

## New laws but few cases: understanding the challenges to the investigation and prosecution of human trafficking cases

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**Abstract** All fifty states and the federal government have passed laws to combat human trafficking, but we know little about their effectiveness. Using data from investigative case records and court files for 140 human trafficking cases in 12 U.S. counties and qualitative interviews with law enforcement, prosecutors, and victim service providers, we examined the characteristics of and challenges to investigation and prosecution of human trafficking cases under new state and federal laws. We found that few human trafficking cases are identified by local law enforcement, most cases forwarded to state prosecution are sex trafficking cases involving U.S. citizens, and state prosecutors overwhelmingly charge human trafficking offenders with other, lesser crimes. The legal, institutional, and attitudinal challenges that constrain prosecution of human trafficking are similar across study sites despite varying types of state antitrafficking legislation. Study results suggest prosecution of human trafficking cases is challenging. If new laws are to be effective, then local law enforcement and prosecutors should work collaboratively and adopt proactive human trafficking investigative strategies to identify both labor and sex trafficking cases. There is social benefit to holding traffickers accountable, but more emphasis should be placed on policies that identify and serve victims.

The United States abolished slavery 150 years ago. Yet today, lawmakers and law enforcers struggle to identify and combat human trafficking, a modern form of slavery fueled by those who seek to maximize profits by forcing or deceiving often marginalized individuals into exploitive labor or sexual services. In the United States, human trafficking takes a variety of forms—from the migrant laborer seeking a job to support his family who is forced into exploitive work to the runaway child seeking the love and protection of a boyfriend who turns out to be a pimp and exploiter.

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Common among these victim experiences is the commodification and abuse of people for profit. Despite accounts of the horrific conditions suffered by human trafficking victims, such as those documented annually in the U.S. Department of State's *Trafficking in Persons Report*, we know little about the true nature of the problem or the effectiveness of various antitrafficking strategies. This study identifies the characteristics of human trafficking cases investigated in a targeted sample of U.S. counties and attempts to understand the legal, institutional, and attitudinal factors that affect the prosecution of human trafficking.

## Human trafficking and legislation in the United States

In response to increased public concern about the problem of human trafficking, in 2000, Congress enacted the *Victims of Trafficking and Violence Protection Act (TVPA)*. The U.S. law, like many others worldwide, addresses the problem of human trafficking as a crime—defining elements of a new criminal offense; enhancing penalties for existing offenses such as slavery, peonage, and involuntary servitude; and providing resources to protect and restore victims.<sup>1</sup> Whereas “trafficking” is a newly defined crime, it is not a new phenomenon. By its nature, trafficking “involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion” [61]. Cases that now meet the federal definition of human trafficking would have historically been prosecuted under a range of federal and state laws. For example, state laws prohibiting pandering and promoting prostitution have been, and continue to be, used to prosecute sex trafficking. However, penalties for these offenses are generally weak and the statutory language commonly characterizes victims as complicit. Additionally, these laws do not contain provisions for protecting victims from prosecution under prostitution-related offenses, nor do they contain the immigration protections for unauthorized migrant victims provided by the TVPA. With respect to what we now define as “labor trafficking,” the Supreme Court’s decision in *United States v. Kozminski* [66] highlights the difficulties of applying traditional antislavery provisions to modern forms of slavery prior to the enactment of TVPA.<sup>2</sup> Specifically at issue was whether psychological coercion could be used to compel a person into involuntary servitude. The court held that the original intent of the Thirteenth Amendment did not include psychological coercion nor were “immigrants, children, and mental incompetents... entitled to any special protection” (*United States v. Kozminski* 1988, 948). The TVPA expands protections to individuals coerced into servitude without the requirements of physical or threatened physical force, and it includes special protections for vulnerable groups.

<sup>1</sup> The TVPA defines severe forms of trafficking persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” (TVPA, 2000: Section 103, 8a and b). This definition does not require the physical transportation of a victim from one location to another.

<sup>2</sup> The two victims in the case were mentally disabled men psychologically coerced to work 7 days a week, up to 17 hours a day, on a farm for little to no pay and live in isolated and squalid conditions.

Since the passage of the TVPA, all 50 states have enacted legislation criminalizing human trafficking. However, there is significant variation in the degree to which these laws facilitate efforts to identify and prosecute such offenses. Little is known about the effectiveness of these efforts. In a recent assessment of state antitrafficking legislation, a leading antitrafficking advocacy group affirmed the necessity of state laws but cautioned that passing legislation alone was an insufficient response. The group wrote that “using the laws is the next important step” [52].

The passage of a law is just one step in the process of legal change. Legislation rarely directs specific actions by the agencies responsible for the enforcement of new laws [9, 10, 53]. Instead, lawmakers just define the elements of a new offense and its associated penalties. In some cases, legislators provide resources for the education of agency professionals about a new offense, but rarely do they impose systems of accountability to ensure agencies use the new criminal provisions. Unless criminal justice organizations actively seek change and adopt institutional responses to promote enforcement, there will be a lag or even a complete disconnect between the enactment and the enforcement of new laws. This seems to be the case with human trafficking laws in the United States.

Despite the attention and resources directed at combating human trafficking, fewer cases have been identified and prosecuted than would be expected based on estimates of the problem. Debate surrounds the reliability of national and international estimates of human trafficking. Nevertheless, the International Labour Organization (ILO) recently estimated that 20.9 million people are victims of forced labor and human trafficking worldwide, with 1.5 million victims located in the United States, Canada, and Western Europe [25]. In 2011, the U.S. Department of State documented 3,969 convictions for human trafficking offenses worldwide [60], with only 151 convictions by the U.S. government and a small but unknown number of state human trafficking prosecutions under new state laws [60]. The low numbers of prosecuted cases have caused speculation that the provisions of federal and state human trafficking laws are not being enforced. Others have suggested that human trafficking estimates are exaggerated and that the low numbers of prosecutions indicates there are fewer actual victims than estimates or the public outcry predicts [38, 39, 62, 63].

Previous research has documented numerous challenges that state and local law enforcement face when trying to identify human trafficking cases. These include a lack of training and failure to recognize trafficking situations [12, 49]. The U.S. Department of State noted these challenges in its most recent *Trafficking in Persons Report*. It said that:

Federal, state, and local law enforcement agencies face ongoing challenges in victim identification....[D]espite increased trainings, laws, and regulations, NGOs noted that some federal, state, and local law enforcement officials were reluctant to identify individuals as trafficking victims when they have participated in criminal activity, facilitated their own smuggling, and/or were subjected to debt bondage or peonage by a smuggler. ([60]:363)

Whereas impediments to human trafficking identification are well known, there is a lack of research on the effectiveness of antitrafficking policies generally [19]. We lack an understanding of how local agencies investigate and prosecute human trafficking cases once identified. Some research on human trafficking prosecution

has focused on the challenges to prosecution at the federal level [8], but we know little about how local authorities are using the new state-level human trafficking laws. This study describes human trafficking cases identified and investigated in a targeted sample of U.S. counties, and it identifies the challenges police and prosecutors face in bringing cases forward to prosecution and conviction.

## Literature review

### Uncertain legal environment

New laws create challenges for prosecutors because the elements of the crime that are needed to establish a *prima facie* case are unclear until tested in court. This seems to be particularly true in human trafficking cases. Prosecutors and law enforcement officials have cited several challenges in interpreting human trafficking laws including the following: uncertainty over the elements necessary to prove coercion; whether the federal law requires proof of all three elements of force, fraud, and coercion; and whether cases where children were commercially sexually exploited in the absence of a “third party” (commonly interpreted as a pimp/trafficker) could be prosecuted by holding purchasers/exploiters accountable as third parties or as “obtainers.”<sup>3</sup>

In response to this uncertain legal environment, state prosecutors sometimes charge individuals engaged in activities encompassed by new human trafficking laws with offenses defined under existing state statutes such as promoting or compelling prostitution, rape, fraud or kidnapping. Under these long-standing statutes, the legal elements of the crime are well established and prosecutors are more certain of a conviction [49]. Local prosecutors also fear human trafficking cases are too complex and demand resources that are less available to state agencies [8]. They turn human trafficking cases over to federal authorities rather than proceeding with state prosecution. As a result, new state human trafficking laws remain under-used and untested.

Similar patterns of prosecutors avoiding using new laws have been observed with the entry into force of other laws creating new criminal offenses. For example, after passage of antistalking laws, police and prosecutors commonly referred stalking crimes to specialists in other units because they did not understand what constituted a stalking offense [44]. Prosecutors also struggled with the perceived ambiguity of new state hate crime laws, often overlooking bias motivation in crimes because of their inexperience [20]. State prosecutors resisted charging hate crimes because they had to reclassify traditional crimes as bias motivated, which added complexity and reduced certainty about conviction [40]. Human trafficking cases present similar challenges. Unique to human trafficking, however, is the fact that victims have traditionally been classified as offenders and the laws in most states still allow them to be charged as such.

<sup>3</sup> Although the federal law states “force, fraud, or coercion,” some federal prosecutors either believed they needed to prove all three elements or declined cases that did not demonstrate all three elements because they felt the cases were stronger and potentially more likely to be protected if appealed.

### *Institutional barriers*

The day-to-day activities of police and prosecutors are highly institutionalized, and they resist change in response to new legislation [6, 31, 35]. Such resistance is particularly acute when frontline actors such as police officers perceive the identification of new crimes as “a reflection of political whims, the politicization of law enforcement, and a distraction from basic ‘good police work’” ([29]: 337, also see [4, 6, 36]).

Additionally, the needs of police agencies, their existing structures and their capacity to respond to new crime problems further constrain decisions about how to handle cases. Without action to meet the needs and to modify the structures, laws often are unenforced. Institutional responses are needed to promote the use of new laws because formal policies and informal norms within prosecutors’ offices constrain the decisions of individual prosecutors [26, 27, 41].

Criminal justice agencies are responsible for developing institutional structures that promote an operational understanding and enforcement of new law [21] and that overcome institutional resistance. These structures include training regarding the new statute and holding law enforcement officials accountable for its enforcement. For example, comprehensive police training and policies that guided officer responses improved enforcement of domestic violence [5, 14] and hate crime laws [29, 50].

Some agencies designate specialized personnel to investigate and prosecute new offenses. Specialization provides a small group of decision makers with additional training around a new or newly prioritized crime. Specialized personnel serve as subject-matter experts within the organization. They help police and prosecutors develop routines for dealing with less common cases and/or cases that have evidentiary challenges. Training specialized personnel also improves police responses to sensitive crime victims [34].

Institutional responses are particularly important for crimes like human trafficking where there is a history of resistance from law enforcement. Yet, law enforcement agencies and prosecutors’ offices have done little to support frontline police and prosecutors in the response to human trafficking incidents. Few agencies have formal policies or procedures to guide responses to human trafficking, and training is limited [12, 49].

### *Attitudinal barriers*

Institutional responses are important. However, training and specialization overcome only some of the resistance of frontline agents to new laws. Research has suggested that institutional changes can promote changes in attitudes toward new laws, but they do not always result in different legal outcomes. For example, whereas police [33, 34] and prosecutors in specialized sexual assault units [3] held more empathetic attitudes toward sexual assault victims, the arrest and charging patterns of those specialists were similar to those of nonspecialized units. Institutional pressure to prosecute particular crimes may conflict with the focal concerns [59] of prosecutors about what constitutes a convictable case. Prosecutors file criminal charges in those cases that they think have the best chance of a conviction [1, 2]. In the case of newly defined crimes, there is uncertainty about the likelihood of a conviction. Consequently, prosecutors are cautious about proceeding.

Prosecutorial assessment of whether a case will result in a conviction is typically influenced by legal factors such as the severity of the offense and the strength of the evidence [2, 28, 43, 55, 58]. In situations of uncertainty, prosecutors employ a form of perceptual shorthand [23]. They use stereotypes about “appropriate” victim behavior to determine whether a victim’s account of his or her experience is credible. Legally irrelevant factors such as race, class, and gender of victims and of suspects as well as behavior unrelated to the criminal incident can influence prosecutorial charging decisions [30, 56, 57], particularly when those factors influence whether the victim is perceived as credible [15]. These effects may be even greater in the case of newly defined crimes where the prosecutor is less able to judge what evidence is necessary to secure convictions.

Victim engagement in behavior perceived to be “risky” also raises questions about the blameworthiness of victims for their own victimization. This can reduce the likelihood of prosecution [30, 33, 37, 56, 58]. Because they focus on securing successful convictions, prosecutors develop a “downstream orientation” whereby they evaluate evidence based on how they believe information will be received by judges and juries regardless of their personal opinions about the facts of the case [16: 535]. As documented in the subsequent discussion, the negative effect of victim blaming is common in trafficking cases where perpetrators often compel victims to engage in illegal acts such as prostitution or illegal border crossing.

## Methods, sampling, and data

This study is aimed at improving our understanding of human trafficking prosecutions in the United States. In this article, we describe the characteristics of human trafficking investigations and prosecutions occurring in a sample of local communities and we identify legal, institutional, and attitudinal factors that inhibit or facilitate the prosecution of these cases. We seek to understand also whether the experience of prosecuting human trafficking offenders varies according to the comprehensiveness of the antitrafficking laws in different states.

### Methodologies

We used a multiple-method approach. Information from 140 closed human trafficking case records was collected and coded to describe the characteristics of human trafficking cases that came to the attention of police and to identify the factors associated with different court outcomes. Additionally, qualitative data from 166 interviews with law enforcement personnel, prosecutors, victim-service representatives, and other stakeholders were analyzed.

### Sources of data

The data for this study were collected as part of a larger project examining human trafficking prosecutions in a targeted sample of 12 counties across the United States [13]. Because few local agencies have conducted human trafficking investigations, randomly selecting counties would not have yielded study sites with enough cases or experience to be an adequate basis for sound conclusions. We used a nonprobability, purposeful sampling

design. It involved a multistage cluster sampling approach identifying states by type of human trafficking law. We selected a sample of 12 counties within states with known human trafficking cases. This sample is not nationally representative. Conclusions about patterns in the prosecution of human trafficking cases or challenges identified are only generalizable to the 12 counties studied. Notwithstanding these limitations, our sample represents the richest available source of information about law enforcement and prosecutorial efforts against human trafficking at the state and local levels.

Because our research focused on understanding how local officials investigate and prosecute human trafficking cases in varying legal contexts, we classified all states as having one of three types of state human trafficking laws. The first category includes states with comprehensive antitrafficking legislation. Comprehensive legislation is defined as including criminalization of trafficking plus at least two additional elements intended to enhance criminal justice system responses (such as mandated training, victim benefits and services, state task force, or research commission/report). The second category includes states with basic antitrafficking legislation that only criminalize human trafficking or criminalize trafficking and include only one additional element. The third category includes states without antitrafficking legislation.

State legislation was defined by the status of state antitrafficking laws at the end of 2007. The first state antitrafficking laws were not passed until 2003. Most states passed initial antitrafficking laws between 2005 and 2007. We organized states based on their legal status in 2007 because we were mindful that cases would need a sufficient amount of time to be adjudicated and closed by the time our data collection began. Figure 1 illustrates the distribution of the three state legislation types at the end of 2007.

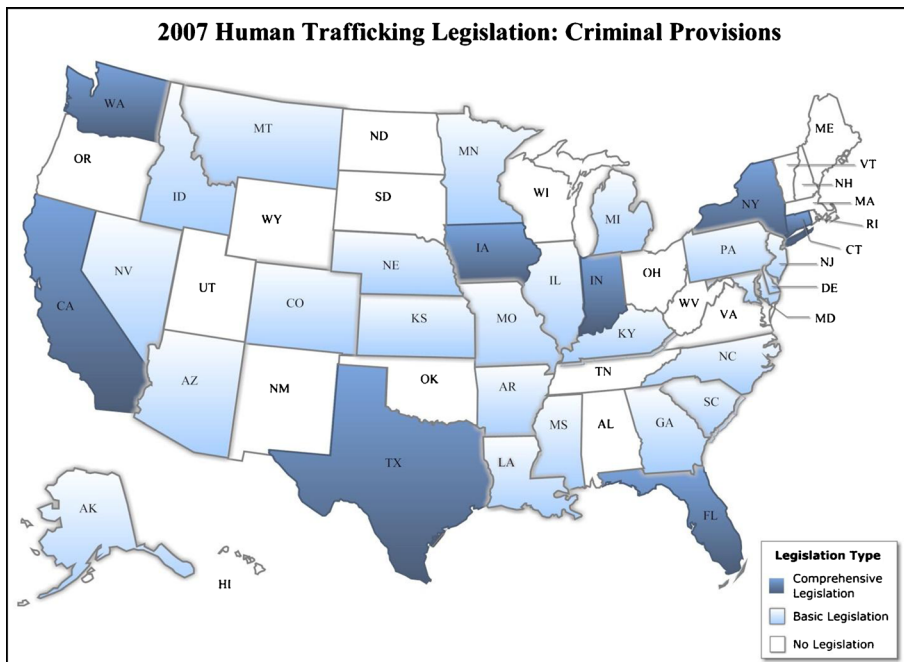


Fig. 1 State human trafficking legislation (2007)

We identified all known cases of human trafficking investigated by local law enforcement agencies in each state that were closed by 2010.<sup>4</sup> We then selected four counties in each of the three categories of state legislation (comprehensive, basic, and none) with at least ten closed human trafficking cases. Care also was taken in sampling to ensure regional variation.<sup>5</sup> Half of the selected counties were in states with federally funded human trafficking task forces, and half were in states with no such federal support. The primary local law enforcement agency in each county was selected for study.

At the time of this study, police agencies did not have a standardized crime code, such as a Uniform Crime Reports code, to identify human trafficking offenses. As a result, we relied on study agencies to identify all investigations initiated by their agency or in which their agency cooperated regarding incidents with some evidence of human trafficking. These included cases investigated as trafficking and prosecuted either locally or federally as such, cases investigated as trafficking but prosecuted either locally or federally as a different crime, or cases investigated as trafficking but never prosecuted. A total of 254 human trafficking cases were identified across the 12 study sites. In eight of the study counties, there were fewer than 15 identified human trafficking cases. For these latter sites, we coded all available case records. In four sites, there were more than 15 identified cases. In these sites, we drew a sample of approximately 15 cases per site—stratified by year and by type of trafficking—to ensure representation of different case types throughout the study period. This allowed for a comparison across sites with different types of legislative structure. The final sample included 140 human trafficking cases.

We collected basic information about the characteristics of each case including how it came to the attention of the police, the type of crime it was initially investigated as, and the number and types of agencies involved in the investigation. For each case we also collected information about the number and characteristics of victims and suspected perpetrators. We recorded the types of evidence collected by the police, including interviews with victims, witnesses, and suspects; physical and digital evidence; as well as documents and other written statements.

We developed a checklist of indicators of human trafficking as outlined in the TVPA (and its subsequent reauthorizations). Based on the information in the investigative record we coded whether or not there was evidence to support each of the indicators of human trafficking for each case. (See a description of the checklist items in the next section.) We collected information on prosecution and case processing from indictment and charging documents, court testimony records, and sentencing opinions for each case. We conducted 166 in-depth interviews with law enforcement, prosecutors, and other court officials involved in the studied cases.<sup>6</sup> Nearly all interviews were conducted in person. Each lasted between 1 and 2 h.

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<sup>4</sup> Cases were identified based on publicly available information from news reports, data from a national survey of law enforcement agencies about the identification of human trafficking cases [11], and data from the Federal Justice Statistics Research Center on federal prosecutions for human trafficking offenses.

<sup>5</sup> Of the 12 study counties, 2 were located in the West, 2 in the South, 2 in the Northeast, and 6 in the Midwest.

<sup>6</sup> Seventy-two interviews were with local law enforcement, 14 with state or county prosecutors, 18 with federal law enforcement (primarily Federal Bureau of Investigation or Immigration and Customs Enforcement agents), 15 with federal prosecutors, 40 with victim service providers, and 7 with other court officials, legislators, or community stakeholders.



## Analytic strategy

Descriptive and bivariate statistics were employed to understand the basic characteristics of the 140 studied cases and the differences in key case characteristics across the study sites. Interviews were transcribed, and interview text was uploaded into QSR-NVivo 9 (QSR International Pty Ltd., Victoria, Australia), a qualitative data analysis software package for coding and analysis. Through this analysis, we developed thematic codes representing themes that emerged in the key actor interviews. We established 155 unique codes across the following broad categories: case characteristics (24), community background (20), law enforcement experiences (47), prosecutor experiences (40), and victim service experiences (24).<sup>7</sup> The themes of legal ambiguity, institutional challenges, and attitudinal challenges emerged across coding categories. These themes were then analyzed within and across cases, and within and across study counties, to identify any differences in the patterns of themes. We developed a series of analytic memos to explore each emerging theme in depth. Qualitative findings are organized around these themes.

## Findings

### Human trafficking case characteristics

A relatively small number of human trafficking cases were identified across the 12 study sites. Remarkably, sites in states with comprehensive legislation did not identify statistically significantly more human trafficking cases than those in sites in states with basic legislation or no legislation at all. When cases were identified, most were either not prosecuted or prosecuted for other, less severe offenses.

Although federal and state laws define human trafficking to include both sex and labor trafficking offenses, most (85 %) of the 140 human trafficking cases in our sample had sex trafficking as the primary offense, 11 % had labor trafficking as the primary offense, and 4 % had both sex and labor trafficking (Table 1). Sex trafficking comprised most cases in every site despite the fact that state antitrafficking legislation prohibited labor trafficking as well. Additionally, 50 % of the human trafficking investigations in our sample involved victims who were minors at the time of the offense. Contrary to the popular view of human trafficking, only a quarter of the cases involved foreign national victims.

We coded the investigative files of each human trafficking case to determine whether evidence in the criminal incident description supported the legal elements of human trafficking as defined in the TVPA and its subsequent reauthorizations

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<sup>7</sup> Codes were developed through a multiphase coding conference process. We developed a list of preliminary codes based on the research questions and reviews of existing literature. Research team members then independently coded three interviews (one law enforcement, one victim service provider and one prosecutor) using the preliminary code structure. New codes were added by each team member as they emerged from the review of the interview text. A series of coding conferences was held where research team members compared the coding of each segment of text and made final determinations of how existing codes would be used. New codes were added to the coding list as they emerged from independent reviews of interview text.

**Table 1** Human trafficking case characteristics by state legislation type ( $N=140$ )

Case characteristics	All sites ( $N=140$ )	Site type		
		Comprehensive legislation ( $n=42$ )	Basic legislation ( $n=55$ )	No legislation ( $n=43$ )
<b>Case type</b>				
Sex	85 %	79 %	84 %	93 %
Labor	11 %	17 %	9 %	7 %
Both	4 %	5 %	7 %	0 %
Minor victim*	50 %	56 %	59 %	33 %
Foreign victim	25 %	29 %	23 %	22 %
<b>Method of identification*</b>				
<b>Reactive</b>				
Tip	39 %	32 %	52 %	24 %
Victim self-identify	10 %	11 %	6 %	14 %
Victim family report	3 %	8 %	2 %	0 %
Call for service	3 %	0 %	0 %	10 %
Other reactive	2 %	0 %	4 %	3 %
<b>Proactive</b>				
Ongoing investigation	18 %	16 %	15 %	24 %
Entrapment/sting	11 %	5 %	19 %	7 %
Confidential informant	3 %	5 %	0 %	3 %
Referral other law enforcement	7 %	11 %	2 %	10 %
Referral within law enforcement	4 %	11 %	0 %	4 %
<b>Location of identification</b>				
Residence	42 %	34 %	44 %	49 %
Internet	23 %	20 %	20 %	30 %
Street	13 %	17 %	11 %	9 %
Hotel	9 %	10 %	11 %	3 %
Restaurant/bar	6 %	5 %	6 %	6 %
Massage parlor	3 %	7 %	0 %	3 %
Other	4 %	7 %	8 %	0 %
Physical Evidence	66 %	63 %	71 %	61 %
Average # Suspects	2.78	3.08	2.94	2.32
Average # Victims	5.10	5.28	6.04	3.19
Arrest	81 %	89 %	74 %	83 %
Any Prosecution	69 %	79 %	62 %	68 %
State prosecution	33 %	40 %	36 %	24 %
Federal prosecution	36 %	40 %	26 %	44 %

Percentages shown in Table 1 are based on non-missing cases

\* $p < .05$  measuring differences across state legislation types

(Table 2).<sup>8</sup> Incidents did not need to contain all the elements identified in Table 2 to meet the legal definition of human trafficking used by the federal government and by most states. With few exceptions, the legal elements necessary to meet the definition of human trafficking were present in the investigative records of all cases in all sites.

On average, cases investigated as potentially involving human trafficking matters contained five separate indicators of human trafficking. As illustrated in Table 2, the most common elements of human trafficking we found in the investigative records were the presence of a pimp/trafficker, evidence of financial gain through trafficking, and the sex trafficking of minors. High rates of violence, threats, and isolated atmospheres of violence were each found in approximately 40 % of the cases we reviewed. Some differences in the strength of human trafficking evidence were found in states with different types of legislation. But the pattern was strange. Where statistically significant differences existed, cases from sites in states with basic legislation more often included elements of human trafficking than cases in states with either comprehensive or no legislation, the reverse of what one might expect.

Of the cases reviewed, 69 % resulted in the prosecution of at least one suspect on *some type* of criminal charge, although not necessarily a human trafficking charge. Thirty-six percent of cases resulted in the prosecution of at least one suspect in federal court, and 33 % of cases resulted in the prosecution of at least one suspect in state court. Proportionately, more cases were prosecuted in states with comprehensive legislation (79 %) compared with those with basic (62 %) or no legislation (68 %). However, differences in the likelihood of prosecution across the sites did not rise to the level of statistical significance.

Although human trafficking cases were not routinely dismissed, they were rarely prosecuted for offenses created by the new human trafficking laws. We collected information on the type of offense charged in either state or federal court for each of the 379 suspects identified across the 140 human trafficking cases (Table 3).<sup>9</sup> The most common state charges were for promoting or compelling prostitution and for the transport of persons for the purposes of prostitution. Only 17 % of suspects in state cases were charged with any type of human trafficking offense. No suspects in state cases were charged with a labor trafficking offense. In short, despite the new trafficking laws, state prosecutors continue to pursue human trafficking offenders with the laws that existed prior to the antitrafficking campaign. These existing laws often involve lower level offenses. This finding suggests that prosecutors believe that the certainty of punishment is more valuable than its severity.

Nineteen percent of the human trafficking suspects that were referred for federal prosecution were charged with sex trafficking of children or sex trafficking of adults by force, fraud, or coercion offenses (specified under 18 U.S.C. §1591 [68]). Six percent were prosecuted for labor trafficking offenses (under 18 U.S.C. §1590 [67]). Thirty-five percent of trafficking suspects charged in federal courts faced interstate transport for prostitution [70] violations,<sup>10</sup> and another 26 % were charged with alien harboring offenses.

<sup>8</sup> Two researchers independently reviewed each case recorded and coded for the existence of human trafficking indicators. Coding was then compared between reviewers, and inconsistencies were discussed before a final coding determination was made.

<sup>9</sup> For the purposes of analyses, primary offense types were grouped in similar offense categories.

<sup>10</sup> The White Slave Act (commonly known as the Mann Act, 1986) made it a federal felony to transport women or girls in interstate commerce for the purpose of prostitution. Under TVPA, transportation is no longer an element of the crime of “trafficking.”

**Table 2** Elements of human trafficking identified in investigative records ( $N=140$ )

Elements of human trafficking	Total	Site type		
		Comprehensive legislation	Basic legislation	No legislation
1 Threatened or actual physical or non-physical harm which compels victim to perform labor*	40 %	44 %	48 %	26 %
2 Use of threatened use of law to exert pressure on another person to perform labor or services	12 %	20 %	11 %	7 %
3 Demeaning or demoralizing the victim	23 %	24 %	24 %	19 %
4 Disorienting and depriving victims of alternatives (isolation, restrict communication, debts, and monitoring)*	41 %	44 %	50 %	25 %
5 Diminishing resistance and debilitating (deny food, water, medical care, or weaken with drugs or alcohol)	15 %	15 %	22 %	7 %
6 Deceiving about consequences (overstate risks of leaving, overstate rewards of staying, feigning power/ties to authorities or hit men/gangs)*	21 %	15 %	32 %	14 %
7 Dominating, intimidating and controlling (abuse, atmosphere of violence, displaying weapons, rules and punishments)	38 %	44 %	43 %	28 %
8 Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person for purposes of a commercial sex act (presence of a pimp)*	57 %	61 %	72 %	35 %
9 Knowingly benefited, financially or by receiving something of value, from participating in above venture	58 %	66 %	63 %	44 %
10 Knew (or recklessly disregarded) that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts)	29 %	22 %	35 %	28 %
11 Sex trafficking victim under the age of 18*	44 %	44 %	54 %	30 %

Percentages shown in Table 2 are based on non-missing cases

\* $p < .05$  measuring differences across state legislation types

Our findings are in line with research on prosecution decisions that has found that prosecution is more likely when there are objective indicators of case strength, such as more witnesses and stronger evidence [2, 28, 43]. We found that human trafficking cases with more evidence of trafficking (measured by the number of trafficking indicators) were prosecuted more often than those with less evidence. (There were six indicators on average for cases prosecuted at either the state or the federal level compared with three on average for cases that were not prosecuted.)

In the following sections, we examine the challenges communities face prosecuting human trafficking cases under new laws to help contextualize the patterns identified through the case review.

**Table 3** Case outcomes and charges for suspects in human trafficking Cases ( $N=379$ )

Case outcomes	All suspects	Site type		
		Comprehensive legislation	Basic legislation	No legislation
Charged with state crime				
Yes	28 %	35 %	22 %	29 %
No	72 %	65 %	78 %	71 %
State charge ( $n=106$ )				
Compelling prostitution	41 %	53 %	26 %	36 %
Human trafficking	10 %	11 %	16 %	4 % <sup>a</sup>
Kidnapping	4 %	0 %	0 %	14 %
Labor trafficking	0 %	0 %	0 %	0 %
Prostitution	10 %	7 %	16 %	9 %
Sex offense	3 %	7 %	0 %	0 %
Sex trafficking	7 %	4 %	16 %	5 %
Sexual exploitation minor	4 %	0 %	16 %	0 %
Other	20 %	18 %	11 %	32 %
Charged with a federal crime				
Yes	50 %	51 %	47 %	54 %
No	50 %	48 %	53 %	46 %
Federal charge ( $n=189$ )				
Harboring	26 %	50 %	5 %	29 %
Labor trafficking	6 %	10 %	8 %	0 %
Transport for purposes of prostitution	27 %	12 %	49 %	12 %
Transport for purposes of prostitution—minor	8 %	0 %	6 %	20 %
Sex trafficking	6 %	12 %	6 %	0 %
Sex trafficking—minor	13 %	2 %	12 %	25 %
Sexual exploitation minor	1 %	2 %	0 %	2 %
Other	13 %	12 %	15 %	12 %

Percentages shown in Table 3 are based on nonmissing cases

<sup>a</sup> This case represents a prosecution for human trafficking brought forward to prosecution under human trafficking legislation that was passed after 2007

### Uncertain legal environment

Despite 49 states criminalizing human trafficking, few human trafficking cases were prosecuted under state human trafficking laws. In all study sites, state prosecutors listed numerous challenges to the prosecution of human trafficking cases, including untested laws and unclear legal standards, lack of guidance about how to use state antitrafficking laws, and a lack of prosecutorial tools specific to the antitrafficking statute, such as jury instructions or motions. State prosecutors generally did not know the specific elements of their state human trafficking law or, in some cases, even its

existence. When asked about prosecutor reluctance to prosecute human trafficking cases, a law enforcement supervisor explained:

These are not laws that a prosecutor would deal with on a regular basis. ... There isn't a whole lot of case law on it...and you really don't want to stick your neck out and do something you are unsure of. These are high-profile cases, the last thing you want to do is stick your neck out and wind up getting an egg on your face because you failed in your prosecution. ... Nobody wants to fail on a grand scale, which sometimes these cases turn out to be.

(Comprehensive Legislation, South, Law enforcement)

In the absence of experience or case law to guide their decisions, some prosecutors accepted only cases that had multiple legal elements necessary for prosecution, even when a single element would have met the legal requirements. (As demonstrated in the preceding analysis, prosecuted cases had twice as many legal elements of human trafficking than declined cases.) Some prosecutors required evidence of force in cases of sex trafficking of minor victims even in states where the law makes an exception to the force, fraud, and coercion requirement for minors.

If state prosecutors accepted human trafficking cases, then they were more likely to prosecute them using existing nontrafficking laws with which they (and judges) were more familiar, such as pandering or promoting prostitution or civil labor violations. As one prosecutor explained:

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

(Basic Legislation, Midwest, Prosecutor)

This reluctance of state prosecutors to use state human trafficking laws was reported in an article in which a Texas county prosecutor cautions against charging offenders with state human trafficking offenses. He said that the "stories of trafficking victims are complex, and they seldom fit neatly into the categories of forced labor that the statute provides, so we generally charge offenses with less complex language, such as compelling prostitution or aggravated promotion of prostitution" ([22]: para. 22). Trafficking offenders often were prosecuted under lesser charges in the cases we reviewed. Of course, doing so hides within the justice system's records the prevalence of human trafficking. It might even send a message to offenders and victims that the labor and sex trafficking crimes are not perceived to be as serious or as severe by the criminal justice system.

Human trafficking cases present additional legal challenges. These cases often establish a victim as both a victim and potentially as an offender (either through involvement in prostitution and/or unauthorized immigration status). Prosecutors then

face the task of determining whether they should view the victim as a victim or whether they should worry that the victim will not be perceived as a victim by a judge or jury (see *infra*).

The few state prosecutors in our study who used their state antitrafficking laws faced challenges in the form of judge and jury misunderstanding, bias, and lack of knowledge about human trafficking. One prosecutor described how he lost a sex trafficking case involving a victim who was a U.S. citizen when a judge allowed the defense attorney to claim that trafficking only happens to immigrants smuggled across borders (which is not required by the law). Although the prosecutor objected, he believed that the judge's action biased the jury's decision toward acquittal. Prosecutors in other sites recounted situations where judges allowed irrelevant factors regarding a victim's past to be admitted during trial. One prosecutor (who successfully prosecuted her state's first trafficking case) recalled:

Our trial judge was what I like to call a “good ol’ boy,” and he wasn’t going for this. He made life extremely difficult during trial. At one point, because we had asked for a lot of stuff to be kept out related to the minor victim’s past, we did our standard motion of limiting and this stuff isn’t relevant and we shouldn’t be allowed to talk about it and just after the girl testified the judge said, “Well I don’t care about the rulings I made before. Anything is coming in because I think your girl is a lying little ‘you-know-what.’” And I said, “Okay, well, and that’s where we are.”

(Comprehensive Legislation, Midwest, Prosecutor)

State prosecutors raised concern that judges in their jurisdictions might not think trafficking is serious because they are uninformed about the issues and have never presided over a trafficking case before. Some prosecutors feared judges would be biased against the victims who they perceive as complicit in their own victimization or as criminal offenders themselves.

In addition to judges misunderstanding the law, prosecutors in every study site described the challenges they faced trying to educate juries about human trafficking. As one prosecutor in a state with comprehensive legislation explained, public perceptions about human trafficking complicate prosecutions. “You have to get over the perception from jurors that human trafficking is slavery with an iron ball attached to their leg, and they’re wearing rags and sleeping in a shipping container. ... It’s hard. And the facts that fit that circumstance don’t come along all the time.”

Another prosecutor in a state with basic legislation repeated this concern:

I think it’s really hard to make the general public realize just how much these people are being victimized. I think it’s really hard for people to understand victims being forced into servitude when they can come and go to some extent.... I think people watch TV and it’s a truckload of girls trapped in the back and they’re being hauled back and forth and that’s what people imagine.

(Basic Legislation, South, Prosecutor)

## Institutional challenges

Institutional challenges also were evident across study sites regardless of the type of state human trafficking legislation. Three common institutional deficiencies are the lack of specialization among investigative and prosecutorial personnel, the lack of training and tools, and the lack of victim services.

*Lack of specialization* Local law enforcement agencies have the training, resources, tools, and institutional support to investigate, prosecute, and convict cases using new human trafficking laws. Across study sites, we found few specialized investigators with time dedicated to proactive investigations of human trafficking. Instead, cases in our sample were predominantly identified through reactive approaches. As illustrated in Table 1, human trafficking cases were most frequently identified (in 39 % of the investigations) through a tip from a community member, a victim-services organization, or a hotline call. Victims self-reported their victimization to the police in only 10 % of the cases, and in another 3 % of cases, the victim's family reported victimization. Only 3 % of the cases began in response to a call for service. To the degree that it occurred, proactive identification happened primarily during the course of another ongoing investigation into prostitution.

The lack of specialized personnel often reflects a lack of institutional and/or community prioritization of such investigations. As one detective explained:

These cases are really resource-intensive for law enforcement and they have a hard time putting resources towards that when they've got one investigator in their police department whose job it is to investigate burglaries, auto theft, everything under the sun. When you've got people's houses being broken into, the community is going to ask that you address that before spending a lot of time investigating something that they're not even probably seeing on a first-hand basis.

(Basic Legislation, Midwest, Law enforcement)

In sites with federal human trafficking funding, investigators in vice or special-crimes units did have time allocated for human trafficking investigations, but the traditions of these units largely determined the types of cases that were identified. Cases of sex trafficking of adults and minors were most likely to be investigated by vice units—units that have historically been in charge of prostitution arrests. The cases identified in our sample reflect the approach of vice investigations. Nearly half (45 %) of all human trafficking cases were found in traditional venues for vice investigations such as on the street, in a hotel, or on the Internet. Another 42 % of cases were found in a residence, reflecting, in part, the movement of prostitution and sex trafficking indoors. Even though law enforcement often mentions massage parlors as a target for human trafficking, only 3 % of cases we reviewed were located in such establishments. No site had law enforcement dedicated to investigate labor trafficking proactively. Given that labor violations are traditionally civil matters and that local law enforcement does not have routines to facilitate the investigation of labor trafficking, it is not surprising that few labor trafficking cases were identified by the police.



Similarly, prosecutors lacked specialization. They employed a reactive approach to human trafficking prosecutions. Although prosecutors told us that they were “open for business” and welcomed referrals of human trafficking cases, they did not have the institutional resources—such as specialized units or dedicated personnel—that are needed to collaborate with local law enforcement and to build human trafficking investigations proactively. Instead, prosecutors waited for the police to bring them cases.

Of the few labor trafficking cases that were identified, no prosecutions of labor trafficking used state labor trafficking laws in any study site. Although local prosecutors repeatedly acknowledged that labor trafficking existed in their communities, they said that such cases were not being investigated because the public did not call to report them and because the police had not identified any cases where there was clear evidence that victims had been coerced, defrauded, or forced to labor. When asked who in their agency would handle labor trafficking cases, most prosecutors were unsure. Local prosecutors thought that labor trafficking cases would be more successful if prosecuted federally given that victims might be in the United States without authorization, the potential for an international nexus, and given their limited resources. When asked how a local prosecutor thought his supervisors would react if he were referred a case of labor trafficking for state prosecution, he responded as follows:

I think my supervisor would push back on it because he wants to make sure he can win a case, especially since most of our labor trafficking involves immigrants. It sits better that the federal government would handle those cases.

(Comprehensive Legislation, West, Prosecutor)

The reticence of local prosecutors to accept human trafficking cases further discouraged police investigations of human trafficking cases. Instead, the police funneled their limited resources toward investigating the types of cases prosecutors were more likely to accept. The following quote from law enforcement illustrates the frustrations of a detective in a state without human trafficking legislation and where there is little incentive to investigate crimes that do not provide financial resources to the department: “In our department the narcotics unit rules. The things that they do bring in money so they have the manpower needed. Our unit just doesn’t have the resources. ... Yeah, there’s money from prostitution, but 9 out of 10 times the people you are arresting aren’t the ones that are holding that money.”

*Lack of training and tools* Both police and prosecutors lacked training in trauma-informed and victim-centered interviewing techniques. This deficiency negatively affected law enforcement’s ability to interview potential victims or to infiltrate organized criminal networks involved in labor and sex trafficking. As one officer stated:

Often law enforcement is thrust into the role of counseling women, but they are not trained in this capacity. They feel for them and try to help them, but these women are so traumatized and often law enforcement is unable to devote the

amount of time that needs to go into helping these victims heal or feel comfortable enough to cooperate in an investigation.

(No Legislation, Northeast, Law enforcement)

Law enforcement lacked critical language skills and cultural knowledge of immigrant groups within local communities, leading to a small number of cases that could be identified as human trafficking and investigated in such a way to promote successful prosecution.

Several prosecutors said they needed training on how to implement state human trafficking laws into the actionable steps necessary to build strong investigations and prosecutions. Yet, none of them had received state-specific training on the elements of their state's human trafficking law. For those prosecutors who had received training or attended a conference, the training was geared toward federal prosecution or toward general awareness-raising.

*Lack of victim services* The lack of specialized services for labor or sex trafficking victims as well as the lack of advocates to coordinate the provision of services to victims during the investigation and prosecution of a case were significant challenges in every study site. In a few sites, victims of trafficking, including children, who were willing to cooperate in the prosecution of their cases had to be removed out of state to access specialized victim services.

In other cases, victims were referred to nonspecialized local services. Prosecutors cited secure, specialized, and long-term housing as the service that victims needed most often. One detective noted that finding secure housing continued to be a serious challenge even though he was in a state with comprehensive legislation and with federal funding to support victim services. "Sometimes they go back home. Sometimes they just disappear into the wind. There's no real way to say, 'ok, for the next six months, because that's how long it takes to prepare a case, you've got to stay here.' We don't have a way to house them in like a safe-house." Some agencies reported putting victims in shelters or in foster care for minors. But this approach risks victims disappearing. A detective explained as follows:

There are some things that we cannot do. For example, some of the juvenile prostitutes that we've arrested—a lot of those girls are from out of state, they're not from here. We try not to charge them with crimes but if we did charge them we could hold them, but that's not really what we're trying to do. Other than that we don't have a reason to hold them. So we need places to house them and put them where they can be where they can get counseling until we can either get them home or get them somewhere safe. And so again, the police department doesn't have those resources.

(Basic Legislation, South, Law enforcement)

Despite their negative implications, arrests of trafficking victims occurred in all study sites. Thirty-five percent of the human trafficking victims identified in cases we reviewed were arrested or sent to detention during the course of the investigation.

Some police officers justified arresting victims because it kept them safe and it created an incentive for the victims to provide information about the trafficking situation. As a detective from a state with basic legislation explained, “We’ve had some girls that get to the shelter and run right away because they know they are in trouble, because pimps know that that’s not locked. We’ve had girls not open up until they do get locked up, and that’s when they feel safe.”

Unauthorized immigrants who are victims of human trafficking are supposed to be afforded protection through provisions of the TVPA that allows them to stay legally in the United States and to receive services while their cases are prosecuted. Interviewees report that this commonly does not happen. In the cases we reviewed, when local law enforcement officers suspected that suspects were unauthorized immigrants, the Department of Homeland Security was notified a majority of the time. They never came to the attention of local prosecutors. A local prosecutor in a state with basic legislation candidly explained the thinking about costs as follows: “The majority of them [potential suspects or victims] are deported administratively ... We don’t have the resources to deal with every illegal alien case. Usually if it is just one victim, ICE will just deport them.” He clarified that housing trafficking victims who are unauthorized immigrants in jail or detention and providing them with services is too expensive. So, he added, “Sometimes it makes more sense to just deport them and get them on their way.”

### *Attitudinal challenges*

The attitudes of police and prosecutors about the credibility of victims and their perceived blameworthiness influence prosecution decisions [15, 30, 56–58]. Findings from our study support and extend this body of research findings in two important ways. First, victim statements are often the primary and, sometimes the only, source of evidence in human trafficking cases. Second, research on the prosecution of sensitive crimes (e.g., domestic assault and rape) has found prosecutors are reluctant to pursue criminal charges when victims have engaged in crime or risky acts [15, 29, 30, 37, 56, 58]. Human trafficking victimization almost always involves victims in situations deemed risky or criminal. Consequently, the legal elements implicit in human trafficking offenses (e.g., commercial sex) or the characteristics that may make a person vulnerable to trafficking (e.g., unauthorized immigrant or drug addiction) undermine victim credibility. These facts help explain the lack of law enforcement attention to the problem.

*Necessity of victim testimony* Although credible victim testimony is important in most criminal prosecutions, victim testimony is virtually an absolute necessity in most human trafficking cases. Because of the hidden nature of the crime, often few witnesses to the victim’s exploitation are available. When witnesses do exist (such as buyers of commercial sex or cheap labor), they have a vested interest in keeping the victimization hidden. Investigative techniques such as electronic surveillance and undercover operations that might reduce reliance on victim testimony are not commonly used in these investigations.

Once a victim is identified, police and prosecutors are reluctant to put them back in a situation to gather evidence. The chances of further victimization are too high. As a result, the police rarely find first-hand witnesses to human trafficking victimization.

Instead, they have to depend on statements of victims about their experiences. One investigator explained:

You may get lucky and stumble onto a victim that comes crashing out of a house. These aren't like drug cases that have tangible evidence you can lock away in an evidence locker and break it out for trial. You have a live human being that the foundation of the case rests upon them. And they're your evidence. (Comprehensive Legislation, Northeast, Prosecutor)

Evidence to help corroborate victim statements, such as the instruments of prostitution (i.e., condoms, lubricant, clothing, money, customer ledgers, photographs, and digital files), was collected in 66 % of the cases we reviewed.

Even when collected, corroborating evidence often is insufficient for prosecution. Police officers explained that they would be reluctant to refer a case to the prosecutor unless they were sure the victim would be willing to testify. Prosecutors confirmed this perspective. They refused to file charges or they dropped charges when victims could not be found, or had run away or refused to provide information. As one prosecutor noted, "Victim testimony is not just a necessity. It's a legal requirement. If I don't have her, I got no case."

The challenge of securing trafficking victim testimony is similar to that faced in domestic violence prosecutions. In the past, prosecutors could bring charges in domestic violence cases even if victims were unwilling to cooperate through the use of corroborating evidence, such as victim statements to the police and 911 calls. However, in 2004 the Supreme Court ruled in *Crawford v. Washington* [65] that allowing such evidence without giving the accuser the ability to be cross-examined amounted to hearsay and violated the Confrontation Clause of the Sixth Amendment. (Previously, such evidence met hearsay exemption standards.) Prosecutors frequently referred to the ruling in *Crawford* when explaining why they would not file charges in cases where a victim was reluctant or unavailable to testify.

Because victim testimony is critical to human trafficking prosecutions, police said they needed to put pressure on victims to convince them to participate in the investigation. One investigator explained, "We almost have to do the same grooming process that the pimp did. A lot of times they are very angry, you know. They don't want to be picked up." Expressing frustration with victims who are reluctant to provide information, another investigator admitted that they will question victims until they "break."

Across the cases we reviewed, more than half of the victims who initially cooperated with prosecutors refused to cooperate or went missing as the case progressed. This response is understandable as human trafficking victims often are fearful of the trafficker; lack access to comprehensive, specialized services; and distrust law enforcement. Compounding these challenges, trafficking cases take a long time to investigate and prosecute. One victim-service provider explained that victims may decide that cooperating with authorities is not worthwhile, especially if their basic necessities had been provided by their trafficker.

In some cases we reviewed, unauthorized immigrant victims were unwilling to provide information to law enforcement out of a fear of deportation. A detective recognized these fears stating, "You can offer them all of the services in the world, but survival is number one for them." For victims who have left home and taken

significant risks to secure work, the prospect of being deported can be more frightening than the benefits of providing information to the police to help arrest the trafficker.

*Negative attitudes toward human trafficking victims and the challenge of victim credibility* When human trafficking victims do cooperate, their credibility often is questioned because they have engaged in crime as a result of their victimization. Negative views of human trafficking victims affected police and prosecutor assessments of a victim's credibility. In turn, this affected their treatment of victims. A detective in a state with comprehensive legislation explained that human trafficking victims often are unreliable and have drug addictions that make them even less credible. He concluded, "It's probably easier to prosecute homicides because the victims are dead." The chief of police in this department repeated these sentiments, stating his belief that human trafficking victims were not credible. "Ninety-nine-point-nine percent of the time those women are crack whores." This chief said that he could not justify the expenditure of public resources to investigate their potential victimization.

One hardened detective in a different state expressed his cynical attitude toward domestic sex trafficking of minor victims who returned to the "safety" of their pimps after being arrested. He sneered, as if speaking to a trafficking victim expressing concern that her pimp would be angry that she provided information to the police, "Don't worry; 'daddy' [her pimp] will be there the moment you get out of jail to make you sell your ass again."

Perceptions of human trafficking victims as criminals also extend to foreign national victims, particularly those who are in the country without proper documentation. A detective explained the challenge of convincing prosecutors to move forward with human trafficking charges when the public has a negative opinion of victims. "I would have to say ignorance is the biggest hindrance to these investigations. The ignorance of the 'they-are-illegal-they-shouldn't-be-here-to-hell-with-them-they-get-what-they-get' attitude." Police and prosecutors were reluctant to try to overcome some of the challenges of human trafficking cases when those victimized were not perceived sympathetically.

Negative perceptions were most problematic in cases where there was no evidence of physical force or restraint. In these cases, threats of force were subtle and culturally specific, or psychological coercion was used to control victims. Nevertheless, victims were blamed for not leaving the trafficking situation. In some cases, victims themselves were fearful of providing information to the police because they feared being treated like a criminal. An investigator explains how this challenge impeded victim interviews:

When I pulled her to the side, she was really scared and she was really hesitant to talk to me. With my experience, I just felt like there was more, and finally she broke. I mean it took a long time and I think it was just me reassuring her, you know, it will be ok, she's not in any trouble, and that I know what's going on.

(Basic Legislation, Midwest, Law enforcement)

Because many human trafficking victims suffer from trauma, depression, self-blame, and guilt, factors that may prevent victims from leaving the trafficking situation, they often cannot accurately recall details of their victimization [54]. One prosecutor indicated that the human trafficking victims he worked with could not participate in the

prosecution because of the debilitating effects of trauma. He said, “They are the most fragile of all victims I have worked with in over 15 years as a prosecutor.”

Multiple interviews often are needed to gather information from victims. This information may change over time, further undermining the credibility of victims as well as the strength of the case. A detective explained that some victims initially seemed to be lying when their stories changed, but he said, “You realize after talking to two, three, or ten victims, it’s not lying. A day in their lives is a difficult thing for them to talk to us about. It continues to be an eye-opener for me.” A prosecutor in another jurisdiction explained that some victims need to be reminded continuously that they are doing the right thing by testifying. Because prosecutors cannot be counselors, they depend on overworked and under-resourced victim-witness coordinators to provide the day-to-day management of victim service needs.

Many prosecutors understood the complexities of victimization but were concerned that judges and juries would not find victims credible. Prosecutors explained that victims of trafficking do not make good witnesses at trial precisely because the factors that led to their vulnerability can be held against them by judges and juries. Those factors also impede their ability to cooperate fully with the prosecution of the case. With respect to factors that would reduce victim credibility in labor trafficking cases, prosecutors cited the following: a person’s status as an unauthorized immigrant, possible willing participation in being smuggled, being from a country where they would be paid less than what they were paid in the United States, and language barriers. For minor and adult victims of sex trafficking, the factors that make them vulnerable to victimization include the following: being a runaway, past physical and sexual abuse, past involvement in prostitution or other criminal history, difficult personalities, substance abuse, mental or physical disabilities, parental substance abuse, or involvement in the criminal justice system. A detective confirmed this view, explaining a prosecutor’s declination: “I suspect that a lot of it had to do with the girls being not very good witnesses. I was told that they might have actually gone forward against the suspects otherwise. ... [A]lmost all of these girls are damaged goods. They’ve been abused physically or sexually or you know, if you sit down and talk to them, you can tell they’re just not good witnesses.”

One local prosecutor explained that even when a trafficking victim cooperates with the prosecutor and provides statements or testimony, the fact that his or her associates or family members may not be perceived as credible can work against him or her. It can cause the prosecutor to settle or dismiss a case fearing that juries would not believe the victim or would not believe witnesses who support the victim’s testimony.

Evaluating cases based on their potential for conviction at trial is known as a “downstream orientation.” Prosecutors base their judgment about the strength of evidence in a case by thinking of how it will be received by judges and juries [16: 535]. This perspective is a particular problem in light of the reports from police and prosecutors about the communities’ lack of understanding about human trafficking and the lack of political will to address the problem. If jurors misunderstand the crime of trafficking and therefore are unlikely to convict, then prosecutors either will be unlikely to proceed with the case or will proceed knowing they will have to negotiate a plea to a lesser charge or lighter sentence than the trafficking law allows.

Nearly all the prosecutors interviewed for this study indicated that cases were stronger when multiple victims could testify to help overcome credibility challenges of a single

human trafficking victim. A state prosecutor explained the benefit of having multiple witnesses corroborate the experiences of a victim who is not perceived as credible:

You need more than just one person saying this is what happened, oftentimes things cannot be corroborated. Other witnesses that will corroborate the event are gone or not credible. ...I guess it's too broad to say that the problem prosecuting human trafficking cases is the victim. It is really the victim and the evidence that surrounds the case and often these cases are very shrouded. You know, they're difficult cases just by the nature of the events of the crime.

(Basic Legislation, Midwest, Prosecutor)

Across all study sites, prosecutors relied on victims as witnesses. In some cases, this reliance was the result of a lack of corroborating evidence. In other sites, it was caused by prosecutor uncertainty about the types of evidence that would establish human trafficking. These victim-witnesses are not commonly perceived by prosecutors to be credible. Consequently, these human trafficking cases are less likely to be prosecuted.

Prosecutors routinely use plea bargaining as a means of getting convictions in cases where the evidence is weak. They will charge a case anticipating that they will reduce the charges in exchange for a plea of guilty. But prosecutors told us that because trafficking victims are so unreliable and not credible as witnesses, they often will not even charge the cases.

## Conclusion and policy implications

Too often, advocates for laws intended to suppress some social ill rest on the comforting assumption that once laws have been passed, victims and offenders will be identified and cases prosecuted. The literature on the implementation of new laws indicates this assumption is a mistake. The implementation of new laws is not easy, as shown by our study of the implementation of state-level laws against human trafficking.

The failure of state and federal authorities to prosecute large numbers of human trafficking perpetrators has led to suggestions that human trafficking is a smaller problem than estimates or public outcry would suggest [38, 39, 62, 63]. Our study indicates that the problem lies in legal, institutional, and attitudinal challenges of using new human trafficking laws. It serves as a warning against drawing conclusions about the scope and nature of the problem of human trafficking in the United States based on traditional criminal justice system measures, such as arrests and convictions.

In our sample of cases from a nonprobability sample of selected U.S. counties, we found that the overwhelming majority of human trafficking cases identified by the police involve victims trafficked for commercial sex. Labor trafficking cases were rarely identified. None of the state human trafficking prosecutions in our sample involved labor trafficking offenses.

Some of the criminal justice system's focus on sex trafficking may be attributed to legal framing. Early state antitrafficking legislation often narrowly defined trafficking as sex trafficking or included language limiting the crime to exploitation occurring in prostitution [51]. Today, the federal antitrafficking laws and all state laws include both sex and labor offenses within their definitions.

In addition, the exclusive focus on sex trafficking at the state level seems to be attributable to institutional and attitudinal barriers. Traditionally, local police have not been responsible for conducting investigations into labor-related issues. Such investigations are carried out by regulatory agencies, such as state and federal departments of labor or licensing agencies. These agencies have the capacity to identify human trafficking, but they lack the legal authority to pursue criminal prosecutions for human trafficking crimes independently. In the agencies we studied, primary responsibility for human trafficking investigations was commonly located in vice units or with detectives who had backgrounds in sexual exploitation enforcement. This division of labor further exacerbates institutional conditions that result in the disproportion of the number of sex trafficking cases compared with those of labor trafficking.

Police and prosecutors in this study primarily relied on traditional reactive strategies to identify cases of human trafficking. These strategies included waiting for victims to come forward and report their victimization or relying on nongovernmental agencies to provide tips. These efforts were seldom successful. Because human trafficking victims often fear retaliation by the trafficker and apprehension by the police, they rarely come forward to report their victimization.

Proactive police strategies were confined to traditional vice sting operations that resulted primarily in the uncovering of domestic sex trafficking. A broader array of proactive strategies is needed to locate a range of human trafficking offenses. Local law enforcement should develop or expand partnerships with regulatory agencies including state labor, wage and hour regulators, municipal code enforcement, and licensing agencies. Local law enforcement should also be cross-trained by these agencies to learn about labor violations and identify venues ripe for proactive labor trafficking investigations. In addition, police should utilize techniques from organized crime investigations to develop cases against traffickers, including analyses of cash flow and real estate and business incorporation records for those who run brothels or other businesses involved in exploitation of workers.

Sex trafficking cases present a host of difficult problems. Police, prosecutors, and judges often perceive sex trafficking victims to not be legitimate victims because of their involvement in crimes, such as prostitution and illegal migration. Also, the difficulties victims face with regard to providing accurate and consistent accounts of their experience contribute to the perception that they are not “legitimate.” Many of the legal and attitudinal challenges to prosecuting human trafficking cases identified in this study are consistent with the literature on the prosecution of sensitive crimes that often depend on the testimony of victims, such as domestic violence and sexual assault. These challenges are exacerbated because trafficking is not well understood and because the same characteristics that make victims vulnerable to exploitation make them less credible as witnesses [54].

Notwithstanding assurances by police and prosecutors that they understand how trauma and social isolation shape trafficking victim experiences, many police and prosecutors continued to blame victims for their victimization and to label them as “bad victims” (i.e., ones who make poor witnesses). Given this view, prosecutors were reluctant to charge trafficking offenses. In turn, the police were reluctant to devote resources to the investigation of cases that they feared would be dismissed.

To compensate for problems of victim cooperation and credibility, evidence-based prosecution strategies that focus on securing evidence in addition to victim testimony



are critical for human trafficking prosecutions. Although visible effects of violence may not be apparent in human trafficking cases in the same way as in domestic violence, important lessons can be learned from the general strategies developed by domestic violence prosecutors who continue to prosecute cases without victim cooperation in the post-*Crawford* era (see [17, 42]).<sup>11</sup> These strategies include the use of various things: photographs, documents such as labor contracts or visa application paperwork, digital and phone records, and testimony of corroborating witnesses including family members, customers, and other workers. Ultimately, however, as some prosecutors noted, there are situations where only victims can provide the evidence of psychological coercion necessary to establish the restraint of liberty required to convict an offender under the new human trafficking laws. Of course, in those cases, the problems of victim credibility and cooperation determine whether the case is even charged much less whether the traffickers are convicted.

Because human trafficking prosecutions often depend on victim cooperation and testimony, comprehensive victim services are essential. Human trafficking victims have varied but serious needs. Sex trafficking victims suffer from trauma-related conditions including posttraumatic stress disorder, depression, and anxiety [24, 64] that impede their ability to recall details of their victimization. More research is needed to understand whether labor trafficking victims experience the same types of trauma.

Social isolation and marginalization are common among all types of trafficking victims. Victims often rely on their trafficker to meet their immediate daily needs. As one victim-service provider noted, “When victims leave [the trafficking situation], they leave with nothing.” Before they can cooperate with law enforcement, victims require support and stabilization including emergency health and mental health services, secure housing, food, and clothing [7]. Because human trafficking cases often take multiple years to prosecute, a correspondingly long-term victim-support plan (including housing, mental health services, legal advocacy, and education and job training) is needed to ensure that victims are in the best position possible to assist police and prosecutors. Restitution programs and civil remedies established by new state laws can provide much needed economic support for trafficking victims. Yet the prosecutors we interviewed rarely used these tools.

State and local prosecutors need special training and resources. At the federal level, several best practices have been identified to improve prosecution (including training on victim interviews, using corroborating evidence, and using expert testimony to educate judges and juries about trafficking) [8]. State and local prosecutors should make use of this training. They also need training specifically on implementing their state human trafficking laws.

Organizations that support state attorneys generals, district attorneys, and judges should help educate practitioners about human trafficking. The National Association of Attorneys General (NAAG) took an important step in this direction by identifying human trafficking as the presidential initiative for 2011 and by adopting a resolution that members commit to prosecuting human trafficking cases [46]. Such symbolic statements are important, but comprehensive guidance also is needed.

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<sup>11</sup> As noted, *Crawford v. Washington* (541 U.S. 36) established that use statements to the police without the ability of the accuser to be cross-examined violated the Confrontation Clause of the Sixth Amendment, and amounted to hearsay.

There are some promising first steps. The New York State Judicial Committee on Women developed a resource guide to improve legal representation for victims and to promote prosecution of traffickers [18]. The National Judicial Conference has recently developed a basic human trafficking course to raise awareness among judges. Unfortunately, these efforts are limited and often too general in scope. The National Association of District Attorneys (NDAA) provides a list of state human trafficking statutes and civil remedies [47, 48]. In addition, state-specific training and toolkits with case examples and model legal strategies are needed to educate prosecutors and court officials and to promote the use of new trafficking laws.

The U.S. Department of Justice has advocated a victim-centered approach to human trafficking prosecution focused primarily on providing services to identified victims. Although this approach is appropriate, it has been limited in practice by the fact that many victims are mistakenly classified as offenders. Human trafficking victims are commonly compelled to engage in criminal acts such as prostitution and illegal migration in the course of their victimization. Thus, some prosecutors bring criminal charges against them if their status as a victim of human trafficking is not recognized. The victim-centered philosophy is intended to avoid this outcome. It is endorsed by a recent statement by NAAG: “Best practices dictate that a person who is forced into prostitution, or, as a consequence of the trafficking situation, is in violation of some immigration provision, should not be prosecuted for such crimes.” On the other hand, however, NAAG also cautions that “immunity is not appropriate for every crime committed in the course of trafficking” [45]. This statement illustrates the bind that prosecutors have been put in by the trafficking laws.

At the time of this writing, eleven states have “safe harbor” laws to protect minors who are involved in commercial sex from being prosecuted for prostitution.<sup>12</sup> Safe harbor laws direct explicit legislative mandates to law enforcement agencies to ensure that trafficking victims are recognized and treated as victims. By law, minors cannot consent to engage in prostitution because they are underage. These laws spare prosecutors from the difficult moral and political choice of parsing blameworthiness, deciding whether the youth should be treated as a criminal deserving punishment or as a victim to be rescued. To date, such laws have only occurred for minors. For adults, however, the transformation from offender to victim is more complicated. It requires prosecutors to determine whether, based on whatever credible information is available, the person was “forced, defrauded or coerced” into illegal behavior. If not, the person is not a “victim of trafficking” for the purposes of prosecution as defined by the TVPA and by most state laws.<sup>13</sup> If people are not classified as victims, then they may be treated as offenders and arrested or detained.<sup>14</sup> The complexities of

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<sup>12</sup> States with Safe Harbor laws include Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Tennessee, Vermont, and Washington [52].

<sup>13</sup> The TVPA distinguishes between trafficking victims and victims of severe forms of trafficking. Only cases with force, fraud, or coercion are considered to be severe forms of human trafficking and eligible for federal prosecution.

<sup>14</sup> Seven states now allow human trafficking victims to have their criminal records vacated after being classified as a human trafficking victim, but this requires the transformation of offender to victim to have already occurred. States that provide remedies to vacate criminal convictions include Hawaii, Illinois, Maryland, Nevada, New York, Vermont, and Washington [52].

determining a person's status as a victim or offender present a crucial barrier to the prosecution of human trafficking.

Although our study sheds new light on the problems of fighting human trafficking in the United States, we urge caution about drawing conclusions about the prevalence of human trafficking or the effectiveness of antitrafficking laws based on our findings. In 2012, in recognition of problems with the trafficking laws, legislatures in 24 states passed new laws modifying the existing human trafficking statutes. For example, legislators in Florida amended human trafficking laws originally passed in 2004. The revised law expanded the jurisdiction of the Attorney General's Statewide Prosecutor to include human trafficking cases, combined existing statutory language regarding sex and labor trafficking into a single human trafficking offense, increased the penalties for human trafficking offenses, and allowed seizure and forfeiture of property used in trafficking [69].

Recent changes to state law also provide increased victim protection and support victims of trafficking in ways other than criminal prosecution of traffickers. For example, legislators in Texas and Washington—two of the first states to pass legislation criminalizing human trafficking—recently adopted new laws providing more comprehensive services to victims. Changes include a victim assistance program for domestic sex trafficking victims [71] and a fund to support housing victims of human trafficking and their families [72].

As described in this article, some strategies for improving the prosecution of human trafficking cases do exist, but the challenges are steep. Although the criminal justice system remains the dominant antitrafficking response in the United States, criminal prosecution perhaps should not be thought of as the primary tool for addressing the problem of human trafficking. There is instrumental and symbolic value in holding offenders accountable for human trafficking offenses, but prosecution is not the only way to affirm our society's intolerance of modern slavery. Initiatives that promote victim protection regardless of the success or failure of the prosecution of their traffickers must also be emphasized.

The approach to trafficking victims should be informed by what has been done in the response to domestic violence. There, a comprehensive victim-service approach has routinized the provision of service. Shelters, counseling, and safety planning can be accessed regardless of a victim's involvement in the legal system. A similar, even stronger victim-oriented approach to victims of human trafficking could have significant results in both restoring victims and securing communities.

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