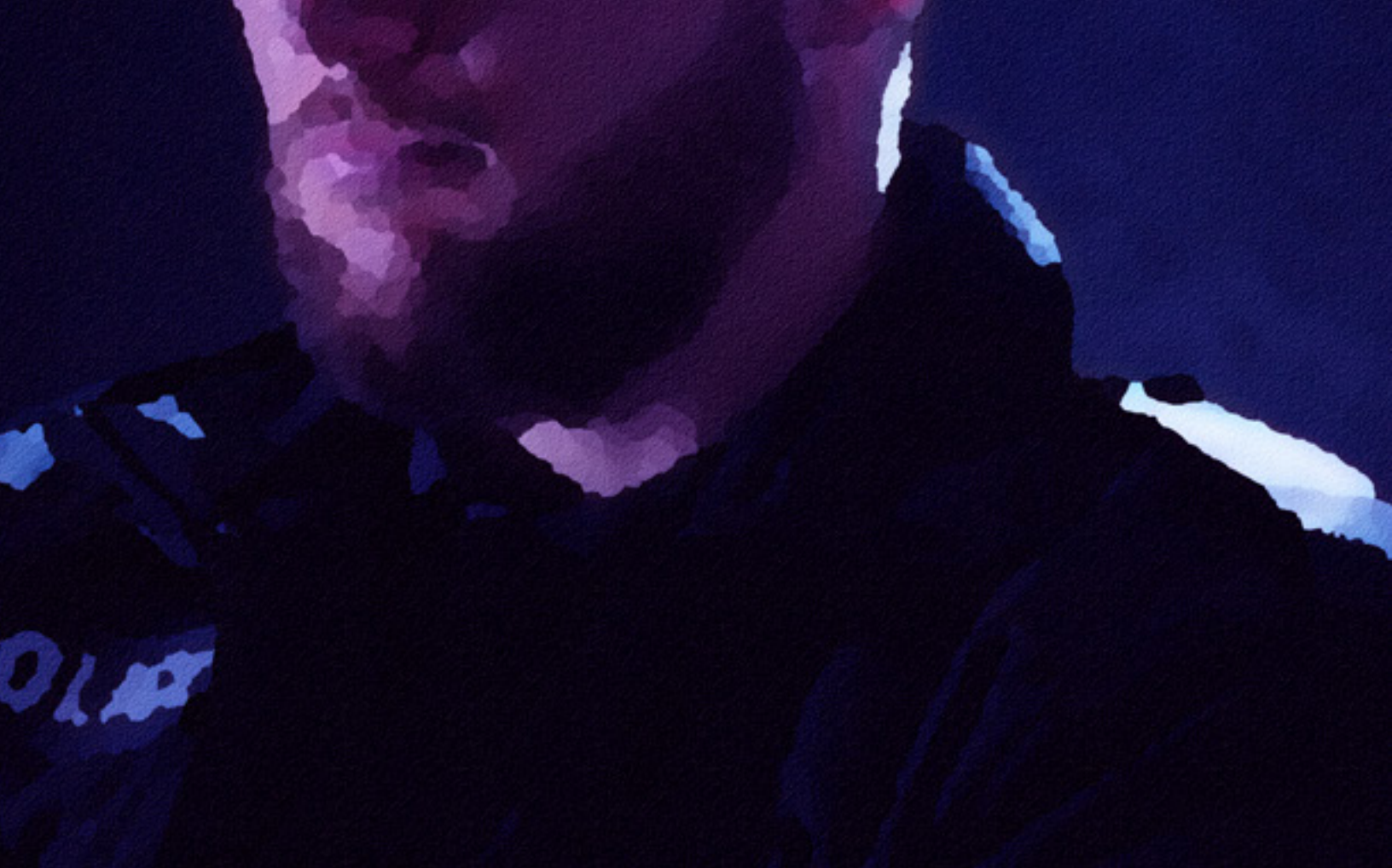
-Local law enforcement officer

advocate reports instances in which officers doubted victims' claims of abuse, including a case in which an officer did not believe a victim who reported being gang raped. Another survivor advocate states that an officer refused to take a victim's statement because the victim was intoxicated. The same survivor advocate says another victim who met his victimizer online was blamed by law enforcement, who responded, "This is what happens when you meet people online."

"There are some police organizations that are very advanced in trauma-informed care . . . Then there are other areas where [they are] still doing the same raids as they were doing twenty years ago."

-Survivor advocate

Interviewees admit that training about how to interact with victims varies greatly. Some law enforcement state that they are taught how to interact with suspected victims and describe their training as trauma-informed. A local officer states, in contrast, "We could teach people to talk a little better to the victims," and a federal officer confirms: "I went to the FBI academy [and] there's not a lot that's taught about



how you talk to victims.” Law enforcement often uses buzzwords such as “trauma-informed” and “victim-centered,” but their interactions with victims are neither, claim some interviewees. “In the trafficking field, there’s new language and old tactics. Everything is ‘victim-centered’ or ‘trauma-informed,’ but we still use old tactics,” explains an expert.

Interviewees report, as a result, that law enforcement has little understanding of trauma-informed care. One law enforcement advocate estimates that fewer than one in ten law enforcement officers could provide a working definition of trauma-informed care. Those who understand trauma-informed care may fail to employ it during operations, says a survivor advocate who refused to participate in ILNI operations because the FBI “will not agree to trauma-informed practices.”

d. Lack of law enforcement policies regarding sexual contact with victims

Law enforcement agencies do not all maintain clear policies prohibiting sexual contact with victims. Interviewees report secondhand accounts of law enforcement sexually abusing victims, both during operations and while off duty.

One state prosecutor reports that sexual abuse of victims by law enforcement “is definitely something that survivors share with me on a regular basis.”

**Sexual abuse of victims by law enforcement “is definitely something that survivors share with me on a regular basis.”
-State prosecutor**

Comments from local officers suggest that even when officers do not engage in sex with victims, they believe they can. For example, one local officer believes that sending a picture of his penis to an “underage prostitute” is not illegal or “against the rules.” Another states that when he goes to massage parlors undercover, he tries to keep his underwear on, but the workers “strip you butt naked. . . . They’ll kind of almost start the [sex] act and then that’s when you give the ‘go word.’” Notably, one prosecutor explains that, in their view, coming very close to engaging in sexual contact with suspected victims is necessary to prove that they were engaging in commercial sex. By contrast, a law enforcement advocate asserts, “As long as you have established intent for a commercial sex act to occur, that is sufficient for the crime . . . you shouldn’t need to physically do the act.”

Interviewees generally agree that law enforcement should not have sexual contact with victims, and the absence of enforceable, uniform policies indicates ignorance of the protections needed to ensure the safety of victims.

One local officer believes that sending a picture of his penis to an “underage prostitute” is not illegal or “against the rules.”

2. Planning of law enforcement operations

Interviewees report that current law enforcement operations fail to effectively identify victims because they are structured to target sex workers. Some interviewees also describe operations as “stats-driven,” or focused on demonstrating high numbers of arrests and prosecutions—often resulting in the arrest of sex workers and victims who fail to identify as such. The planning of operations is often reportedly motivated, at least in part, by morale-building and overtime pay. Finally, operations are executed with varying levels of evidence of force, fraud, or coercion, the absence of which inhibits the identification of victims during operations.

a. Anti-sex trafficking operations are structured to target sex work

Some interviewees assert that operations “don’t target trafficking, they target sex work.” Law enforcement do not always differentiate the two. For example, two local law enforcement interviewees discuss “John stings”¹⁴⁷ in conjunction with anti-sex trafficking operations, even though such stings attract buyers but fail to bring law enforcement in contact with traffickers or victims. Moreover, a survivor advocate claims that if law enforcement recovers a single victim when patrolling areas known for sex work, law enforcement describes the operation as an “anti-sex trafficking [operation].”

Regardless of their intent, anti-sex trafficking operations, like anti-sex work efforts, result in the arrest of many sex workers and buyers. A local officer who has participated

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in 20-30 raids estimates that these raids identified dozens of sex workers, but only five or six juvenile victims. The high number of arrests of sex workers and buyers results in part from the fact that some anti-sex trafficking task forces

respond to community complaints regarding sex work. One law enforcement advocate explains that officers are beholden to the desires of politicians, local law enforcement leaders, and the community. One expert posits that responding to such community complaints about sex work is not an effective way to address sex trafficking, since if they “Got a complaint on Monday and went on Tuesday, [they] did not get enough info to prove force, fraud, coercion.” In general, interviewees suggest that using anti-sex trafficking resources to identify and arrest sex workers and buyers detracts from a focus on protecting victims.

b. Operations are planned to maximize the number of arrests

**“What is more valued? People in handcuffs, because it’s more dramatic.”
-Local law enforcement advocate**

Many law enforcement interviewees report that operations are driven, at least in part, by statistics—including the number of arrests, prosecutions, and convictions. According to one local officer, “The more numbers, the better you look.” Another explains, “You show stats, it gives the impression of success.” Two interviewees opine that law enforcement officers and agencies value arrests more than a victim’s stabilization because handcuffs are “more dramatic,” and stabilization of a victim is hard to measure. One expert explains that when local officials are running for re-election, they are more interested in demonstrating a high number of arrests than long-term investigations. Another expert agrees, stating that “Stings are for big flashy press releases.” A federal law enforcement officer shares that OCC, specifically, “was not as effective in terms of federal prosecutions or saving children. It got to be too statistics-focused. Too focused on quantity [instead of] quality.” Moreover, he explains that during Operation Independence Day (formerly OCC), the FBI “put more emphasis on case prosecution,” and the goal of the operation “was to get a human trafficking case prosecuted in every field office.”

While many interviewees believe that statistics are the primary focus of the law enforcement operations, some interviewees highlight other objectives of the operations. One task force coordinator asserts that “[law enforcement] cared about lives impacted, not the data.” However, the prosecutor also acknowledges that low numbers of arrests or prosecutions could affect task force funding. Another interviewee acknowledges that even well-meaning law enforcement are subject to the demands of their communities and depart-

147 A “John sting” usually refers to when female officers pose as sex workers and arrest men who solicit sex from them.

ments, who are often most interested in numbers. Relatedly, one public health advocate claims anti-trafficking operations are a guise for arresting undocumented immigrants.

Interviewees report that a heavy emphasis on statistics detracts from a victim-centered approach to the operations. Several interviewees explain that law enforcement has an incentive to either arrest victims or demand that they accept services, denying victims their autonomy, in order to bolster relevant statistics. To that end, some law enforcement departments work only with nonprofits that pressure victims to cooperate with law enforcement, rather than giving victims the choice to participate in their traffickers' prosecution. A local officer tells us that advocates "coddle" victims: they "would say [victims] didn't have to talk to the cops, but no, they do need to because we are doing a law enforcement investigation." One survivor advocate believes that law enforcement's desire to collect evidence for prosecutions overshadows the provision of victim services and leads to verbal abuse of victims. Another survivor advocate agrees, stating, "[The] detectives didn't interview me in a trauma-informed way. They were only interested in their case."

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-Survivor advocate**

Interviewees describe federal operations such as OCC and ILNI as "glorified sweep campaigns" in which law enforcement arrests as many people as possible and later "see who shakes out as a victim." Law enforcements' desire to secure high arrest numbers leads to the arrest of many sex workers and victims who have not been properly identified because prostitution arrests are easier to support with probable cause than other types of arrests. Although prostitution-related arrests are based on local and state laws, federal law enforcement claims prostitution arrests in their operations statistics if they coordinated with state and local law enforcement. One law enforcement advocate recalls that during an ILNI operation, for every 300 people arrested, only one victim was identified. Echoing these sentiments, one HSI officer states, "if operations result only in prostitution arrests, then [law enforcement] shouldn't be doing operations. I would rather them do nothing because they're only making the situation worse."

**"[An operation] gets people out putting handcuffs on people, which is fun if you're a police officer."
-Local law enforcement officer**

c. Other motivations for planning operations: morale and overtime

Interviewees describe other motivations for executing operations—such as morale-building and overtime—that divert the focus from providing trauma-informed protection to trafficking victims. Some law enforcement interviewees who participated in law enforcement operations state that the volume of operations was driven in part by the desire to build morale amongst law enforcement personnel. One law enforcement advocate opines that operations are driven by "testosterone," and another observes that officers sometimes went out for drinks after operations to celebrate. One local officer explains "[Operations are] not that hard, and you're in a downtown hotel . . . so a lot of the time it's really nice. They give us, like, room service. So, yeah. I mean, it's fun." Another local officer agrees: "[An operation] gets people out putting handcuffs on people, which is fun if you're a police officer."

Interviewees disagree on the extent to which overtime pay incentivizes the execution of operations. Some believe that overtime pay—by the FBI to local law enforcement on loan for FBI operations—is a strong incentive to conduct and participate in operations. One law enforcement advocate acknowledges that people may like the operations because of overtime pay, but believes that overtime is not a "predominant motivating factor" to conduct operations. A local law enforcement officer disagrees, stating that "Overtime is not necessarily an incentive; it just helps with the logistical planning."

d. Depth of pre-operation investigation

Scholars, law enforcement personnel, and survivor advocates all agree that pre-operation investigation and planning increases the efficacy of operations. Without sufficient evidence to establish the elements of force, fraud, or coercion prior to the operation, law enforcement is unlikely to identify adult victims due to victims' reluctance to self-identify. Some interviewees describe well-investigated law enforcement operations. For example, one nonprofit advocate reported monitoring a wiretap for months at a time prior to executing operations. However, other interviewees describe law enforcement operations that occurred with little or no prior investigation, and more often than not, without establishing the elements of force, fraud and coercion beforehand. One survivor advocate recalls an operation that

One survivor advocate recalls an operation that was very disorganized: it started late and without sufficient personnel but went forward regardless.

was very disorganized: it started late and without sufficient personnel but went forward regardless. One interviewee had provided services for victims at an ILNI operation and recalls “wanting more information.” She explains that law enforcement did not communicate with the victim service providers about how the operation would unfold, nor did they ask for the victim services providers’ input prior to the operation. Failure to collaborate with victim services providers before operations can inhibit protection of victims.

3. Execution of operations

Many interviewees report that operations fail to protect victims because they are generally executed in a manner that traumatizes and criminalizes victims. Additionally, operations are not always conducted with a female officer or a victim advocate present, nor are victims always provided appropriate short-term services, which undermines efforts to protect victims from additional trauma.

a. Operations can be traumatizing

Interviewees describe operations as traumatic for victims for a variety of reasons, including that officers usually wear uniforms, have their guns out, and surprise victims. One survivor advocate describes an operation she experienced as “really scary,” and “intimidating.” A nonprofit advocate agrees, stating, “a raid in itself can be traumatizing. People you don’t know or trust are coming in. It’s not a place where you’re restoring autonomy to survivors.” A law en-

Operations are “not a place where you’re restoring autonomy to survivors.”

-Nonprofit advocate

forcement investigator recounts chasing victims down the hallway of hotels during operations and having armed security at the door. He states that victims “were initially scared because four guys were coming out of the bathroom so they thought they were going to get killed.” A public health advocate says operations traumatize everyone in the establishment cause those present to worry for their safety. She states that during operations, “inspectors beelined to locked doors, banging in, taking pictures, catching evidence, and horrifying [sex] workers [on the scene].”

The “horrifying” nature of operations is exacerbated by the fact that there is often no one on the scene who speaks the same language as migrant victims. The same public health advocate notes, “None of the inspectors were Chinese-speaking. [They were] holding a phone to do interpreting through a big speaker. [It was] really chaotic and messy.” A survivor advocate explains that to reduce trauma,

it is crucial not only to have someone present who speaks to victim’s language, but also who understands the culture and can therefore relate to the victim’s concerns and effectively explain to the victim what is occurring.

Moreover, interviewees suggest that victims are often traumatized by operations because law enforcement mirrors the way victims are treated by their traffickers: like traffickers, law enforcement officers mislead, pressure, or coerce victims, and use them for information in the same way traffickers use them for money. For example, during certain operations, undercover officers initially pose as buyers, later surprising victims, often abruptly and without any warning, with their true identity. One survivor compares the deception of law enforcement with how traffickers mislead their victims with promises of money, love, and security, only to surprise them with the harsh reality of being trafficked: “Traffickers are often male and have a position of power. Traffickers have tricked and coerced them into trusting [them]. You have law enforcement, who then has done the same thing—‘I’m a buyer,’ and then ‘Nope, I’m arresting you.’ They trick them like the trafficker.”

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-Survivor advocate

Additionally, law enforcement sometimes pressures or coerces victims to accept services or give up information. Interviewees report that law enforcement wields arrest, or the threat of arrest, as a tool to “force people into services.” A survivor advocate explains how being offered two unsatisfactory options—either going to jail or accepting services they are not ready for—parallels the undesirable “options” that victims are offered by their traffickers: “[Have] sex with strangers or get beat to death.” Interviewees also report that victims are pressured to divulge information. A survivor advocate states, “[law enforcement] just said: since you’re not talking, we’ll charge you.” Law enforcement tries “to break you down, they say ‘You’re a fucking bitch because you’re not talking,’” says another survivor advocate. A law enforcement investigator explains, “the victim, in order to get some services, has to cooperate with the investigation.” A state prosecutor agrees, explaining that officers will often say to victims: “If you don’t tell me the name of your pimp,

I'm going to arrest you." A survivor advocate who was a foreign national and a minor at the time he was trafficked in the U.S. says he was told that if he testified, he could go back home, which is what he wanted. "That is a technique that is used against children. You want to be with your family and you want to go home? You testify and you can. But that never happened to me." These quid pro quo arrangements mirror the pressure that traffickers use to control victims, which is why such pressure can be particularly traumatic to trafficking victims.

Finally, interviewees report that verbal, physical, and sexual abuse occurs at operations, which can further traumatize victims. Survivor advocates report experiencing verbal abuse: law enforcement yelled and screamed in their faces, and called them names such as "bitch," "disgusting," and a "disease." Another survivor advocate reports that "Some cops were real jerks . . . I had cops count my money and make fun of how broke I was. They would go through my phone and threaten to call my pimp." Survivor advocates also report experiencing physical abuse: law enforcement would handle them roughly, put on their handcuffs too tight, and make sure they were uncomfortable in order to get them to talk.

Survivor advocates report experiencing verbal abuse: law enforcement yelled and screamed in their faces, and called them names such as "bitch," "disgusting," and a "disease."

Some interviewees recall other instances of abuse by law enforcement, such as permitting outside organizations to film victims without their consent for the purpose of a reality TV show. A survivor advocate recounts how law enforcement would shame victims by parading them through casinos in handcuffs for everyone to see, and "throw you into a bathtub in zip ties in a mini skirt and heels."

Many stakeholders have heard of, or at least are aware of, law enforcement officers sexually abusing suspected victims, both while on and off duty. One public health advocate describes sexual abuse by law enforcement as "part of the trauma" of the law enforcement approach to anti-trafficking.

b. Operations often criminalize victims

Many interviewees report that operations criminalize victims instead of protecting them. This criminalization is reflected in how victims are treated by law enforcement (handcuffing and arresting) and by prosecutors (charging). A survivor advocate explains that despite improvements in law enforcement's treatment of victims, they still view victims first as sex workers, drug addicts, and criminals, and "Their first reaction is to treat them that way." Another survivor advocate agrees, "You're being treated as a criminal, the same as someone who murdered someone." Additionally, stakeholders report that trafficking victims who traffic others at their trafficker's direction are generally treated as criminals rather than victims. Finally, some stakeholders report that victims' race may influence law enforcement's tendency to criminalize victims. "[Victims] are still treated as criminals. It's mostly Black and brown girls that are victims [and they are treated as] juvenile delinquents. Foreign trafficking victims are just deported," says an expert.

"You're being treated as a criminal, the same as someone who murdered someone." -Survivor advocate

During most operations, it is standard practice to handcuff victims, interviewees report. Local law enforcement officers explain that sometimes victims have to be handcuffed and separated "for safety reasons." According to one officer, "It's policy that all suspects should be handcuffed. When I'm running an operation, I tell the officers to handcuff everybody because it's easier." A law enforcement advocate explains, "No one likes victims to be in handcuffs, but you can't put them in the back of the car without being handcuffed . . . Need to make sure they're isolated so they aren't cross-talking and that no one is being coached." One interviewee notes that if victims have to be handcuffed and potentially injured to be "helped," perhaps operations are not the best way to identify and interact with victims.

"Arresting [victims] is not the most efficient or effective way. Why choose the technique that causes harm before it reduces harm?"

-Public health advocate

Law enforcement officers also criminalize victims during operations by arresting them. Some stakeholders state that in theory, victims should not be arrested, at least not for a sex-related crime. But a state prosecutor explains that it is a hard "mental thing" for law enforcement not to arrest individuals engaged in commercial sex if there is no evi-



dence of trafficking. A federal officer reports, if someone is “strictly a sex worker and not a victim,” local law enforcement “have no choice but to arrest them.”¹⁴⁸ But given that victims rarely self-identify, it is likely that many victims are mistaken as “strictly a sex worker.” For example, a local officer explains, “Even if they’re a victim that’s not identifying, there’s a good chance they’re going to get a ticket or get arrested.”

“Even if they’re a victim that’s not identifying, there’s a good chance they’re going to get a ticket or get arrested.”
-Local law enforcement officer

Stakeholders report that victims sometimes spend time in jail and face charges. One local law enforcement officer explains, “I know it’s bad because we’re punishing them for being a victim, but it kind of forces them to be in contact with us. And then we’re able to monitor them.” When victims are charged, they are most often charged with loitering,

“I know it’s bad because we’re punishing them for being a victim, but it kind of forces them to be in contact with us. And then we’re able to monitor them.”
-Local law enforcement officer

prostitution, or solicitation. A federal officer explains, “If you don’t see a lot of prostitution arrests, you’ll see a lot of young women get arrested for possession of a controlled substance.” Occasionally, victims face other charges, such as trespass and tax evasion. A state prosecutor explains that citations do not usually get processed but may appear on a victim’s rap sheet. Even when victims are not formally charged, when they are picked up, they are fingerprinted and therefore “in the system.” One survivor advocate was working on a project to identify sex trafficking victims in prisons and explains that attorneys were “defending or prosecuting a victim and they don’t even know it . . . in jail or prison [victims] eventually get identified.” A law enforcement advocate says, “There have been times [during hotel operations], there were indications or red flags [of trafficking]. A lot of times I go back to the jail after they have detoxed some. I give them another chance to talk, I refer them to resources. If they indicate they want help, I’ll get them out of jail.”

Some victims are coerced or forced by their trafficker to recruit other victims or teach them how to deal with buyers. Generally, these victims are treated and charged as traffickers. For example, one survivor advocate reports that she was charged with everything her trafficker was charged with: “13 counts of promoting, 13 counts of compelling; 1 count of conspiracy to promote prostitution; 1 count of con-

¹⁴⁸ In fact, law enforcement has discretion to make arrests unless they have a warrant or are subject to a departmental policy that mandates arrest of sex workers.

spiracy to promote prostitution. My bail was \$3 million.” A few stakeholders state that charging victims who recruit other victims is decided on a case-by-case basis and depends in part how violent they were to other victims. A law enforcement advocate states that one victim was charged because she was very violent with other victims, “But it also came out that she’d been very much abused by [her trafficker].” A prosecutor explains, “at some point a victim can cross the line and needs to be held accountable . . . yes, you were victimized . . . but that doesn’t give you the right to victimize others.”

Some interviewees report that a victim’s race may influence law enforcements’ tendency to criminalize them. Stakeholders report that usually, law enforcement conducting operations are white, and a disproportionate number of victims are persons of color. A nonprofit advocate explains, “I think there was this narrative out there about white girls being trafficked which made girls of color less likely to be seen as victims or survivors. There’s internalized racism [and] conscious racism; I’m sure that plays into [identification of victims].” A state attorney reports that racial profiling led to under-identification of victims of color: “There are more victims of color but they weren’t identified . . . numbers skew very high for Black women being arrested for prostitution. When they look for women being referred to trafficking court, it’s skewed the other way.” A task force coordinator agrees, “Biases creep in when they are looking at elements of force, fraud, and coercion.”

“There are more victims of color but they weren’t identified.... numbers skew very high for Black women being arrested for prostitution. When they look for women being referred to trafficking court, it’s skewed the other way.”

-State prosecutor

c. Advocates are inconsistently present during operations

Victim advocates—whether offered by law enforcement or a non-governmental organization (“NGO”)—are critical to the protection of victims. These advocates provide emotional support and connect victims to short- and long-term services based on their needs. “Culturally competent” advocates that speak the same language as suspected victims are especially critical in the identification and support of foreign national victims. While most interviewees report that advocates were involved in law enforcement opera-

tions, the level of their involvement varies greatly. Additionally, interviewees indicate that victim services are frequently provided on an ad hoc basis and are not uniformly available. Moreover, interviewees suggest that funding of operations contributes to a power imbalance between law enforcement and service providers, and lack of transparency about funding raises questions about whether law enforcement is using funds appropriately.

Many interviewees note the importance of *nonprofit* advocates to operations.¹⁴⁹ Nonprofit advocates prioritize the victim’s well-being over other objectives, and they are “outside of law enforcement,” which helps to mitigate some of the victims’ mistrust of law enforcement. Although many interviewees acknowledge the importance of partnering with nonprofit advocates during operations, some law enforcement state that they do not have a nonprofit partner, or they have a nonprofit partner on an ad hoc basis.

Some interviewees question the effectiveness of *law enforcement* advocates—employees of law enforcement agencies who are trained to support victims of crimes—during operations. One survivor perceived that such advocates are “there for a reason: to gather information and bring it back to law enforcement.” Other interviewees agree that law enforcement advocates have “different interests” than those of the victims, and in some cases, law enforcement advocates only provide services to victims who agree to engage in prosecution. Nevertheless, one nonprofit advocate believes that FBI Victim Witness Specialists “were very victim-centered,” and successfully encouraged victims to accept long-term services.

Interviewees report that neither nonprofit or law enforcement advocates are always present at all stages of operations. Instead, they are often called in at discrete stages. Sometimes advocates are on-site during operations; sometimes they are on standby and called on-site once a victim is identified; and sometimes victims are merely referred to advocates after the operation. Notably, a law enforcement advocate who participated in ILNI operations reports that nonprofit advocates are not present at operations, but instead on standby. This could be for various reasons: law enforcement’s discretion to partner with nonprofit advocates; law enforcement’s fear of leaks and need for confidentiality of operations; unavailability of nonprofit staff; nonprofit advocates’ reluctance to participate in operations; and nonprofit advocates’ desire not to appear to be part of, or agents of, law enforcement.

¹⁴⁹ *Nonprofit advocates* are individuals assisting and providing resources to trafficking victims through a nonprofit organization, which we contrast with *law enforcement advocates*, which are employees of law enforcement agencies who are trained to support victims of crimes.

Some law enforcement only partner with nonprofit advocates who encourage victims to provide information to law enforcement.

Law enforcement generally has the power to decide when, and whether, they work with nonprofit advocates on operations. According to multiple law enforcement officers, they sometimes refuse to partner with nonprofit advocates because advocates advise victims that they are not required to talk to law enforcement. Some law enforcement view this as “coddling” victims and preventing them from cooperating. As a result, some law enforcement only partner with nonprofit advocates who encourage victims to provide information to law enforcement.

Nonprofit advocates “don’t want to be seen as an arm of law enforcement, or victims don’t trust them. But on the other hand, law enforcement not having connection to community groups is really bad.” -Nonprofit advocate

Even when law enforcement wishes to work with nonprofit advocates, advocates may not be available or willing to participate in operations. Nonprofits might not have staff available in the evening hours when the operations typically occur. One local officer explains that nonprofit advocates were invited to every operation, but only attended about 20% of operations due to lack of available staffing. Aside from logistical issues, some advocate interviewees indicate that they struggle ethically with how much to engage in operations. Nonprofit advocates report that they did not agree with operations being executed, or at least not with the manner in which they are executed. One nonprofit advocate elaborates, stating nonprofit advocates “don’t want to be seen as an arm of law enforcement, or victims don’t trust them. But on the other hand, law enforcement not having connection to community groups is really bad.”

In addition to a nonprofit advocate, many interviewees recognize the importance of having a female officer present at operations to help certain victims feel comfortable. A survivor advocate explains that when she was being trafficked, she was not allowed to talk to men unless they were paying her. Another survivor advocate states that women have “a little more sensitivity in the situation.” A law enforcement advocate agrees: “I do think there’s a difference when you talk to male cops versus female cops simply because I think women have a better understanding of how sex can be used

against [them].” Other interviewees report that victims express a preference for speaking with women rather than men, and therefore, female officers increase the efficacy of operations. Yet interviewees report that overwhelmingly, law enforcement conducting operations identify as male, and victims are female-identifying. Some law enforcement try to have at least one female officer per operation, but others conduct operations without female officers present.

“I do think there’s a difference when you talk to male cops versus female cops simply because I think women have a better understanding of how sex can be used against [them].”

-Local law enforcement advocate

d. Victims are inconsistently connected to services during operations

Short- and long-term services are critical to support victims and prevent them from returning to their trafficker. However, victims identified during operations are inconsistently connected to services. Interviewees report that long-term services are rarely available. Additionally, victims are often unwilling to accept short-term services offered to them after an operation, in part because of the trauma and distrust bred by operations. Moreover, the services available to victims may depend in part on their age.

Local law enforcement reports that there is “no official protocol for providing food, water, clothes,” but victims were offered these things when law enforcement had a “steady supply” of these items or to “help victims cooperate.”

Many interviewees report that short-term services—such as food, water, and clothing—are offered to victims during (*i.e.*, on-site) or immediately after (*i.e.*, at the station) the operation. However, some interviewees maintain that they are not. One survivor advocate laughed when asked whether she was provided with short-term services. Another said they were never offered services, and that “The system is not designed for an immigrant kid.”

Advocates report that after victims’ immediate needs are met, they generally require longer-term services such as mental health counseling, housing, food assistance, legal assistance, financial assistance, education, job skills, and jobs. Some interviewees observe that community providers only offer such services in the short-term, which is insuffi-

cient to support victims since they “may have lifelong mental health and physical health needs.” Several interviewees emphasize the difficulty of finding long-term housing for survivors, which they view as the most critical long-term service that victims need.

Interviewees consistently indicate victims rarely accept services during or immediately after an operation. They largely attribute this unwillingness to the trauma and distrust bred by the criminal justice system generally, and law enforcement operations specifically. One nonprofit advocate opines, “It’s hard for anyone to be ready to receive help when it seems like they’re in trouble, they don’t know anyone, there are people with guns standing over them. How can they feel like we’re there to help?” A survivor advocate explains that while many sex trafficking victims want help, it is critical that the advocate develop a relationship with the victim to help the victim understand what help entails.

“It’s hard for anyone to be ready to receive help when it seems like they’re in trouble, they don’t know anyone, there’s people with guns standing over them. How can they feel like we’re there to help?”
-Nonprofit advocate

“The FBI does really well when victims are minors. No agency does a really good job when victims are over 18,” says one federal officer. Interviewees indicate that sometimes, the services offered to victims depends on the victims’ age. A nonprofit advocate reports that she is always asked to assist with an operation if a minor is identified, but not always if the victim is an adult. Another nonprofit advocate, however, states that minor and adult victims are provided the same services. One survivor advocate points to the injustice of the fact that a seventeen-year-old engaging in commercial sex is legally a victim, while one year later, would likely be charged as a sex worker.

e. Operation funding may result in power imbalance and lacks oversight

Multiple interviewees note that a power imbalance exists between law enforcement and nonprofit organizations involved in operations, which is enforced by the law enforcement-heavy nature of some funding models. One local officer running operations explained that the entire million-dollar anti-trafficking budget from the city was allocated to solely law enforcement, rather than split with service providers. Similarly, interviewees report that money designated for ILNI operations pays only law enforcement and

not service providers; organizations that provide services to victims during operations, therefore, must do so with their own funding.

As explained by an interviewee, an anti-trafficking ECM-funded task force requires:

- a local law enforcement agency,
- either the FBI or HSI or both,
- a signature from the attorney general, and
- a single service provider.

She says, “If you look at the power structure [there is] one service provider, [and] three criminal justice providers.”

Some interviewees report that certain anti-sex trafficking task forces, such as those funded through the Enhanced Collaborative Model (“ECM”) grant, require multiple law enforcement agencies, but only one victim services agency. Additionally, interviewees report that within ECM-funded task forces, law enforcement receives more funds than victim service agencies. In theory, the ECM grant may be split evenly between law enforcement and service providers, but usually more than one service provider is necessary to meet the needs of victim and, as a result, the money allocated for victim services is often divided into subgrants. Several interviewees state that some of the funding designated for victim service agencies, such as funding from ECM grants, requires cooperation with law enforcement. While this is not true based on the current ECM model, these reports reflect important perceptions about the funding. Due in part to this power imbalance, whether actual or perceived, law enforcement agencies have discretion to exclude nonprofit advocates to operations.

There is “Nothing to hold us accountable. I’m aware of task forces that inflate numbers to get funded again. DOJ oversight is a serious problem.”

-Anti-trafficking expert

Funding of operations also occurs with little transparency and oversight. Aside from the ECM grant, interviewees report that there is very little publicly known about how much federal money is given to law enforcement agencies for operations. One interviewee states, “I think [there is] a big gap in what we know what’s happening with tax dollars.”

This lack of oversight raises questions about whether funds are misused; indeed, interviewees suggest it is likely that anti-trafficking funds are being used for anti-sex work operations. An expert explains, there is “nothing to hold us accountable. I’m aware of task forces that inflate numbers to get funded again. DOJ oversight is a serious problem.”

4. Impact of operations

Victims suffer from operations long after the operation has ended, according to interviewees. Law enforcement advocates state that operations exacerbate victims’ vulnerabilities by interrupting their lives and forcing them to leave a dangerous situation before they are ready. One law enforcement advocate explains that many victims do not feel rescued by raids; instead, they feel like operations disrupt their source of food, income, and stability without providing a viable alternative to life with their trafficker. Some

One law enforcement advocate explains that many victims do not feel rescued by raids; instead, they feel like operations disrupt their source of food, income, and stability without providing a viable alternative to life with their trafficker.

advocates express concern that undocumented victims face deportation post-operations. An expert describes how sex trafficking situations are similar to domestic violence situations in that a victim cannot be forced to leave a situation until they feel safe. Yet operations do just that—they force victims to leave their trafficker, who may be their intimate partner or parent of their children, and who they are almost certainly dependent on for food and shelter.

Second, due in part to their chaotic and stressful nature, operations can exacerbate victims’ fear and distrust of law enforcement, thereby increasing their attachment and dependency on their traffickers. According to one nonprofit advocate, victims’ involvement in operations made victims less likely to identify themselves as victims to law enforcement. A survivor advocate explains, “A lot of victims, the majority of victims, they learn law enforcement is your enemy and they’re gonna throw you in jail. When law enforcement does that, it’s like everything the trafficker said is true.” Another survivor advocate, states that raids were not effective ways to help her leave her situation, because “[operations] would bring me closer to [my trafficker] because then I needed [him] to rescue me from the police.”

“[Operations] would bring me closer to [my trafficker] because then I needed [him] to rescue me from the police.”

-Survivor Advocate

Furthermore, victims who are arrested during operations are less likely to leave their trafficking situation because their criminal history impedes their ability to live independently from their trafficker. “[Victims with charges] can’t go see their kids at school, can’t get jobs, [or] somewhere to live. They get background checks and it comes up they’re a sex offender, or prostitution is on [their] record,” says a survivor advocate. Additionally, traffickers sometimes use a victim’s involvement in the criminal justice system as leverage over them; a nonprofit victim advocate describes a situation in which a victim was “caught up in a couple of operations,” which resulted in her being “deep in the criminal justice system.” The trafficker threatened to hold the victim in captivity, preventing her from attending her court date.

B. Prosecution of Traffickers

Interviewees report that operations fail to produce successful trafficker prosecutions because they 1) identify few or no traffickers; 2) are executed without sufficient evidence to arrest traffickers and 3) undermine rapport with victims, which is crucial to securing testimony that is often necessary to prosecute traffickers.

1. Operations identify few or no traffickers

Successful prosecution of traffickers first requires successful *identification* of traffickers, and stakeholders report that the vast majority of operations fail to identify any traffickers. One local officer estimates that about one in ten operations identify a trafficker, but during the 20-30 operations he participated in, none resulted in the arrest of a pimp, let alone a trafficker. A state prosecutor estimates that in 2014, out of 99 human trafficking, racketeering, and pimping cases, only five or six originated from operations.

There are two key reasons that operations identify few or no traffickers, according to interviewees. First, traffickers are rarely at the scene of operations. Traffickers manage their victims remotely using online advertising and ride-sharing, and by delegating management of their victims to others. “The trafficker is controlling [victims] from many miles away,” one federal officer says. One survivor advocate

“The trafficker is controlling [victims] from many miles away.”

-Federal law enforcement officer

cate explains that in massage parlors, the “higher-ups” are never on-site; instead, they ask a cousin or family member to oversee the victims. Another survivor advocate agrees: when her trafficker bailed her out of jail, he sent another victim rather than going himself. “[Traffickers] don’t want to be seen with you, [they don’t want any] verifiable evi-

dence that [they are] connected to the victim.” A third survivor advocate explains that while she was being picked up by law enforcement during operations, her trafficker was at home watching Netflix.

Second, operations identify few traffickers because victims are usually unwilling to provide information about their traffickers. This unwillingness stems from various factors, including loyalty to their trafficker, a deep distrust of law enforcement, and reluctance or inability to self-identify as being trafficked. According to a survivor advocate, “As a victim, you’re taught that the police will try to get your man and it’s a 15-year sentence. You take a slap on the wrist and go to jail for a night—[you] just take one for the team.” A federal prosecutor agrees: “It’s very common for a victim to . . . try to protect their pimp.” Victims are taught by their traffickers that law enforcement is the enemy, and operations do not usually improve law enforcement’s rapport with victims. A survivor advocate explains, “Law enforcement’s question is always: ‘How can we get these people to talk?’ Well, it won’t happen busting down the door with a gun, that’s a scare tactic, it’s not a welcoming situation.” Additionally, many victims fail to self-identify, in which case they may not be interrogated about their trafficker. A survivor advocate explains, “Victims of violence are more likely to not answer questions than to answer questions.” An expert notes that undocumented victims are “not going to talk if there’s no immigration attorney who gives them context about their rights.”

“Law enforcement’s question is always: ‘How can we get these people to talk?’ Well, it won’t happen busting down the door with a gun, that’s a scare tactic, it’s not a welcoming situation.”

-Survivor advocate

2. Operations are executed without sufficient evidence to arrest traffickers, in part because of the inconsistent involvement of prosecutors in the planning and execution of operations

Even when law enforcement identifies traffickers at the scene of an operation, law enforcement may not have accumulated sufficient evidence to arrest them at the time of the operation. According to a local officer:

[W]hen we do make contact with [the traffickers], it’s hard to arrest them right away ‘cause we don’t even have enough probable cause to arrest them. So, we know that they’re a pimp.¹⁵⁰ They know that we know. However, they also know that we don’t have anything

on them and the only way to actually put a case on them is this to do a bunch of follow-up investigations.

A federal prosecutor recounts a similar situation in which a victim and her trafficker were located in hotel rooms next door to each other: “Police went into the room where she was and rescued her, and couldn’t get the trafficker next door.” A law enforcement advocate elaborates, “if [officers] don’t have all the evidence there proving that [a trafficker] is exploiting [a victim], then [the trafficker] can plead to something really small, like some misdemeanor. And you miss out on that whole opportunity to hold him truly accountable.” According to a state prosecutor, “the undercover operation wouldn’t give me a trafficking case—it was the subsequent investigation. . . . Most cases come through intel, targeted investigations and tips.”

“The undercover operation wouldn’t give me a trafficking case—it was the subsequent investigation.... Most cases come through intel, targeted investigations and tips.”

-State prosecutor

Insufficient evidence to arrest traffickers may result in part from lack of prosecutor involvement in the planning and execution of operations. Interviewees report varying levels of prosecutor involvement before and during operations, and prosecutors report the more they are involved, the greater likelihood they can successfully prosecute a trafficker. Involving prosecutors “Goes a long way in building teamwork [and] achieving collective goals,” in part because prosecutors are better able to prove force, fraud, or coercion when they know “how the victim is encountered, what evidence is collected, what statements are taken, and how they are taken.” Operations that do not involve prosecutors throughout are “a lot of effort for nothing. You missed victims, charges, and you can’t prosecute it,” says one former prosecutor.

However, even with sufficient evidence to arrest traffickers, not all prosecutors have knowledge of sex trafficking and experience prosecuting traffickers. One law enforcement advocate states that “most prosecutors who work in [the sex trafficking] field get better training than the cops who work in the field.” Yet a former prosecutor notes that, in her experience, many other prosecutors did not know how to draft indictments against traffickers. “The level of exposure a prosecutor has to sex trafficking law enforcement operation is sort of up to the individual attorney,” says a federal prosecutor.

¹⁵⁰ The terms “trafficker” and “pimp” are often used interchangeably, but a “pimp” refers to an individual who profits from prostitution without using force, fraud or coercion.

3. Operations often result in the arrest of sex workers and buyers and more minor charges than sex trafficking

While many law enforcement operations are accompanied by great media fanfare touting the success of the operations, often the publicized arrests and charges are actually for sex workers, sex buyers, and individuals charged with more minor crimes, not traffickers.

“You see these astronomical numbers, [but] most of the time when you dig down, they’re not really trafficking charges. It’s 19-, 20-year-old women who are charged with solicitation. It’s concerning to me I’m not seeing a trafficker getting charged.”

**-Former state and federal prosecutor
-State prosecutor**

According to a state prosecutor, “a lot of agencies were getting lazy and doing buyer stings where they could arrest 400 people in a day and count it towards their [number of trafficking arrests].” A local officer explains, “When it comes to the John actually being a pimp trying to recruit the girl, those are fairly low numbers, under 10% [of the identified Johns].” Another local officer explains how buyer arrests are often presented in the media as trafficking arrests:

You make a press release . . . of, like, 20 Johns that you arrested and say, ‘Hey, these people were arrested for human trafficking.’ When really they were cited for soliciting sex. But it looks good in the media, like we’re doing something about it. I think I saw a recent media release about Reclaim and Rebuild and they did that.

Additionally, reported arrests may include arrests of pimps and individuals charged with more minor crimes. A public health advocate explains that the numbers of arrests from operations “don’t distinguish [pimping and trafficking]. But not all traffickers are pimps. . . . It’s highly flawed.” A local officer explains that media releases will claim that “30 people were arrested for human trafficking in this operation”; however, he “[does not] think all of them were arrested for pimping and pandering or sex abuse and stuff like that. A lot of it might have been for minor shit that they did and [law enforcement] scooped them up in this operation.” Another local officer echoes this sentiment:

A lot of the times in the big press releases, they’ll put out these numbers saying they’ve made all these human trafficking arrests when it’s really citations for minor things—solicitation, pimping or pandering, other minor things that are misdemeanors and not very meaningful

4. Operations undermine victim rapport, diminishing the likelihood of essential testimony

Many interviewees confirm that proving force, fraud, or coercion without a victim’s testimony is difficult. For example, one state prosecutor explains that when she tried to charge a few trafficking cases she “couldn’t get past the preliminary hearing [stage] because the victim didn’t want to testify.” A survivor advocate notes: “You don’t legally need the victims’ testimony. But there is a glass ceiling and law enforcement doesn’t think of how to put together a case without victim testimony.”

If law enforcement develops rapport with victims, victims are more likely to “meaningfully engage with the criminal justice process ... a supported victim is a better witness.”

-Local law enforcement advocate

One law enforcement advocate asserts that if law enforcement develops rapport with victims, victims are more likely to “meaningfully engage with the criminal justice process . . . a supported victim is a better witness.” A federal prosecutor similarly observes,

I think it’s the little things—showing up consistently, remembering [the victim’s] favorite food, fighting for them—that helps gain their trust. All these little things add up and show that they have the person’s best interest in mind. I saw an instance where a survivor changed how she interacted with the advocate and law enforcement just when the advocate remembered that she preferred a certain type of soda (Sprite).

Other interviewees agree that victims are more likely to seek help from and confide in law enforcement officers that take the time to build trust and show care for them. A local law enforcement officer contacted a victim four times without detaining her, and it was not until the fourth interaction that the victim agreed to accept help. Similarly, one federal prosecutor observes, “Having officers be educated on trauma helps victims cooperate and lead to more successful interviews—not just for evidence at trial but also for building a relationship with the victim.”

More often, however, operations reinforce a distrust of law enforcement as discussed throughout the report (see *supra* Sections III(A)(2) at p. 13; III(B)(2) at p. 18; IV(A)(3)(d) at p. 33-34; IV(A)(4) at p. 35). By exacerbating victims’ distrust of law enforcement, law enforcement operations ultimately make victims less likely to testify against their trafficker. As one academic put it, “what is the effectiveness of

running in with guns pointed at people and then asking them to feel comfortable talking to them?” A federal prosecutor explains that, as a result, “Most [victims] don’t cooperate in the first interview.”

C. Prevention of Trafficking

Interviewees report that operations fail to prevent trafficking because operations 1) do not prevent victims from returning to their trafficking; 2) further marginalize sex work, which increases the risk of sex trafficking; and 3) do not address the root causes of trafficking.

1. Operations do not prevent victims from returning to their trafficker

Victims identified by law enforcement commonly return to their traffickers, according to multiple interviewees. A local officer comments: “The recidivism rate [of sex trafficking victims] is astronomical. . . . As a society, we are failing to provide the assistance these girls need.” Ninety percent of minor victims are picked up by another pimp “within a matter of hours,” says another local officer. A nonprofit advocate observes, “I’ve seen the same [sex trafficking victims] cycle through on stings.”

Ninety percent of minor victims are picked up by another pimp “within a matter of hours,” says another local officer.

Victims are often re-trafficked, at least in part, due to lack of victims’ services (*see supra* Section IV(A)(3)(e) at p. 35-36). One survivor advocate explains that if victims are not connected to services, such as housing and therapy, they will often be re-trafficked shortly after being identified.

One survivor advocate explains that if victims are not connected to services, such as housing and therapy, they will often be re-trafficked shortly after being identified.

“We need to offer them more [in order] for them to want to leave the life. . . . We need to be able to provide better services,” says another survivor advocate. A public health advocate explains:

[Operations are] targeting victims who need a tremendous amount of support. They need to be supported in the way their trafficker supports them, to be made to feel valuable. They’ve been deprived of something that their trafficker is offering them. We have to replace whatever the trafficker is offering.

Operations, however, inconsistently connect victims to services, and victims who experience operations are often unwilling to accept services, in part, due to their distrust of law enforcement.

2. Operations further marginalize sex work, thereby increasing the risk of trafficking in the industry

Multiple interviewees report that anti-sex trafficking operations result in the identification, arrest, and charge of many sex workers (*see supra* Section IV(A)(2)(a) at p. 27). Arrests of sex workers during operations, however, only increases workers’ vulnerability to trafficking and other forms of violence. Specifically, these arrests inhibit victims from self-reporting to law enforcement due to victims’ fear of facing prostitution charges.

Nonprofit advocates, law enforcement advocates, and a state prosecutor agree that building rapport with sex workers results in valuable tips about potential trafficking victims.

Additionally, arresting sex workers inhibits them from sharing important tips about trafficking with law enforcement. One nonprofit advocate explains that sex workers typically understand the difference between sex work and sex trafficking. Sex workers are able to recognize sex trafficking and they are uniquely positioned to organically come in contact with or learn about victims. Nonprofit advocates, law enforcement advocates, and a state prosecutor, agree that building rapport with sex workers results in valuable tips about potential trafficking victims. One survivor advocate claims that “All survivors are in favor of decriminalizing sex work” because it would be easier to distinguish consensual sex workers from sex trafficking victims.

3. Operations do not address the root causes of trafficking

Interviewees identify various causes of trafficking including inequality, poverty, racism, homophobia, childhood neglect, and bad immigration policy. Operations in no way mitigate these causes, and may, in some cases, exacerbate these causes. A federal prosecutor, in discussing the link between trafficking and neglected children, admits, “We can get better at understanding how [recruitment] happens and pool intelligence to develop ways to better protect the most vulnerable populations.” A law enforcement advocate agrees, stating, “Where are these girls [and boys] being recruited from? And how do you stop it and how do you see it and how do you help communities feel empowered to

protect the children in their communities? There's only so much that cops can do, and for some of these communities [of color], cops are not the answer."

"Where are these girls being recruited from? And how do you stop it and how do you see it and how do you help communities feel empowered to protect the children in their communities? There's only so much that cops can do, and for some of these communities [of color], cops are not the answer."

-Local law enforcement advocate

Several interviewees suggest that money designated for operations would be better spent on fundamental protections for victims that address their basic needs, health, and well-being. According to one public health advocate:

We have failed these youths in the systems that are supposed to take care of them. . . . In the richest country on Earth, so many become vulnerable to exploitation. If we reinvested operations to fundamental protections and health and well-being, just basic needs, [that] would reduce vulnerability."

A silhouette of a person's head and shoulders is shown against a bright, hazy sunset or sunrise. The person is wearing a dark shirt with a large, circular badge on the chest. The word "SHERIFF" is printed in a bold, yellow, blocky font across the middle of the badge. The background features a bright sun low on the horizon, creating a strong glow and silhouetting the person and distant hills.

SHERIFF



The background is a textured, painterly image. It shows a corner of a building with a dark, possibly black, roof on the right side. The main wall is a warm, orange-brown color. On the left, there's a dark, rectangular area that looks like a window or a shadowed part of the building. A small, bright white light source is visible on the orange wall. In the bottom right corner, a white car is partially visible, parked on a grey surface. The overall style is reminiscent of a textured print or a digital painting with a heavy, grainy texture.

V. QUANTITATIVE FINDINGS: DATA FROM PUBLIC RECORDS REQUESTS

In an effort to learn more about the funding and outcomes of particular law enforcement operations, we submitted sixteen CPRA and FOIA requests to California and federal law enforcement agencies. We sent our requests in February 2020 and followed up with unresponsive agencies the next year. When filing our requests and following up, we consulted with Ian Head, a Senior Legal Worker and Coordinator of the Open Records Project at the Center for Constitutional Rights, who has expertise in Freedom of Information Act and open records requests.

The FOIA and CPRA requests sought information regarding ILNI, OCC, Operation Independence Day, and ORR. More specifically, our FOIA and CPRA requests sought the following categories of information, from 2003 to the present:

1. Required trainings for participants in these operations and guidelines used in the execution of these operations, including those for identifying and providing services to sex trafficking victims.
2. Statistical data related to the funding and expenditures of these operations, including funds allocated to attorneys, law enforcement agents and agencies, prosecutors, victim advocates, service providers, healthcare providers, and any other stakeholders that participate in these operations.
3. Records related to the execution of the operations, including, but not limited to, videos and communications related to internal reports for planning of these operations and any communications and statistical data related to the staffing of these operations.
4. Demographic information related to adult and child victims.
5. Records related to arrests, charges, and convictions resulting from these operations.

The following is a summary of responses to our requests from the offices and agencies.

Table 1. Summary of Public Records Requests

TYPE OF AGENCY	RELEASED DOCUMENTS	DENIED REQUEST	NO RESPONSE AS OF 11/15/2021
Federal Law Enforcement	FBI	ICE/HSI	DOJ
Attorney Generals	California Attorney General	U.S. Attorney General	
Local Law Enforcement	• Los Angeles PD • Oakland PD	• Riverside PD • San Francisco PD	• Fresno PD • LA Sheriff's Office
Local District Attorney Office	Los Angeles	• Alameda County • Fresno • Riverside	San Francisco

Our requests were denied for various reasons. (See Table E2: Summary of Denied Requests, in Appendix E: FOIA/CPRA Chart). The DOJ, specifically, denied our request claiming that it “failed to demonstrate that the requested information is in the public interest.” However, the release of this information would contribute significantly to public understanding; indeed, the public has an interest and even a right to know how its tax dollars are being used in these operations. Moreover, the release of this information would enable evaluation and improvement of operations that could ultimately serve victims and conserve resources.

Nevertheless, only five of the sixteen requests produced responsive documents. These responsive documents were limited, and, generally, only provided piecemeal information about the number of arrests and victims identified during operations.¹⁵¹ The FBI’s responsive documents constituted primarily of public press releases and data through 2010. The responsive documents from the California Attorney General were nearly identical to the statistics released by the Los Angeles Police Department. This reality, along with many agencies’ failure to respond or disclose information, suggests a lack of transparency regarding the mechanics and outcomes of the operations, or a lack of internal training, documentation and statistics related to the operations, or both.

For the reasons listed above, we only analyze in depth the responsive documents from the Los Angeles Police

¹⁵¹ In particular, responses from Oakland PD and Los Angeles DA’s Office were extremely limited, consisting of a half-page summary and cursory information about ORR, respectively.

Department, which relate to ORR¹⁵² and ILNI from 2015-2020 from the City of Los Angeles Public Records.¹⁵³ Below is a summary of our findings from this analysis:

A. Operation Reclaim and Rebuild (2017-2020)

ORR is an annual, weeklong, California-wide law enforcement effort aimed at combatting human trafficking.¹⁵⁴ In 2020, participating entities included the Los Angeles Regional Human Trafficking Task Force (“LAR-HTTF”), 70 federal, state, and local law enforcement agencies, and task forces from across California.¹⁵⁵ The LAPD operational plans state that the mission of ORR is “to identify and rescue commercially sexually exploited victims of human trafficking . . . [and] to obtain information from the victims that can be utilized to identify and

Summary of relevant data

ORR 2020 arrests:

- **Statewide:**
 - **190 commercial sex workers**
 - **266 sex buyers**
 - **27 pimps**
 - **87 juvenile and adult victims**
- **LAPD + LASD LARHTTF**
 - **90 commercial sex workers**
 - **49 sex buyers**
 - **7 pimps**
 - **7 juvenile and adult victims**

OCC 2017 arrests:

- **90 commercial sex workers and buyers**
- **6 potential (not confirmed) sex-trafficking related arrests**
- **5 victims**

apprehend suspects responsible for their exploitation and trafficking.”¹⁵⁶ Although our data request did not yield detailed funding data, the 2017, 2018, and 2020 Operational Plans stated that “Approximately \$2000 of Federal funds will be made available to LAPD personnel to facilitate Operation Reclaim & Rebuild” for “purchases deemed a necessity to this operation.”¹⁵⁷

As part of the response to our data request, we received data regarding the types of arrests, victim demographics, and the types of felony and misdemeanor charges resulting from the ORR operations in 2017-2020, broken down into regional categories: statewide (which includes Los Angeles county, LAPD, and LARHTTF), Los Angeles County (which include the LAPD + LASD LARHTTF statistics), and LAPD + Los Angeles County Sheriff’s Department (“LASD”) LARHTTF.¹⁵⁸ We were unable to determine the number of traffickers arrested as a result of the ORR operations because traffickers were not documented as their own category; rather, they were included in the category of “Pimp/pandering/supervising.”¹⁵⁹ Overall, however, the data indicate that the operations resulted in a large number of sex work-related arrests (e.g., of commercial sex workers and buyers, which are colloquially referred to as “Johns”), but few trafficking arrests and few identifications of trafficking victims.

For example, statewide operations in 2020 resulted in the arrest of 190 commercial sex workers and 266 sex buyers, but the arrest of only 27 pimps and the identification of 87 juvenile and adult victims.¹⁶⁰ LAPD + LASD LARHTTF Operations reflect an even greater disparity, with the arrests of 90 commercial sex workers and 49 sex buyers, but the arrests of only 7 pimps and the identification of 7 juvenile and adult victims. As illustrated in the tables that follow, the data for statewide operations

152 We received records associated with ORR from 2016-2020, including operational plans, agendas, the Los Angeles Regional Human Trafficking Task Force funding agreement, and statistics related to arrests and “rescues” stemming from ORR. Some of these statistics were publicly reported in the press conferences following the ORR operations. See, e.g., Press Conference, *Sheriff Villanueva*, [supra](#) note 45.

153 HUMAN TRAFFICKING UNIT, L.A. POLICE DEP’T, OPERATION RECLAIM AND REBUILD FILES (2016-2020); L.A. POLICE DEP’T, OPERATION CROSS COUNTRY FILES (2017).

154 Press Conference, *Sheriff Villanueva*, [supra](#) note 45.

155 *Id.*

156 HUMAN TRAFFICKING UNIT, L.A. POLICE DEP’T, OPERATION RECLAIM AND REBUILD 3 (2016); HUMAN TRAFFICKING UNIT, L.A. POLICE DEP’T, OPERATION RECLAIM AND REBUILD 3 (2018).

157 *Id.* at 6.

158 L.A. Police Dep’t, Operation Reclaim Rebuild 2017-2020, tbl. Statewide Arrests (2017-2020).

159 Both law enforcement officers stated that traffickers would be included in the “Pimp/Pandering/Supervising” category and that LAPD does not count traffickers in their own category. Under California law, a “pimp” refers to an individual who profits from prostitution. Cal. Penal Code §266H. A pimping/pandering charge does not require the presence of force, fraud, or coercion.

160 The ORR press conference on February 4, 2020 reported the recovery of 76 adult and 11 minor victims; the arrests of 266 males for the charge of Solicitation; and the arrests of 27 suspected traffickers and exploiters. See Press Conference, *Sheriff Villanueva*, [supra](#) note 45.

in 2017-2019, for Los Angeles county, and for LAPD + LASD LARHTTF follow a similar trend, with the arrest of a disproportionate number of commercial sex workers and buyers. The data we received did not break down the race or gender of victims because; according to two LAPD officers we interviewed, California law enforcement agencies generally do not compile demographic information about victims identified during law enforcement operations.

Table 2. CA Statewide Operations Arrests and Victims Identified¹⁶¹ by Individual Type

	2017	2018	2019	2020
Total Arrests	236	493	339	518
Commercial Sex Worker	N/A	268	132	190
John	142	166	156	266
Pimp/Pandering/Supervising	36	30	36	27
Other	58	29	15	35
Total Rescues	27	55	48	87
Juvenile		10	14	11
Adult	27	45	34	76

Table 3. Los Angeles County Operations Arrests and Victims Identified by Individual Type

	2017	2018	2019	2020
Total Arrests	280	298	107	180
Commercial Sex Worker	149	189	52	96
John	82	79	42	60
Pimp/Pandering/Supervising	16	13	11	8
Other	33	17	2	16
Total Rescues	21	16	15	22
Juvenile	15	8	9	6
Adult	6	8	6	16

Table 4. LAPD + LASD LARHTTF Operations Arrests and Victims Identified by Individual Type

	2017	2018	2019	2020
Total Arrests	262	208	95	161
Commercial Sex Worker	146	179	45	90
John	70		42	49
Pimp/Pandering/Supervising	14	12	7	7
Other	32	17	1	15
Total Rescues	18	16	9	7
Juvenile	12	8		6

The breakdown of arrests resulting from the operations tells a similar story. We were unable to discern from the arrest data the precise number of traffickers identified from the ORR operations because (1) sex trafficking charges are grouped with pimping and pandering charges and (2) for reasons explained in greater detail in *supra* Section III(B)(1) at p. 16, traffickers are often arrested for crimes that are easier to prove (e.g., child exploitation). However, even keeping these limitations in mind, the data appear to indicate that ORR operations heavily focus on sex work, reflected in the disproportionate arrests of sex workers and buyers.

We were unable to determine the number of traffickers arrested as a result of the ORR operations because traffickers were not documented as their own category; rather, they were included in the category of “Pimp/pandering/supervising.”

As demonstrated by the charts that follow, in 2020, statewide ORR operations resulted in 487 misdemeanor arrests (including 456 prostitution/loitering/escort arrests, which apply to sex workers and buyers), but only 31 felony arrests (including 19 arrests for human trafficking, pimping, and pandering). LAPD + LASD LARHTTF County ORR Operations, in 2020, resulted in 156 misdemeanor arrests (including 139 prostitution/loitering/escort arrests), but only 5 felony arrests (including 3 arrests for human trafficking, pimping, and pandering). As indicated by the tables that follow, the data in 2017-2019 generally follow a similar trend, with a disproportionate number of sex work-related arrests.

Table 5. CA Statewide Operations Arrests by Charge Type

	2017	2018	2019	2020
Total Felonies	50	48	44	31
Felony - Human Trafficking, Pimping, Pandering	23	24	30	19
Felony - Other Sex Felony, Child Related	17	19	8	5
Felony - Other (Non HT/Sex)	10	4	6	7
Felony - Other Sex Felony, Impersonating P.O.		1		
Total Misdemeanors	13	419	295	487
Misdemeanor - Prostitution/Loitering/Escort		387	280	456
Misdemeanor - Illicit Massage Business Related		10	0	
Misdemeanor - Supervising Prostitute	13	5	6	8
Misdemeanor - Other (Non HT/Sex)		17	9	23
Total Arrests	63	467	339	518

¹⁶¹ The tracking sheets we received counted victims as “rescues.” However, victims who are identified during operations often return to their trafficker or are re-trafficked by another trafficker, and are not necessarily “rescued.”

Table 6. Los Angeles County Operations by Charge Type

	2017	2018	2019	2020
Total Felonies	9	22	9	6
Felony – Human Trafficking, Pimping, Pandering	1	8	8	3
Felony – Other Sex Felony, Child Related	6	14	1	2
Felony – Other (Non HT/Sex)	2	0	0	1
Felony – Other Sex Felony, Impersonating P.O.	0	0	0	
Total Misdemeanors	161	251	98	174
Misdemeanor – Prostitution/Loitering/Escort	116	235	93	156
Misdemeanor – Illicit Massage Business Related	40	8	0	0
Misdemeanor – Supervising Prostitute	10	4	3	5
Misdemeanor – Other (Non HT/Sex)	5	4	2	13
Total Arrests	170	273	107	180

Table 7. LAPD + LASD LARHTTF County Operations Arrests by Charge Type

	2017	2018 ²	2019	2020
Total Felonies	19	21	6	5
Felony - Human Trafficking, Pimping, Pandering	4		5	3
Felony - Other Sex Felony, Child Related	13	14	1	1
Felony - Other (Non HT/Sex)	2			1
Felony - Other Sex Felony, Impersonating P.O.	0			
Total Misdemeanors	243	240	89	156
Misdemeanor - Prostitution/Loitering/Escort	188	224	86	139
Misdemeanor - Illicit Massage Business Related	40	8	0	
Misdemeanor - Supervising Prostitute	10	4	2	4
Misdemeanor - Other (Non HT/Sex)	5	4	1	
Unknown				13
Total Arrests	262	261	95	161

B. Operation Cross Country (2017)

We also received information from the City of Los Angeles about law enforcement operations coordinated by the Los Angeles Innocence Lost Task Force, as part of Operation Cross Country XI. The operations were scheduled for October 12-14, 2017, at various corridors within the LAPD's jurisdiction. According to the operations plan, "The objective of these operations is to identify and rescue juvenile victims who are being exploited through prostitution, as well as to identify and arrest those responsible for this exploitation."¹⁶³

Table 8. Operation Cross Country: 2017 LAPD Arrests

OFFENSE	GENDER ³		TOTAL
	MALE	FEMALE	
Aiding in Prostitution			
653.23 PC	2	1	3
Aiding in Prostitution Total			3
Escorting			
103.107 ⁴	1	5	6
Escorting Total			6
Loitering/Prostitution			
653.22 PC ⁵	9	14	23
653.23 PC	2	1	3
Loitering/Prostitution Total			26
Prostitution			
647(b) PC ⁶	1	6	7
653.22 PC	0	10	10
Prostitution Total			17
Solicitation			
647(b) PC	13	30	43
Solicitation Total			43
Suspended DL			
Misd Warrant		1	1
Suspended DL Total			1
Total Arrests	28	68	96

162 This table reflects data exactly as documented in the records released to us, including the data in column 2018 which do not add up (i.e., the data for Total Felonies).

163 L.A. POLICE DEP'T, OPERATION CROSS COUNTRY FILES (2017). The operations plan states that it will target individuals who commit certain state violations with juvenile victims, and that "[e]ach state violation will be explored for potential federal charges, including: Title 18, U.S.C. Sections 1591 (Sex trafficking of a minor through force, fraud, or coercion); 2423 (Transportation of a minor for purposes of sex)." L.A. POLICE DEP'T, FBI SAFE TEAM OPERATIONS PLAN, OPERATION CROSS COUNTRY XI 2 (2017).

164 The tracking sheet did not include any other gender identities, such as non-binary.

165 Los Angeles Municipal Code § 103.107(b) prohibits conducting, managing or carrying on any escort bureau without a written permit from the Board.

166 CAL. PENAL CODE § 653.22(a)(1) PC prohibits loitering in any public place with the intent to commit prostitution.

167 CAL. PENAL CODE § 647(b) PC prohibits prostitution; specifically (1) an individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person and (2) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person.

As part of our records request, we received data maintained by the Detective Support Vice Division, Human Trafficking Unit that detailed the breakdown of the 96 total arrests made (Table 8) and the five victims identified (Table 9) during the OCC Operations.¹⁶⁸ Similar to the ORR data, the OCC data suggest the arrests resulting from the operations were primarily related to sex-work rather than sex trafficking. While it appears that none of the arrests resulting from the 2017 OCC operations were based on sex trafficking charges, one LAPD officer who participated in OCC stated that the six arrests based on Cal. Penal Code Section 653.23 PC¹⁶⁹—which prohibits directing or otherwise aiding a person in the commission of prostitution—could reflect the arrests of traffickers. Nevertheless, only six of the 96 arrests resulting from the OCC operations could even potentially be related to sex trafficking.

Overall, the data reflect many arrests related to selling and buying sex (~90 arrests), but few potential sex trafficking-related arrests (six arrests) and the identification of just five victims. Indeed, the idea that OCC operations might be more focused on sex work rather than sex trafficking was reinforced by one LAPD officer’s description of the OCC operations. The officer stated that these operations involved: (1) law enforcement posing as Johns, resulting in the detention, citation, or arrest of sex workers, (2) law enforcement posing as sex workers, with the aim of “catching sex clients;” or (3) law enforcement conducting undercover surveillance and arresting both sex clients and sex workers. As discussed further in *supra* Section IV(A)(2)(a) at p. 27, the conflation of anti-sex work operations and anti-sex trafficking operations is both problematic and commonplace.

Moreover, as reflected in Table 8, the data indicate that females were disproportionately arrested: the number of females arrested as part of the operation (68 females) was nearly 2.5 times the number of males arrested (28 males). According to an LAPD officer who participated in OCC, most of the arrests of females were related to sex work. They explained that because the operations conducted as part of OCC target the tracks worked by commercial sex workers, 80%+ of whom are female, this OCC operation resulted in the arrest of a higher number of females than males.

Finally, as reflected in Table 9 below, victim services were not always provided to juvenile victims identified during the Innocence Lost operation. Nor does law enforcement appear to have tracked the long-term outcomes of any of the victims identified. Additionally, two juvenile victims were arrested. One LAPD officer explained that sometimes, a juvenile victim may be arrested in the course of law enforcement operations if a warrant is out for the juvenile’s arrest. The LAPD officer explained that if victims have warrants out for their arrests, law enforcement cannot ignore those warrants simply due to the juveniles’ victim status.

Table 9. Operation Cross Country – 2017 Victims¹⁷⁰

VICTIM	GENDER	JUVENILE SUBJECT	ADULT	ARRESTED	VICTIM SERVICES	CITATION OR CHARGE
1	F	Y	N	N	Y	N/A
2	F	Y	N	Y	Y	N/A
3	F	Y	N	N	N	N
4	F	N	Y	N	Y	
5	F	Y	N	Y	N	?

168 L.A. Police Dep’t, Operation Cross Country 2017, tbl. Tracking Sheet (2017).

169 CAL. PENAL CODE §§ 653.23(a)(1), and (a)(2) PC prohibits directing, supervising, recruiting, or otherwise aiding another person in the commission of prostitution or loitering in any public place with the intent to commit prostitution, as well as collecting or receiving all or part of the proceeds earned from an act or acts of prostitution committed by another person.

170 This table reflects data exactly as documented in the records released to us, including the blank cells and the “N/A” and “?” notations. According to one law enforcement officer, “N/A” means that the victim was not in a position to be cited or charged. We were unable to verify the meaning of “?”.





POLICE

VI. CONCLUSIONS AND RECOMMENDATIONS



Analysis of relevant literature, interviews with 42 anti-trafficking professionals, and responses to our public records requests consistently reveal that, in spite of improvement in recent years, anti-sex trafficking law enforcement operations can be deeply harmful to victims and may be fundamentally incapable of achieving the TVPA's aims. Moreover, the limited data we received in response to our public records requests highlights the lack of transparency about funding and outcomes of operations.

Our research also indicates that law enforcement's under-

standing of sex trafficking and attitudes towards victims vary greatly based on individual and department. There are many law enforcement officers who are sincerely motivated to address sex trafficking and better serve victims. We call on these officers to reexamine their use of operations and instead support anti-sex trafficking efforts that do not harm victims. Ultimately, we recommend that law enforcement drastically reform and limit the use of operations. At the very least, we recommend law enforcement commit to a series of reforms that would help operations further the aims of the TVPA and minimize collateral harm to victims:

RECOMMENDATIONS

- 1 Drastically limit the use of operations while supporting community and public health approaches to identify victims and traffickers outside of the criminal justice system;
- 2 Redirect funding to evidence-based victim identification methods that are more effective and less harmful to victims, and to the extent operations continue, implement strict policies and training that increase the efficacy of victim identification while minimizing trauma to victims;
- 3 Increase the transparency of operations to support more effective oversight;
- 4 Strengthen prevention efforts that reduce the vulnerability of potential victims;
- 5 Increase services available to victims and systematically offer comprehensive services to every suspected victim;
- 6 Improve communication between nonprofit service providers, prosecutors and other law enforcement agencies, community organizations and sex workers.

Below, we detail our evidence-based sub-conclusions and corresponding recommendations on the assumption that these operations will likely continue, at least for some time and in some capacity, while emphasizing again our overall conclusion that they should be more victim-centered and used in narrow circumstances, if at all.

CONCLUSION 1:

Law enforcement over-rely on operations as a method to identify and empower victims when in reality, operations tend to traumatize victims and undermine their trust in law enforcement.

RECOMMENDATION 1: Drastically limit the use of operations to a few specific circumstances while supporting community and public health approaches to identify victims and traffickers outside of the criminal justice system.

1.1: Law enforcement should **only use operations in specific situations**, such as:

- When a victim or other individual is in extreme physical danger (i.e., when a victim has been kidnapped);
- When a victim can only be contacted through an operation, such as when a victim is confined to a dwelling and not permitted to move about freely;
- When young minors are involved, and;
- When pre-operation investigation has established evidence of force, fraud or coercion.

1.2: Law enforcement should **support community and public health approaches** to identify victims and traffickers outside of the criminal justice system. Outside of the situations listed above—and sometimes, within these situations—alternative interventions that honor victims’ agency may be more effective to identify and reduce harm to victims.

- A public health approach¹⁷¹ to anti-sex trafficking, for example, involves health care professionals offering resources to suspected victims.¹⁷²
 - To illustrate, the San Francisco Department of Public Health disseminates information to workers in massage establishments about access to healthcare.
 - Dignity Health, a nonprofit that operates hos-

pitals in California, Arizona, and Nevada, hires survivor advocates to work in hospitals, since survivors may feel more supported by other survivors than by law enforcement officers or other professionals.¹⁷³

A survivor advocate explains that the public health approach is more effective than law enforcement operations because it does not force victims out of their trafficking situation without their consent.

CONCLUSION 2:

Despite law enforcement’s overreliance on the use of operations, operations identify few or no victims while largely targeting sex workers.

RECOMMENDATION 2: Redirect funding to evidence-based victim identification methods that are more effective and less harmful to victims, and to the extent operations continue, implement strict policies and training that increase the efficacy of victim identification while minimizing trauma to victims.

2.1: Funding for law enforcement operations should be **redirected to community-led approaches**—such as the public-health approach mentioned in Recommendation 3.2—that are likely more effective methods of victim identification and are certainly less harmful to victims than operations.

- Community-led approaches build rapport with victims, which in turn, makes victims more likely to disclose information about their trafficking situation.
- Such approaches are less harmful to victims because they allow victims to maintain their agency and do not traumatize victims.

2.2: To the extent that operations continue, law enforcement should adopt **strict procedures to minimize trauma** to victims.

- Every police department who continues to execute operations should implement a clear policy prohibiting officers from engaging in sexual contact with victims, **without exception**.
 - Police departments should ensure that all

¹⁷¹ This approach requires systematically collecting data related to exploitation, researching topics including victimization risk factors, and implementing programs for preventing trafficking and identifying trafficking in its early stages. Part of this approach entails training healthcare professionals—such as physicians, emergency department workers, and social workers—to identify signs of trafficking in patients and to offer resources to suspected victims.

¹⁷² Jordan Greenbaum, *The Public Health Approach to Human Trafficking Prevention*, 36 GA. ST. U. L. REV. 1059, 1063-69 (2020).

¹⁷³ Rajaram & Tidball, *supra* note 84, at 194.

personnel who participate in operations receive mandatory training on the policy that is repeated periodically.

- Police departments should enforce the policy by instituting internal reporting systems that allow law enforcement officers to anonymously report instances of victim abuse by law enforcement, as well as internal protocols for promptly investigating and adjudicating such reports.
- Every police department who continues to execute operations should implement a clear policy to enforce the non-punishment principle—which states that victims of trafficking should not be held liable for unlawful acts they committed as a direct result of their trafficking situation. The UN Special Rapporteur on trafficking endorses this principle as critical to effective protection of victims.¹⁷⁴
- Every police department who continues to execute operations should implement a clear policy to ensure undocumented victims are not reported to immigration enforcement, charged with immigration

offenses, or deported.

2.3: Only law enforcement who complete **comprehensive and specialized training about sex trafficking** should be assigned to operations. Law enforcement often fail to differentiate victims and sex workers, resulting in the arrest of unidentified victims. Accordingly, in the limited circumstances in which operations are appropriate, officers participating in operations should have to complete a requisite number of courses about the following:

- **Implicit bias training.** Under California law, employees and volunteers who work with victims of domestic violence must receive 40 hours of training.¹⁷⁵ Similarly, law enforcement personnel should be required to complete a 20- to 40-hour training program that includes implicit bias training about the role that race and gender plays in the identification of victims.
- We recommend that implicit bias training be repeated periodically, as a prerequisite to participating in operations, to reduce biases that impede law enforcement’s ability to distinguish between

¹⁷⁴ Rep. of the U.N. Human Rights Council, *Implementation of the Non-Punishment Principle*, U.N. DOC. A/HRC/47/34 (May 17, 2021) (Siobhán Mullally (Special Rapporteur)), <https://undocs.org/A/HRC/47/34>.

¹⁷⁵ Cal. Evid. Code § 1037.1.



trafficking victims and consensual sex workers.

- Sufficient investigation prior to executing operations. Multiple interviewees indicate law enforcement would benefit from gathering sufficient intelligence prior to an operation—particularly with respect to force, fraud, and coercion—is critical to successful identification of victims and traffickers. Interviewees suggest that law enforcement should be trained on the importance of researching prior reports of domestic violence (indicates the use of force), prostitution arrests (indicates commercial sex), financial records, and Venmo transactions (indicates potential profit sharing with a trafficker), last-minute purchase of airplane tickets, and whether ride-shares are being purchased from miles away from the pick-up location.
 - Gathering sufficient information prior to an operation can also facilitate victim advocates’ preparation of services for suspected victims, which in turn builds rapport with victims.

Gathering sufficient information prior to an operation can also facilitate victim advocates’ preparation of services for suspected victims, which in turn builds rapport with victims.

- For example, if law enforcement establishes, prior to an operation, that the suspected victims are foreign nationals, advocates can plan to have an interpreter present to increase rapport with suspected victims.
- As another example, victims are almost always in need of housing; if the gender identity and age of a victim are known prior to an operation, appropriate housing can be arranged in advance.
- Interacting with victims in a victim-centered and trauma-informed way. Victim-centered training is crucial to build rapport with victims, avoid harm to victims, and to shifting the focus away from statistics like the volume of arrests toward the long-term stabilization of victims.¹⁷⁶ A victim centered-approach “seeks to minimize re-traumatization associated with

the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice.”¹⁷⁷ Part of a victim-centered approach is being trauma-informed, which means cultivating “a basic understanding of trauma and how a victim’s trauma impacts [their] ability to engage in the criminal justice process.”¹⁷⁸

- Officers should prioritize victims’ safety and well-being, without making demands for information or cooperation.¹⁷⁹ Officers can return autonomy to victims by paying close attention to their individual needs and preferences, including how they wish to identify and how much they want to disclose.¹⁸⁰
- Law enforcement should collaborate with nonprofit organizations and survivors to design a comprehensive training program based on “Formally eliciting and integrating victim feedback.”¹⁸¹ To the extent possible, training should be tailored to the geographical and industry nuances of the location.

Law enforcement should collaborate with nonprofit organizations and survivors to ensure training is victim-centered and trauma-informed.

176 Gavin & Thomson, *supra* note 130, at 338. See Amy Farrell et al., *Police Perceptions of Human Trafficking*, 38 J. CRIME & JUST. 315, 327-28 (2015).

177 U.S. GAO REPORT 2016, *supra* note 101, at 19.

178 Farrell et al., *Failing Victims?*, *supra* note 97, at 666.

179 Gavin & Thomson, *supra* note 130, at 342.

180 *Id.*; Farrell et al., *Failing Victims?*, *supra* note 97, at 666-67 (“[A]cknowledgment of the victimization and respect for the victims to talk about their experiences on their terms are vital to repair some of the harms of human trafficking crimes.”).

181 Farrell et al., *Failing Victims?*, *supra* note 97, at 666.

CONCLUSION 3:

Statistics related to the outcomes and funding of operations are not publicly available, which inhibits public understanding, evaluation and improvement of operations.¹⁸² Publicly reported data, namely from the FBI, paint an overly rosy picture of operation outcomes that conflicts with experiences reported by survivors, experts, and advocates, which include accounts of law enforcement abusing victims.

RECOMMENDATION 3: Increase the transparency of operations to support more effective oversight, evaluation, and accountability.

3.1: The U.S. Government should **increase oversight** of the outcomes and funding of operations.

- Congress should enforce Section 401 of the 2017 TVPA, which requires the FBI to publish and submit to Congress a status report on ILNI.¹⁸³ This provision also requires the DOJ to publish and submit to Congress a report on efforts by the National Institute of Justice to develop a methodology to assess the prevalence of human trafficking in the United States.¹⁸⁴ The FBI and DOJ had 180 days after the 2017 TVPA passed, on December 21, 2018, to submit these reports.¹⁸⁵ To date, neither agency has submitted these reports.

The DOJ should submit to Congress the Attorney General's Trafficking in Persons Report from FY 2020 and FY 2019. This report, which describes the U.S. Government's comprehensive campaign to combat human trafficking, was previously submitted to Congress annually. The latest report is from FY 2018.¹⁸⁶

Many interviewees report that little is known about how tax dollars are spent on these operations, and some express concern that funds are being used to arrest sex workers and buyers.

- *The Attorney General's Trafficking in Persons*

¹⁸² Berger, *supra* note 68.

¹⁸³ Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393, 132 Stat. 5265.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ U.S. Att'y Gen.'s Trafficking in Persons Reports, *supra* note 32.

Report details how much states receive in federal anti-trafficking funds and who they subgrant to. This report should also include how subgrantees use the funds they receive, and particularly, how much money goes to operations and how this money is spent.

3.2: Federal and local law enforcement agencies should **require uniform data collection** to promote information sharing and the evaluation of operations.

- Federal and local law enforcement agencies should record and publicly report:
 - The number of victims who:
 - Were identified during operations,
 - Were foreign nationals and/or undocumented,
 - Were offered and accepted services (and the type of services accepted, e.g., social, legal, etc.),
 - Continued receiving services after six months,
 - Were suspected or known to be re-trafficked,
 - Were deported, and
 - Were prosecuted (and for what crimes).
 - The number of perpetrators who:
 - Were identified during operations,
 - Were charged with trafficking, and
 - Were successfully prosecuted.
 - The receipt of federal or other funds for operations and how, specifically, they were used.

One survivor advocate, when asked about information on immigration status of victims, said he believes that it is “Hard to get that information—very private information [that is] kept private because of this myth that [trafficking is] affecting white girls and not international [communities].”

3.3: Federal and local law enforcement agencies should **implement accountability mechanisms** to appropriately discipline officers who abuse their power during operations, committing physical or sexual violence against

The numbers of victims and perpetrators should not be conflated with the number of sex workers and buyers.

victims. Accountability procedures must be clearly laid out in written policies and should include independent and transparent investigation with potential disciplinary measures appropriate to abuse of power, including termination and criminal prosecution. This process will be most successful where law enforcement leaders take ownership of opportunities to improve and are the champions of pursuing accountability enhancements. *See* recommendation 4.2 for more details about this recommendation in the context of minimizing trauma to victims.

CONCLUSION 4:

Anti-trafficking efforts are currently reactionary, focusing on prosecuting traffickers and assisting victims after trafficking has already occurred.

RECOMMENDATION 4: Strengthen prevention efforts that reduce the vulnerability of potential victims and traffickers.

4.1: Congress, state and local legislatures, and private funding sources should **advance research about sex trafficking recruitment strategies and factors that increase vulnerability to trafficking.** This research should be used to strengthen early intervention programs, which involves raising community awareness and educating youth about healthy interpersonal relationships and sexual exploitation.¹⁸⁷

- Raising community awareness about sex trafficking enables community members to identify at-risk youth, provide them with additional supports, and promptly report evidence of trafficking itself.¹⁸⁸ According to *Chisolm-Straker & Stoklosa*, in a 2018 study of human trafficking as a public health issue, “Health care providers, child welfare workers, home care workers, spiritual leaders, law enforcement personnel, social service providers, and virtually everyone else who comes in contact with those who may be at risk of being trafficked can communicate primary prevention-focused messages that strengthen individual knowledge and skills.”¹⁸⁹ As stated by one local officer, the effectiveness of anti-sex trafficking

efforts “comes down to public awareness. . . . The community needs to be more educated about what’s occurring and how parents can be more effective at protecting their kids.”

“As a society, we have to shift away from law enforcement operations and instead put the money upstream to reduce the vulnerability [of victims] in the first place. Instead of sorting out pieces later, [anti-sex trafficking] efforts could be more targeted to empowering the people who are vulnerable to harm.”

-Local law enforcement officer

Schools should implement, as part of basic curriculum at the elementary and middle school level, lessons about the existence of trafficking, the right of students to healthy, non-coercive relationships, and how to identify and seek help from trustworthy adults.¹⁹⁰ As part of a 2018 study of survivors in the Midwest, *Rajaram & Tidball* conducted interviews of survivors, many of whom recommended that one way to support vulnerable individuals is to educate them from an early age about the dangers and warning signs of trafficking.¹⁹¹

“Dealing with poverty in the U.S. is the ultimate anti-trafficking approach.”

-Public Health Advocate

4.2: Congress, state and local legislatures, and private funding sources should **invest in anti-poverty efforts, anti-discrimination efforts, and educational and employment opportunities.** In the same *Chisolm-Straker & Stoklosa* publication, the authors explain, “Economic, legal, and social factors, including poverty, discrimination, inadequate educational and employment opportunities, and insufficient protections for workers, must all be addressed in order to reduce and eliminate human trafficking.”¹⁹² While addressing these systemic issues is no simple feat, money to prevent trafficking may be better

187 Rahma Farah, *Early Interventions: Preventing At-Risk Youth from the Path of Sexual Exploitation: A Systematic Review*, U. ST. THOMAS, MINN., ST. CATHERINE U. SOC. WORK MASTER’S CLINICAL RSCH. PAPERS, no. 844, 2018, https://ir.stthomas.edu/ssw_mstrp/844/.

188 *Id.*

189 Elaine J. Alpert & Sharon E. Chin, *Human Trafficking: Perspectives on Prevention*, in *HUMAN TRAFFICKING IS A PUBLIC HEALTH ISSUE: A PARADIGM EXPANSION IN THE UNITED STATES* 379, 393 (Makini Chisolm-Straker & Hanni Stoklosa eds., 2018).

190 *Id.*

191 Rajaram & Tidball, *supra* note 84, at 191-92.

192 Nicole Littenberg & Susie Baldwin, *The Ignored Exploitation: Labor Trafficking in the United States*, in *HUMAN TRAFFICKING IS A PUBLIC HEALTH ISSUE: A PARADIGM EXPANSION IN THE UNITED STATES* 67, 76 (Makini Chisolm-Straker & Hanni Stoklosa eds., 2018) (Note that this specific quote refers to labor trafficking, but the principles are applicable in sex trafficking cases as well).

ToC spent than money for operations that prematurely and forcibly remove victims from their trafficking situations with no viable alternative and insufficient social support.

CONCLUSION 5:

Operations inconsistently connect victims to services, which is attributable at least in part to inadequate funding of victim services and failure of law enforcement to connect victims to the necessary provider. When victims are not efficiently and meaningfully connected to services, they are likely to return to their traffickers and often unwilling to cooperate with law enforcement.

RECOMMENDATION 5: Increase services available to victims and, to the extent operations continue, promptly and systematically offer comprehensive services to every suspected victim.

5.1: Congress/local legislatures/private donors should reallocate funding used for operations and provide additional funding to **increase the availability of victim services**, including:

- Shelters specifically for trafficking victims;¹⁹³
- Long-term housing;
- Mental health counseling;
- Immigration services;
- Legal services;
- Education;
- Paid job-training programs;
- Life skills training;
- Substance abuse programs, and;
- Services for the children of trafficked persons.

5.2: To the extent operations continue, law enforcement should **promptly and systematically offer comprehensive services to every suspected victim**, whether or not they identify as a victim and whether or not they agree to cooperate with law enforcement's investigation.¹⁹⁴ To support this effort, law enforcement should build its relationships with community nonprofits to create a network

that can effectively provide victims with a well-rounded set of services including housing, free basic needs such as food and clothing, crisis mental health counseling,¹⁹⁵ immigration services, legal aid services, education, and job training, among other services.

CONCLUSION 6:

Lack of communication and collaboration between law enforcement, nonprofits and other agencies and community organizations may inhibit the efficacy of operations. Interviewees emphasize that collaboration is critical to identify, minimize harm to, and effectively provide services for victims.

RECOMMENDATION 6: To the extent operations continue, law enforcement must improve communication and collaboration with nonprofit service providers, prosecutors and other law enforcement agencies, community organizations and sex workers.

Advocates justifiably express concern about working closely with law enforcement on anti-trafficking efforts that are criticized for focusing primarily on arrests and prosecutions rather than victims' rights and well-being.¹⁹⁶ To the extent operations continue, equitable nonprofit leadership and involvement is necessary to support victims.

6.1: Law enforcement should improve communication and collaboration with **nonprofit service providers**. According to one expert, stakeholders respecting each other's roles and goals, "and identifying the areas for mutual assistance will promote victim-centered responses."¹⁹⁷ Accordingly, we recommend that:

- Law enforcement consult and respond to nonprofit and other community organizations' views when designing training, planning operations, and preparing to connect victims to services.
- Where victims are interested in participating in the prosecution of their trafficker, nonprofits should refer them to law enforcement.

¹⁹³ Survivors do not always feel their needs can be met at a homeless shelter or at a shelter for domestic violence survivors, so it is important to increase the number of shelters that specifically serve trafficking victims.

¹⁹⁴ Raymond L. Taylor, *Recommendations for Effective Sex Trafficking Investigative Practices by Law Enforcement* 16 (July 30, 2018) (M.S. seminar paper, University of Wisconsin) (on file with MINDS@UW Platteville, University of Wisconsin).

¹⁹⁵ Rajaram & Tidball, *supra* note 84, at 193-94.

¹⁹⁶ Abigail Swenstein & Kate Mogulescu, *Resisting the Carceral: The Need to Align Anti-Trafficking Efforts with Movements for Criminal Justice Reform*, 6 ANTI-TRAFFICKING REV. 118 (2016), <https://www.antitraffickingreview.org/index.php/atjournal/article/view/175/178> ("Interestingly, the US Department of State's annual Trafficking in Persons Report uses statistics on the number of prosecutions conducted when evaluating foreign governments' efforts to comply with the 'minimum standards for the elimination of trafficking' found in Section 108 of the Trafficking Victims Protection Act.") (citing Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, 108, as amended.).

¹⁹⁷ Farrell et al., *Failing Victims?*, *supra* note 97, at 667.

6.2: Law enforcement should improve communication and collaboration with **other law enforcement agencies**, particularly prosecutors.

- To promote successful prosecution of traffickers, prosecutors should help plan and execute operations. Prosecutors should work with law enforcement to ensure they can establish the legal elements of the crime of human trafficking and that they are collecting evidence constitutionally. At the very least, prosecutors should train law enforcement about the kinds of evidence needed for a successful sex trafficking prosecution.

6.3: Law enforcement should improve communication and collaboration with **other community organizations and sex workers** and provide support for community-led efforts. As a state prosecutor aptly stated, “Victims intersect with a lot of systems,” and therefore various stakeholders should be part of the anti-sex trafficking conversation and collaborative efforts.¹⁹⁸ Notably, the Human Trafficking Institute reports that the vast majority (88%) of the new federal human trafficking cases in 2020 involved multi-agency collaboration in the investigation of the cases, further confirming the importance of collaboration across stakeholders.¹⁹⁹ Accordingly, law enforcement should build relationships with:

- Survivors;
- Health care professionals;
- Educators;
- Policymakers;
- Businesses in the community, e.g., local hotel and car rental agencies that are frequently used by traffickers;²⁰⁰ and
- Sex workers. Multiple interviewees advised that law enforcement build and maintain relationships of trust with sex workers, who often have valuable information about victims.²⁰¹

198 Taylor, *supra* note 194, at 16 (“It is impossible for any single agency or organization to respond comprehensively to the problem of sex trafficking. Traffickers range from opportunistic individuals to complex criminal organizations, with multi-jurisdictional activity.”); *id.* at 26 (“The IACP also recommends law enforcement agencies develop collaborative relationships before sex trafficking cases occur.”).

199 2020 FEDERAL HUMAN TRAFFICKING REPORT, *supra* note 109, at 69.

200 *Id.* at 54-55.

201 To foster such relationships, decriminalization of sex work should be considered. We regret that a robust analysis of that approach is beyond the scope of this report, and acknowledge the work and analysis of organizations that support the decriminalization of sex work, including the American Civil Liberties Union (ACLU), Amnesty International, Human Rights Campaign (HRC), Joint United Nations Programme on HIV/AIDS (UNAIDS), and the World Health Organization (WHO). *Organizations that Support the Decriminalization of Prostitution*, DECRIMINALIZE SEX WORK, <https://decriminalizesex.work/why-decriminalization/organizations-endorsing-decriminalization/> (last visited Sept. 16, 2021).







APPENDICES

APPENDIX A: LIST OF ACRONYMS

Throughout the report, we rely on a variety of acronyms. These acronyms are provided in parentheses upon first use of the full term and are also included below in a summary table.

ACRONYM	MEANING
ACTeams	U.S. Department of Justice Anti-Trafficking Coordination Teams
BJS	U.S. Bureau of Justice Statistics
CEHTTF	Child Exploitation and Human Trafficking Task Forces
CPRA	California Public Records Act
DA	District Attorney
DOJ	U.S. Department of Justice
DOJ CEOS	U.S. Department of Justice’s Child Exploitation and Obscenity Section
ECM	Enhanced Collaborative Model
FBI	Federal Bureau of Investigations
FOIA	Freedom of Information Act
GAO	U.S. Government Accountability Office
HSI	Homeland Security Investigations
HTI	Human Trafficking Institute
HTPU	Department of Justice Human Trafficking Protection Unit
ICE	Immigration and Customs Enforcement
ILNI	Innocence Lost National Initiative
LAPD	Los Angeles Police Department
LARHTTF	Los Angeles Regional Human Trafficking Task Force
LASD	Los Angeles County Sheriff’s Department
LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer
NCMEC	National Center for Missing and Exploited Children
NGO	Non-governmental Organization
OCC	Operation Cross Country
ORR	Operation Reclaim and Rebuild
OVC	U.S. Office for Victims of Crime
PC	Penal Code
PD	Police Department
SVU	Special Victims Unit
TVPA	Trafficking Victims Protection Act

APPENDIX B: OPERATIONS

The TVPA approach is commonly referred to as the “3P” paradigm—prosecution, protection, prevention,²⁰² with some recent efforts to acknowledge a fourth “P” of partnership.²⁰³ The law’s passage “signaled the U.S. government’s resolve to fight human trafficking and marked a pivot from indignation to positive action.”²⁰⁴ Historically, such “positive action” has consisted, in large part, of law enforcement operations.

This report analyzes various types of operations, which interviewees report include stings, reverse stings, raids, and sweeps.²⁰⁵ There are not standardized definitions of these operations, but interviewees described the different types of operations as follows:

<u>Type of operation</u>	<u>General definition</u>
<i>Sting</i>	An operation in which an undercover officer solicits sex from an individual selling sex, usually in a hotel room, massage parlor, online, or on the street. The primary purpose of this type of operation is to identify sellers of sex.
<i>Reverse sting/demand operation</i> ⁷	An operation in which an undercover officer, usually female, poses as an individual selling commercial sex. The primary purpose of this type of operation is to identify individuals who solicit the undercover officer for sex, often referred to as “Johns.”
<i>Raid</i>	An operation in which law enforcement obtains a warrant to enter a private or commercial dwelling with the intent of arresting individuals who are suspected of criminal activity. Raids occur at locations including brothels, massage parlors, and private homes. They typically involve more pre-operation investigation and require more manpower to execute than sting or reverse sting operations.
<i>Sweep</i>	An operation in which law enforcement patrols areas known for sex work, arrests sex workers and buyers, and attempts to identify sex trafficking victims in the process.

202 POLICE EXEC. RESEARCH FORUM, *supra* note 97.

203 U.S. Dep’t of State, *Human Trafficking*, <https://www.state.gov/policy-issues/human-trafficking/>.

204 U.S. 2020 TIP REPORT, *supra* note 97.

205 Notably, reverse stings target sex buyers and sweeps target both sex workers and buyers, not sex trafficking, but because interviewees discussed these types of operations as part of their anti-trafficking efforts, we include them in the category of “anti-trafficking law enforcement operations.” (See *infra* Sections III(A)(1) at p. 10 and IV(A)(2)(a) at p. 26-27).

206 Various interviewees described all of these types of operations as part of law enforcement’s anti-sex trafficking efforts. As described further in, because these types of operations are often focused on identifying buyers and sellers of sex, they may not effectively identify victims of sex trafficking or their traffickers.

ToC **APPENDIX C: TASK FORCES**

Law enforcement operations are often planned and executed by collaborative operation task forces. Some task forces are more formal and federally organized, while others are more ad hoc.

“Formal” Task Forces

The Child Exploitation and Human Trafficking Task Forces (“CEHTTFs”) are part of Innocence Lost National Initiative (ILNI), which was launched in 2003 by the FBI, in partnership with the Department of Justice’s Child Exploitation and Obscenity Section (“DOJ CEOS”), and the National Center for Missing and Exploited Children (“NCMEC”) to investigate child sex trafficking.²⁰⁷ Since ILNI was launched, the FBI has created 86 CEHTTFs that include local, state, and federal law enforcement and victim services organizations.²⁰⁸ ILNI task forces conduct operations in every U.S. state and some U.S. territories, including Guam.²⁰⁹

Generally, ILNI and other FBI operations begin with local law enforcement gathering information to make solicitation or prostitution²¹⁰ arrests at truck stops, casinos, and street “tracks,” which are areas known for sex work.²¹¹⁻²¹² Task forces investigate these arrests, which can reveal organized efforts to traffic children across several states.²¹³

“Informal” Task Forces

Other task forces are more ad hoc, created through informal partnerships between federal and state stakeholders that developed in the regular course of collaborative investigations. These task forces sometimes become institutionalized via federal grants, such as the ECM Task Force to Combat Human Trafficking,” a program established in 2004 “to develop and support multidisciplinary human trafficking task forces.”²¹⁴ ECM Task Forces are funded through the federal Office for Victims of Crime (“OVC”) and require coordinated applications between one local law enforcement partner, one federal law enforcement partner (usually FBI or HSI), and one victims services organization.²¹⁵ These grants are authorized pursuant to the TVPA.²¹⁶ As of 2020, there are 42 task forces funded through the ECM grants.²¹⁷

Some local task forces do not receive federal funds but are instead funded by city councils or other local government agencies. Even without a formal relationship to federal law enforcement, such local task forces may be contacted by FBI or HSI to collaborate on operations in their jurisdictions.

207 Janice Mertz, *Collaboration to Recover U.S. Exploited Youth: The FBI’s Innocence Lost National Initiative*, POLICE CHIEF MAGAZINE, <https://www.police-chiefmagazine.org/collaboration-to-recover-u-s-exploited-youth-the-fbis-innocence-lost-national-initiative/> (last visited Apr. 9, 2021).

208 *Id.*

209 Press Release, FBI Washington, Innocence Lost National Initiative and Operation Independence Day 2019 (Aug. 6, 2019), <https://www.fbi.gov/contact-us/field-offices/washingtondc/news/press-releases/innocence-lost-national-initiative-and-operation-independence-day-2019>.

210 We recognize that individuals engaged in selling commercial sex generally prefer the term “sex work,” given that “prostitute” is stigmatizing and has morality connotations. In this report, we refer to “prostitution” when discussing it as a legal charge and do not modify quotes from literature or interviewees that use the term.

211 Press Release, FBI Sacramento, FBI Task Forces in Fairfield, Fresno, and Sacramento Successfully Recover Nine Juveniles, Arrest Seven Alleged Pimps (June 23, 2014), <https://www.fbi.gov/contact-us/field-offices/sacramento/news/press-releases/fbi-task-forces-in-fairfield-fresno-and-sacramento-successfully-recover-nine-juveniles-arrest-seven-alleged-pimps>.

212 A “track” can be the area around a group of strip clubs and pornography stores, or a particular stretch of street. Shared Hope International, *Trafficking Terms*, <https://sharedhope.org/the-problem/trafficking-terms/> (last visited July 23, 2021).

213 *Id.*

214 U.S. Bureau of Justice Assistance, *Enhanced Cooperative Model Task Force to Combat Human Trafficking Program: Performance Update Report Fiscal Years 2016-2018*, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/ECM-Program-Performance-Update-Report-FY16-18.pdf>.

215 U.S. Dep’t of Justice, *Enhancing Collaborative Model Task Force to Combat Human Trafficking* (Mar. 16, 2020), <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/OVC-2020-18392.pdf>.

216 22 U.S.C.A. § 7105(b)(2) (2000).

217 U.S. Attorney’s Office: District of Columbia, *D.C. Human Trafficking Task Force*, <https://www.justice.gov/usao-dc/human-trafficking> (last visited Apr. 9, 2021).

APPENDIX D: INTERVIEWEE CHART

CATEGORY OF INTERVIEWEE	SUB-CATEGORY AND DESCRIPTION
Law enforcement (9)	1. Federal (2): Law enforcement personnel employed by a federal agency, namely HSI or FBI. • HSI Special Agent; • FBI Supervisory Special Agent. 2. Local (7): Law enforcement personnel employed by a local agency/police department in California. • DA Investigator; • Detective; • Lieutenant; • Police Officer 2 (2); • Sergeant (2).
Prosecutors (5)	1. Federal (3): Prosecutors employed by the DOJ. • Civil Rights Division – Human Trafficking Protection Unit (HTPU) (1 current, 1 former) • Criminal Division – Child Exploitation and Obscenity Section (CEOS) 2. Local (2): Prosecutors employed by a local agency. • Miami Dade County (formerly) • San Francisco
Advocates (21)	1. Law enforcement advocates (5) are employees of law enforcement agencies who are trained to support victims of crimes. 2. Nonprofit advocates (7) are individuals assisting and providing resources to trafficking victims through a nonprofit organization. 3. Survivor advocates (7) are individuals who have experienced sex trafficking and are now working at a nonprofit organization to assist victims. 4. Public health advocates (2) are individuals who promote anti-sex trafficking efforts through a public health approach.
Experts (7)	Experts (7) include law professors, consultants, legal counsel, and founders of nonprofit organizations.

APPENDIX E: FOIA/CPRA CHART

In February 2020, we filed sixteen FOIA and CPRA requests to federal and California law enforcement agencies. We focused our data collection on California for two primary reasons. First, given the location of the IHRC in Los Angeles, most of the clinic's expertise and contacts are California-focused. Second, unique features of anti-sex trafficking efforts in California make the state an interesting case study, including, but not limited to, that California has one of the highest rates of trafficking in the U.S.,²¹⁸ has implemented progressive legislation against human trafficking; and has modeled its state-wide anti-trafficking operation, ORR, after federal operations such as ILNI.

The FOIA and CPRA requests sought information regarding ILNI, OCC, Operation Independence Day, and ORR. More specifically, our FOIA and CPRA requests sought the following categories of information, from 2003 to the present:

1. Required trainings for participants in these operations and guidelines used in the execution of these operations, including those for identifying and providing services to sex trafficking victims.
2. Statistical data related to the funding and expenditures of these operations, including funds allocated to attorneys, law enforcement agents and agencies, prosecutors, victim advocates, service providers, healthcare providers, and any other stakeholders that participate in these operations.
3. Records related to the execution of the operations, including, but not limited to, videos and communications related to internal reports for planning of these operations and any communications and statistical data related to the staffing of these operations.
4. Demographic information related to adult and child victims.
5. Records related to arrests, charges, and convictions resulting from these operations.

In January 2021, we sent follow up requests to agencies who had not yet responded. When filing our requests and following up, we consulted with Ian Head, a Senior Legal Worker and Coordinator of the Open Records Project at the Center for Constitutional Rights, who has expertise in Freedom of Information Act and open records requests.

²¹⁸ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020, Country Profile*, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_CP_North_America.pdf (California, Texas, and Florida receive the most human trafficking reports).

²¹⁹ Protects records of investigations conducted by, intelligence information or security procedures of, and investigatory or security files compiled by local police agencies.

²²⁰ Protects records for which the public interest served by nondisclosure of documents clearly outweighs the public interest of disclosure.

As of October 2021, only five of the sixteen government agencies have provided responses to our request. Below is a summary of which agencies released documents, denied our request, or failed to respond to our request.

Notably, while give agencies responded to our requests, only one of these responses provided new, substantive information about the topics we requested. In particular, responses from Oakland PD and Los Angeles District Attorney's Office were extremely limited, consisting of a half-page summary and cursory information about ORR, respectively. The FBI's responsive documents constituted primarily of public press releases and data through 2010. The responsive documents from the California Attorney General were nearly identical to the statistics released by the Los Angeles Police Department.²¹⁹

Table E1. Summary of Public Records Requests

TYPE OF AGENCY	RELEASED DOCUMENTS	DENIED REQUEST	NO RESPONSE AS OF 11/15/2021
Federal Law Enforcement	FBI (consisted primarily of public press releases and data through 2010)	ICE/HSI	DOJ
Attorney Generals	California Attorney General (replicated Los Angeles PD data)	U.S. Attorney General	
Local Law Enforcement	- Los Angeles PD - Oakland PD (one paragraph response)	- Riverside PD - San Francisco PD	- Fresno PD - LA Sheriff's Office
Local District Attorney Office	Los Angeles (only released documents about ORR).	- Alameda County - Fresno - Riverside	San Francisco

Table E2. Summary of Denied Requests

TYPE OF AGENCY	AGENCY	REASON FOR DENIAL
Federal Law Enforcement	ICE/HSI	"Too broad in scope."
Attorney Generals	U.S. Attorney General	"Not an agency record."
Local Law Enforcement	- Riverside PD - San Francisco PD	"No responsive documents" "Not subject to disclosure under Cal. Government Code § 6254(f)."⁸
Local District Attorney Office	- Alameda - Fresno - Riverside	- Does "not keep track of the requested information" (even though it confirmed its participation in Innocence Lost National Initiative, Operation Cross Country, Operation Independence Day, and Operation Reclaim and Rebuild). "No responsive documents" "No responsive documents;" and "not subject to disclosure under Cal. Government Code § 6255."⁹



Los Angeles PD
Released information
related to ORR and
OCC.



Oakland PD
One paragraph
response.



Los Angeles DA
Only released
documents about
ORR.



**CA Attorney
General**
Replicated Los
Angeles PD data.



FBI
Consisted primarily of
public press releases
and data through 2010.



Riverside PD
“No responsive
documents.”



Fresno DA
“No responsive
documents.”



ICE/HSI
“Too broad in scope.”



U.S. Attorney General
“Not an agency record.”



Alameda DA
Does “not keep track of the requested
information” (even though it confirmed
its participation in Innocence Lost Na-
tional Initiative, Operation Cross Coun-
try, Operation Independence Day, and
Operation Reclaim and Rebuild).



San Francisco PD
“Not subject to disclosure
under Cal. Government
Code § 6254(f).”²¹⁹



Riverside DA
“No responsive documents;”
and “not subject to disclo-
sure under Cal. Government
Code § 6255.”²²⁰



Fresno PD
No response.



LA Sheriff's Office
No response.



San Francisco DA
No response.



Dept. of Justice
No response.

ToC **APPENDIX F: RESEARCH LIMITATIONS**

1. Survivor interviews

Trafficking victims who have experienced law enforcement operations have firsthand knowledge of the strengths and shortcomings of these operations. For this reason, a primary goal of our report was to underscore survivor voices, experiences and recommendations. Although we were able to interview seven individuals who experienced sex trafficking, our sample was limited in at least three ways: 1) in the number of survivors we were able to interview, 2) in the representativeness of our sample, and 3) to the extent which the survivors we interviewed experienced law enforcement operations, especially in recent years.

First, it was difficult to identify and contact trafficking survivors. Through an extensive public data search, we were able to reach out to seventeen sex trafficking survivors. However, due to the sensitive nature of the information we sought, and survivors' varying exposure to law enforcement operations and willingness to interview, we ultimately were able to interview only seven survivors.

Second, the survivors we were able to interview are not representative of the population of sex trafficking survivors as a whole. Our survivor sample does not reflect the diversity of gender, sexual, national, and racial identities of the survivor population. Of the seven survivors we interviewed, six are female-identifying, one is male-identifying, and none disclosed they were nonbinary or LGBTQ. Data from survivors therefore provides a female-centric version of the trafficking experience that is not necessarily representative of the male, non-binary, or LGBTQ experience. We understand men and members of the LGBTQ have historically been excluded from the category of "victim," and we acknowledge that despite our survivor sample, no gender or sexual identity is immune from sex trafficking. Additionally, five of the seven survivors we interviewed are white. This survivor sample does not reflect the reality that people of color, especially Black and Asian women, are disproportionately impacted by trafficking.²²¹ We recognize a focus on white victims in the media and literature may inhibit the identification of persons of color as victims, and we regret our inability to highlight the experiences of Black and Asian

women who are inordinately victimized. Finally, due in part to the sensitive nature of trafficking cases, we were primarily able to identify and contact survivors through their associations with nonprofit organizations. Consequently, all of the survivors we interviewed are or were advocates for sex trafficking victims in some capacity, which does not necessarily represent the survivor population as a whole.

Third, we were unable to interview a survivor who was sex trafficked in the last ten years. Recently trafficked survivors have needs that inhibit their ability and willingness to interview. We recognize that recently trafficked survivors are more likely to face re-traumatization and other adverse effects during an interview than survivors who have had more time to process and heal from being trafficked. As a result, some survivors we interviewed were trafficked prior to the TVPA in 2000, and others were trafficked and encountered law enforcement within the first few years of the TVPA. We acknowledge law enforcement operations have improved since the enactment of the TVPA, and especially in the past ten years. We asked survivors to compare their trafficking experiences in the late 90s and early 2000s to what they know about operations today, and most felt that they were fundamentally the same, although some geographic areas have improved greatly. For this reason, we included their perspectives despite the fact they do not represent the most recent operations conducted.

2. Information about specific operations

We were limited in our ability to gather information specific to certain operations, such as ILNI, Independence Day/OCC, and ORR. It is difficult, and sometimes impossible, for interviewees to know whether an operation they participated in or experienced was part of one of these larger national initiatives. Nonetheless, several interviewees confirmed participating in these initiatives. One local officer explained "A lot of times like we're part of these 'operations' but we don't really realize it. It's probably just because the government will take the stats from operations we've already done." Other interviewees report they did not work on these specific initiatives, but they drew parallels between these initiatives and operations they worked on. For this reason, it is uncertain

²²¹ Five of the survivors we interviewed are also U.S. citizens; we acknowledge this does not reflect the reality that foreign nationals, and particularly undocumented and non-English speaking individuals, are particularly vulnerable to sex trafficking. However, there exists a common misconception that sex trafficking does not happen to U.S. citizens or occur in the U.S. Polaris, *Common Myths and Misconceptions about Human Trafficking in the U.S.* (last visited Oct. 16, 2021), <https://humantraffickinghotline.org/sites/default/files/Common%20Myths%20and%20Misconceptions.pdf>. Our report focuses on domestic sex trafficking in the U.S., and accordingly, our survivor sample accurately represents the reality that sex trafficking can happen to U.S. citizens.

precisely how much of the information we gathered is reflective of specific national or state operations.

3. Reliance on anecdotal evidence from disparate parts of the country

Publicly available data about law enforcement operations is extremely limited, and our efforts to collect quantitative data from FOIA and CPRA requests were largely unsuccessful. Consequently, much of our analysis and many of our recommendations stem from qualitative data from interviews. We recognize anecdotal evidence is inherently subject to bias—including selection bias—misremembering, and misinterpretation. Additionally, we interviewed individuals located across the United States, and recognize that what may be true about operations in one part of the country is not necessarily true about operations in another part of the country.

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SCHOOL OF LAW

 An official website of the United States government, Department of Justice. [Here's how you know](#)

Democrats have shut down the government. Department of Justice websites are not currently regularly updated. Please refer to the [Department of Justice's contingency plan](#) for more information.



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Prostitution: Pathways, Problems and Prevention

Archival Notice

This is an archive page that is no longer being updated. It may contain outdated information and links may no longer function as originally intended.

September 29, 2009

Researchers are helping to find solutions to prostitution and its violent, sometimes deadly, repercussions and associated problems such as neighborhood blight, drug abuse and spread of infectious disease.

Policymakers and law enforcement officials use the research to:

- Set up intervention programs for prostitutes.
- Improve homicide investigations.
- Examine the relative costs and benefits of focusing on arresting prostitutes versus arresting their "clients."

Pathways to Prostitution

Women often enter street prostitution as minors. Many are recruited into prostitution by force, fraud or coercion. Some women need money to support themselves and their children; others need money to support their drug habits.

Abuse is a common theme in the lives of prostitutes — many were abused as children, either physically or sexually or both. Many street prostitutes are running away from an abusive situation.

Even when street prostitutes try to leave the streets, they often return to prostitution because their limited education and lack of skills make finding employment very difficult. Without a means to support themselves and their children, they may think staying on the streets is less risky than leaving prostitution. [1]

Men who use Prostitutes

Studies about male clients of female prostitutes have focused on:

- How the clients compare to the general male population.
- Whether they are violent.
- Whether arresting them deters future visits to prostitutes.

Research has shown that men who visit prostitutes:

- Are substantially deterred from future visits by arrest.
- Are not highly deviant or crime-involved.
- Feel entitled to sex with prostitutes if they are not being satisfied by a conventional partner.
- Do not express opinions that support violence against women.

Men who are violent toward prostitutes:

- Are likely to have a criminal past.
- Are likely to have a history of violent offenses, rape and property crime.

Learn more from the full report [Clients of Prostitute Women: Deterrence, Prevalence, Characteristics, and Violence \(pdf, 187 pages\)](#).

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Learn more from the full report [Clients of Prostitute Women: Deterrence, Prevalence, Characteristics, and Violence \(pdf, 187 pages\)](#).

Reducing Demand for Prostitution

Most prostitutes are women. Their clients, commonly called "johns," are almost all men.

Most arrests associated with prostitution are arrests of the women; about 10 percent are arrests of the men who purchase commercial sex.

There are several approaches to reducing the demand for prostitution. These include public awareness and education campaigns, neighborhood watch programs, and efforts by law enforcement (such as Web and street-level reverse stings, surveillance cameras, and publicizing the names and photos of johns. However, to date the only strategies qualifying as "evidence-based practices" are arrest [\[2\]](#) and programs, called "john school," that make customers aware of the negative consequences of prostitution.[\[3\]](#)

In San Francisco's john school, (the official name is the First Offender Prostitution Program), first-time offenders who agree to pay the fee and attend a one-day workshop have the charges

against them dropped if they avoid rearrest for another prostitution offense for a year after they attend the class.

Learn more about the [First Offender Prostitution Program in San Francisco](#).

An NIJ-funded evaluation of the First Offender Prostitution Program reported that the program:

- Produced positive shifts in attitude.
- Reduced the number of repeat johns.
- Was cost-effective.

Over the last 12 years, the program has cost taxpayers nothing because the fees that are paid by the convicted person cover all direct costs for educating the johns. The program has also generated nearly \$1 million for programs that help prostitutes start another life.

This program has been successfully replicated in other cities and counties.

Read the complete evaluation of the [First Offender Prostitution Program in San Francisco \(pdf, 246 pages\)](#).

Murder of Prostitutes

Researchers have studied homicides of street prostitutes to see if crimes involving one victim (single homicide) differed from those involving two or more victims murdered by the same person (serial homicides).

A 2001 study found that serial murderers:

- Were almost always motivated by sex.
- Were more sexually aggressive.
- Had deviant sexual interests and active sexual fantasies.
- More frequently planned their activities, such as moving victims to a preselected area or taking clothing from the victim's body.
- Engaged in rituals and body mutilation.

This study has helped law enforcement officials identify suspects and conduct more efficient investigations.

The profile of the victims was similar in both types of homicides. Most victims were:

- In their late 20s to early 30s.
- African American (60 percent).
- Working in high-crime areas.
- Abused both "on the job" and in their personal lives.
- Involved in prostitution to support a drug habit.

Read the complete report [When Silenced Voices Speak: An Exploratory Study of Prostitute Homicide \(pdf, 500 pages\)](#).

Notes

[\[note 1\]](#) Michael Scott and Kelly Dedel, Street Prostitution, 2nd Edition, Office of Community Oriented Policing, November 2006, NCJ 216620.

[\[note 2\]](#) Brewer, Devon D., John J. Potterat ; Stephen Q. Muth ; John M. Roberts, Jr., [A Large Specific Deterrent Effect of Arrest for Patronizing a Prostitute](#), sponsored by the National Institute of Justice, grant no. 2003-IJ-CX-1036, Washington, DC, National Institute of Justice, 2006.

[\[note 3\]](#) Shively, Michael, Sarah Kuck Jalbert, Ryan Kling, William Rhodes, Peter Finn, Chris Flygare, Laura Tierney, Dana Hunt, David Squires, Christina Dyou, and Kristin Wheeler, [Final Report on the Evaluation of the First Offender Prostitution Program \(pdf, 246 pages\)](#), Final report to the National Institute of Justice, grant no. 2005-DD-BX-0037. March 2008, NCJ 221894.

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Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law

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PROHIBITING SEX PURCHASING AND ENDING TRAFFICKING: THE SWEDISH PROSTITUTION LAW[†]

Max Waltman*

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INTRODUCTION

At the symposium on “Successes and Failures in International Human Trafficking Law” at the University of Michigan Law School in February 2011, I addressed the topic of international sex trafficking law, particularly the Swedish law that prohibits the purchase of sex while simultaneously decriminalizing the prostituted person. Being asked to address trafficking, I was surprised by the name given to my panel: “Kidnapped at Home, Sold Abroad: Sex Trafficking in the International Community.” This surprise was owing to the fact that in the most current international instrument defining trafficking, the United Nation’s so-called Palermo Protocol, nowhere is the

[†] This Essay is an edited version of a talk presented at the symposium entitled Successes and Failures in International Human Trafficking Law held at the University of Michigan Law School on February 5, 2011. All translations from Swedish are the Author’s, except where noted. Similar material by the Author is forthcoming in the journal entitled *Women’s Studies International Forum*, Volume 34. Part of the legal arguments and ideas regarding the Swedish law were previously developed with co-authors through submissions to the Swedish government. See PETITIONERS ET AL., A RESPONSE TO *Prohibition Against Purchase of Sexual Service: An Evaluation 1999–2008 (SOU 2010:49)* (officially received by the government on Feb. 2, 2011) [hereinafter PETITIONERS ET AL., A RESPONSE], available at http://www.statsvet.su.se/homepages/max_waltman.htm; PETITIONERS ET AL., SUGGESTIONS TO THE GOVERNMENT’S REVIEW OF THE SEX PURCHASE ACT (SWEDEN) (2010) (officially received by the government commissioner on Mar. 17, 2010) [hereinafter PETITIONERS ET AL., SUGGESTIONS], available at http://www.statsvet.su.se/homepages/max_waltman.htm. Jonas Tallberg and the Department of Political Science, Stockholm University, provided a foundation for further research, and the article would not have been conceived without the generous support of Catharine A. MacKinnon.

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term “kidnapping” found.¹ However, under the protocol, trafficking can be “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability . . . for the purpose of exploitation.”² Consent of the person so trafficked is irrelevant for liability purposes.³

Now, contrast the trafficking definition to kidnapping, which according to U.S. law occurs when under federal jurisdiction someone “unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person.”⁴ As opposed to this definition of kidnapping, which mostly involves physical force, trafficking can occur when someone abuses a person’s position of vulnerability for the purpose of sexual exploitation. Because most people who are in prostitution are subject to the treatment contained in the Palermo Protocol, which in reality describes pimping⁵ as commonly conducted, the U.N. Special Rapporteur on Trafficking (2004–2008) found that prostitution generally is a form of trafficking:

For the most part, prostitution as actually practised in the world usually does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty. Put simply, the road to prostitution and life within “the life” is rarely one marked by empowerment or adequate options.⁶

Although some people who are trafficked for sex are kidnapped, trafficking is, as suggested below in Part I, more often a problem of social

1. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter Palermo Protocol].

2. *Id.* art. 3(a).

3. *Id.* art. 3(b).

4. 18 U.S.C. § 1201(a) (2010).

5. See Palermo Protocol, *supra* note 1, art. 3(a). See also Harvey Schwartz, Jody Williams & Melissa Farley, *Pimp Subjugation of Women by Mind Control*, in PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 49, 49–84 (Melissa Farley ed., 2007), for an illuminating account of pimping based on three different cases, where men pimped women into prostitution with different amounts and forms of coercion along a continuum—overt force on one end, exploitation of persons’ inequality and lack of equal alternatives due to racism, sexism, or social class on the other end.

6. Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and a Gender Perspective*, ¶ 42, Comm’n on Human Rights, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006) (by Sigma Huda) [hereinafter *U.N. 2006 Trafficking Report*].

inequality than a problem of kidnapping, and it is linked to prostitution. Further, this Essay will illuminate how the Swedish law against the purchase of sex enacted in January 1999 is based on a similar understanding of sexual exploitation and social inequality. The Swedish law criminalizes only those who buy prostituted persons, *not* those being bought: “A person who . . . obtains a casual sexual relation in return for payment, shall be sentenced for *purchase of sexual service* to a fine or imprisonment for at most one year.”⁷ From January 1999 to July 1, 2011, the maximum penalty was imprisonment for at most six months.⁸ Before this law was passed, neither the purchase of sex from adults nor being prostituted was criminalized, but procuring⁹ sex was. Tangential laws prohibiting the public performance of

7. BROTTSBALKEN [BrB] [CRIMINAL CODE] 6:11 (Swed.).

8. The raise to a one-year maximum imprisonment was made possible by an Act of Parliament. See LAG OM ÄNDRING I BROTTSBALKEN [AN ACT AMENDING THE CRIMINAL CODE] (Svensk författningssamling [SFS] 2011:517) (passed 282 to 1, 66 absent). For the government’s rationales for this raise, see Justitiekanslens betänkande [Bet.] 2010/2011:JuU22 Skärpt straff för köp av sexuell tjänst [Raised Punishment for Purchase of Sexual Service] [parliamentary committee report] (Swed.) (May 12, 2011) [hereinafter Bet. 2010/2011:JuU22 Skärpt straff] (making a few additional legislative remarks and proposing that Parliament pass the executive government’s bill: Proposition [Prop.] 2010/2011:77 Skärpt straff för köp av sexuell tjänst [government bill] (Swed.) [hereinafter Prop. 2010/2011:77 Skärpt straff]). For further legislative history on this amendment, see Statens Offentliga Utredningar [SOU] 2010:49 Förbud mot köp av sexuell tjänst: En utvärdering 1999–2008 [Prohibition Against Purchase of Sexual Service: An Evaluation 1999–2008] [government report series] (Swed.) [hereinafter SOU 2010:49 Förbud mot köp].

9. Procuring laws in Sweden are used against pimps, although the two terms are not synonymous: procuring is not legally regarded as necessarily exploitative per se, while pimping is commonly perceived to involve exploitation. Normal procuring may, for example, entail either a “person who promotes” or a person who “in an improper way financially is exploiting a person who has casual sexual relations in return for payment,” with a maximum imprisonment of four years. BrB 6:12(1) (Swed.). According to existing case law no party is considered injured, except the public order, if the procuring only entailed a normal “promotion” of prostitution. Christian Diesen, *Målsägande? [Injured Party?]*, in FESTSKRIFT TILL LARS HEUMAN 119, 140 (Jan Kleineman, Peter Westberg & Stephan Carlsson eds., 2008). In addition to normal procuring, there is *gross procuring*, with a maximum penalty of eight years. When assessing whether the procuring is gross, “special consideration shall be given to whether the crime has concerned a large-scale activity, brought significant financial gain or involved ruthless exploitation of another person.” BrB 6:12(3) (Swed.). As is mentioned further below, see *infra* notes 44–45 and accompanying text, courts are inconsistently applying these distinctions, substituting even normal procuring for what appears to be trafficking under the Palermo Protocol. The latter is ratified and located in BrB 4:1a, with a maximum penalty of ten years imprisonment. Several members of parliament have thus repeatedly proposed instead to treat all instances of procuring, which they regard as an outmoded legal concept, as trafficking. See Motion till riksdagen 2008/2009:Ju379 Bekämpa den grova kriminaliteten och brottens orsaker [parliamentary motion] at 36 (Oct. 1, 2008) (Swed.) (Mona Sahlin et al.; Social Democrats) (“[I]t is time to toughen the assessment of procuring by replacing it with human trafficking for sexual purposes. The procuring offense’s foundation is that there would be voluntariness between the seller and purchaser. This voluntariness is completely false. Every purchase of someone’s body is built upon an exploitation of vulnerability.”). See also Motion till riksdagen 2010/2011:Ju293 Trygghet mot brott [parliamentary motion] at 6 (Oct. 25, 2010) (Swed.) (Morgan Johansson et al.; Social Democrats) (proposing to remake the

pornography, as well as regulations concerning communicable diseases, legal aliens, or the compulsory care of young or addicted persons, could at that time be used in the context of prostitution.¹⁰

This Essay considers the potential of the Swedish law against the purchase of sex, with further suggestions for improvements, as a rational response for states parties to the Palermo Protocol. It aims to sort out some of the conflicting claims and misinformation in the international debate regarding the rationales underlying the law, and will document the law's impact and some of the obstacles found in its judicial application. Part I of the Essay thus situates the legislative history of the Swedish law in the context of the knowledge of prostitution in Sweden and elsewhere before and after the law's enactment, including assessing preconditions for entry into prostitution, the situation while there, and possibilities for exit from it by prostituted persons. Part II will survey the law's impact since its introduction, including comparative assessments from neighboring countries and other relevant jurisdictions. Part III addresses some biased misinformation commonly encountered in comparative discussions. Finally, Part IV deals with current obstacles to effective implementation, particularly related to judicial interpretation and legal application. As will be further illuminated, the experience gained since the passage of the Swedish law suggests that any effective approach against sex trafficking must also reduce prostitution and the demand for it. This approach is already implied in international law, through the Palermo Protocol, which states that "States Parties shall adopt or strengthen legislative or other measures . . . to discourage the demand that

procuring offense into trafficking in order to raise the penalty and increase the protection for the person victimized); *cf.* Motion 2008/2009:Ju4 med anledning av skr. 2007/2008:167 Handlingsplan mot prostitution och människohandel för sexuella ändamål [parliamentary motion] at 3 (Sept. 23, 2008) (Swed.) (Thomas Bodström et al.; Social Democrats).

10. See SOU 1995:15 *Könshandeln*: Betänkande av 1993 års Prostitutionsutredning [The Sex Trade: Final Report of the 1993 Prostitution Inquiry] [government report series] at 55–70 (Swed.) [hereinafter SOU 1995:15 *Könshandeln*]. For instance, LAG OM VÅRD AV MISSBRUKARE I VISSA FALL [CARE OF ABUSIVE PERSONS (SPECIAL PROVISIONS) ACT] (Svensk författningssamling [SFS] 1988:870) (Swed.), could be used to force compulsory care in an institutionalized setting, among other places, on an addicted adult prostituted person, even against the person's will, if there was "an extraordinarily severe situation, where the addiction patently endangers, i.e., next to thwarting the substance abuser's possibilities to live a humanly dignified life during a long time ahead." SOU 1995:15 *Könshandeln*, *supra*, at 67 (citing legislative history). Similarly, the Legal Aliens Act at the time, UTLÄNNINGSLAG (Svensk författningssamling [SFS] 1989:529) (Swed.), was said, *inter alia*, to enable the state to refuse entrance to a noncitizen who is presumed to conduct a "dishonest living" (in statutory terms), or revoke the individual's residence permit after having conducted it, which according to this provision's legislative history would include "procuring" and "prostitution" (the latter, presumably, meant being prostituted). SOU 1995:15 *Könshandeln*, *supra*, at 67–68 (citing statute and legislative history). When this 1995 report was written, laws on legal aliens appear not to have considered prostitution as exploitation of vulnerable persons or as acts of inequality, but rather as immoral; hence the expression "dishonest living" was interpreted as a *de facto* criminalization of legal aliens who were prostituted. Such views, as will be shown, are not officially expressed in the current Swedish law prohibiting the purchase of sex.

fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”¹¹

I. PROSTITUTION AND THE SWEDISH LAW: A HISTORIC AND COMPARATIVE ANALYSIS

Before the Swedish law prohibiting the purchase of sex was introduced, some relatively obscure attempts had been made that did not bear fruit at the time to criminalize purchasers.¹² Some of these had argued along a gender-equality rationale that understood that buying women for sex was exploitative.¹³ Responses submitted to a 1981 government report, for example, effectively argued that prostitution would “disappear if there was not a demand” and that a law against purchasers would “improve equality between the sexes and prevent undue exploitation of socially deprived women.”¹⁴ The idea went no further until American lawyer Catharine A. MacKinnon in 1990, during a speech together with writer Andrea Dworkin, organized by the umbrella association Swedish Organization for Women’s and Girls’ Shelters (ROKS) under its first chair Ebon Kram, independently argued publicly that gender inequality and sexual subordination could not be fought effectively by assuming a gender symmetry that empirically does not exist.¹⁵ Thus, in an unequal world, she argued, a law against men purchasing women is called for, together with no law against the people, mainly women, being bought for sexual use and hence, “ending prostitution by ending the demand for it is what sex equality under law would look like.”¹⁶ ROKS held regular yearly meetings with

11. Palermo Protocol, *supra* note 1, art. 9(5); *see also* U.N. High Comm’r for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, ¶ 4, U.N. Doc. E/2002/68/Add.1 (May 20, 2002) (“Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.”); *U.N. 2006 Trafficking Report*, *supra* note 6, ¶¶ 29–30, 50–78 (discussing the importance of, and approaches for, reducing demand).

12. *See, e.g.*, Yvonne Svanström, *Criminalising the John: A Swedish Gender Model?*, in *THE POLITICS OF PROSTITUTION* 225, 233 (Joyce Outshoorn ed., 2004) (mentioning that from 1983 to 1993 some fifty parliamentary minorities submitted party or member bills (“motions”) that were never passed, of which approximately thirty proposed criminalizing the purchaser or both the purchaser and prostituted person).

13. *Id.* at 229–33.

14. Prop. 1981/1982:187 om vissa åtgärder mot prostitutionen [government bill] at 44–45 (Swed.) (summarizing and selectively quoting responses to a 1981 government report from considerate parties (*remissinstanser*) arguing in similar terms for criminalizing only the purchaser).

15. For MacKinnon’s speech in 1990 as it was translated then, *see* Catharine A. MacKinnon, *Pornografi och jämställdhet* [*Pornography and Gender Equality*], in *PORNOGRAFI: VERKLIGHET ELLER FANTASI?* 58, 69 (Amanda Golert & Pia Laskar trans., 1991).

16. CATHARINE A. MACKINNON, *On Sex and Violence*, in *ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES* 91, 101 (2006); *see also* MacKinnon, *Pornografi och jämställdhet*, *supra* note 15, at 69.

members of the Swedish Parliament, where the criminalization of sex purchasers was an agenda item in 1992, 1994, and 1995.¹⁷

After years of concerted effort pursuant to this theory, in 1998, the Swedish Parliament passed an omnibus bill on men's violence against women that situated prostitution and the new law in the context of sex inequality,¹⁸ rather than—as has been common around the world—among crimes against morality, decency, or the public order. The bill stated that prostitution and violence against women were “issues . . . related with each other. Men's violence against women is not consonant with the aspirations toward a gender equal society In such a society it is also unworthy and unacceptable that men obtain casual sex with women for remuneration.”¹⁹ Further, it was recognized that prostituted women often had deprived childhoods, were neglected, and early on were deprived of a sense of self-worth, as well as it was emphasized that there was a strong association between child sexual abuse and prostitution.²⁰

Compelling evidence from a broad range of countries supports the Swedish legislative conclusion that the majority of prostituted persons are sexually abused as children.²¹ Consequently, many run away from home or

17. Svanström, *supra* note 12, at 236.

18. Bet. 1997/1998:JuU13 Kvinnofrid [parliamentary committee report] (Swed.) (passed) (proposing Parliament to pass Prop. 1997/1998:55 Kvinnofrid [Women's Sanctuary] [government bill], *infra* note 19).

19. Prop. 1997/1998:55 Kvinnofrid [Women's Sanctuary] [government bill] 22 (Swed.).

20. *Id.* at 102–03.

21. See, e.g., Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 33, 43 (Melissa Farley ed., 2003) [hereinafter Farley et al., *Nine Countries*], available at <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>. Farley and her co-authors found that 59%, or 448 responding prostituted persons, affirmed that she or he “[a]s a child, was hit or beaten by caregiver until injured or bruised.” *Id.* An additional 63%, or 508 respondents, affirmed they were “sexually abused as a child.” *Id.* See also Mimi H. Silbert & Ayala M. Pines, *Entrance into Prostitution*, 13 YOUTH & SOC'Y 471, 479 (1982) (finding 60% of 200 prostituted subjects reported childhood sexual abuse from ages three to sixteen). In-depth studies of survivors show higher frequencies of abuse. See, e.g., Evelina Giobbe, *Confronting the Liberal Lies About Prostitution*, in LIVING WITH CONTRADICTIONS 120, 123 (Alison M. Jaggar ed., 1994) (referring to organization WISPER's survivor interviews in Minneapolis, where 90% reported assault and 74% sexual abuse between three to fourteen years of age); Susan Kay Hunter, *Prostitution Is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91, 98–99 (1993) (finding 85% of 123 prostitution survivors reported child incest, 90% physical abuse, and 98% emotional abuse). Likewise, the Mary Magdalene Project in Reseda, California, reported in 1985 that 80% of the prostituted women it worked with were sexually abused during childhood, and Genesis House in Chicago reported the same for 94%. Giobbe, *supra*, at 126 n.10 (citing The First National Workshop for Those Working with Female Prostitutes, Wayzata, Minnesota, Oct. 16–18, 1985); see also INES VANWESENBEECK, PROSTITUTES' WELL-BEING AND RISK 21–24 (1994) (summarizing studies on abuse and prostitution); Chris Bagley & Loretta Young, *Juvenile Prostitution and Child Sexual Abuse: A Controlled Study*, 6 CANADIAN J. COMMUNITY MENTAL HEALTH 5 (1987) (finding 73% of the study's prostituted persons were subjected to child sexual abuse);

become homeless,²² effectively living “on the street” and increasingly being exploited by unscrupulous purchasers. A low age of entry is common. Forty-seven percent of 751 prostituted persons in nine countries reported entering prostitution under age eighteen.²³ Among a sample of 200 juvenile and adult, current and former prostituted women in San Francisco, sixty-two percent started before age sixteen, and “a number” started “under 9, 10, 11 and 12.”²⁴ That is not an age when one has autonomy and power to choose one’s life’s further direction. Furthermore, because abuse and neglect of children may break their spirits and reduce their life chances, others will be able to abuse their vulnerability as adults in prostitution.²⁵ This was also evident among the 200 San Francisco juvenile and adult women, where seventy percent of those sexually abused as children explicitly reported that sexual abuse affected their entry into prostitution, while a greater number strongly indicated so in open-ended responses.²⁶ A 1995 Swedish government report, part of the law’s legislative history, corroborated these findings with those of clinical and outreach workers in Gothenburg.²⁷

Jennifer James & Jane Meyerding, *Early Sexual Experience as a Factor in Prostitution*, 7 ARCHIVES SEXUAL BEHAVIOR 31, 35–37 (1977).

22. See, e.g., Farley et al., *Nine Countries*, *supra* note 21, at 43 (reporting 75% of 761 prostituted persons in nine countries had been homeless, either currently or in the past); Silbert & Pines, *supra* note 21, at 485 (reporting over half of 200 juvenile and adult, current and former, prostituted women in San Francisco were runaways when entering prostitution; over two-thirds of the current prostituted women were runaways and 96% of prostituted juveniles were runaways).

23. Farley et al., *Nine Countries*, *supra* note 21, at 40. For the countries included and related information, see *infra* note 35.

24. Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 CHILD ABUSE & NEGLECT 407, 410 (1981). Seventy percent of these respondents were under the age of twenty-one at the time of the interview. *Id.* at 408.

25. It is notable that in addition to home problems such as childhood abuse and neglect, Silbert & Pines’s sample of 200 juvenile and adult prostituted women reportedly had an “almost total lack of positive social supports, and . . . an extremely negative self-concept and a depressed emotional state” when entering prostitution. *Id.* at 486. The “primary picture” was thus one of vulnerable runaway juveniles being “solicited for prostitution” and exploited by pimps “because they have no other means of support due to their young age, lack of education, and lack of the necessary street sense to survive alone.” *Id.* at 489. These conditions are common for entering prostitution and also make it more difficult to leave as an adult. See also *infra* notes 54–61 and accompanying text.

26. Silbert & Pines, *supra* note 24, at 410; Ronald L. Simons & Les B. Whitbeck, *Sexual Abuse as Precursor to Prostitution and Victimization Among Adolescent and Adult Homeless Women*, 12 J. FAM. ISSUES 361, 361 (1991) (finding, in a sample of forty adolescent runaways and ninety-five adult homeless women in Des Moines, Iowa, that “early sexual abuse increases the probability of involvement in prostitution irrespective of . . . [other] factors”).

27. SOU 1995:15 Könshandeln, *supra* note 10, 104 (citing Mimi H. Silbert & Ayala M. Pines, *Early Sexual Exploitation as an Influence in Prostitution*, 28 SOCIAL WORK 285, 286 (1983)).

The number of children being sexually exploited in Sweden is, unfortunately, still “significant” according to a 2004 government report.²⁸ Similarly, new findings among young adults prostituted in the Gothenburg area also confirm high associations to prior childhood (sexual) abuse, neglect, and homelessness,²⁹ further corroborated in nationally representative youth surveys (including LGBT populations) that add socioeconomic factors and nationality as predictors of entry to prostitution.³⁰ Additionally, as the Swedish National Council for Crime Prevention (BRÅ) recently found, poverty and discrimination are two key structural factors for recruitment into trafficking to Sweden, Finland, and Estonia.³¹ Many women and girls belong to minority groups such as the Baltic Russian-speaking minority and the Roma people in Eastern Europe, and the “majority come from the lowest social strata.”³² Many were “single mothers” and unemployed.³³ Such factors, and

28. SOU 2004:71, *Sexuell exploatering av barn i Sverige*, del.1 [government report series] 15–16 (Swed.).

29. JONNA ABELSSON & ANNA HULUSJÖ, *I SEXUALITETENS GRÄNSTRAKTER: EN STUDIE AV UNGDOMAR I GÖTEBORG MED OMNEJD SOM SÄLJER OCH BYTER SEXUELLA TJÄNSTER* [AROUND THE BORDERS OF SEXUALITY: A STUDY OF YOUTH IN GOTHENBURG AND SURROUNDINGS WHO SELL OR BARTER SEXUAL SERVICES] 97–99 (2008).

30. Gisela Priebe & Carl-Göran Svedin, *Unga, sex och internet*, in SE MIG: UNGA OM SEX OCH INTERNET [SEE ME: YOUTH ON SEX AND INTERNET] 74–75, 110, 112, 135 (Ungdomsstyrelsen [Nat’l Bd. for Youth Affairs] ed., 2009); Ungdomsstyrelsen, *Erfarenheter av sexuell exponering och sex mot ersättning* [Experience of Sexual Exposure and Sex for Remuneration], in SE MIG: UNGA OM SEX OCH INTERNET, *supra*, at 156, 158, 161–69.

31. BROTTSFÖREBYGGANDE RÅDET [BRÅ] [SWEDISH NAT’L COUNCIL FOR CRIME PREVENTION], THE ORGANISATION OF HUMAN TRAFFICKING: A STUDY OF CRIMINAL INVOLVEMENT IN SEXUAL EXPLOITATION IN SWEDEN, FINLAND AND ESTONIA 36–43 (2008), available at <http://www.bra.se/>.

32. *Id.* at 8. Although the study had found a few “exceptions” of educated women from “better circumstances,” it is notable that the reason stated for their prostitution was a need for money (e.g., to finance their studies). *Id.* at 39. Furthermore, no information is provided to account for whether these persons had not also been subjected to childhood abuse or neglect, or were otherwise vulnerable. *Id.* at 36–43. Regarding the overrepresentation of colored women and girls in Canadian and U.S. prostitution, see, for example, 2 SPECIAL COMM. ON PORNOGRAPHY AND PROSTITUTION, PORNOGRAPHY AND PROSTITUTION IN CANADA 347 (1985) (“On the prairies . . . most of the prostitutes are young native women . . .”); Melissa Farley, Jacqueline Lynne & Ann J. Cotton, *Prostitution in Vancouver: Violence and the Colonization of First Nations Women*, 42 TRANSCULTURAL PSYCHIATRY 242, 242 (2005) (finding 52% of 100 prostituted women of First Nations descent, 1.7–7% of Vancouver’s population); Vednita Nelson, *Prostitution: Where Racism and Sexism Intersect*, 1 MICH. J. GENDER & L. 81, 83 (1993) (“Racism makes Black women and girls especially vulnerable to sexual exploitation and keeps them trapped in the sex industry.”); see also Aboriginal Women’s Action Network, AWAN Address to the People’s Tribunal on Commercial Sexual Exploitation (Mar. 18–20, 2011), <http://www.facebook.com/notes/aboriginal-womens-action-network/aboriginal-womens-action-network-address-to-the-peoples-tribunal-on-commercial-s/10150161363946691> (last visited Sept. 21, 2011) (stating that Aboriginal women’s overrepresentation in prostitution in Vancouver “is not simply a coincidence”).

33. BRÅ, *supra* note 31, at 56.

not being kidnapped,³⁴ explain how they entered prostitution. Hence, in most situations, coercive circumstances—including child sexual abuse, homelessness, sex discrimination, economic discrimination, and often racial discrimination—propel persons into prostitution.

Regarding traumatic experiences, a nine-country study by Melissa Farley and others found that sixty-eight percent of 840 prostituted persons met the clinical criteria for posttraumatic stress disorder (PTSD) symptoms at levels equal to or higher than the levels of symptoms found in treatment-seeking Vietnam veterans, battered women seeking shelter, or refugees fleeing from state-organized torture, regardless of whether prostitution was legalized or criminalized, and regardless of whether the prostitution took place indoors, in brothels, on the streets, or in developing as opposed to fully industrialized countries.³⁵ Professional practitioners working with trauma and recovery of women prostituted in Sweden testify that what is common with all women they encounter are “the severe posttraumatic stress reactions manifested in the forms of serious mental disorders such as severe sleep and concentration disorders, recurrent anxiety and panic attacks, grave depressions, severe anorectic reactions, self-destructive behaviors combined with extensive dissociation, problems with impulse control, and manifest or latent suicidality.”³⁶ Additionally, suggesting doubts about the position recently taken in the case *Bedford v. Canada* in Ontario that PTSD “could be caused by events unrelated to prostitution,”³⁷ a 2009 Korean study involving forty-six former indoor-prostituted persons and a control group found

34. The Council mentions that, although there have been abduction “reports” from Kosovo and Albania, in their survey of trafficking in Estonia, Finland, and Sweden only *one* woman reported being abducted. *Id.* at 50. The Council also notes that traffickers try to avoid the risks associated with such women, who will presumably try to escape; thus, traffickers avoid recruitment by kidnapping. *Id.*

35. Farley et al., *Nine Countries*, *supra* note 21, at 44–48. Researchers sampled prostituted persons (1) on streets in Canada; (2) in brothels, stripclubs, streets, or massage parlors in Mexico; (3) at clinics for STD controls in Turkey (respondents not “seeking assistance/treatment”); (4) by local newspaper advertisements, drop-in shelters for drug addicted women, and peer-referred in Germany; (5) randomly, in four different San Francisco street areas; (6) at a beauty parlor in Thailand and at a job training/nonjudgmental support agency in northern Thailand; (7) at brothels, streets, and drop-in centers for prostituted persons in Johannesburg and Capetown, South Africa; (8) at a nongovernmental organization supporting approximately 600 women a week in Lusaka, Zambia; and (9) at support agencies in Bogota, Colombia. Male and transgendered persons were included among the Thai, South African, and U.S. samples. For more information, see *id.* at 37–39.

36. Luis Ramos-Ruggiero & Brita Hännestrand, Utlåtande: Angående unga kvinnors psykiska tillstånd och reaktioner orsakad av prostitution och trafficking [Statement: Regarding Young Women’s Mental Condition and Reactions Caused by Prostitution and Trafficking] (Kris- och Traumacentrum Sverige AB [Traumacenter Sweden], 2010) (updated Oct. 12, 2010) (on file with journal).

37. *Bedford v. Canada*, 2010 ONSC 4264, [2010] O.J. No. 4057 ¶ 353 (Can. Ont. Super. Ct.) (QL).

that prostitution was strongly related to PTSD even when controlling for childhood abuse.³⁸

Not surprisingly, it is well known and well documented that pimps and purchasers commonly use threats and violence. For instance, seventy percent of the 200 prostituted females in San Francisco reported that purchasers raped or similarly victimized them “beyond the prostitution contract” on average 31.3 times;³⁹ eighty-four percent out of a group of fifty-five female prostitution survivors participating in a project in Portland, Oregon, had been subjected to aggravated assault an average of 103 times a year; seventy-eight percent were subject to rape forty-nine times a year; and fifty-three percent were sexually tortured more than once a week, often while being filmed or photographed for pornography.⁴⁰ Indeed, in the nine-country study, forty-nine percent among 749 responding persons reported being used in pornography and were diagnosed with “significantly more severe symptoms” of PTSD than were those who did not report being in pornography,⁴¹ suggesting that prostitution in pornography is particularly vicious. Independent witnesses in Swedish procuring and trafficking cases regrettably confirm the abusive image of prostitution, with their testimonies of daily beatings, gang rapes, or torture.⁴² Even an individual purchaser or pimp who does not inflict such abusive harm in every instance nonetheless contributes to the accumulated harm by exploiting a person so severely traumatized (including when the abuse primarily happened during childhood). In order to properly account for that harm, the diagnosis of PTSD symptoms provides a particularly pertinent instrument during trials and preliminary investigations. As was recently done in a number of British trafficking cases, plaintiffs’

38. Hyunjung Choi et al., *Posttraumatic Stress Disorder (PTSD) and Disorders of Extreme Stress (DESNOS) Symptoms Following Prostitution and Childhood Abuse*, 15 VIOLENCE AGAINST WOMEN 933, 942 (2009).

39. Mimi H. Silbert & Ayala M. Pines, *Occupational Hazards of Street Prostitutes*, 8 CRIM. JUST. & BEHAV. 395, 397 (1981). Evidence suggests purchasers are generally responsible for most violence against prostituted persons. See, e.g., 2 SPECIAL COMM. ON PORNOGRAPHY AND PROSTITUTION, *supra* note 32, at 388 (stating purchasers were the “primary source of sexual violence”); Jody Raphael & Deborah L. Shapiro, *Violence in Indoor and Outdoor Prostitution Venues*, 10 VIOLENCE AGAINST WOMEN 126, 135 (2004) (noting that, in a sample of 222 women in Chicago, Illinois, purchasers were the “most frequently identified perpetrators of violence across all types of prostitution”).

40. Hunter, *supra* note 21, at 93–94.

41. Melissa Farley, *Renting an Organ for Ten Minutes*, in PORNOGRAPHY: DRIVING THE DEMAND IN INTERNATIONAL SEX TRAFFICKING 144, 146, 422 n.298 (David E. Guinn & Julie DiCaro eds., 2007) (Pearson $r = 126$, $p = .001$, $n = 749$). For the nine-country study, see Farley et al., *Nine Countries*, *supra* note 21.

42. See, e.g., Helsingborgs tingsrätt (TR) [Helsingborg Dist. Ct.] 2005-09-25, B 1230-05 *passim* (Swed.), *sentences modified by Hovrätten över Skåne och Blekinge* [Scania & Blekinge Ct. App.] 2006-01-11, B 2429-05 (Swed.); see also Stockholms tingsrätt (TR) [Stockholm Dist. Ct.] 2003-03-21, B 4205-02, at 13 *et seq.* (Swed.) (several testimonies of daily beatings, gang rapes, and torture, by Nadja, Julia, Renata, and Olesia), *sentence modified by Svea hovrätt* [Svea Ct. App.] 2003-06-23, B 2831-03, at 15 *et seq.* (Swed.) (additional testimonies).

attorneys should submit a diagnosis of the PTSD symptoms of the prostituted persons, followed by additional inquiries about their suffering and situation to assess their damages.⁴³ Using this documentation provides persuasive evidence that purchasers and pimps have contributed to harm, and thus should pay damages.

Unfortunately, many Swedish cases involving pimps never result in formal charges or convictions under trafficking,⁴⁴ rape, assault, or unlawful deprivation of liberty laws, even where such crimes have been committed de facto; rather, these crimes are pursued under the less stringent procuring provisions, suggesting that prostituted persons are unequal under the law.⁴⁵ However, the 1995 Swedish government report had already noted that violence, abuse, and coercion were frequent in prostitution:

It is common that women in the sex trade are subjected to various forms of violations such as physical abuse and rape. Some purchasers conceive the situation such as that they, since they're paying, have a right to treat the woman as they wish. The purchaser thinks that he has . . . also paid for the woman's right to a human and dignified treatment.⁴⁶

Consistent with these remarks, more recent studies also show that many purchasers perceive it as their right to demand whatever acts they are paying for,⁴⁷ which documented harm and trauma in commercial sexual exploitation

43. See, e.g., *AT v. Dulghieru*, [2009] EWHC (QB) 225, [et passim] (Eng.) (citing, inter alia, a report from Dr. Monica Thompson, a single joint expert).

44. See, for example, FANNY HOLM, BROTTSOFFERMYNDIGHETEN [SWEDISH CRIME VICTIM COMPENSATION AND SUPPORT AUTHORITY], UTBETALNING AV BROTTSSKADEERSÄTTNING TILL OFFER FÖR MÄNNISKOHANDEL [PAYMENTS OF CRIMINAL DAMAGE REIMBURSEMENTS TO VICTIMS OF HUMAN TRAFFICKING] 14 (2010), available at <http://www.brottsoffermyndigheten.se/default.asp?id=3850>, where a review was reported of all human trafficking cases since July 2002 and "some seventy judgments" since March 1999 on "accounts of the criminal acts of procuring or gross procuring, despite that in the description of the acts is accounted for a sequence of events that exhibit very large similarities to, or are completely identical with, those that could give rise to liability for human trafficking for sexual purposes." Holm notes that "[t]his may have the consequence that the victim, rather than as injured party, is considered as a witness and therefore is not given the opportunity to assist the prosecution, claim reimbursement in the scope of the criminal proceeding, or to receive an injured party's legal counsel." *Id.* at 15.

45. For examples and analysis, see PETITIONERS ET AL., SUGGESTIONS, *supra* note † at 22–29.

46. SOU 1995:15 *Könshandeln*, *supra* note 10, at 142.

47. Of 103 male sex purchasers interviewed in London, 27% openly explained that once having paid "the customer is entitled to engage in any act he chooses"; 47% openly expressed to a greater or lesser degree that "women did not always have certain rights during prostitution." MELISSA FARLEY, JULIE BINDEL, & JACQUELINE M. GOLDING, *MEN WHO BUY SEX* 4, 13 (2009), [hereinafter FARLEY ET AL., *MEN WHO BUY SEX*] available at http://www.eaves4women.co.uk/Documents/Recent_Reports/MenWhoBuySex.pdf; see also RACHEL DURCHSLAG & SAMIR GOSWAMI, *DECONSTRUCTING THE DEMAND FOR PROSTITUTION* 7, 18 (2008), available at <http://www.caase.org/pdf/resources/17-deconstructing-the-demand-for-prostitution.pdf> (finding 43% of 113 sex purchaser-interviewees in Chicago stated the

evidences also. Such treatment is possible because prostitution usually entails a massive power imbalance against the prostituted person, often simply because of the desperate position that causes her entry into prostitution and keeps her from leaving it. The 1995 Swedish government report described one such instance where a “club” that sold pornographic movies had produced its own videos in its basement, in which any male guest could perform with the women for approximately ten dollars.⁴⁸ One twenty-year-old woman in great need of money was put through two “seasoning” sessions where more men were introduced each time. The girl was expected to perform for less than \$100. After the first two sessions, she finally found herself having to serve over ten men from a large crowd with vaginal and oral intercourse, and a completely unprepared anal intercourse.⁴⁹ Police investigated several similar reports and testimonies at the time according to the 1995 Swedish government report, which additionally stated that she “had been very ill because of what had happened,” and also that she did not get the full pay promised.⁵⁰

Similarly, legalization cannot address the power imbalance between the purchaser and the prostituted woman and, among other things, his demand for unsafe or high-risk sex.⁵¹ In the state of Victoria, Australia, legalization appears rather to lead to competition and increasing demands that women perform unsafe or high-risk practices and accept unwanted purchasers.⁵² Correspondingly, during three years of research interviews in Nevada (where prostitution is legal in several counties), Melissa Farley received a number of accounts in which women were fired from legal brothels upon receiving a positive HIV test, while brothels appeared uninterested in the women’s lives and health.⁵³ This is to be expected, considering the fact that purchasers’ money—and not the women or their choices—drives the business. That is what inequality looks like. Some scholars and most courts, as well as the existing structure of laws in most jurisdictions, do not adequately perceive this inequality. The *Bedford v. Canada* ruling appears to have failed in this regard, invalidating a provision against “living on the avails” of pros-

woman “should do anything he asks” when paid); Melissa Farley et al., *Attitudes and Social Characteristics of Men Who Buy Sex in Scotland*, PSYCHOL. TRAUMA: THEORY RES. PRAC. & POL’Y 3, 7 (Advance online publication Mar. 28, 2011), available at <http://www.prostitutionresearch.com/pdfs/Farley,Macleod et al 2011 Men Who Buy Sex In Scotland.pdf> (reporting that 22% of 110 Scotland purchasers said that the paying customer is “entitled to do whatever he wants to the woman”); Farley, *supra* note 41, at 149–51 (quoting from interviews).

48. SOU 1995:15 *Könshandeln*, *supra* note 10, at 96.

49. *Id.* at 96–97.

50. *Id.* at 97.

51. See, e.g., MARY LUCILLE SULLIVAN, MAKING SEX WORK 106, 264–65 (2007).

52. See, e.g., MARY LUCILLE SULLIVAN, WHAT HAPPENS WHEN PROSTITUTION BECOMES WORK? AN UPDATE ON LEGALISATION OF PROSTITUTION IN AUSTRALIA 7 (2005), available at http://action.web.ca/home/catw/attach/Sullivan_proof_01.pdf.

53. See Melissa Farley, *Legal Brothel Prostitution in Nevada*, in PROSTITUTION AND TRAFFICKING IN NEVADA, *supra* note 5, at 18, 21, 39–45.

titution that had been used against pimping and traffickers.⁵⁴ The outcome is that third-party involvement, without more, is principally regarded as beneficial for prostituted persons' security,⁵⁵ rather than being the exploitation, and indeed the pimping/trafficking that it is.

Even prostituted women not exploited by pimps often face economic hardships coercing them to stay put, thus keeping them exploited. A woman interviewed for the 1995 Swedish government report stated that she had been prostituted for twenty-five years and claimed that she could choose her customers carefully; nonetheless, she said that, above all else, she wanted to escape prostitution but could not:

The problem is that I cannot enter schools, courses, or work-places. I have no papers and I cannot account for what I have done during all these years. I get anxious for the future. It is too late for me now to change my life. Nonetheless, I am afraid to get stuck in prostitution. I cannot imagine going around here until age 50–60. For me, it is now burdensome and difficult to walk the streets. It is onerous to stand here.⁵⁶

Thus, if purchasers can buy persons and pimps can sell them for sex, but the persons themselves want to escape and cannot, (as explicitly reported by eighty-nine percent of 785 persons in nine countries⁵⁷) then according to the Slavery Convention, these persons appear to be in a "status or condition . . . over whom any or all of the powers attaching to the right of ownership are exercised."⁵⁸ Undoubtedly, all of these prostituted persons are in a position of vulnerability that the interpretive notes to the Palermo Protocol define as "any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved."⁵⁹ The exploitation of the persons' lack of alternatives is a reason why, in response to demands to criminalize prostituted persons, the 1998 Swedish legislature concluded that it is "not reasonable also to criminalize the one who, at least in most cases, is the weaker party whom is exploited by others who want to

54. Bedford v. Canada, 2010 ONSC 4264, [2010] O.J. No. 4057 ¶¶ 259–72, 379 (Can. Ont. Super. Ct.) (QL).

55. See, e.g., *id.* ¶¶ 429–31.

56. SOU 1995:15 *Könshandeln*, *supra* note 10, at 75.

57. Farley et al., *Nine Countries*, *supra* note 21, at 51, 56.

58. Convention to Suppress the Slave Trade and Slavery, art. 1(1), Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253 (entered into force Mar. 9, 1927).

59. Rep. of the Ad Hoc Comm. on the Elaboration of a Convention Against Transnational Organized Crime on the Work of Its First to Eleventh Sessions, Addendum, Interpretative Notes for the Official Records (*Travaux Préparatoires*) of the Negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, ¶ 63, U.N. Doc. A/55/383/Add.1 (Nov. 3, 2000) [hereinafter *Travaux Préparatoires* to the Palermo Protocol].

satisfy their own sexual drive.”⁶⁰ By recognizing the clear link between prostitution and trafficking—that the reality of prostitution “usually does satisfy the elements of trafficking”⁶¹—it becomes evident that in order for trafficking to end, prostitution must end as well. The question, then, is how successful has the Swedish law been?

II. IMPACT OF THE SWEDISH LEGISLATION

In 1995, the government estimated that there were approximately 2500 to 3000 prostituted women in Sweden, of whom 650 were on the streets.⁶² In contrast, a study published in 2008 estimated that approximately 300 women were prostituted on the streets, while 300 women and fifty men were found in prostitution being advertised online.⁶³ Comparable methods of approximation have been used in Denmark, where sex purchase is legal. Even though Denmark only has a population of 5.6 million⁶⁴ while Sweden has 9.4 million,⁶⁵ Sweden’s prostituted population is approximately one-tenth of Denmark’s. Approximations suggest that at least 5567 persons are visibly in prostitution in Denmark, among whom 1415 were on the streets.⁶⁶ A Danish nongovernmental organization (NGO) claimed street numbers were exaggerated, but even without street numbers, the difference in prostitution between Sweden and Denmark is staggering.⁶⁷ Using similar methods of

60. Prop. 1997/1998:55 Kvinnofrid [government bill] 104 (Swed.); *see also* Bet. 1997/1998:JuU13 Kvinnofrid [parliamentary committee report] (Swed.) (dismissing minority motions proposing criminalizing both parties).

61. U.N. 2006 Trafficking Report, *supra* note 6, ¶ 42.

62. SOU 1995:15 Könshandeln, *supra* note 10, at 10, 99.

63. Charlotta Holmström, *Prostitution och människohandel för sexuella ändamål i Sverige: Omfattning, förekomst och kunskapsproduktion [Prostitution and Trafficking for Sexual Purposes in Sweden: Extent, Occurrence, and Knowledge Production]*, in PROSTITUTION I NORDEN: FORSKNINGSRAPPORT [PROSTITUTION IN THE NORDIC: RESEARCH REPORT] 303, 314 (Charlotta Holmström & May-Len Skilbrei eds., 2008).

64. Statistics Denmark, Quarterly Population, 2011Q2 (Feb. 9, 2011), http://www.dst.dk/HomeUK/Statistics/Key_indicators/Population/pop_quarterly.aspx.

65. Press Release, Statistiska Centralbyrån [SCB] [Statistics Sweden], Trend Break for Increased Births (Aug. 15, 2011), http://www.scb.se/Pages/PressRelease____318978.aspx.

66. Charlotta Holmström & May-Len Skilbrei, *Nordiska prostitutionsmarknader i förändring [Nordic Markets for Prostitution Under Change]*, in PROSTITUTION I NORDEN, *supra* note 63, at 9, 14.

67. A so-called sex workers’ organization in Denmark claimed that street prostitution in Copenhagen had been overestimated by 1000 persons, attributing these numbers to an NGO called Reden that works with prostituted women in outreach programs. *See* Pressemeldelse [Press Release], Sexarbejdernes Interesse Organisation (SIO), Svensk rapport bygger på forkerte tal for Danmark; Nu må Reden sige sandheden (July 4, 2010), <http://s-i-o.dk/wordpress/?p=58>. However, the researchers’ numbers on indoor prostitution, particularly “clinic prostitution,” which on their own were estimated to include 3278 persons, *see* Holmström & Skilbrei, *supra* note 66, at 14, were based primarily on advertising—and not on any information from Reden. *See* Jeanett Bønness, *Holdninger til prostitution i Danmark*, in PROSTITUTION I NORDEN, *supra* note 63, at 101, 107.

approximation in Norway (population 4.9 million),⁶⁸ there were 2654 prostituted women, of whom 1157 were on the street in 2007 when purchasing sex was still legal,⁶⁹ which is well over eight times more per capita than in Sweden. Although the Nordic numbers are not exact, as comparative approximations they are more than sufficient.

According to both NGOs and government agencies in Stockholm, Gothenburg, and Malmö, briefly after the law's enactment "the sex trade virtually disappeared from the street," although it did later return, "albeit to a lesser extent."⁷⁰ In Stockholm, the number of purchasers was reported by police to have decreased by almost eighty percent in 2001.⁷¹ As reported in 2007, social workers in Stockholm encountered only fifteen to twenty prostituted persons per night, whereas they encountered up to sixty per night prior to the law.⁷² In Malmö, social workers encountered 200 women a year prior to the law, but a year after the law, they encountered 130, and in 2006, only sixty-six.⁷³ In Gothenburg, data indicate that street prostitution declined from one hundred to thirty persons a year between 2003 and 2006.⁷⁴

Despite the misinformation (discussed further below) spreading what is sometimes simply rumors of how, after the law's enactment, there was a stronger move from street prostitution to internet or other indoor, allegedly "hidden" prostitution venues in Sweden as compared to elsewhere, no information, empirical evidence, or other research suggests that this has actually occurred.⁷⁵ Concurring with these observations, the National Criminal Investigation Department states that its telephone interceptions show that international traffickers and pimps have been disappointed with the prostitution market in Sweden.⁷⁶ Consequently, the latter's clandestine

68. *Focus on Population*, STATISTICS NORWAY, http://www.ssb.no/english/subjects/02/befolkning_en/ (last visited Sept. 21, 2011).

69. Marianne Tveit & May-Len Skilbrei, *Kunnskap om prostitusjon og menneskehandel i Norge* [Knowledge of Prostitution and Human Trafficking in Norway], in PROSTITUTION I NORDEN, *supra* note 63, at 213, 220–21 (noting that among those not on the street in Norway, the numbers were based on those who sought support from social agencies or whose advertisement was found on the internet or in a newspaper); *see also* Holmström & Skilbrei, *supra* note 66, at 13.

70. SOCIALSTYRELSEN [SoS] [NAT'L BD. OF HEALTH AND WELFARE], PROSTITUTION IN SWEDEN 2007, at 33 (2008), available at http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65_200812665.pdf.

71. Caspar Opitz, *Gatans sexhandel minskar* [The Street's Sex Trade Decreases], DAGENS NYHETER [DAILY NEWS], June 29, 2001, at 7.

72. SoS, *supra* note 70, at 33.

73. *Id.*

74. *Id.* at 34.

75. SOU 2010:49 Förbud mot köp, *supra* note 8, at 118, 152.

76. RIKSPOLISSTYRELSEN [NAT'L CRIMINAL INVESTIGATION DEP'T, SWED.] [NCID], LÄSGESRAPPORT 10: MÄNNISKOHANDEL FÖR SEXUELLA OCH ANDRA ÄNDAMÅL 2007–2008 [SITUATION REPORT NO. 10: TRAFFICKING FOR SEXUAL AND OTHER PURPOSES 2007–2008] 10 (2009); *cf.* NCID, TRAFFICKING IN WOMEN: SITUATION REPORT NO. 5, at 34 (2003) [hereinafter NCID REPORT NO. 5] (noting reduced demand after 1999).

brothels in Sweden are fairly small enterprises, with police operations rarely finding more than three or four prostituted women at one time,⁷⁷ compared to the twenty to sixty women commonly included in certain criminal activities in the rest of Europe.⁷⁸ These international traffickers and pimps avoid conducting prostitution for too long in any one apartment or location in order to calm customers' fears of getting caught.⁷⁹ This "necessity" for "several premises" has been corroborated in telephone interceptions, testimonies from prostituted women, police reports in the Baltic states, and in almost all preliminary investigations of procuring or trafficking charges.⁸⁰

Moreover, the passing of the law, in and of itself, seems to have changed public sentiment. In 1996, only forty-five percent of women and twenty percent of men in Sweden were in favor of criminalizing male sex purchasers.⁸¹ In 1999, eighty-one percent of women and seventy percent of men were in favor of criminalizing the purchase of sex; in 2002, eighty-three percent of women and sixty-nine percent of men were in favor; and, in 2008, seventy-nine percent of women and sixty percent of men favored the law.⁸² Furthermore, the number of men who reported, in the national population samples, having purchased sex seems to have dropped from 12.7% in 1996⁸³ (before the law took effect) to 7.6% in 2008.⁸⁴ The method used for approximation, self-reported anonymous crime surveys, has repeatedly been proven reliable in a number of scientific reviews.⁸⁵ Asked about the law's effects on their own purchase of sex in 2008, respondents stated they had

77. *Id.*

78. SOU 2010:49 Förbud mot köp, *supra* note 8, at 122.

79. NCID, REPORT NO. 5, *supra* note 76, at 34.

80. *Id.* The use of several premises may be observed by reading individual case-opinions from Swedish courts.

81. Sven-Axel Månsson, *Commercial Sexuality, in SEX IN SWEDEN: ON THE SWEDISH SEXUAL LIFE 1996*, at 235, 249 (Nat'l Inst. of Pub. Health & Bo Lewin eds., 2000).

82. Jari Kuosmanen, *Tio år med lagen [Ten Years with the Law]*, in *PROSTITUTION I NORDEN*, *supra* note 63, at 357, 361–62. While the drop-out rate was considerably high in the 2008 survey, which had been sent to 2500 persons, with only 43% of men and 57% of women responding ($n = 1134$), its results nonetheless are consistent with other surveys conducted in 1999 and 2002, and with a study done in 1996 before the law took effect. *Id.* at 359–60.

83. Månsson, *supra* note 81, at 238.

84. Kuosmanen, *supra* note 82, at 368.

85. See, e.g., David Huizinga & Delbert S. Elliot, *Reassessing the Reliability and Validity of Self-Report Delinquency Measures*, 2 J. QUANTITATIVE CRIMINOLOGY 293, 294, 324 (1986) (stating that "these measures have acceptable levels of reliability and validity as judged by conventional social-science standards," *id.* at 294 (multiple citations omitted), and that "self-report measures are among the most promising of our measures of criminal behavior and are, perhaps, the only measures capable of meeting the needs of both descriptive and etiological research," *id.* at 324); Josine Junger-Tas & Ineke Haen Marshall, *The Self-Report Methodology in Crime Research*, 25 CRIME & JUST. 291, 354 (1999); Terence P. Thornberry & Marvin D. Krohn, *The Self-Report Method for Measuring Delinquency and Crime*, 4 MEASUREMENT & ANALYSIS CRIME & JUST. 33, 72 (2000).

not increased their purchase of sex, had not started purchasing sex outside of Sweden, and had not begun purchasing sex in “non-physical” forms.⁸⁶

The changed circumstances in Sweden after the law’s enactment, especially compared to its neighbors, highlight the strong deterrent effect of the law, even if conviction rates have not been staggering. Convictions went from 10 in 1999 to 29 in 2000, 38 in 2001, 37 in 2002, 72 in 2003, 48 in 2004, 105 in 2005, 114 in 2006, 85 in 2007, 69 in 2008, 107 in 2009, and 326 in 2010.⁸⁷ However, in 2010 there was a dramatic increase in crimes reported to the police, the customs authority, and the prosecution service—1251 reported sex purchases—compared with the previous highest annual number of 460, reported in 2005.⁸⁸ In 2010, there were also 231 reported “purchases of a sexual act from a child” (under age eighteen), a crime for which the maximum penalty is two years.⁸⁹ The reasons for this increase in 2010 appear to be due to particular funds allotted by the Government’s Action Plan against “prostitution and trafficking” and one large, local case of organized pimping in Jämtland in northern Sweden.⁹⁰

From the perspectives of international jurisdictions, the Swedish law’s effects are notable. Studies suggest that with legalization comes an increased demand for more prostituted persons.⁹¹ Indeed, legalization appears to be associated with a culture in which prostitution and sexual coercion are more normalized.⁹² Moreover, to meet the increased demand for prostitution, there

86. Kuosmanen, *supra* note 82, at 372–73.

87. BRÅ [Swedish Nat’l Council for Crime Prevention], Statistics, National Criminal Statistics Database, Sweden, [hereinafter National Criminal Statistics Database] available at <http://www.bra.se> (under “Statistik,” follow “Personer lagförda (dömda m m) för brott,” then select year prior to 2004 under “Samtliga lagföringsbeslut. Årvis: Lagföringsbeslut efter huvudbrott och huvudpåföljd,” and from 2004 under “Samtliga lagförda brott”). In both cases, numbers include orders for summary penalty and district court sentences, but not appeals and not persons simultaneously convicted for offenses with a higher penalty (i.e., the “primary crime” (*huvudbrott*)). See SCB [Statistics Sweden], Beskrivning av statistiken [Description of the Statistics], http://www.scb.se/Pages/ProductDocumentations___19175.aspx (select year, then read under heading “B. Kvalitetsdeklaration”). Note also that, before April 1, 2005, the Sex Purchase Law was not inserted into the criminal code but was cited as a special law: LAG OM FÖRBUD MOT KÖP AV SEXUELLA TJÄNSTER (Svensk författningssamling [SFS] 1998:408) (Swed.), available at <http://62.95.69.3/SFSdoc/98/980408.PDF>, superseded by statute, BRB 6:11. There were some differences in wordings between the two.

88. National Criminal Statistics Database, *supra* note 87. Reports may, or may not, result in convictions.

89. See BRB 6:9. For number statistics, see the National Criminal Statistics Database, *supra* note 87.

90. See Anna Helmersson, *Anmälda sexköp har fördubblats* [Reported Sex Purchases Doubled], DAGENS NYHETER [DAILY NEWS], July 27, 2010, <http://www.dn.se/nyheter/sverige/anmalda-sexkop-har-fordubblats>.

91. See generally SULLIVAN, *supra* note 51; SULLIVAN, *supra* note 52; Farley, *supra* note 53.

92. See, e.g., Melissa Farley, Mary Stewart & Kyle Smith, *Attitudes Toward Prostitution and Sexually Coercive Behaviors of Young Men at the University of Nevada at Reno*, in PROSTITUTION AND TRAFFICKING IN NEVADA, *supra* note 5, at 173–80 (surveys comparing

is often a corresponding increase in cross jurisdictional trafficking.⁹³ In Sweden in 2008, though, there were no such reported large groups of foreign women being prostituted visibly as there were in Norway, Denmark, and Finland.⁹⁴ This is notable also compared to the Netherlands, where, in 1999, half of all prostituted persons were estimated to be foreign born.⁹⁵ Previously, in 1994 and 1995, the Amsterdam police had also estimated that approximately seventy-five percent of all prostituted persons “behind windows in the Red Light district, De Wallen, were foreigners and that 80 percent of all foreign prostitutes [*sic*] are in the country illegally.”⁹⁶ In 2008, the *New York Times* reported that, after legalization reforms in 2000, the situation had deteriorated further.⁹⁷ In contrast, other countries—including Norway,⁹⁸ Iceland,⁹⁹ and, to some extent, South Korea¹⁰⁰ and the United

undergraduate men in California, Iowa, Oregon, and Texas (n = 783) with similar men in Nevada (n = 131), finding that the latter, to a significantly higher extent, normalized sexual exploitation, prostitution, and sexual violence such as rape myths). Cf. Melissa Farley, *Adverse Effects of a Prostitution Culture on Nonprostituting Women*, in PROSTITUTION AND TRAFFICKING IN NEVADA, *supra* note 5, at 181–86.

93. There are findings in Victoria, Australia, and similar indications in Nevada as well suggesting, for instance, that prostituted women and minors are regularly moved between legal and illegal venues by pimps for reasons which appear to include money laundering, changed demand, and avoiding law enforcement scrutiny. SULLIVAN, *supra* note 51, at 202–03, 206, 225–26, 243; Melissa Farley, *Trafficking for Legal and Illegal Prostitution in Nevada*, in PROSTITUTION AND TRAFFICKING IN NEVADA, *supra* note 5, at 103–05, 118–21; Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS, *supra* note 21, at 315, 320. Regarding interstate trafficking, among a sample of forty-five women in legal Nevada brothels, thirty-two had moved there from another state in the United States, and 58% had been in prostitution in other states. Farley, *supra*, at 104. Not surprisingly, the president of the Nevada Brothel Owners Association in 1994 said that 90% of prostituted persons in the legal brothels in Storey, Nye, and Lyon counties were not Nevada residents. See LENORE KUO, PROSTITUTION POLICY 80 (2005).

94. Holmström & Skilbrei, *supra* note 66, at 16–17.

95. SOU 2010:49 Förbud mot köp, *supra* note 8, at 163.

96. Gerben J.N. Bruinsma & Guus Meershoek, *Organized Crime and Trafficking in Women from Eastern Europe in the Netherlands*, in ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE 105, 107 (Phil Williams ed., 1999).

97. See Marlise Simons, *Amsterdam Tries Upscale Fix for Red-Light District Crime*, N.Y. TIMES, Feb. 24, 2008, at A10 (citing reports suggesting over 75% of Amsterdam’s 8000 to 11,000 prostituted persons are from Eastern Europe, Africa, and Asia, as well as statements by Amsterdam’s mayor that reforms did not give more transparency or protection to women, but, rather, just the opposite).

98. ALMINDELIG BORGERLIG STRAFFELOV (STRAFFELOVEN) [CRIMINAL CODE] Ch. 19, § 202a (Nor.), available at <http://www.lovdato.no/cgi-wift/ldles?doc=/all/nl-19020522-010.html>.

99. See Comm. on the Elimination of All Forms of Discrimination Against Women, *Response to the Recommendations Contained in the Concluding Observations of the Committee Following the Examination of the Fifth and Sixth Periodic Reports of the State Party on 8 July 2008* (Iceland), U.N. Doc. CEDAW/C/ICE/CO/6/Add.1 (May 27, 2011).

Kingdom¹⁰¹—are starting to adopt aspects of the Swedish model. A similar law was also proposed by the Government of India.¹⁰²

III. MISINFORMATION ABOUT SWEDEN'S LAW

Unfounded rumors have circulated internationally about Sweden's law, surprisingly often attributed to one Swedish prostitution commentator, Petra Östergren, and an old unpublished English-language piece of hers.¹⁰³ For instance, the Sex Worker Education and Advocacy Taskforce (SWEAT) promulgated her claims to the South African Law Reform Commission (SALRC) in 2009, but never referred to any published research from Sweden.¹⁰⁴ Östergren argues, *inter alia*, that "[a]ll of the authorities say that there is no evidence that prostitution was lower overall" and that "hidden prostitution had probably increased."¹⁰⁵ However, none of the reports Östergren cites were published more than two years after the law took effect. Data before and after the law took effect, as well as comparative data from other Nordic countries, undoubtedly show Östergren's claims are not correct.¹⁰⁶ Moreover, Östergren claims that women in street prostitution faced a tougher "time" after the law's enactment with, *inter alia*, more demands for unsafe sex and more violent purchasers.¹⁰⁷ Not surprisingly, the National Board of Health and Welfare's 2000 report that Östergren cites is, according to the Board's own homepage, "not valid anymore."¹⁰⁸ Already in 2003, the Board expressed doubts about such claims:

While *some* informants speak of a more risk-filled situation, few are of the opinion that there has been an increase in actual violence. Police who have conducted a special investigation into the amount

100. Statutes of S. Korea, Act No. 7196: Act on the Punishment of Procuring Prostitution and Associated Acts (Mar. 22, 2004); Statutes of S. Korea, Act No. 7212: Act on the Prevention of Prostitution and Protection of Victims Thereof (Mar. 22, 2004).

101. Policing and Crime Act (2009) Chap. 26 (U.K.), *available at* <http://www.legislation.gov.uk/ukpga/2009/26>.

102. See *Anti-Prostitution Laws in for Drastic Revamp*, TIMES OF INDIA, Oct. 1, 2005, *available at* http://articles.timesofindia.indiatimes.com/2005-10-01/delhi/27864103_1_prostitution-laws-immoral-trafficking-prevention-act.

103. Petra Östergren, *Sexworkers Critique of Swedish Prostitution Policy*, PETRAOSTERGREN.COM, http://www.petraostergren.com/pages.aspx?r_id=40716 (last visited Sept. 21, 2011).

104. See ERIC HARPER, DIANNE MASSAWE & VIVIENNE MENTOR-LALU, SEX WORKER EDUCATION AND ADVOCACY TASKFORCE [SWEAT], SUBMISSION TO THE SOUTH AFRICAN LAW REFORM COMMISSION: PROJECT 107 SEXUAL OFFENCES ADULT PROSTITUTION 41-42 (2009).

105. Östergren, *supra* note 103.

106. See *supra* notes 62-97 and accompanying text.

107. Östergren, *supra* note 103.

108. SoS [NAT'L BD. OF HEALTH AND WELFARE], KÄNNENDOM OM PROSTITUTION 1998-1999 (2000), <http://www.socialstyrelsen.se/publikationer2000/2000-3-5>.

of violence have not found any evidence of an increase. Other research and the responses of our informants both indicate a close connection between prostitution and violence, regardless of what laws may be in effect.¹⁰⁹

Additionally, in a 2007 report, the Board noted that opinions vary among prostituted women, with some still preferring the street over restaurants, nightclubs, and the Web. One woman likened “making contact online” to “buying a pig in a poke” while another said it makes dismissing an unwanted purchaser harder.¹¹⁰ Although Östergren may have been correct that some purchasers stopped testifying against traffickers once they were criminalized,¹¹¹ the Gothenburg Police report having “received anonymous tips from clients who suspect human trafficking.”¹¹²

Furthermore, few people outside of Sweden appear to know how Östergren selected her sample of twenty prostituted women-interviewees to whom she refers frequently. Clues are given in a book published by her in Swedish in 2006, in which Östergren explicitly says she did not attempt to contact or hold interviews with “sellers of sex” who had “primarily bad experiences of prostitution,”¹¹³ but, rather, intentionally sought women with “completely different experiences” since the former were claimed to be “the only ones heard in Sweden.”¹¹⁴ Similarly, her 2003 graduate thesis refers to interviews with fifteen female “sellers of sex” of whom “most . . . have a positive view of what they do.”¹¹⁵ Thus, when mentioning “informal talks and correspondence with approximately 20 sex workers since 1996”¹¹⁶ in her English-language piece, she apparently refers to persons selected because they had positive views of prostitution. Evidently, she should have informed readers that critics were excluded. Scholars like Jane Scoular have referred to “Östergren’s interviews with women, who reported experiencing greater stress and danger on the streets” after the 1998 law took effect, without noting this selection bias.¹¹⁷ In 2009, Ronald Weitzer cited Scoular in

109. SoS [NAT’L BD. OF HEALTH AND WELFARE], PROSTITUTION IN SWEDEN 2003, at 34 (2004) (emphasis added), available at http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/10488/2004-131-28_200413128.pdf.

110. SoS, *supra* note 70, at 28.

111. Östergren, *supra* note 103.

112. SoS, *supra* note 70, at 48.

113. PETRA ÖSTERGREN, PORR, HOROR OCH FEMINISTER [PORN, WHORES, AND FEMINISTS] 168 (2006).

114. *Id.* at 169.

115. Petra Östergren, *Synden Ideologiserad* 17 (Spring 2003) (unpublished *magisteruppsats* [master’s thesis], Stockholm University), available at <http://www.petraostergren.com/upl/files/8914.pdf>.

116. Östergren, *supra* note 103.

117. Jane Scoular, *What’s Law Got to Do with It? How and Why Law Matters in the Regulation of Sex Work*, 37 J.L. & SOC’Y 12, 20 (2010); see also Jane Scoular, *Criminalizing ‘Punters’: Evaluating the Swedish Position on Prostitution*, 26 J. SOC. WELFARE & FAM. L.

order to support the claim that Sweden's law has not been effective.¹¹⁸ Janet Halley and others have also cited Östergren's unpublished piece to support the claim that the law has made prostitution more hidden and dangerous.¹¹⁹ The Swedish government's latest inquiry report, of course, establishes that these claims are baseless.¹²⁰

Naturally, there is still room for improvement, and the law could—consistent with its intent—be further strengthened. Until those victimized are empowered to leave prostitution, the situation will not be fully addressed.

IV. OBSTACLES TO EFFECTIVE IMPLEMENTATION

Contrary to the Palermo Protocol, where *consent* is explicitly stated as irrelevant,¹²¹ the Swedish Supreme Court in 2001, in a cursory opinion consisting of merely four sentences, affirmed rulings by lower courts where, inter alia, an interpretation was made that, under Sweden's prohibition against the purchase of sex, the prostituted person's so-called "consent" was relevant, suggesting that the offense was primarily a crime against the public order and not primarily against her as a person, and failing to recognize damages for the prostituted person.¹²² In the District Court, it was argued that crimes primarily directed against the public order entail a lower punishment *per se* than crimes primarily directed against persons.¹²³ Although penalties were slightly raised in the Court of Appeals in this case, the purchaser was nonetheless only fined.¹²⁴ Many law enforcement officers and prosecutors have subsequently awarded the Sex Purchase Law little priority when assigning resources to enforce it, explicitly blaming the penalty level as determining their priorities.¹²⁵ Although some courts lately, beginning in

195, 200 (2004) [hereinafter Scoular, *Evaluating the Swedish Position*] (citing Östergren's interviews to support a critique of the 1998 Swedish law).

118. Ronald Weitzer, *Legalizing Prostitution: Morality Politics in Western Australia*, 49 BRIT. J. CRIMINOLOGY 88, 100 (2009) (citing Scoular, *Evaluating the Swedish Position*, *supra* note 117).

119. Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, Sex Trafficking*, 29 HARV. J.L. & GENDER 335, 396 nn.206–07 (2006).

120. SOU 2010:49 Förbud mot köp, *supra* note 8, at 127–30.

121. Palermo Protocol, *supra* note 1, art. 3(b).

122. Nytt Juridiskt Arkiv [NJA] [Scania & Blekinge Ct. App.] 2001-07-09 pp. 527, 532, *aff'd id.* p. 533 [Supreme Court] (Swed.).

123. NJA [Malmö Dist. Ct.] 2001-07-09 p. 529 (Swed.).

124. NJA [Scania & Blekinge Ct. App.] 2001-07-09 p. 532, *aff'd id.* p. 533 [Supreme Court] (Swed.).

125. See, e.g., SOU 2010:49 Förbud mot köp, *supra* note 8, at 217 (reporting that police say they could bring "many times more" legal cases against purchasers if prioritized higher and that prosecutors agree, in part, but blame the low penalty level); Ann Johansson & Per Nygren, *Polisen tar tuffare tag mot sexköparna runt Rosenlund* [Police Being Tougher Against Sex Purchasers Around Rosenlund], GÖTEBORGS-POSTEN [GOTHENBURG POST], Apr. 11, 2010,

December 2007, switched direction and recognized some circumstances during the purchase of sex as coercive, thereby justifying a higher level of sanctions such as conditional sentences for purchasers in those cases, courts nonetheless have awarded no damages merited by such victimization.¹²⁶

However, none of the conditions or observations of prostitution recognized in the legislative findings, or in contemporary research, document the condition of freedom that is required for the “consent” on which the above courts relied to be meaningful. Exploiting the deprived conditions or abusive situations leading persons to enter prostitution in order to purchase them for sex is not a situation to which these persons can legitimately consent.¹²⁷ Based on the legislative history and evidence accounted for above, sex purchase appears primarily to be a crime against the purchased person’s humanity, equality, and dignity, one which is “objectively damaging to the person in the social empirical sense.”¹²⁸

Several studies strongly suggest purchasers understand that prostituted persons do not enjoy the sex, are economically strapped, are subjected to violence and grave hardships, and are often pimped or trafficked, but nonetheless, they proceed to purchase sex.¹²⁹ In the words of the omnibus bill on

sec. 1, at 9 (noting that police traditionally define success in terms of total jail time and number of convictions).

126. See, e.g., Hovrätten för västra Sverige [Ct. App. for Western Sweden] 2007-12-18, B 3065-07, at 9-10, Rättsfall från hovrätterna [RH] [Ct. of App. Case Reporter] 2008:59 (Swed.) (sentencing purchasers to conditional sentences and to pay fines—but *not* to pay damages—because, after the completed sexual act, one defendant introduced the other, an acquaintance, to the situation when the prostituted person had “been in such a subordinate position against the two men that it must have appeared as a near-impossibility for her to refuse the other man intercourse, or to otherwise affect the situation. This [the defendants] have understood and exploited.”). The prostituted person was, according to the court, effectively understood to be in a situation in which genuine consent was not possible. This is common in prostitution.

127. Just as consent to prostitution appears to not be genuinely valid, it would be equally wrong to say that prostituted people are contributing to their own exploitation when being subjected to the coercive circumstances overwhelmingly documented as preconditions for entry into prostitution. See *supra* notes 19-38, 56-60, and accompanying text. Doing so is to incorrectly blame the persons victimized, as is arguing that prostituted people generally are liable to gross negligence under the Swedish Tort Liability Act, which, according to this theory, would diminish their entitlement to damages. SKADESTÅNDSLÄG [SKL] [TORT LIABILITY ACT] 6:1(1) (Swed.) (“Damage awards due to personal harm may be adjusted, if the injured person themselves intentionally or by gross negligence have contributed to the harm.”).

128. See PETITIONERS ET AL., A RESPONSE, *supra* note †, at 3.

129. See, e.g., DURCHSLAG & GOSWAMI, *supra* note 47, at 20, 22 (finding that, of the 113 men interviewed, 66% responded that “economic necessity” is the cause of female prostitution; 27% responded that the majority are “homeless”; 57% believed the majority had “experienced some type of childhood sexual abuse”; 32% believed the majority’s age of entry to be below eighteen; and 42% believed that “prostitution causes both psychological and physical damage”); FARLEY ET AL., MEN WHO BUY SEX, *supra* note 47, at 14 (“34% of the [103 London male] interviewees estimated that between 30-40% of all women in prostitution were [abused as children], and 35% thought that 50-90% were.”); *id.* at 16 (“Of the men interviewed, 55% believed that a majority of women in prostitution were lured, tricked or trafficked.”); JAN MACLEOD ET AL., CHALLENGING MEN’S DEMAND FOR PROSTITUTION, *supra* note 47, at 10.

men's violence against women passed by Sweden's Parliament in 1998, these "'ordinary men' who are often married or cohabiting, are involved in an activity which they should be aware of is destructive . . . particularly for the women they are buying sexual services from."¹³⁰ The purchaser has, in other words, abused the prostituted person's conditions of deprivation or abuse, thus harming the person and should therefore compensate her or him. Imposing damages on the purchaser creates both an economic opportunity—that the state does not have to pay for—to facilitate the prostituted person's escape, as well as an incentive for the prostituted person to testify against sex purchasers, an incentive that is currently lacking.

The courts' decisions have now been clarified, however, by the government's latest inquiry. Consistent with the argument raised here, the government inquiry concludes that the "*purchase of sexual service* . . . is more of a crime against a person than a crime against the public order, even if its background has elements of both."¹³¹ Furthermore, the report states that "anyone who has been exploited by someone who has purchased a sexual service occupies a special position compared with others who felt violated by the crime. Nor is the offence of such misdemeanor character that could support the conclusion that there is no injured party."¹³² This inquiry report strongly emphasized that, even where a crime's protected interest might "primarily" be public-interest related, for example, to promote gender equality and fight exploitation, this need *not* mean the interest is exclusively public.¹³³ Indeed, no court has held that the interest cannot, at the same time, be regarded as a crime against the person purchased. Hence, Parliament has followed the preceding government report and proposals and acknowledged that prostituted persons may be recognized as the "injured party" under the Code of Judicial Procedure, which can entail entitlement to damage awards from the purchasers, though Parliament has also stated that an individual assessment of whether the prostituted person is an "injured party" has to be made in each and every case.¹³⁴ It is notable that the Parliamentary Committee on Justice, in

TUTION IN SCOTLAND: A RESEARCH REPORT BASED ON INTERVIEWS WITH 110 MEN WHO BOUGHT WOMEN IN PROSTITUTION 20–21 (2008), available at <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf> (finding that, of the 110 men interviewed, 85% stated prostituted women do not like the sex of prostitution, while 73% said women are prostituted only because of "economic necessity"); Andrea Di Nicola & Paolo Ruspini, *Learning from Clients*, in PROSTITUTION AND HUMAN TRAFFICKING: FOCUS ON CLIENTS 231–32 (Andrea Di Nicola et al. eds., 2009) ("[S]triking is the shared . . . awareness [among purchasers] of exploitation and the related neutralization techniques."); Martin A. Monto, *Female Prostitution, Customers, and Violence*, 10 VIOLENCE AGAINST WOMEN 160, 177 (2004) ("[M]any [purchasers] are aware that prostitutes are victimized in the course of their activities.").

130. Prop. 1997/1998:55 *Kvinnofrid* [government bill] 22 (Swed.).

131. SOU 2010:49 *Förbud mot köp*, *supra* note 8, at 81.

132. *Id.* at 250 (citation omitted).

133. *Id.* at 250–51.

134. Bet. 2010/2011:JuU22 *Skärpt straff*, *supra* note 8, at 11–12; *see also* Prop. 2010/2011:77 *Skärpt straff*, *supra* note 8, at 14–15; RÄTTEGÅNGSBALKEN [RB] [CODE OF

conjunction with passing these amendments in May 2011, found itself having to remark in writing that existing law *already* provides opportunities for witnesses and other persons affected by the offense who are not technically recognized as injured parties to claim certain damages.¹³⁵ The statement might imply that many legislators are disappointed with how the judicial system is asserting prostituted persons' rights to damage awards.

There are problems with this secondary venue for claiming damages though. For instance, prosecutors and public victims' legal counsels are only obliged to represent claims of a recognized injured party.¹³⁶ The fact that no prostituted person has ever received damage awards under the Sex Purchase Law since its enactment suggests that existing law might need further improvements for any civil venues to be effectively used.¹³⁷ Nevertheless, by emphasizing these dormant venues, the legislature's intent arguably is for them to be used. In the future, these statements might be seen as the tipping point that enabled more damage awards for prostituted persons.

Furthermore, nothing stops states from extending their application of the Palermo Protocol to charge purchasers with human trafficking when they receive persons who are effectively pimped by a third party, even if the Protocol's *travaux préparatoires* do not specifically mention purchasers.¹³⁸ Just as pimps abuse prostituted persons' vulnerabilities, purchasers do so when

JUDICIAL PROCEDURE] 20:8(4) (Swed.), *unofficial translation available at* <http://www.regeringen.se/content/1/c4/15/40/472970fc.pdf> (as amended 1999) ("The injured party is the party against whom the offence was committed or who was affronted or harmed by it."); SOU 2010:49 Förbud mot köp, *supra* note 8, at 250 (noting that the one who, according to RB 20:8(4), was harmed by the crime is entitled to damages).

135. Bet. 2010/2011:JuU22 Skärpt straff, *supra* note 8, at 11–12.

136. See RB [CODE OF JUDICIAL PROCEDURE] 22:2 (Swed.), for this particular regulation of the prosecutor's obligation. In addition to the prosecutor, for offenses falling under the criminal code's Chapter 6 on Sexual Offenses and some other chapters, a victim's legal counsel (*målsägandebiträde*) is appointed by the public on behalf of injured parties. 1 § LAG OM MÅLSÄGANDEBITRÄDE (Svensk Författningssamling [SFS] 1988:609) (Swed.). For a critical commentary on the problems with the procedural status associated with technically non-injured parties who nonetheless have a right to claim damages, see, for example, Diesen, *supra* note 9, at 122–24. There appear to be more legal demands for scrutiny in assessing whether a defendant caused damages to the plaintiff where the latter is not regarded as an injured party. See *id.* at 123 n.13 (citing SKADESTÅNDSLAG [SKL] [TORT LIABILITY ACT] 2:3 (Swed.) while noting that torts specifically relating to offenses against the "person, liberty, peace, or reputation" are unavailable for persons not regarded as an injured party).

137. See Carina Hägg et al., *Stärk prostituerade personers möjlighet att kräva skadestånd* [Strengthen Prostituted Persons' Possibilities to Demand Damages], GÖTEBORGS-POSTEN [GOTHENBURG POST], May 10, 2011 (online ed.), <http://www.gp.se/nyheter/debatt/1.622968>; see also Motion 2010/2011:Ju10 med anledning av prop. 2010/2011:77 Skärpt straff för köp av sexuell tjänst [parliamentary motion] (Mar. 22, 2011) (Swed.) (Social Democrats) (suggesting a further government inquiry that returns to Parliament with a proposal for creating better conditions for the prostituted person to receive damages); Motion 2010/2011:Ju11 med anledning av prop. 2010/2011:77 Skärpt straff för köp av sexuell tjänst [parliamentary motion] (Swed., Mar. 22, 2011) (Left Party) (proposing additional inquiry along the lines of Motion 2010/2011:Ju10, *supra*).

138. See *Travaux Préparatoires* to the Palermo Protocol, *supra* note 59, ¶¶ 62–86.

buying them from a third party. In any case, a purchaser could already be liable as “an accomplice” under the Protocol.¹³⁹ Additionally, as opposed to a purchaser of consumer goods, the sex purchaser is distinctly part of the trafficking chain by “virtue of his receipt of the trafficked person.”¹⁴⁰

CONCLUSION

Despite its present shortcomings, the Swedish law has been very successful in reducing trafficking, particularly so when compared to Sweden’s neighbors. In light of the evidence presented above, and considering that prostitution generally “does satisfy the elements of trafficking”¹⁴¹ and that the legalization of third-party profiteering and the purchase of sex promotes the demand for both domestic and cross jurisdictional trafficking, jurisdictions where third parties and sex purchasers may act legally—such as Denmark, Germany, the Netherlands, New Zealand, Nevada, and Victoria, Australia—arguably violate international law. As stated by the U.N. Trafficking Rapporteur in 2006: “State parties with legalized prostitution industries have a heavy responsibility to ensure that . . . [they] are not simply perpetuating widespread and systematic trafficking. As current conditions throughout the world attest, States parties that maintain legalized prostitution are far from satisfying this obligation.”¹⁴² Policy makers, such as the U.S. Department of State, who assess countries globally on the basis of their commitment to fight trafficking should not rank jurisdictions that legalize prostitution, and so *promote* trafficking, in the same “tier one” as countries that criminalize purchasers and decriminalize prostituted persons, and so *deter* trafficking.¹⁴³ Many citizens of the United States and elsewhere now surely ask their governments what they are doing to address the clear link between trafficking and prostitution, as Sweden is doing in criminalizing buyers, which has proven so effective in eliminating so much trafficking from our country.¹⁴⁴

139. Palermo Protocol, *supra* note 1, art. 5(2)(b).

140. U.N. 2006 Trafficking Report, *supra* note 6, ¶ 63.

141. *Id.* ¶ 42.

142. *Id.* ¶ 43.

143. See, e.g., OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 47–48 (10th ed. 2010) (ranking several countries with legalized prostitution industries in the same top tier as countries that do not legalize the purchase of sex, submitting the rationale that the former are in full compliance with U.S. domestic trafficking law).

144. Immediately following delivery of this paper, the chair of the panel at which it was presented invited Mr. Luis CdeBaca, Ambassador-at-Large of the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, to address the question posed at the end of this paper. He did not do so then, stating he had to leave for an interview, nor later.

