Sex Trafficking & Prostitution: Where Does Indiana Stand?

An Honors Thesis (HONRS 499)

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Abstract

Little research has been done specifically on the effectiveness of the Indiana laws and social services that affect sex trafficking (or any human trafficking). This paper is designed to help fill that gap by identifying the strengths and weaknesses in Indiana's sex trafficking framework in order to make recommendations to the Indiana General Assembly and other governmental agencies regarding the next steps that must be taken to fight the sexual trafficking of Hoosiers. The authors analyzed primary data from interviews with stakeholders in Indiana, and synthesized it with legal materials from Indiana, the federal government, and other states, and scholarly work in law, social work, psychology, and many other fields in order to make their recommendations. The legal recommendations include increasing the sentence on trafficking crimes, clarifying ambiguity in the statute & defining important words, allowing sex trafficking victims to have convictions vacated that they incurred as part of the trafficking, and increasing & enforcing penalties on purchasers of commercial sex. The social services recommendations include commissioning data collection in Indiana, diverting juvenile prostitutes to the child welfare system, and appropriating state funding to provide services for trafficking victims
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DISCLOSURE

The authors of this thesis are NOT attorneys, and therefore MAY NOT GIVE LEGAL ADVICE. The legal analysis contained in this paper is purely academic in nature, and the authors have omitted portions of the legal materials cited that are irrelevant to the subject at hand, but that may be relevant to another situation. This thesis is not designed to advise anyone of his or her legal rights, responsibilities, obligations, or causes of action, but is merely designed to inform the reader about what the author believes the law is.

Additionally, the author has done his best to paraphrase the provisions of the law in plain language in order to make it easier for everyone to understand. However, the wording of the statute, as written by the legislature, is controlling, and you should consult a licensed attorney if you believe the statute affects you.

If, after reading this thesis, or any part of this thesis, you believe:

- You are a victim of Human Trafficking, you should call the National Human Trafficking Hotline (1-888-373-7888), the FBI field office in Indianapolis (317-595-4000), or 911 for an emergency.

- You are a victim of a crime, you should contact your local police department, the FBI, or 911 for an emergency.

- You have committed a crime, you should IMMEDIATELY contact an attorney licensed to practice in Indiana (or in your state). The Indiana Bar Association operates a lawyer referral service that can be reached by calling (317-269-2222).

- You have the right to sue someone, have a legal right or obligation, or may be sued by someone else, you should contact a licensed attorney as soon as possible.

Under no circumstances should you rely solely upon this document if you have a question about the law. The advice of a licensed attorney is crucial in such situations.
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Methods

This Honors Thesis analyzes data that came from interviews with eight stakeholders in the counter-trafficking movement in Indiana and synthesizes it with a review of counter-trafficking literature and relevant legal materials in order to evaluate Indiana's response to human trafficking. These stakeholders included an Indiana legislator, Marti MacGibbon (a sex trafficking survivor); the head of IMPD's Human Trafficking Unit, Sgt. Jon Daggy; Deputy Prosecuting Attorney & Human Trafficking Prosecutor Mary Hutchison of the Marion County Prosecutor's Office; two health workers at the Marion County Health Department, Tracy McDaniel of the Julian Center, and Tamara Weaver of the Indiana Attorney General's Office.

In order to evaluate the effectiveness of Indiana's human trafficking statutes, one researcher conducted legal research on relevant sections of the Indiana Code and comparable statutes in the U.S. Code and in the codes of other states. The researcher also relied on analyses of those statutes by legal scholars. In order to evaluate the effectiveness of Indiana's social service response to human trafficking, the second researcher established the needs of trafficking victims through a literature review and through interviews with health workers and an Indiana social worker.

The authors' aim was to discover both the strengths and weaknesses of Indiana's response to human trafficking in order to make recommendations to the Indiana General Assembly and other key stakeholders in the fight against human trafficking, so that Indiana can improve its counter-trafficking operations.

Part I: Human Trafficking in the United States and Indiana

Human trafficking is essentially the practice of controlling or exploiting another person for financial gain. (Polaris Project, n.d.[a]). As part of the United Nations Convention Against Transnational Organized Crime, the U.N. defined trafficking as:

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 or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (2237 U.N.T.S. 319, art. 3(a)).

Trafficking exists in every country in the world (U.S. Dept. of State, 2012). It affects people of all ages and genders, but it disproportionately victimizes women and children because of their vulnerability (as found by Congress in 22 U.S.C. §7101(b)). The International Labour Organization estimated in 2012 that 20.9 million people are enslaved worldwide (USAID, 2012), and Congress has found that approximately 50,000 women and children are trafficked into the U.S. every year (22 U.S.C. §7101(b)). Trafficking victims have
been found in every state in the U.S., and come from urban, rural, and suburban areas. (Polaris Project, n.d.[d]). While globally, the majority of victims are trafficked for labor (Chuang, 2006), the majority of trafficking victims in the U.S. are trafficked for sex (22 U.S.C. §7101(b)). Of sex trafficking victims in the U.S., about 83 percent are U.S. Citizens (Disis, 2014).

Sex trafficking occurs in all areas of the commercial sex industry. Victims can be found in street prostitution, escort services, faux massage parlors, strip clubs, and truck stops. (Polaris Project, n.d.[c]). Traffickers use a variety of methods tocontrol their victims, although every tactic involves exploiting the victim’s vulnerability. Methods of control include isolation, confiscating immigration documents, restricting medical care, violence, threats against family, facilitating drug addiction, rape, shaming, and threatening to expose involvement in prostitution. (U.S. Dept. of State, 2012; Polaris Project, n.d.[b]).

The profits of human trafficking are immense. Current estimates place the annual profits of traffickers at $32 billion. (USAID, 2012). Additionally, prostitutes can earn continuous income for their trafficker, which makes trafficking extremely profitable. As one trafficker stated: “You can buy a woman for $10,000.00 and you can make your money back in a week if she is pretty and she is young. Then everything else is profit.” (Maralek, 2003).

Trafficking victims experience extreme violence and trauma including rape, severe beatings, verbal abuse, forced sex without condoms, and confinement, leading to complicated psychological problems. These problems can include, but are not limited to, PTSD, suicidal ideations, depression, and self-harm (Clawson et al., 2007).

Sex Trafficking in Indiana

There is no publicly available statistical data on the prevalence of sex trafficking in Indiana, but information from secondary sources can help paint a helpful, if limited, picture of sex trafficking in the Hoosier State.

Since the founding of Indiana’s Human Trafficking Task Force (IPATH) in 2006, Marion County law enforcement has opened at least 73 human trafficking cases, and at least 53 victims have participated in IPATH’s victim assistance programs (IPATH, n.d.[b]). While this number includes both labor and sex trafficking, interviews with law enforcement and prosecutors in Marion County reveal that most cases involve sex trafficking (Sgt. J. Daggy, Personal Communication, October 18, 2013; M. Hutchison, Personal Communication, March 3, 2014), as labor trafficking cases are harder to identify. To date, the State of Indiana has never filed a labor trafficking charge (M. Hutchison, Personal Communication, March 3, 2014).

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1 The authors searched for statistical or quantitative data on sex trafficking within the state in every source that they could find and that a rational academic could rely upon, but without success. When confronted with this fact, the Indiana law enforcement officials interviewed in this study confirmed this dilemma and were unaware of any resources that could be used.
SEX TRAFFICKING & PROSTITUTION: WHERE DOES INDIANA STAND?

The Polaris Project, which operates the National Human Trafficking Hotline, has published a cumulative report of all the call data collected from Indiana between 2007 and 2013. During this time, the hotline received 684 calls from Hoosiers and identified 153 potential cases of trafficking in Indiana. Nearly 80% of those calls were related to sex trafficking (Polaris Project, 2014a). While this may not seem like a lot of cases for a five-year period, it is worth noting that the hotline’s call volume increased by nearly 260% between 2007 and 2012, and so the cumulative data may be skewed downward based on lower reporting rates from earlier years (Polaris Project, 2013c).

Maps illustrating the relative prevalence of pimp-controlled sex trafficking across the U.S. reveal that Indianapolis has a rate of (reported) pimp-controlled sex trafficking similar to Detroit, Columbus, and Cincinnati, and slightly less than Chicago, Atlanta, and Washington, D.C. This comparison is less true with commercial-front brothels (massage parlors, etc.) and residential brothels (brothels run out of a person’s house). Indiana has much less reported activity in these venues than the cities mentioned above (Polaris Project, 2013c).

This disparity is supported by the experience of the human trafficking prosecutor in Indianapolis, who stated that Indianapolis has many more “single operators” (pimps with one or two girls) than large prostitution rings (M. Hutchison, Personal Communication, March 3, 2014), such as the one discovered in New York City during Super Bowl XLVIII, which involved 16 child victims and a multi-million dollar drug and prostitution business (Lopes, 2014). Despite this, Indianapolis still has an “aggressive trafficking market” (Li, 2013).

Of the call data from Indiana categorized as “high” or “severe” trafficking between 2007 and 2013, the largest concentration of incidents were in Indianapolis, Fort Wayne, Evansville, Gary/East Chicago, and along the I-70 & I-65 corridors. Trafficking was also reported in Bloomington, Anderson, Lafayette, South Bend, and near Louisville. During this time period, 87 survivors were referenced (Polaris Project, 2014a). In 2011, 2012, and the first half of 2013, the Hotline received 127, 193, and 128 calls from Indiana, respectively (Polaris Project, 2012a; Polaris Project, 2013a; Polaris Project 2013b). In 2011, the callers referenced 6 sex trafficking situations involving 5 victims (Polaris Project, 2012a). In 2012, callers identified 14 cases of sex trafficking involving around 20 victims (Polaris Project, 2013a). Finally, in the first half of 2013, callers identified 20 cases of sex trafficking (Polaris Project 2013b).

While the call data is helpful, it is extremely important to realize its limited nature. The data depends intrinsically upon the truthfulness of the calls made to the Hotline. Incidents may be incorrectly identified as trafficking, non-trafficking situations may make uneducated callers suspicious, or bona fide trafficking may be reported by multiple callers, and so the call data does not necessarily give an accurate description of how much human trafficking occurs in Indiana.

2 Of those calls, 98 were categorized as “severe” or “high”, and 55 were categorized as “moderate.”
While this data is insufficient to support a mathematically accurate conclusion about the prevalence of trafficking throughout Indiana, the authors hope that it can give the reader a general sense of the problem in the Hoosier state. In addition to the quantitative data presented above, the authors have also collected qualitative data (data from the experience of individuals) through interviews with law enforcement and victim service providers in Indianapolis. This data is presented later in the study.

Part II: Social Services Analysis

Needs of a Victim

The needs of a victim \(^3\) of human trafficking are numerous. As many as 60-75% of juvenile prostitutes (who are considered trafficking victims in Indiana) are runaway youth or "throwaway" youth (Mitchell, Finkelhor, & Wolak, 2010; Estes & Weiner, 2002; Reichert & Sylwestrzak, 2013). The term "throwaway" means a child who is under 18 and is forced by his or her parents to leave home or who is abandoned. This means that trafficking victims are often in need of safe long-term shelter and adequate nutrition. Of all cases of trafficking reported through the National Human Trafficking Resource Center, more victims listed long term shelter as a primary need than law enforcement response, crisis case management, transportation, and medical attention combined (NHTRC, 2011). These needs are immediate and must be addressed firsts in order to establish trust and to make the victim feel safe (Clawson, Salomon, Goldblatt, & Grace, 2007). Many victims have immediate medical needs, as only 35% of them had access to medical care while they were trafficked (Reichert & Sylwestrzak, 2013). Some of the common injuries sustained by victims of trafficking include broken bones (35%), bruising (80%), head injuries including nose bleeds and injuries that required stitches or resulted in a loss of consciousness (47%). As many as 53% report mouth injuries resulting in lost and chipped teeth, split lips, and scars, and 53% say they sustained either a sprain or stab wound while being trafficked (Raymond & Hughes, 2001, p. 78).

The trauma that victims of sex trafficking experience is not an isolated event such as an injury, but is rather a constant trauma. Traffickers prey on the vulnerable, and the women they recruit often have been physically, sexually, and/or emotionally abused by family members, and traffickers use this to their advantage (Brittle, 2008; Estes & Weiner, 2002; Geist, 2012). When a trafficker first recruits a woman, he treats her extremely well, and often the woman has never experienced that kind of attention or love before in her life. After this initial phase, however, the trafficker then uses violence against the girl, knowing that she still feels intense loyalty to him. This loyalty has been compared to Stockholm Syndrome, another form of traumatic bonding (Clawson et al, 2007; Geist, 2012). Beatings, gang rape, branding through the use of tattoos, and the threat of violence against the girl’s families are all part of the trauma victims of trafficking face, leading to a myriad of mental health problems that need to be addressed (Geist, 2012).

Posttraumatic Stress Disorder,

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\(^3\) The author’s decision to use the term “victim” rather than “survivor” is a conscious choice indicating the person’s status as a victim of a crime.
depression, suicidal ideations, dissociative disorder, self-harm, and difficulty sleeping are just a few of the problems commonly faced by victims of trafficking (Clawson et al, 2007; Shigekane, 2007; Williamson et al, 2010).

Victims of trafficking often need substance abuse treatment (Clawson & Dutch, 2008). As many as 71% of trafficked women in the United States say that drugs and alcohol were used to control them (Raymond & Hughes, 2001). Many others became trafficked out of a desperation for drugs, and one of the main risk factors that increases a person's chance of being trafficked is substance abuse or coming from a family with a history of drug abuse (Reichert & Sylwestrak, 2013; Estes & Weiner, 2002; M. MacGibbon, personal communication, October 25, 2013). Some develop drug dependencies in order to cope with their situation (Family Violence Prevention Fund, 2005).

People who have been trafficked often have complex legal needs, particularly if the person was trafficked into the United States from outside of the country. Many of the needs of international victims are related to their immigration status, as many might have entered the country illegally. Their needs include applying for visas and representation at deportation hearings (Clawson & Dutch, 2008). In addition, all victims of trafficking need legal protection to ensure that if they were forced to commit a crime while being trafficked, they are not prosecuted for that crime. In addition, a victim of trafficking often has prior convictions related to prostitution because of the trafficking. Legal assistance would be needed in this situation as well in order to vacate these convictions, if legally possible. (Polaris Project, 2014b).

Finally, even after a victim of trafficking has been treated for the physical, mental, and sexual violence they have suffered (and this may take several years), many still have additional needs before they can become self-sufficient. Many young victims of trafficking have little education and a history of poor performance in school (Estes & Weiner, 2002; Reichert & Sylwestrak, 2013). Throwaway children who have no family support have a particularly great need for life-skills training in order to become self-sufficient without having to rely on a trafficker or pimp for clothing, food, and shelter (Reichert & Sylwestrak, 2013).

Response as a Nation

The first major federal effort to protect victims of human trafficking came in 2000 via the Trafficking Victims Protection Act. This act did many good things, including mandate that traffickers pay full restitution to their victims and require appropriate and safe shelter for victims and their families. In order to receive assistance from the federal government, however, a person has to be certified as a victim of trafficking, and this certification can only be attained if the individual “is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma.” The assistance required of the victim includes identifying the person who trafficked them, helping to locate the trafficker, testifying against them in court, and giving evidence and information as requested (22 U.S.C. 7105(b)(1)(E)(i)(I)).
For a domestic victim of trafficking, this means that the victim is left vulnerable to his/her trafficker with no access to services or safety until these conditions are met. For international victims, the consequences are greater. If they refuse to cooperate with law enforcement, they will be denied a T-Visa, which would allow them to stay in the country and receive services. According to the Coalition to Abolish Slavery and Trafficking located in Los Angeles, only half of their clients decide to cooperate with the prosecution of their traffickers, making them ineligible for federal assistance (Shigekane, 2007).

While it is important to apprehend and prosecute traffickers, making access to services contingent on cooperation with law enforcement is not in the best interest of the victim. Many victims of trafficking are living under a threat of violence from their traffickers against themselves and their families (Reichert & Sylwestrzak, 2013; Williamson et al, 2010). The threat is not just perceived, as many victims have not only been beaten severely themselves but have seen their traffickers beat others. In addition, many traffickers know the families of their victims (Goodman, 2011; Virginia Department of Criminal Justice Services, 2012). For instance, a Northern California man named Lakireddy Bali Reddy had been trafficking girls from India into the United States for years to use them for labor and sexual exploitation. He controlled his victims using threats of violence, and he was able to carry out his threats even after he had been discovered and arrested. When the family of one of the survivors spoke out against Reddy, people broke into their home in India and doused the family with acid, killing one and disfiguring two (Shigekane, 2007).

Asking a victim to assist in bringing a case against their trafficker is unreasonable under these kinds of threats, particularly if the victim has not yet had any treatment to address the physical and mental trauma they have experienced. Conditioning access to basic rights such as proper medical care and safe shelter leads victims to further distrust police and might prevent them from ever seeking help with escaping their trafficker (Virginia Department of Criminal Justice Services, 2012). This approach is also in opposition to recommendations made by the UN High Commissioner for Human Rights, who has stated that “access to physical and psychological care and shelter for trafficking survivors should not be contingent on their willingness to cooperate in criminal proceedings” (Shigekane, 2007).

There are many not-for-profits that provide services to victims of trafficking without the kind of conditions mentioned above. While these organizations do a lot of good for trafficking survivors, there are still gaps in service provision. Excluding government-run facilities, it is estimated that there are 2173 beds for survivors of human trafficking. Of these beds, only 678 are exclusively for trafficking survivors, while 1,495 are in organizations that serve other populations but have a human trafficking program. Of the 678 beds that are available exclusively to trafficking victims, 200 of them are in one California shelter, with California housing 54% of all beds for victims of trafficking. Twenty-nine states do not have any beds exclusively for victims, and 23 states do not have any beds designated for trafficking survivors at all (Polaris Project, 2012b; Reichert & Sylwestrzak, 2013). Low estimates of how many people are trafficked into the United States are between 14,500 and 17,500, not including those who are trafficked from one region to another (Shigekane,
2007). Congress has estimated that approximately 50,000 women and children are trafficked into the U.S. annually (22 U.S.C. §7101(b)), and another estimate puts the number of children who have been sexually exploited in the United States in any given year at 190,000 (Reichert & Sylwestrzak, 2013).

Even with the lower estimates for trafficking in the United States, the country’s shelter system can only house 15% of victims, and the shelters do not always have adequate resources to serve those they do house. Shelters dedicated exclusively to the rehabilitation of trafficked women have limited access to government funding, and many stay open exclusively using private donations. Others receive funding from churches, but many have financial struggles, with one organization closing its doors in 2012 due to lack of funding (Reichert & Sylwestrzak, 2013).

Many of the dual-service organizations that provide services to trafficking victims in addition to groups with similar needs do not have the necessary resources to help trafficking victims. In a needs assessment survey conducted by the Virginia Department of Criminal Justice Services, over 80% of respondents said they are not able to serve victims adequately, and more than 75% said that the problems of trafficking victims are more severe than other victims they serve. 84% said that the needs of trafficking victims they served were more complex than the others they worked with (2012, p. 15). For instance, the average victim of domestic violence needs between three and nine months in a shelter, while a human trafficking victim needs a year to a year and a half (Shigekane, 2007). This can be detrimental to the recovery of a victim of trafficking as she may see other women go through the shelter at a faster rate, and feel like she is getting nowhere in comparison. The high rate of turnover of domestic violence victims also leads the women who have been trafficked to feel more isolated and less willing to make friends (Family Violence Prevention Fund, 2005). In addition, many domestic violence shelters are not equipped to provide the necessary security to protect trafficking victims from their traffickers, leading to tension when domestic violence victims feel threatened by the presence of trafficked women (Shigekane, 2007).

In addition, the study conducted by the Virginia Department of Criminal Justice Services found that all of the correction and detention centers surveyed did not know whether an agency that served victims of trafficking was in the area. None of the correction centers had an employee who had been trained on human trafficking, and only 31% of domestic violence programs had any training on how to serve victims of trafficking. According to the respondents, the third-greatest barrier to providing services after “lack of adequate resources” and “problems identifying victims of human trafficking” was “lack of adequate training.” Identification of victims, the effect of the law on victims, ensuring the safety of the trafficked person, and establishing trust were all requested trainings by respondents to the survey (Virginia Department of Criminal Justice Services, 2012, p. 19). Another study found that all employees at organizations who served trafficking victims exclusively had been given training, but this training varied anywhere from two hours to six weeks of training at the start of employment, and not every program required updated trainings (Reichert & Sylwestrzak, 2013).
Professionals who might be able to identify trafficking victims and provide them with adequate help are often under-trained as well, but the federal government is taking strides to change that. The U.S. Department of Health and Human Services has started an anti-trafficking campaign with a toolkit to help medical care providers to recognize trafficking victims. Traffickers usually do not allow victims access to medical care, but when a victim does come in it is important that medical professionals recognize signs of trafficking and alert the authorities without endangering the victim. It is not uncommon for traffickers to accompany their victims to the doctor's office and never leave the room, making it impossible for the victim to speak freely. Doctors, nurses, and other medical professionals need to be equipped to deal with these situations and know how to respond appropriately (Family Violence Prevention Fund, 2005).

Police across the nation need to have more specialized training in human trafficking as well. Many child victims of trafficking have not only been arrested but also charged more than once, which happens for many reasons (Geist, 2012). Often trafficking victims will lie about their age or name because their traffickers have given them new identities. Police officers might also misidentify trafficking victims as domestic violence victims because of the personal relationship a trafficked woman has with her trafficker (Reichert & Sylwestrzak, 2013). Many police officers look at prostitution as a simple vice crime, and fail to investigate anything beyond the sex act (Geist, 2012). Sergeant Jon Daggy of the Indianapolis Metropolitan Police Department (IMPD) who is in charge of IMPD's Human Trafficking Unit, stresses the importance of slowing down vice investigations to make sure that cases of prostitution are not cases of trafficking (Personal Communication, October 18, 2013).

Finally, in order for the needs of a trafficking victim to be met, a coordination of many services is required. The United States has been building a network of service providers since the passage of the Trafficking Victims Protection Act, but there are still many gaps in service provision and in the coordination of services. In a 2002 study of commercial exploitation of children in the United States, the investigators found that, "for virtually all [government organizations], lack of coordination between the complex network of local, county, and state law enforcement, human service, and educational organizations on matters pertaining to child sexual exploitation" was a major issue (Estes & Weiner, 2002, p. 23). The study also found that the efforts of separate non-governmental organizations are not coordinated, often resulting in overlapping services. Often, the training and policies at different levels of the government and in non-governmental organizations result in difficulty coordinating services as well (Estes & Weiner, 2002).

The federal government has done a good job of raising the consciousness of human trafficking in the United States, particularly through the annual trafficking in persons report published by the U.S. Department of State, which evaluates the performances of countries around the world in regards to human trafficking policy, but there is still much work to do regarding trafficking in the United States. In fact, it wasn't until the TIP report had been published for several years that the United States included itself in the analysis of efforts to combat trafficking. In addition to the efforts at the national level to combat trafficking, each state has the
power to legislate against human trafficking. The rest of this section will explore how Indiana currently fills in the gaps left by the federal government.

Response in Indiana

Indiana currently has 430 beds available for trafficking victims, but this number is deceptive. All of these beds are located at the Julian Center in Indianapolis, and none of these beds are exclusive to trafficking victims. The Julian Center primarily serves women who are victims of domestic violence, and while they have a human trafficking care coordinator, there is a limit to who they serve. Their beds are open to foreign nationals and U.S. citizens, but they do not serve minors (Polaris Project, 2012b). The Julian Center did not serve domestic victims for some time because their program was funded by a federal grant that stipulates the money given must be used only for serving foreign nationals, in spite of the fact that domestic trafficking is more prevalent in the United States. This stipulation created a large gap in services because no domestic victims and no child victims of trafficking could have their needs met in Indiana at a place that understands the complexity their care demands. While the Julian Center now covers both domestic and foreign born victims of trafficking, they are the only service provider in the state of Indiana that does so, meaning that one case worker is responsible for the management for all trafficking cases in the state, which is not enough to keep up with the demand for services (Office of the Inspector General, 2008).

The Julian Center does, however, provide a range of services that are congruent with the needs of trafficking victims, including case management, emergency housing, legal services, safety planning, counseling, immigration aid, medical assistance, food, clothing, and job training (Julian Center, 2014). Tracy McDaniel, the human trafficking care coordinator, says that one of the most important services she provides is trauma informed care, and that she has an understanding of the diversity of needs each victim has. When asked what an appropriate length of stay should be in a shelter for victims of trafficking, she said that there is no set amount of time because while every story is similar, all victims are unique. Tracy also provides her services to all human trafficking victims who are eligible in the state, but few cases of trafficking are reported outside of Indianapolis, even though trafficking happens throughout Indiana (T. McDaniel, Personal Communication, January 24, 2014; Polaris Project, 2014a).

Another strength of the Julian Center is its use of collaboration with other agencies to serve victims. They work with Exodus Refugee Immigration, an organization that provides limited human trafficking case management and helps victims find new employment. Unfortunately, Exodus does not cover the same population range that the Julian Center does, as they assist only foreign-born trafficking victims and certified victims (Exodus Refugee, 2013).

The Julian Center also works with IMPD on a daily basis through referrals. If a victim is referred to the Julian Center, Tracy screens them for human trafficking. If Tracy determines that the individual has been trafficked, she calls Sgt. Daggy to begin investigating the case while she provides services. If Sgt. Daggy or
another officer makes an arrest, Sgt. Daggy screens the victim for trafficking and calls the Julian Center (T. McDaniel, personal communication, January 24, 2014).

Because of Sgt. Daggy’s work with IMPD, Indianapolis does a good job screening for trafficking victims, but the response of the IMPD is not indicative of other departments in the state. According to Sgt. Daggy, it is important for local law enforcement to slow down their investigation of prostitution cases to make sure that they are not actually cases of human trafficking. Sgt. Daggy usually interviews victims several times in order to build rapport and learn the truth from the women he interviews, as many lie during the first few interviews. Daggy also reported, consistent with the audit of the federal grant paying for the Julian Center human trafficking program, that there are more domestic than foreign victims in Indianapolis. In addition, Daggy says he is lucky if two in one hundred girls cooperate with investigations making it difficult for him to build cases and convince the victim to seek help or treatment, saying that approximately 98% of victims choose to go back to their trafficker. The human trafficking unit will often incarcerate the trafficked victim if that is the safest option (Personal Communication, October 18, 2013).

IPATH, the Indiana Protection for Abused and Trafficked Humans Task Force is a significant part of Indiana’s response to human trafficking. The task force is made up of “law enforcement specialists, social service providers, health providers, legal service providers, awareness and education organizations, as well as passionate community members and groups” (IPATH, n.d.[a]). IPATH has four subcommittees: Law enforcement, victim services, training, and outreach. The law enforcement committee brings together local, state, and federal officers to increase their case-building capacities and works to increase the amount of training law enforcement receives. The victim services committee works to ensure that the needs of trafficking victims are met through collaboration with social service providers throughout the state (IPATH, n.d.[a]). IPATH, however, is funded by the grant program sponsored by the Office of Victims of Crime, meaning they may not “refer domestic victims to service providers,” which ties their hands in many trafficking cases (Office of the Inspector General, 2008, p. 3).

The training committee provides a variety of groups with professional training on human trafficking, including mental health service providers, prosecutors, hospitals, transport companies, and social workers. The outreach committee raises community awareness of human trafficking, and attempts to garner the social will to fight human trafficking (IPATH, n.d.[a]). One of IPATH’s most successful outreach efforts was during the 2012 Super Bowl, capitalizing on a large event to raise Indianapolis’s consciousness of human trafficking. IPATH mobilized hundreds of volunteers to train over 3,000 people and distribute over 70,000 materials aimed at outreach and victim recovery (Ellison, Dold, & Vanderhoof, 2012).

As a result of these efforts, IMPD made 68 vice arrests during the Super Bowl, and two human trafficking victims were identified. In addition, IMPD reported that an abnormal amount of johns did not show up for commercial sex appointments, and it appears that the actions of IPATH, the Indiana Attorney General’s Office, and volunteers had a significant deterrent effect on trafficking during the Super Bowl
(Kuzma, 2011). IPATH has also conducted similar operations during the Indy 500, Brickyard 400, and NBA Finals games (T. Weaver, Personal Communication, October 15, 2013).

Between 2011 and 2012, the Indiana code improved from a tier two to a tier one state on Polaris Project's rating scale, which evaluates the efficacy of state human trafficking laws. This classification means that the Indiana Code meets at least seven of the ten categories needed for good trafficking laws (Polaris Project, 2013d). One of the strongest protections for victims of trafficking the code provides is classifying all child prostitutes as victims of trafficking (I.C. §35-42-3.5-1(b)). Indiana also allows trafficking victims to sue their trafficker for damages, court costs, attorney fees, and punitive damages as long as the suit is filed no more than two years after the trafficker is convicted (I.C. § 35-42-3.5-3). The code also lays out basic rights for victims, including the right "not to be detained in a facility that is inappropriate to the victim's status as a crime victim; [not to be] jailed, fined, or otherwise penalized due to having been the victim of the offense; and [to be] provided protection if the victim's safety is at risk or if there is danger of additional harm." The provision also provides basic rights to confidentiality and protection for the victim and victim's family members (I.C. §35–42-3.5-4(a)). All of these provisions are good first steps to protecting trafficking victims in Indiana, but there are still gaps in the code that, if fixed, will put Indiana at the forefront of protecting trafficking victims.

Part III: Legal Analysis

Existing Legal Structure

While it is not the only thing that must be done, creating an effective statutory code is the first step that Indiana must take if we are serious about ending sex trafficking. All power in the Indiana legal system is derived from the U.S. Constitution, the Indiana Constitution, and the Indiana Code (I.C. §1-1-2-1). If those sources are insufficient to empower Indiana to combat sex trafficking, then we can create little positive change for the Hoosiers affected by this grievous evil.

Legal Basis for Counter-Trafficking Legislation

The U.S. Government, as a government of limited powers, does not have the authority to punish every act of wrongdoing that occurs in the United States, and may only exercise the powers given to it in the U.S. Constitution (United States v. Lopez, 514 U.S. 549). However, sex trafficking often involves interstate travel, affects interstate commerce, victimizes foreign citizens and nationals, and typically involves the involuntary servitude of one person for the economic benefit of another (22 U.S.C. §7101). When these facts arise in a sex trafficking case, the U.S. government has concurrent jurisdiction with Indiana to prosecute traffickers under the Interstate & Foreign Commerce Clauses (U.S. Const. art. 1 §8) and the Thirteenth

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4 Indiana meets seven of the ten requirements
Amendment, although a sufficient interstate nexus is required in order for a case to be filed by the U.S. Attorney (M. Hutchison, Personal Communication, March 3, 2014).

Indiana, by virtue of the 10th Amendment to the U.S. Constitution, is endowed with all power not explicitly given to the federal government or specifically prohibited by the U.S. Constitution (U.S. Const. amend. X). In other words, the State of Indiana has a general “police power” to regulate the actions of its residents, as long as it does not violate federal law or the U.S. Constitution. Congress has made it clear that federal trafficking laws do not preempt or prohibit states from enacting similar laws (22 U.S.C. § 7101). In addition, the Indiana Constitution specifically states in Article 1, §37: “There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.” Combined with Indiana’s general police power, the Indiana Constitution gives the state broad power to combat trafficking by prosecuting criminals and providing aid and services to victims.

**Federal Statutes**

Federal trafficking law is based on the Trafficking Victims Protection Act of 2000 (TVPA), as amended (TVPA, 2000; TVPRA, 2003; TVPRA, 2005; TVPRA, 2008; VAWRA, 2013). Among other things, the TVPA criminalized human trafficking, established the Office to Monitor and Combat Trafficking in Persons within the Department of State, and authorized the President to impose sanctions on countries that do not take steps to fight trafficking (TVPA, 2000).

The federal statutes prohibiting sex trafficking are in Title 18, Part I, Chapter 77 of the U.S. Code. Crimes include peonage (holding a person in servitude until they repay a debt) (18 U.S.C. §1581); using a boat or other vessel to transport someone into involuntary servitude (18 U.S.C. §1582); kidnapping or enticing an individual into involuntary servitude (18 U.S.C. §1583); selling individuals into involuntary servitude (18 U.S.C. §1584); trafficking a minor into commercial sex, or trafficking an adult into commercial sex by force, fraud, or coercion (18 U.S.C. §1591); theft or destruction of a victim’s immigration documents (18 U.S.C. §1592); benefiting financially from trafficking (18 U.S.C. §1593A); and attempted trafficking (18 U.S.C. §1594). In addition, victims may sue their traffickers in federal court for damages (18 U.S.C. §1595), and federal judges are required to order restitution to victims of trafficking (18 U.S.C. §1593).

**Indiana’s Current Human Trafficking Statutes**

While federal legislation is critical to the counter-trafficking movement, effective state legislation is equally important. Most law enforcement happens at the state level, and so state and local law enforcement units are more likely to encounter trafficking victims (particularly victims in prostitution). In addition, good state laws allow another venue for prosecution if the U.S. Attorney is unwilling or unable to prosecute the case, and state governments can tailor their laws to address the unique trafficking market in their state (Li, 2013). For example, since Indiana has more single operators, the laws in Indiana can be written to primarily address that issue. Finally, research shows that traffickers actively look for states with lenient and/or
unenforced trafficking laws (Smith & Vardaman, 2011), and so it is critical that states create an effective
deterrent to trafficking.

Indiana’s Human Trafficking statute can be found in I.C. §35-42-3.5 (Human & Sexual Trafficking). The primary criminal statute, I.C. §35-42-3.5-1, creates four distinct offenses that can be charged by prosecution. Since these statutes are the most relevant to human trafficking prosecutions in Indiana, they are reprinted and discussed in detail below. Since this study is designed to address sex trafficking, the sections addressing labor trafficking have been omitted.

I.C. 35-42-3.5-1(a): Promotion of Human Trafficking, a Level 4 Felony
(a). A person who, by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person:
   (1) [omitted]
   (2) to force the other person into: (A) marriage; (B) prostitution; or, (C) participating in sexual conduct (as defined by IC 35-42-4-4);
   commits promotion of human trafficking, a Level 4 felony.

This is the primary sex trafficking statute. It applies primarily to the sex trafficking of adults, although it could be applied to the trafficking of children as well. It consists of four elements, all of which must be proven beyond a reasonable doubt:

1. A person, using force, threat of force, or fraud
2. Knowingly or intentionally,
3. Recruits, harbors, or transports another person
4. In order to force the other person into marriage, prostitution, or sexual conduct.

The first notable thing about this statute is that it was designed primarily to criminalize recruiting, harboring or transporting a victim with the goal of forcing them into marriage, prostitution, or sexual conduct. No Indiana court has published an opinion interpreting this statute, but it is likely that a court would find that the defendant need not have actually forced the individual into marriage, prostitution, or sexual conduct, since the statute implies that the person must only intend to force the victim into the conduct.

Although this may seem like a pointless distinction, it is extremely important, because it means that a prosecutor does not have to prove that the victim was exploited at all. This allows police to arrest and charge a trafficker before he exploits his victim in the sex industry, protecting the victim from arguably the most traumatizing component of trafficking.

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3 At the time of this writing, Indiana divides felonies into four categories (A through D). However, the Indiana General Assembly has enacted changes to the Code, effective July 1st, 2014, which incorporate a six-level felony system (Level 1 through Level 6). For the convenience of future readers, we have used the proposed system throughout this paper.
The Indiana Code currently does not define force, fraud, recruit, transport, or harbor in the criminal code, and so the meanings of those words would be determined by their ordinary usage or by the way the courts currently define them. Currently, marriage is generally defined as a union between two people of the opposite sex, who are over 18 and are at least second cousins (I.C. §31-11-1). This could create complications if a trafficker recruited a male Indiana resident and forced him to marry a male in Illinois (where homosexual marriage is recognized), since the trafficker intended to force the victim into a union that Indiana does not consider "marriage."

Prostitution is defined as intentionally performing, or agreeing to perform, sexual intercourse, sexual conduct, or sexual fondling for money or other property (I.C. §35-45-4-2). Sexual conduct is defined as sexual intercourse, other sexual conduct (sexual conduct other than vaginal penetration), exhibition of the genitals or female breast, sadomasochistic abuse, intercourse or other sexual conduct with an animal, and the fondling or touching of a child with the intent to arouse or satisfy sexual desires (I.C. §35-42-4-4(a)(4)). These definitions allow prosecutors to charge a trafficker with recruiting a victim for stripping and other sexual behavior, and not just for prostitution.

I.C. 35-42-3.5-1(b): Promotion of Human Trafficking of a Minor, a Level 3 Felony

(b) A person who knowingly or intentionally recruits, harbors, or transports a child less than 18 years of age with the intent of:

1. inducing or causing the child to engage in prostitution; or
2. with the intent to induce the child to engage in prostitution or pornography;

(1) eightee (18) years of age with the intent of:

(A) inducing or causing the child to engage in prostitution; or
(B) engaging in a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) (child exploitation); or

(2) sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct (as defined by IC 35-42-4-4); commits promotion of human trafficking of a minor, a Level 3 felony. Except as provided in subsection (c), it is not a defense to a prosecution under this subsection that the child consented to engage in prostitution or to participate in sexual conduct.

This is the version of the sex trafficking statute that applies primarily to child victims. Unlike the adult version of the statute, if a victim is under the age of 18, then the state does not have to prove force, threat of force, or fraud. The elements of the crime are:

1. A person, knowingly or intentionally;
2. Recruits, harbors, or transports a child less than 18 years old;
3. With the intent to induce the child to engage in prostitution or pornography;

Or, alternatively,

6 I.C. §35-43-5-4 (Fraud) codifies the criminal offense of fraud, but does not define the word generally enough to be used in the Human Trafficking statute. The criminal fraud statute deals primarily with the fraudulent use of credit cards and technology to steal money and other property.
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SEX TRAFFICKING & PROSTITUTION: WHERE DOES INDIANA STAND?

1. A person, knowingly or intentionally;
2. Recruits, harbors, or transports a child less than 16 years old
3. With the intent to induce the child to participate in sexual conduct.

The rationale behind omitting a requirement to prove force, threat of force, or fraud is twofold. First, the law assumes that children do not fully appreciate the decisions that they make, since their critical thinking and reasoning skills are not as developed as those of adults (Brickhead, 2011). This is particularly true when it comes to sexuality, as a child is much less likely to appreciate the gravity of sexual decisions and may not resist a trafficker’s agenda to the point that an adult would (Smith & Vardaman, 2011; Kuzma, 2011). The trafficker, therefore, is culpable without force or fraud because they are taking advantage of the child’s lack of understanding in order to exploit them.

Secondly, children are much easier to manipulate than adults are when it comes to sexuality, and rarely is force, fraud or coercion present in the case of child trafficking (Smith & Vardaman, 2011; Kuzma, 2011). Traffickers make a habit of targeting runaway children and children who have unmet emotional needs, winning their trust, faithfully meeting those needs, and then slowly grooming them to participate in the sex industry (Clawson et al, 2006; Geist, 2012), without relying on force, threat of force, or fraud.\(^7\)

At first glance, the two alternate situations in the statute seem identical to one another, aside from the age requirement. However, there is one other important difference. The first makes it illegal to recruit, harbor, or transport a child, intending for them to engage in prostitution (sex for money) or pornography.\(^6\) The second makes it illegal to recruit, harbor, or transport a child, intending for them to participate in sexual conduct. Sexual conduct encompasses both prostitution and pornography, but prostitution and pornography are only two examples of sexual conduct—you can engage in the sexual conduct without engaging in prostitution or pornography. A 15 year old trafficked into a harem where no money was exchanged for sex acts and where nothing was filmed would be a victim under the second half of the statute, but not the first.

Finally, the statute explicitly states that the consent of the child is not a defense to prosecution, except in the narrowly limited circumstances listed in subsection (e). This is a logical extension of the doctrine that proof of force, threat of force, or fraud should not be required in child trafficking cases. While the consent of an adult would be a complete defense to a prosecution for trafficking (as it would likely negate the element of force, threat of force, or fraud), a child cannot give meaningful consent in the eyes of the law. Therefore, the consent of the child is irrelevant and should not excuse the trafficker, since, 1. There is no

\(^7\) An argument can be made that this manipulation is actually textbook common-law fraud (a person intentionally makes a false representation of a material fact to another, the other relies on that representation and consequently is harmed), and so the trafficker is using fraud to traffic the child. This may be true, however, the trafficker’s culpability is based on the fact that they exploited the child’s lack of agency for his or her own gain, and not that they committed fraud against the child. For example, the individual ought still to be charged with trafficking if they caused the child to engage in prostitution and split the profits with them, even if no fraud was present, because the child does not realize the true nature of what they are doing while the trafficker does.

\(^6\) I.C. §35-42-4-4(b) is a child pornography statute.
the element of the crime involving the child’s will that the consent could negate, and 2. Even if there were such an element, the fact that the child’s consent is legally insufficient would make the defense defective.

I.C. 35-42-3.5-1(c): Sexual Trafficking of a Minor, a Level 2 Felony
(c) A person who is at least eighteen (18) years of age who knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution or participating in sexual conduct (as defined by IC 35-42-4-4) commits sexual trafficking of a minor, a Level 2 felony.

This statute criminalizes a slightly different aspect of trafficking than the previous two statutes, although there is some overlap between them. The elements of the crime are:

1. An adult, knowingly or intentionally,
2. Sells or transfers custody of a child
3. For the purpose of prostitution or sexual conduct.

The largest difference between this statute and subsections (a) and (b) is that instead of prohibiting the recruitment, harboring, or transportation of a person or child, the statute makes it illegal to “sell or transfer custody of a child” for prostitution or sexual conduct. This section would certainly trap a criminal who recruited a child and then sold them into prostitution, but it also allows the state to prosecute a person who did not intend to make the child a prostitute when they acquired custody (such as a parent, guardian, or foster parent), but then later decided to sell the child into prostitution. It is worth noting that the statute does not require the exchange of money or consideration, but merely that the perpetrator “transfer custody” of the child to someone else for prostitution. A foster parent could still be prosecuted if they gave the child away because they were tired of caring for the child.

I.C. 35-42-3.5-1(d): Human Trafficking, a Level 5 Felony
(d) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

(1) [omitted]
(2) [omitted]; or
(3) prostitution;
commits Human Trafficking, a Level 5 felony.

This is the last, and strangest, of the four human trafficking crimes. The first two statutes criminalize the recruiter (the person who obtains the victim), and the third criminalizes the seller, so it would make sense that the fourth statute would criminalize the buyer—that is, the person who buys the victim from the recruiter/seller and actually forces the victim into prostitution. However, this is not, in fact, what the statute says. The elements of the crime, as written, are:
1. A person, knowingly or intentionally,
2. Pays, offers to pay, or agrees to pay money or property
3. To another person
4. In exchange for an individual
5. Who the first person knows has been forced into prostitution.

The statute makes it an essential element of the crime that the victim be forced into prostitution before the transaction takes place. While a trafficker might force the victim into prostitution again after the transaction, they still could not be convicted under this particular statute unless the victim was forced into prostitution prior to the sale. Such a trafficker could potentially be prosecuted under subsection (a)—the first statute discussed—for “recruiting” and possibly “transporting” the victim, but that prosecution would hinge upon the meaning of “recruit” as used in the statute. The courts would have to determine whether or not the term “recruit” included a trafficker who simply purchased the victim in order to prostitute them, as opposed to someone who did the “initial” recruiting.

This statute could also potentially be used to prosecute a john (an individual who purchases sex) for buying sex from a victim the john knows has been forced into prostitution. This is the interpretation adopted by Shared Hope International in their evaluation of Indiana’s sex trafficking laws (Shared Hope International, 2013b). This interpretation of the statute seems plausible, especially in light of the requirement that the victim be forced into prostitution before the transaction occurs. However, the statute prohibits the purchase of “an individual,” not “the services of an individual,” which are two wildly different things. Federal prosecutors have used the TVPA to prosecute buyers, arguing that the buyer could “obtain” a person for commercial sex (Dysart, 2013), but the Indiana courts may or may not adopt this construction.

It is possible that a person convicted for purchasing sex from a victim under this statute could win an appeal on the grounds that the statute was not intended to punish him. In the alternative, if the statute was intended to criminalize his conduct, he could also appeal on the grounds that the statute was unconstitutionally vague, since it failed to inform him that his actions were illegal (Adams v. State, 968 N.E. 2d 281, 285, (Ind. Ct. App. 2012)). The courts will make the final decision about what behavior the statute can be used to prosecute.

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If this interpretation is adopted, the statute could also be used to prosecute individuals who patronize a restaurant, hair salon, or other non-sexual enterprise, as long as the patrons knew that the workers in the establishment were enslaved. This would be permitted under the first two points in the subsection (omitted in the text above), which include “forced labor” and “involuntary servitude.”

(e) It is a defense to a prosecution under subsection (b)(2) if:

1. The child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person is less than eighteen (18) years of age; or
2. All the following apply:
   (A) The person is not more than four (4) years older than the victim.
   (B) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.
   (C) The crime: (i) was not committed by a person who is at least twenty-one (21) years of age; (ii) was not committed by using or threatening the use of deadly force; (iii) was not committed while armed with a deadly weapon; (iv) did not result in serious bodily injury; (v) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and (vi) was not committed by a person having a position of authority or substantial influence over the victim.
   (D) The person has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person.

This defense is intended to prevent a narrow group of individuals from becoming criminally liable for Promotion of Human Trafficking of a Minor under subsection (b). In addition, the defense only applies to the second option under the statute (recruiting a child under 16 in order to induce them to engage in sexual conduct), and so individuals prosecuted for trafficking a child into prostitution cannot claim it, even if all the other conditions are met. The elements of the defense are:

1. The victim is between 14 and 16; and
2. The defendant is under 18;

Or, alternatively,

1. The defendant is under 21 and not more than 4 years older than the victim
2. The victim and the defendant were dating or otherwise personally involved, but not related by blood or marriage;
3. The crime was not committed by force or threat of force, with a deadly weapon, by using drugs without the victim’s knowledge, or by a person having authority or influence over the victim, and did not result in serious bodily injury; and
4. The defendant has not committed a previous sex offense.

The apparent intent of the legislature in this statute is to prevent teenagers from being charged with sex trafficking for sexual behavior arising out of dating relationships. The legislature has attached similar defenses to the crimes of Child Exploitation (preventing the prosecution of a high school couple for "sexting") (I.C. §35-42-4-4(b)), and Sexual Misconduct with a Minor (preventing the prosecution of high school couples who have consensual sex) (I.C. §35-42-4-9).
The need for this defense stems from the fact that I.C. 35-42-3.5-1(b)(2) involves all sexual conduct, and not just prostitution and pornography. Because of the statute's language, it is possible that a sexually active high school couple could suddenly find themselves enmeshed in a trafficking prosecution if their behavior met the other elements of the trafficking statute. While this behavior is undesirable for many other reasons, the point of the human trafficking statute is not to charge consenting teenagers with human trafficking, but to prevent the exploitation of Hoosier children in the sex industry.

I.C. 35-42-3.5-2: Restitution Orders
In addition to any sentence or fine imposed for a conviction of an offense under section 1 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under I.C. 35-50-5-3.

This statute requires a court to order a convicted defendant to pay restitution to the victim under Indiana's restitution statute, in addition to the sentence imposed by the court for the crime itself. The restitution statute (I.C. §35-50-5-3(k)), in a special subsection that only applies to trafficking, requires that the court order restitution in the amount of either:

1. The gross income or value received by the criminal through the victim's services or labor; or

In the event that the two calculations are different, the court is required to use the greater amount in the restitution order (I.C. §35-50-5-3(k)). The language of the statute ("the court shall order") is mandatory, meaning that the court is legally required to issue a restitution order as dictated by the restitution statute. This notwithstanding, one Indiana judge has already refused to grant restitution to a victim because the income was earned through prostitution (M. Hutchison, Personal Communication, March 3, 2014).

I.C. 35-42-3.5-3: Civil Cause of Action
(a) If a person is convicted of an offense under section 1 of this chapter, the victim of the offense:
   (1) has a civil cause of action against the person convicted of the offense; and
   (2) may recover the following from the person in the civil action:
      (A) Actual damages.
      (B) Court costs (including fees).
      (C) Punitive damages, when determined to be appropriate by the court.
      (D) Reasonable attorney's fees.
(b) An action under this section must be brought not more than two (2) years after the date the person is convicted of the offense under section 1 of this chapter.

After a defendant is convicted by the State for a human trafficking offense, a victim may sue their trafficker in civil court for monetary damages related to the trafficking. The victim must file the lawsuit within two years of the criminal judgment and must prove that it is more likely than not:
1. That the defendant was convicted of trafficking the victim;
2. The extent of the damages suffered; and
3. That the defendant caused the damage through the trafficking.

If these elements are proved, the victim may recover actual damages, or "damages that repay actual losses" (i.e. value of unpaid labor, medical expenses, damage to property) (Black’s Law Dictionary, 2009a); the cost of filing and maintaining the lawsuit, including reasonable attorneys fees; and punitive damages. Punitive damages are designed to punish the defendant for willful and malicious conduct, and are intended to make the judgment so painful that others will be deterred from the wrongful behavior (Black’s Law Dictionary, 2009b). This statute could be a wonderful tool for victims of trafficking, particularly if the defendant has significant institutionalized wealth (a bank account, business, or valuable property).

If the sentencing judge in the criminal prosecution did award restitution, a victim might still be able to recover damages for medical expenses, property damage, and other injuries. However, they would likely be precluded from recovering money for the value of their labor, since they would already be compensated for that loss through the restitution order (See, e.g. IC §34-44-1-1).

I.C. 35-42-3.5-4(a): Rights of Alleged Victims
An alleged victim of an offense under section 1 of this chapter:
(1) may not be detained in a facility that is inappropriate to the victim’s status as a crime victim;
(2) may not be jailed, fined, or otherwise penalized due to having been the victim of the offense; and
(3) shall be provided protection if the victim’s safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense, including:
(A) taking measures to protect the alleged victim and the victim’s family members from intimidation and threats of reprisals and reprisals from the person who allegedly committed the offense or the person’s agent; and
(B) ensuring that the names and identifying information of the alleged victim and the victim’s family members are not disclosed to the public.

Although crime victims have certain rights guaranteed to them by statute (I.C. §35-40-5), victims of human trafficking are granted additional rights under Indiana’s human trafficking law. In Indiana, alleged victims of sex trafficking:

1. Cannot be held by police in a way inconsistent with the fact that they are crime victims;
2. Cannot be jailed, fined, or penalized for anything they did as a result of the trafficking; and
3. Must be given protection by the State if their safety is at risk or if the trafficker could potentially recapture them. These protections include, but are not limited to, keeping the names of the victim and the victims’ family confidential, and protecting victims and their families from intimidation and threats of revenge.

These rights are important, particularly in sex trafficking cases, because the primary source of a sex trafficker’s revenue is prostitution—which is illegal. As a result, many law enforcement units in the United
States have made a habit of imprisoning prostitutes, even if they are trafficking victims (Adams, et al, 2012). This statute helps prevent this from happening by requiring that victims be treated like crime victims instead of criminals, and by making it illegal to jail, fine, or otherwise punish the victim for being a prostitute, once the state discovers that he/she is a trafficking victim. If the state has pending prostitution charges against a victim, the law requires that those charges be dismissed immediately (M. Hutchison, Personal Communication, March 3, 2014).

The requirement that the State protect the victim and the victim's family is also extremely important in trafficking cases, particularly in cases which involve organized crime and international victims. In such cases, traffickers often threaten the lives of the victims or the victim's family in order to keep victims from escaping or seeking help. Because such threats are highly credible (or seem highly credible to the victims), they are extremely effective at preventing victims from cooperating with law enforcement (Goodman, 2011; Shigekane, 2007). By requiring that the State address these concerns, the statute ensures that those needs are met and makes it more likely that victims will cooperate in a prosecution.

I.C. 35-42-3.5-4(b): Rights of Alleged Victims--LEA Declaration
(b) Not more than fifteen (15) days after the date a law enforcement agency first encounters an alleged victim of an offense under section 1 of this chapter, the law enforcement agency shall provide the alleged victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, Form 1-914 Supplement B) in accordance with 8 CFR 214.11(f)(1). However, if the law enforcement agency finds that the grant of an LEA Declaration is not appropriate for the alleged victim, the law enforcement agency shall, not more than fifteen (15) days after the date the agency makes the finding, provide the alleged victim with a letter explaining the grounds for the denial of the LEA Declaration. After receiving a denial letter, the alleged victim may submit additional evidence to the law enforcement agency. If the alleged victim submits additional evidence, the law enforcement agency shall reconsider the denial of the LEA Declaration not more than seven (7) days after the date the agency receives the additional evidence.

Under federal law, an immigrant victim of human trafficking may apply for a T-Visa, which allows individuals trafficked into the U.S. to remain in the country (TVPA 2000, §107(e)(2)). In order to obtain a T-Visa, an immigrant must prove to the Immigration & Naturalization Service that he/she is a victim of a "severe form of trafficking in persons," (8 C.F.R. §214.11(f)(1)) as defined by federal law (22 U.S.C. §7102(9)). A LEA Endorsement is a form filled out by a law enforcement officer that describes the victim's circumstances and the nature of the trafficking, and is sufficient (but not necessary) to prove that the individual is a trafficking victim (8 C.F.R. §214.11(f)(1)).

Indiana law enforcement agencies must obtain a completed LEA Declaration (or a letter explaining why the victim is not eligible for a LEA Declaration) within 15 days of their first encounter with the victim. If the agency finds that the victim does not need or should not receive an LEA Declaration, the victim may submit additional evidence to the agency in support of their position, and the agency must reconsider and respond to the victim within seven days after it receives the additional evidence.
Other Relevant Indiana Statutes

While the human trafficking statutes are the primary source of human trafficking law in Indiana, there are many other statutes that are relevant to human trafficking. These laws, and their relationship to sex trafficking, are discussed briefly below.

Mandatory Human Trafficking Training for Law Enforcement Officers

Indiana was one of the first states to require all police officers to be trained in recognizing and responding to human trafficking (Cross, 2013). Everyone accepted at a law enforcement academy is required to take a course in human and sexual trafficking that discusses the human trafficking statutes, identifying trafficking, communicating with victims, appropriate investigative techniques, collaborating with federal law enforcement officials, the rights and protections guaranteed to victims, the LEA Declaration requirements, and the availability of resources for trafficking victims (I.C. §5-2-1-9(a)(10)).

Incorporation of Human Trafficking Statutes by Reference

The human trafficking statute is not the only place in the Indiana Code that references sex trafficking. Other statutes refer to the human trafficking statute in order to “incorporate” the offense of trafficking into Indiana's criminal law framework.

For example, Indiana defines a sex offender, among other things, as someone who has been convicted of the Sexual Trafficking of a Minor (subsection c); Human Trafficking (subsection (d)(3)), if the victim is a minor; and Promotion of Human Trafficking (subsection (a)(2)), if the victim is a minor (I.C. 11-8-8-4.5(a)(16), (17) & (15)). Such a person would also be a “sex or violent offender,” (I.C. 11-8-8-5(a)(16), (17) & (15)) and would be required to register as a sex offender just as a rapist or child molester would (I.C. 11-8-8-7). Traffickers must also pay a “Sexual Assault Victims’ Assistance Fee” of between $500 and $5,000, determined by the court (I.C. §33-37-5-23).

Among many other things, the purpose of the Indiana Criminal Justice Institute is to help trafficking victims exercise their rights (I.C. §5-2-6-3(18)). In addition, sex trafficking is included in the definition of “victim,” “victim advocate,” and “victim service provider” (I.C. §35-37-6-3; I.C. §35-37-6-3.5; I.C. §35-37-6-5) for the purposes of the Indiana Code chapter regarding Privileged Communication and Victim Counseling (I.C. §35-37-6). Because of this, neither trafficking victims nor the service providers and advocates who assist them can be forced to testify regarding confidential documents or communications, unless the victim gives consent (I.C. §35-37-6-9(a), (b)). A service provider cannot require a victim to consent to disclosure as a condition of receiving services (I.C. §35-37-6-9(c)).

Under both the Criminal Code and the Juvenile Code, a crime of domestic or family violence includes sex trafficking (I.C. §35-31.5-2-76(4); I.C. §31-9-2-29.5), allowing certain sex trafficking offenses to be brought under the Domestic Violence umbrella. Sex trafficking is also considered a “designated offense” under Indiana’s wiretapping laws, allowing law enforcement to use wiretapping technology in trafficking cases.
SEX TRAFFICKING & PROSTITUTION: WHERE DOES INDIANA STAND?

(I.C. §35-31.5-2-91; I.C. §35-33.5), and trafficking is a predicate offense under Indiana’s racketeering/RICO law (I.C. §35-45-6-1(e)(8)). Under Indiana’s kidnapping law, a trafficker may be tried in the place where he was arrested and also in any place where the victim traveled or was confined as part of the crime (I.C. §35-32-2-3(a)). Finally, a trafficker who kills his/her victim while trafficking them may be convicted of Murder, even if the trafficker did not “knowingly or intentionally” kill their victim as required by the primary murder statute (I.C. §35-42-1-1(2)).

Asset Forfeiture

Indiana’s asset forfeiture statute does not explicitly permit law enforcement to seize property used to commit trafficking or to seize a trafficker’s profits. However, the statute does allow law enforcement to seize “any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute” (I.C. §34-24-1-1). Since human trafficking is a violation of a criminal statute, law enforcement should be empowered to seize all money and property the trafficker gained from the crime. If a prosecutor can demonstrate that it is more likely than not that the trafficker’s property meets this criteria, the property will be released to the law enforcement agency that seized it (I.C. §34-24-1-4).

Protection of Certain Trafficking Victims During Trial

While certain sex traffickers are “sex offenders” under the sex offender registry law, sex trafficking is not a sex crime in Indiana, and victims are therefore not protected under Indiana’s “Rape Shield” statute. The Rape Shield law, contained in I.C. 35-37-4-4 and Indiana Evidence Rule 412, prevents the defendant from offering evidence of the victim’s past sexual conduct, except in narrowly limited circumstances (I.C. §35-37-4-4; Ind. R. Evid. 412). This prevents defense attorneys from cross-examining victims about their sexual history in front of an alleged rapist, which can often be traumatizing for victims of sexual assault (Bryden & Lengnick, 1997). These laws exist because the victim’s past sexual conduct is irrelevant in the majority of cases, and serves only to prejudice the jury and to traumatize the victim (Hook v. State, 705 N.E.2d 219, 221).

Sex trafficking is not considered a sex crime because it is not listed in the sex crimes statute (I.C. §35-42-4), which is the statute referenced by the Rape Shield law (I.C. §35-37-4-4(a)). However, there are some protections that trafficking victims may claim during a trial. A trafficking victim under the age of 14 or an adult victim with a mental disability may testify by closed circuit television if the court finds that testifying in the presence of the defendant would cause the victim serious emotional or mental harm, and/or if they would be unable to clearly communicate with the jury while the defendant is present (I.C. §35-37-4-6(a)-(c); I.C. §35-37-4-8).
Sex Crimes

While sex trafficking is not considered a "sex crime" for the purposes of the Rape Shield statute, sex trafficking victims are frequently subject to rape and sexual assault by their traffickers (Geist, 2012), and therefore the sex crimes statute can be (and is) also used to prosecute traffickers (M. Hutchison, Personal Communication, March 3, 2014). Since, in reality, prosecutions revolve around what the prosecutor can prove, and not necessarily what happened, charging a sex trafficker with relevant sex crimes can be useful when there may not be enough evidence to convict a defendant of trafficking (M. Hutchison, Personal Communication, March 3, 2014).

The sex crimes statute includes Rape (Forcible sexual intercourse or sexual conduct, or either with an unconscious or inebriated individual) (I.C. §35-42-4-1); Child Molesting (sexual intercourse, sexual conduct, or sexual touching of a child under 14) (I.C. §35-42-4-3); Sexual Misconduct with a Minor (Sexual intercourse or sexual conduct with a child between 14 and 16) (I.C. §35-42-4-9); Child Exploitation (Creating or distributing child pornography) (I.C. §35-42-4-4(b)); Possession of Child Pornography (I.C. §35-42-4-4(c)); Vicarious Sexual Gratification (Inducing a child under 16 to touch himself or another child in order to satisfy sexual desires) (I.C. §35-42-4-5); Child Solicitation (Soliciting a child under 14 or 16 for sexual intercourse, sexual conduct, or sexual fondling) (I.C. §35-42-4-6); and Sexual Battery (Forcibly touching another person in order to satisfy sexual desires, or touching an unconscious or inebriated person in order to satisfy sexual desires) (I.C. §35-42-4-8). While the sex crimes statute contains several other sections that could potentially be used in a trafficking case, the ones listed above are the most likely to surface in a trafficking investigation.

Prostitution, Promoting Prostitution, and Patronizing a Prostitute

In the majority of cases, sex trafficking is committed by forcing an individual into prostitution, or by causing a child to engage in prostitution. For this reason, most sex trafficking cases are inextricably intertwined with prostitution and the statutes that criminalize it.

Prostitution occurs when an individual intentionally performs or offers to perform sexual intercourse or any other sexual conduct in exchange for money or other property. It is a Class A misdemeanor, but becomes a Level 6 felony if the person has been convicted two times previously (I.C. §35-45-4-2). A person is guilty of Promoting Prostitution when they induce another person to become a prostitute; obtain, offer, or agree to obtain a person for prostitution; permit a place or building to be used for prostitution; knowingly receive money from a prostitute; or direct another person to a place for prostitution. Promoting Prostitution is a Level 5 felony, but if the victim is a child, it becomes a Level 4 felony (I.C. §35-45-4-4). Finally, Patronizing a Prostitute is the act of paying, offering, or agreeing to pay another person for sexual intercourse, other sexual conduct, or sexual fondling. Like Prostitution, Patronizing a Prostitute is only a

10 The age of the child is dependent on the age of the defendant. If the defendant is under 18, the child must be under 14. If the defendant is over 21, the child must be under 16.
Class A misdemeanor, but becomes enhanced to a Level 6 felony if the person has been convicted twice previously (I.C. §35-45-4-3).

**General Rights of Crime Victims**

In addition to the specific rights guaranteed to victims in the human trafficking statute, sex trafficking victims have certain general rights as crime victims. Victims have the right to be treated with fairness, dignity, and respect, and should not be subject to intimidation, harassment, or abuse by police (I.C. §35-40-5-1). Victims have the right confer with the prosecutor after the defendant has been charged, before trial, and before the case is disposed (I.C. §35-40-5-3), and to know, upon request, if their trafficker has been released from custody or has escaped (I.C. §35-40-5-2). When a defendant is sentenced, the victim has the right to be heard at the hearing (I.C. §35-40-5-5), and to make an oral or written statement for a Pre-Sentence Investigation Report (I.C. §35-40-5-6). The victim has the right to be heard at a release hearing (I.C. §35-40-5-5) and to have his/her safety considered as a factor by the court at that hearing (I.C. §35-40-5-4).

If a sex trafficking victim is under the age of 16, they have the right to confer with the prosecutor if the defense attorney or his/her agent wishes to interview them. If the prosecutor believes that the defense counsel should not interview the child, the court must approve the terms of the interview (I.C. §35-40-5-11). Victims must be informed of these rights and other rights arising under the Constitution and the Indiana Code (I.C. §35-40-5-10).

**General Responsibilities of Prosecutors**

When a trafficking incident is reported to police within five days after it is discovered, and the victims cooperate with reasonable requests from law enforcement, prosecutors acquire certain responsibilities toward those victims (I.C. §35-40-6-1). Prosecutors are required to ensure that the rights of victims are protected (I.C. §35-40-6-2), and prosecutors must notify victims of their rights, any relevant hearings regarding the defendant, and must coordinate access to social services. The prosecutor also must inform the victim of their right to restitution, and must help them prepare documentation for the court (I.C. §35-40-6-4).

If the victim files an affidavit with the prosecutor claiming that the defendant or his agent have committed an act or threat of physical violence or intimidation against them or their family, and the prosecutor believes the claim is credible and warrants the revocation of the defendant’s bond, then the prosecutor must file a motion with the court to revoke the defendant’s bond (I.C. §35-40-6-6).

In addition, if the victim requests it, the prosecutor must inform them of their rights during the sentencing process, and must provide the victim general information about the Pre-Sentence Investigation Report and the sentencing hearing (I.C. §35-40-6-7). Finally, if a trafficker decides to attack his/her

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11 A prosecutor may waive the five-day time period if the crime was not reported due to circumstances beyond the victim’s control
conviction through the appellate courts or through another legal mechanism, the prosecutor is required, at
the victim’s request, to inform the victim of the status of the case (I.C. §35-40-6-10).

Institutional Support

In addition to the laws passed by the Indiana General Assembly, several law enforcement agencies
have developed institutional support for counter-trafficking, which makes it easier to enforce Indiana’s
human trafficking laws. For the last six years, the Indianapolis Metropolitan Police Department (IMPD) has
operated a Human Trafficking Unit, which is responsible for investigating trafficking and making arrests in
trafficking cases in Marion County (Sgt. J. Daggy, Personal Communication, October 18, 2013). In addition,
the Marion County Prosecutor’s Office employs a Human Trafficking Prosecutor who assists IMPD with
investigation and evidence collection, and prosecutes all trafficking cases in Marion County (M. Hutchison,

Use of Structure & Resources in Indiana

Arrest Procedure & Police Protocol in Trafficking Cases

Every year, IMPD makes an estimated 900 arrests of both men and women for prostitution &
patronizing prostitution. Trained IMPD officers screen each prostitute for signs of trafficking, and if
possible, detectives investigate why he/she was working in prostitution. Officers typically interview the
prostitute several times, since trafficking victims usually lie to officers initially about the use of force and/or
their age (Sgt. J. Daggy, Personal Communication, October 18, 2013). This can create a problem, particularly
when it involves the victim’s age. If a child victim identifies himself/herself as 18 or older at the point of
arrest, the arresting officer (who may or may not screen the victim for trafficking) will likely create a police
report with the false information. Unless there is extrinsic evidence that prosecutors can use to prove that
the victim is a child, it can be difficult to determine exactly how old the victim was at the time of the offense

Once officers discover that a prostitute is a victim of trafficking, they discuss the victim’s options
with him/her. If the victim wants to go to a safe place during the investigation, officers assist in placing
him/her there. However, if the victim feels safer being held in jail (due to threats of reprisals from a
trafficker yet to be arrested), IMPD will place him/her in jail on prostitution charges. If he/she wishes to
leave prostitution, officers also assist in procuring services and assistance to help them do so (Sgt. J. Daggy,
Personal Communication, October 18, 2013).

Once a trafficking victim has been identified, both IMPD and the Human Trafficking Prosecutor
attempt to corroborate the victim’s story with extrinsic evidence before trafficking charges are filed. This is
done so that the victim’s testimony is not the only evidence linking the trafficker to the crime. If there is a
battle over the victim’s credibility at trial, it is much easier to persuade a jury that a “prostitute” is telling the
truth about an event where she was the only witness when the prosecutor can produce hotel records, cell phone records, and other documents that prove that she has been telling the truth about everything else (M. Hutchison, Personal Communication, March 3, 2014). In addition to screening prostitutes, IMPD also screens johns arrested in “reverse stings” for information about trafficking (Sgt. J. Daegy, Personal Communication, October 18, 2013).

If a trafficking case makes it to the Marion County Prosecutor's Office without being identified as such, (for example, trafficking cases sometimes get misdirected to the Domestic Violence Unit), prosecutors will forward the cases to the Human Trafficking Prosecutor, who will then screen the case and the victim. Several cases have also come to the Human Trafficking Prosecutor through Marion County Judges who suspect that something odd is happening in a case on their docket (M. Hutchison, Personal Communication, March 3, 2014).

While the majority of prostitutes and trafficking victims identified by IMPD return to their pimp/trafficker, it is estimated that IMPD has arrested more pimps and traffickers in the last year than in the previous twenty years combined, with the majority of cases involving victims who are U.S. Citizens. While victim cooperation has increased as IMPD officers have received more training, international victims are particularly unwilling to cooperate. This is especially true regarding victims from China, and one officer estimated that only 1 percent of Chinese victims will turn on their trafficker (Sgt. J. Daegy, Personal Communication, October 18, 2013).

In recent years, IMPD has been the only Indiana law enforcement agency to focus intently on human trafficking. This is still true for most counties in Indiana (Sgt. J. Daegy, Personal Communication, October 18, 2013), however, Lake County has recently established a Human Trafficking unit (Ortiz, 2013), and Johnson County's law enforcement made a human trafficking arrest in January of 2014 (Ryckaert, 2014).

Prosecution & Appeal
While the U.S. Attorney usually has concurrent authority to prosecute human trafficking in Indiana, Indiana’s county prosecutors generally handle trafficking cases. This occurs for several reasons. First, there must be an “interstate nexus” in order for the U.S. Attorney to bring charges in a trafficking case. This means that the case must involve interstate travel or interstate commerce (e.g. the trafficker used condoms manufactured outside Indiana). If prosecutors cannot establish an interstate nexus, Indiana prosecutors must bring the case. Second, the federal courts create case law for the entire nation, and so the U.S. Attorney's Office is selective about which cases they will prosecute, since a bad outcome could potentially hamper or prevent prosecutions for trafficking across the U.S. (M. Hutchison, Personal Communication, March 3, 2014). Third, some state law enforcement units are not adequately trained to collect the evidence required to put together a trafficking prosecution. All these factors lead to a 52% case declination rate among all U.S.
Attorneys presented with sex trafficking cases involving children, compared to 15% for drug offenses and 26% for weapons offenses (Smith & Vardaman, 2011).

While the Marion County Prosecutor’s Office has handled more than a few sex trafficking cases, only two of them have ended in a trial (M. Hutchison, Personal Communication, March 3, 2014). One trial resulted in a conviction, and the other resulted in an acquittal on the trafficking charge, but a conviction on all other counts (including those of the same severity as trafficking) (M. Hutchison, Personal Communication, March 3, 2014). In most of the other cases, the trafficker will plead guilty to another charge of the same severity in order to avoid having a trafficking conviction on his/her record.

As of April 2014, the U.S. Attorneys in Indiana have pursued four human trafficking cases (Disis, 2014). In 2010, federal prosecutors in Hammond obtained a sentence of life in prison for a man who trafficked women into prostitution in northern Indiana and Illinois (U.S. v. Cephus, 684 F. 3d 703, at 705-706), and federal prosecutors in Indianapolis are currently pursuing charges against a trafficker for forcing women and a 12-year-old girl with mental disabilities into prostitution (Disis, 2014).

Until recently, Marion County was the only Indiana county to file trafficking charges. However, Johnson County Prosecutor Bradley Cooper recently filed charges under the trafficking statute in January of 2014 (Ryckaert, 2014). Although this is one of the first trafficking charges to be filed outside Marion County, it does not mean that trafficking has not been occurring—prosecutors just have not been using the trafficking statute (Mary Hutchison, Personal Communication, March 3, 2014; Adams, Dank, Fahy, Farrell, McDevitt, Owens, & Pfeffer, 2012). This happens for several reasons. First, prosecutors may sometimes be able to prove that the defendant recruited a woman with the intent to force her into prostitution (a Level 4 felony), (I.C. §35-42-3.5-1(a)) but can also prove that the trafficker subsequently raped her at gunpoint/knife point (a Level 1 felony) (I.C. §35-42-4-1(b)). If a prosecutor can charge a Level 1 felony under a statute that he/she is familiar with instead of a Level 4 felony under a newer, untested statute, he/she is more likely to do the former (M. Hutchison, Personal Communication, March 3, 2014). Since the statute is new and untested, with no case law to interpret it, prosecutors are also nervous about filing trafficking charges (Sgt. J. Daggy, Personal Communication, October 18, 2013). This is consistent with current national trends among state prosecutors (Adams, et al., 2012).

When informed about the services available to them, most victims have elected to get their GED or to participate in counseling. As noted earlier, the Marion County Prosecutor’s Office has requested statutory restitution in one case, but the judge denied the request because the money was obtained through illegal activity (prostitution) even though the human trafficking statute mandates restitution.

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12 According to the prosecutor, the victim in this case was the wife of the defendant, and the jury stated that they could not believe that a husband could traffic his wife.

13 There are also two pending civil actions in federal court involving forced labor: Panwar v. Access Therapies, Inc. (Docket No. 1:12-cv-00619) & John Roc I v. Bridgestone Corp. (Docket No. 1:06-cv-0627-DFH-JMS)
No human trafficking case filed by the State has been appealed, and consequently none of the Indiana appellate courts have reviewed the statute (M. Hutchison, Personal Communication, March 3, 2014).

Part IV: Issues & Recommendations

General Issues

Data Collection

It is impossible to properly allocate resources, enforce the law, treat victims, and educate the public about sex trafficking unless the extent and nature of the problem is known. The authors are unaware of any publicly available quantitative data about trafficking in Indiana. Law enforcement data is scattered throughout different units in the state and in the U.S., and is often inaccessible to other units that later encounter the same trafficker and/or the same victim. After the Super Bowl, LexisNexis offered to allow Indiana law enforcement to use a pilot database for managing human trafficking cases (Kuzma, 2011), but the project was discontinued once law enforcement was required to pay for the database’s use after the free “trial period” (M. Hutchison, Personal Communication, March 3, 2014).

In 2012, the Research & Analysis division of Ohio’s Human Trafficking Commission, in conjunction with the University of Toledo, developed and published a 29 page statistical report on domestic minor sex trafficking in Ohio. The report included valuable data on the experiences of victims before they entered the sex industry, common traits of victims a year before they were victimized, past maltreatment of trafficking victims compared to child abuse victims, sex trafficking networks in Ohio, current experiences and health conditions of trafficking victims, recruiter/trafficker demographics, venues of exploitation, Intervener demographics, buyer demographics (in total and disaggregated by buyers of manipulated victims, buyers of victims of force, and buyers by city), the cost of sex acts in Ohio, prevalence of trafficking in prominent Ohio cities, and victim risk factors by city (Williamson & Perdue, 2012).

Such a report would be extremely valuable to law enforcement, service providers, volunteer organizations, and the legislature in determining where resources need to be allocated, and what strategies need to be utilized in order to best combat the unique trafficking that occurs in Indiana and Indiana’s cities. Consequently, the authors recommend that:

The Indiana General Assembly or the Indiana Attorney General’s Office commission a study on sex trafficking similar to Ohio’s, to be supervised by IPATH and conducted in partnership with reputable scholars at a University in Indiana.

In addition, in order to allow law enforcement to better investigate trafficking cases that move throughout the state, the authors recommend that:
Funding for Victim Services

Once the data collection has been completed and the Indiana General Assembly is aware of the extent of trafficking, the specific areas where trafficking occurs, and where the greatest needs are in the social services system, the legislature should appropriate money to adequately fund victim services in Indiana that are not dependent on federal funding and Congressional politics.

The Indiana General Assembly passed a budget for 2013-2015 allocating over 23 billion dollars for health and human services. Over 15 billion of this came from federal funds, but nearly 7 billion came from Indiana's general fund, and of the money spent on health and human services in Indiana during this two year period, none was spent on rehabilitative services for victims of trafficking. In fact, the only money that went towards issues of sexual violence was approximately 1.5 million dollars over the course of two years for rape prevention and education (Indiana General Assembly, 2013). Relying on federal grants limits the ability of social service providers to work with domestic women, meaning that Hoosier women who have been trafficked would miss out on crucial services.

In order for the General Assembly to continue its commitment to helping victims of trafficking in Indiana, the next step is to provide funds to expand the services provided to trafficking victims. Indiana has only one human trafficking care coordinator to service the needs of the state, and the capacity for service provision must be expanded in order to provide quality care to victims of trafficking. Tracy McDaniel from the Julian Center has said that service providers need state funding in order to do their job, and the state should allocate funds to organizations with personnel who are qualified to offer a high standard of care to trafficking victims (Personal Communication, January 24, 2014). Marti MacGibbon agrees, saying that non-governmental organizations should run shelters, but they should have oversight from the state (Personal Communication, October 25, 2013).

It is important that these state funds go to organizations that use current best practices for treating victims post-rescue. There is currently little research on evidence-based practices for treating victims of trafficking, but monitoring how service providers are keeping up with trends in practice and the effectiveness of their interventions will ensure that state money is being used in the best interest of victims of trafficking and is not being wasted on ineffective interventions.

Service providers have had success using cognitive-behavioral therapy to treat the mental health needs of victims of trafficking, particularly Post-Traumatic Stress Disorder. Cognitive-behavioral therapy is helpful in restructuring trauma in a way that is more manageable for the victim of trafficking. For those who need treatment for substance abuse, motivational enhancement therapy, which helps clients get ready to make a plan for change, has been shown to be effective (Williamson et al., 2008). It is also important for services to be “trauma informed,” meaning the service provider understands the abuse a client has experienced and then
uses that information to provide services in a way that the client understands and wants to participate in (Clawson et al., 2006). As Tracy McDaniel says, however, victims of trafficking are different and their needs are varied and complex. Each client needs to be approached with their background in mind in order to be given the best possible services (personal communication, January 24, 2014). The Indiana Department of Health and Human Services needs to ensure that these high standards of care are in place in all programs for which they allocate funding. For the reasons stated above, the authors recommend that:

*The Indiana General Assembly, once data collection is complete, fully fund a pilot program for the expansion of victim services appropriate to the findings of the data. Additionally, the Indiana General Assembly should require the organization receiving the funding to comply with minimum standards of care based on current evidence-based practice for victims of sex trafficking.*

**Core Legal Issues: Human Trafficking**

**Severity**

Trafficking victims in Indiana have expressed frustration that the law does not permit traffickers to be punished on a level consistent with their trauma and consistent with similar offenses (M. Hutchison, Personal Communication, March 3, 2014). This frustration is warranted, even under the new sentencing system. Promoting trafficking (I.C. §35-42-3.5-1(a)) is a Level 4 felony, which has a sentence cap of 12 years and an advisory sentence of 4 years (I.C. §35-50-2-5.5), while rape (I.C. §35-42-4-1) is a Level 3 felony, which has a sentence cap of 20 years and an advisory sentence of 6 years (I.C. §35-50-2-5). Promoting trafficking of a minor (I.C. §35-42-3.5-1(b)) is a Level 3 felony. Sex trafficking inherently involves repeated rape, since the victim has no power to refuse consent to the sex in which he/she participates. Because the trafficker is inherently responsible for the repeated rape of the victim, it is incredibly unjust to punish a trafficker with a sentence equal to or less than a rapist.

This reasoning holds true with Human Trafficking (I.C. §35-42-3.5-1(d)), regardless of the construction it is given by the courts. If a john purchases sex with a prostitute knowing that she has been trafficked, he, by extension, knows that she has no power to refuse consent to sex. In the alternative, a trafficker who purchases a woman knowing that she has been forced into prostitution is just culpable for her rape as the trafficker in the previous paragraph. However, Human Trafficking under subsection (d) is only a Level 5 felony, which has a sentence cap of 6 years and an advisory sentence of 2 years (I.C. §35-50-2-6).

Sexual Trafficking of a Minor (I.C. §35-42-3.5-1(c)) is the only offense that is assigned an adequate punishment. It is a Level 2 felony, which has a maximum sentence of 30 years, with an advisory sentence of 17 ½ years (I.C. §35-50-2-4.5). However, this section only applies to someone who sells or transfers custody of a child into prostitution, including only a small component of trafficking. Additionally, none of the trafficking statutes have enhancements for the use of a deadly weapon, severe bodily injury, or the use of
drugs to commit the crime, all of which are enhancements that make Rape a Level 1 felony (I.C. §35-42-4-1).

To resolve this disparity, the authors recommend that

_The Indiana General Assembly amend subsection (a) to be punishable as a Level 3 felony, amend subsection (b) to be punishable as a Level 2 felony, and amend subsection (d) to be punishable as a Level 3 felony. Additionally, the authors recommend that the legislature provide that any offense under I.C. §35-42-3.5-1 is a Level 1 felony if it is committed by the threat or use of deadly force, results in severe bodily injury to someone other than the defendant, is committed by furnishing the victim with a drug or a controlled substance without the victim’s knowledge, is committed against a person with a physical or mental disability, or is committed by a person over 21 years of age, against a child less than 14 years of age._

**Punishing Facilitators**

It currently is not a crime in Indiana to aid, profit from, recklessly disregard, or otherwise facilitate trafficking (Shared Hope International, 2013b). This means that taxi drivers, hotel management/employees, truck stop management/employees, and others are immune from prosecution if they aid, profit from, facilitate, or recklessly ignore that trafficking is occurring on the premises of their property or their business. This is currently prohibited under federal law (18 U.S.C. §1593.), and the authors recommend that:

_The Indiana General Assembly adopt the same stance by amending I.C. §35-42-3.5-1 to prohibit anyone from knowingly, or in reckless disregard of the fact, aiding, benefiting, profiting from, or facilitating trafficking. Facilitating Trafficking should be punishable at the same level as a completed violation of I.C. §35-42-3.5-1(a)-(d), and victims should be empowered to sue facilitators for damages under I.C. §35-42-3.5-3._

**Ambiguity**

The Indiana Code does not define the words force, fraud, recruit, transport, or harbor for the purposes of the human trafficking statute. While these words have commonly understood meanings, leaving them undefined can cause problems for police officers, prosecutors, juries, trial judges, and appellate courts who are called upon to determine whether or not there is probable cause for an arrest or whether a defendant committed a crime. For example, does the force or threat of force have to be carried out against the victim? Can the trafficker be prosecuted for threatening the victim’s family? At what point does a trafficker “harbor” a victim? Can they harbor them in a public space, or must they use a private property or a building? Must they harbor the victim for a certain amount of time in order for liability to attach? Does “recruit” include purchasing an individual, the act of dislodging the victim from their previous mode of living, or both? Without these definitions, law enforcement and judges must “make things up as they go along”, so to speak, which can disrupt investigations and potentially result in a trafficking conviction being reversed on appeal.

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14 I.C. 35-42-4-3 (Child Molesting) makes it a Level 1 felony for a person over 21 to engage in sexual intercourse or sexual conduct with a child under 14. It is only appropriate that a trafficking involving similarly aged individuals is punished on the same level.
Perhaps the most famous example of this unfortunate situation is United States v. Kozminski (487 U.S. 931), decided by the United States Supreme Court in 1988. The Kozminskis enslaved two mentally disabled men on their farm in Michigan, paying them nothing and subjecting them to verbal abuse, substandard living conditions, and isolation. One of the men was threatened with institutionalization if he failed to obey orders (Kozminski, at 935). The U.S. Attorney charged the Kozminskis, among other things, with holding the men in involuntary servitude under 18 U.S.C. § 1584, and a jury convicted them (Kozminski, at 934).

The government’s case did not rest on the use, or threatened use, of force or legal coercion, but instead on the argument that the “psychological coercion” exerted by the Kozminskis was enough to violate the involuntary servitude statute (Kozminski, at 936). Since Congress clearly borrowed the phrase “involuntary servitude” from the Thirteenth Amendment, and since Congress did not explicitly define involuntary servitude in the statute, the Supreme Court resorted to a restrictive interpretation of the phrase based on the text, case law, and history of the statute and the phrase. The court concluded that “involuntary servitude” only meant servitude compelled by the use or threatened use of force or legal coercion, and reversed the Kozminskis’ conviction (Kozminski).

While Congress superseded the ruling through the Trafficking Victims Protection Act (See 22 U.S.C. §7101(b)(14)), the situation in Kozminski could have been avoided if Congress had defined “involuntary servitude”. To prevent this from happening in Indiana, the authors recommend that:

The Indiana General Assembly amend I.C. §35-42-3.5 to define force, threat of force, fraud, recruit, transport, and harbor for the purposes of that chapter.

Additionally, there are some parts of the human trafficking statute that are ambiguous. While defining words will clarify some of these sections, others may still cause problems in the courts, even with definitions. For example, under subsection (a) and (b), the statute makes it illegal to recruit, transport, or harbor a person to force them into prostitution or sexual conduct. It is unclear whether or not the state needs to prove that a trafficker actually induced the individual into prostitution, or if the state merely has to prove that the trafficker intended to do so. The authors recommend that:

The Indiana General Assembly clarify this ambiguity by amending I.C. §35-42-3.5(a) and (b) to provide that the state need not need not prove that the victim was actually induced into the conduct.

Secondly, it is unclear whether subsection (d) applies to a trafficker who purchases a victim whom they know has been forced into prostitution, or whether it applies to a john who buys sex from a victim whom they know has been forced into prostitution. This ambiguity stems from the fact that the statute criminalizes paying money or property for “an individual” whom the person knows was forced to be a prostitute. While it is possible that a jury could construe the words “an individual” to apply to a john who bought “an individual”
for sex, a conservative reading of the statute reveals that this construction is not entirely accurate—the john does not obtain full control over the *individual* (the trafficker still has this control), but is simply purchasing or renting the *individual’s services*.

This ambiguity could easily transform into a nightmare for the State. The Indiana Court of Appeals recently re-affirmed the doctrine that a statute is unconstitutionally vague when it fails “to provide notice enabling ordinary people to understand the conduct it prohibits” (*Morgan v. State*, 2014 WL 651665 (slip op, at 4), quoting *Adams v. State*, 968 N.E. 2d 281, 285). If a john was convicted under this statute, any competent defense attorney could make a compelling argument that the statute failed to provide notice to his client that his conduct was illegal under the statute, since an ordinary person would assume the statute prohibited buying an *individual*, and not the *individual’s services*. To prevent this from happening, the authors recommend that:

*The Indiana General Assembly amend I.C. §35-42-3.5(d) to prohibit the purchase of “an individual’s services” or to clarify that the subsection does not apply to someone who purchases an individual’s services, but does not obtain primary control over the individual.*

**Vacating/Expunging Convictions**

Sex trafficking victims are frequently forced to engage in prostitution, an illegal activity. As a result, many trafficking victims are saddled with convictions for prostitution and other crimes stemming from either the trafficker’s orders or the trauma they have experienced before they are rescued. As a result, victims have trouble obtaining employment and re-integrating into society once they are rescued, since they may be unable to find or keep employment with a criminal record (*Cross*, 2013). Indiana currently does not provide an avenue to resolve this issue, and does not allow prior convictions to be vacated upon a showing that the victim was trafficked at the time of the offense.

While the state is required to dismiss pending charges if a person is discovered to be a trafficking victim (M. Hutchison, Personal Communication, March 3, 2014), victims are sometimes not aware that they are a victim (*Family Violence Prevention Fund*, 2005), and if they are not identified as such by employees of the justice system, they will likely be treated as a criminal. It is unreasonable and unproductive to punish victims for acts over which they had no reasonable control, as it prevents victims from recovering from their trauma and becoming productive members of society.

New York recently added a provision to its criminal procedure code allowing a trafficking victim to file a motion with the court to vacate a conviction for prostitution if he/she shows that he/she was a victim of sex trafficking at the time they committed the offense. However, this provision only allows the court to vacate convictions for prostitution related offenses, and not for other offenses that may have resulted from the trafficking (such as drug possession, theft, operating a vehicle without a license, etc) (*N.Y. Crim. Proc. §440.10(1)(b); See *People v. Gonzalez*, 927 N.Y.S. 2d 567). As long as the victim can prove that the offense was a direct result of trafficking, the justice system has an obligation to allow victims to petition the court to remove them. Therefore, the authors recommend that
The Indiana General Assembly amend the Indiana Code to allow a court to vacate and/or expunge any conviction entered against a trafficking victim upon proof that the person a). Was a victim of trafficking at the time of the offense, and b). Committed the offense as a direct result of the trafficking.

**Further Incorporation of Sex Trafficking into the Sex Crimes Statutes**

Sex trafficking is considered a sex offense under Indiana law, and certain sex traffickers are required to register as sex offenders with the State of Indiana. However, there are some loopholes in the law which should be closed in order to fully incorporate sex trafficking into Indiana’s sex crimes framework.

First, a trafficker is only required to register as a sex offender if his or her victim is a minor (I.C. §11-8-8-4.5(a)(15), (16), (17); I.C. §11-8-8-5(a)(15), (16), (17)). Given the violent nature of adult sex trafficking, it is entirely appropriate to consider all sex traffickers to be sex offenders, regardless of the victim’s age. Therefore, the authors recommend that:

The Indiana General Assembly amend I.C. §11-8-8-4.5 and I.C. §11-8-8-5 to include all sex trafficking, and not just the sex trafficking of minors.

Second, sex traffickers are not considered “sexually violent predators” under I.C. §35-38-1-7.5, and a person who trafficks a child for sex is not considered an “offender against children” under I.C. §35-42-4-11, both of which govern the applicability of I.C. §35-42-4-10 (Unlawful Employment Near Children). This means that a trafficker would not be precluded from living or working at a public school, public park, or a youth program center. Given the danger that trafficking poses to children and youth, this loophole should be closed to make it more difficult for convicted traffickers to victimize children. Therefore:

The Indiana General Assembly should amend I.C. §35-38-1-7.5(b)(1) to include I.C. §35-42-3.5-1(a)(2), (b)(1)(B), (b)(2), and (c). Additionally, the legislature should amend I.C. §35-42-4-11(a)(2) to include §I.C. 35-42-3.5-1(b)(1)(B), (b)(2), and (c).

Secondly, the Rape Shield statute (I.C. §35-37-4-4) only protects victims of sex crimes as defined by I.C. §35-42-4, which does not include sex trafficking. Sex traffickers essentially force their victims to be raped by hundreds of men, and thus would be equally (or more) traumatized by a cross-examination about their sexual history (Shared Hope International, 2013b). The intent of the Rape Shield statute is precisely to prevent this from happening, and so there is no reason to exclude sex trafficking victims from protection under the Rape Shield statute. Accordingly, the authors recommend that:

The Indiana General Assembly amend I.C. §35-37-4-4(a) to include a prosecution under I.C. §35-42-3.5-1(a)(2), (b)(1)(B), (b)(2), and (c).

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15 See page 24
**Termination of Traffickers’ Parental Rights**

Sex Traffickers often intentionally impregnate their victims in order to gain additional leverage over them, and, in particularly horrifying cases, in order to prostitute the child (Shared Hope International, 2013 “Analysis”). If a victim is rescued by law enforcement, the trafficker can threaten to make the victim’s life a nightmare through a custody battle if the victim cooperates with law enforcement—a battle the victim may not be willing or able to endure. I.C. §31-35-3-4(1) does not currently include human trafficking as a basis for terminating the parent-child relationship. In order to minimize the damage the trafficker can cause to the victim, and so the Indiana Department of Child Services and law enforcement can assure a victim that the trafficker can lose his legal rights over his child, the authors recommend that:

*The Indiana General Assembly amend I.C. §31-35-3-4(1) and all other relevant code sections to include I.C. §35-42-3.5-1 as a basis for terminating the parent-child relationship.*

**Core Legal Issues: Prostitution**

**Juvenile Prostitutes**

Under Indiana and federal law, children engaged in commercial sex are trafficking victims (I.C. §35-42-3.5-1(b); 18 U.S.C. §1591). As discussed earlier, this stems from the law’s assumption that a child’s lack of development and maturity makes them incapable of giving legal consent and exercising the judgment of an adult. This is reflected in Indiana’s sex crimes statute, which makes it a crime for an adult to have sex or sexual contact with a child under 16 (I.C. §§35-42-4-3, 9), or to film pornography of a child under 18 (I.C. §35-42-4-4(b)). However, children can be prosecuted for prostitution under Indiana’s age-neutral prostitution statute (I.C. §35-45-4-2), even though children involved in commercial sex are considered crime victims.

This creates a complicated network of questions, the answers to which are confusing and often contradictory. If a fifteen year old is not able to consent to sex with an adult, does the presence of consideration suddenly endow them with the mental capacity to commit a crime that involves their consent? Why is it that a sixteen-year-old is able to consent to sex but not to being filmed in pornography? How can a child be a victim and a delinquent as a result of the same act?

These questions become even more convoluted by the fact that children are not typically permitted to sit on a jury, to vote in elections, to marry without parental consent, or even to enter into contracts (Brickhead, 2011). This last prohibition is particularly troubling, since prostitution is essentially an illegal contract for services. If a child does not have the mental capacity to enter into a legal contract, it is difficult to see how they could have the mental capacity to commit a crime by entering into an illegal one.

Determining whether minors should be liable for prostitution is a complicated question, as is deciding when they should be able to consent to non-commercial sex, and states have taken many approaches

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16 See page 17-18
to answering them. Illinois and New York, operating under the theory that child prostitutes are exploited children, have decriminalized all prostitution for children (Illinois), or given family court judges the ability to divert children from juvenile court to the child welfare system (New York). Other states, such as Connecticut, have decriminalized prostitution for those under 16, consistent with widespread age-of-consent laws, but created a presumption that prostitutes between 16 and 18 were coerced into prostitution (Brickhead, 2011).

Michigan's system is similar to Connecticut's, and offers one of the more consistent models among states where the age of consent is below 18. In Michigan, children under 13 cannot consent to sex. Children between 13 and 16 can only consent to sex with individuals who are less than five years older than them. Children between 16 and 18 can consent to sex, except with certain groups of people (teachers, school employees, etc). As a result of this system, children in Michigan can only be prosecuted for prostitution when they are 16 or older (Brickhead, 2011).

Regardless of the system that the legislature adopts for determining the age of consent, the authors stress the importance of making Indiana's prostitution laws consistent with the age of consent and its human trafficking statutes, so that the public, law enforcement, and the child welfare system have a clear picture of the legal status of child prostitutes. The Texas Supreme Court, when confronted with the dilemma of a 13 year old defendant in a prosecution under the state's prostitution law, was forced to conclude that children under the age of consent could not be held liable for prostitution (In re B.W., 313 S.W. 3d 818, 822, (2010)). In support of this conclusion, the court reasoned that:

It is difficult to reconcile the Legislature's recognition of the special vulnerability of children, and its passage of laws for their protection, with an intent that children under 14 understand the nature and consequences of their conduct when they agree to commit a sex act for money, or to consider children quasi-criminal offenders guilty of an act that necessarily involves their own sexual exploitation...Given the longstanding rule that children under fourteen lack the capacity to understand the significance of sex, it is difficult to see how a child's agreement could reach the "knowingly" standard that the statute requires. Because a thirteen-year-old child cannot consent to sex as a matter of law, we conclude B.W. cannot be prosecuted as a prostitute (In re B.W., at 822).

Indiana's prostitution statute requires a nearly identical "knowingly or intentionally" requirement. In addition, the prostitution statute requires that "money or other property" be exchanged as consideration for the sex act (I.C. §35-45-4-2). Given the paradox articulated by the Texas Supreme Court and the longstanding rule in Indiana that children cannot create contracts, sue, or be sued in contract (See Bowling v. Sperry, 184 N.E. 2d 901, 902), the authors recommend that:

The Indiana General Assembly amend I.C. §35-45-4-2 (Prostitution) to apply exclusively to adults.
In addition, given the well-documented harms of prostitution (Hunt, Kliorys, Shively, & Wheeler, 2012) and the fact that Indiana considers child prostitutes to be trafficking victims, the authors also recommend that:

The Indiana General Assembly amend I.C. §35-45-4-2 and all other relevant statutes to clarify that child prostitutes are trafficking victims and exploited children, and to require that child prostitutes be directed to the child welfare system by law enforcement.

Unless the Indiana legislature is prepared to give children the ability to consent to sex and to enter into legal contracts, the authors believe that this is the only system under which children are treated with any consistency. As the Texas Supreme Court stated, it borders on absurdity to believe that children under 14 cannot give consent to sex but can knowingly exchange sex for money. Furthermore, it is equally unfair to bar children between 14 and 18 from entering into contacts (and to bar them from sitting on a jury to judge the contract of another), while at the same time adjudging them capable of entering into an illegal contract.

Instead of prosecuting children for prostitution, the state should provide them with services appropriate to their status as trafficking victims. The chapter of the Indiana code dealing with human trafficking does not stipulate that trafficking victims must cooperate with law enforcement in order to receive social services, but there are provisions that stipulate the conditions in which the victim of any crime can receive assistance. Similar to the Trafficking Victims Protection Act, a victim must cooperate with law enforcement and prosecuting attorneys in order to be eligible for general services such as access to compensation funds, legal assistance, mental health services, social services, health resources, rehabilitative services, financial assistance services, crisis intervention services, and transportation services (I.C. §35-40-5-1).

As discussed earlier, these provisions are a significant barrier to treatment access for victims who fear for their wellbeing and the wellbeing of others. In the case of children who are victims of trafficking, they are automatically considered "children in need of services" in the Indiana code because they were "allowed to participate in an obscene performance," or "sexual conduct involving any person who is or appears to be under sixteen years of age" (I.C. §31-34-1-4; I.C. §35-49-2-2). A child victim of sex trafficking is entitled to services without first cooperating with law enforcement because of the nature of the abuse they suffered at the hands of a trafficker. Marti MacGibbon, a sex trafficking survivor, has said that as a victim, it is not possible to find a safe space in your mind unless basic needs are met (Personal Communication, October 25, 2013). If children are given access to services before being required to cooperate, they might be more inclined to work with law enforcement after they feel safe and are able to trust their service providers. Therefore, the authors recommend that:

The Indiana General Assembly amend I.C. §35-40-5-1 to state specifically that children rescued from prostitution can receive services consistent with their needs as trafficking victims without having to first cooperate with law enforcement.
Sex Trafficking & Prostitution: Where Does Indiana Stand?

Supply and Demand

Prostitution and sex trafficking are businesses. As businesses, sex trafficking and prostitution are subject to the laws of economics, including the fundamental law of supply and demand (Hunt et al., 2012; Smith & Vardaman, 2011). Men looking for commercial sex create a market for prostitution, which prostitutes, pimps, and traffickers use to make money. If the demand for commercial sex decreases, prostitution becomes less profitable, and begins to disappear (Hunt et al., 2012). Not all prostitution is sex trafficking, but since sex trafficking involves commercial sex, scholars have investigated the extent that male demand induces traffickers to force people into prostitution.

This question has not been definitely answered by the social sciences, and the only thing known for certain is that both prostitution and sex trafficking result from the male demand for commercial sex (Hunt et al., 2012). However, there is substantial correlative evidence that suggests the demand for commercial sex contributes to the prevalence of trafficking. For example, The Schapiro Group did a study of men who purchase sex in Georgia, which found that, on average, 7,200 men have sex with 8,700 children every month. While only 6% of the men were explicitly looking for sex with a child, 47% of the men ignored numerous hints and warnings by the researchers that the girl was “young” and could be under 18 (The Schapiro Group, 2010; As cited in Smith & Vardaman, 2011). Girls described as “young” or “barely legal” were 150% more attractive to buyers than girls whose age was not mentioned (Smith & Vardaman, 2011). This preference for younger girls, coupled with the willingness of buyers to disregard all indications that the girl may be underage, provides an attractive market for traffickers willing to traffic children into prostitution. This seems to be the trend in prostitution markets, as most prostitutes enter the system between 12 and 14 (Hunt et al, 2012).

There is currently a raging debate about whether or not legalized and regulated prostitution (and thus legalized solicitation) reduces trafficking. Some assert that all prostitution is female exploitation (MacKinnon, 1989) and that legalization exacerbates the demand for sex and increases trafficking (Smith & Vardaman, 2011). Those who adopt this perspective tend to call for the decriminalization of women in the sex industry and advocate for the aggressive prosecution of buyers in order to reduce demand for sex (Claude, 2010). Others argue that the research supporting the “female exploitation” thesis is supported with questionable methodology (Weitzer, 2005), and that prostitution should be legalized and regulated in order to promote transparency in the system (Outshoorn, 2004).

The authors of this thesis, while they have their own opinions on the matter, will not attempt to resolve this debate. Historically, western culture has dealt with prostitution primarily by punishing the prostitute, and systems that solely punish the buyer or punish no one have emerged only recently in Sweden, the Netherlands, Australia, and a few other countries (Outshoorn, 2004). Because these systems are so new, more research must be done in order to determine whether women in prostitution and trafficking victims are best served by legalization, criminalization, or partial criminalization (Hunt et al., 2012). Instead of advocating
for a premature structural change, the authors offer some practical suggestions for making Indiana's vice laws more effective at reducing prostitution and trafficking.

Under the current statute, which punishes prostitution and solicitation equally, law enforcement has a tendency to arrest prostitutes at a much higher rate than buyers (Hunt et al., 2012; Sgt. J. Daggy, Personal Communication, October 18, 2013). However, a national study of prostitution reduction initiatives in the U.S. concluded that while prosecuting pimps and traffickers was important, the only initiatives that had any success in reducing prostitution were the ones that incorporated demand-based strategies (Hunt et al., 2012). Therefore, if Indiana wants to have any success at reducing prostitution, law enforcement must adopt a strategy that incorporates an effective demand-reduction component. The first step in this process is to amend the solicitation statute to more effectively deter men from purchasing sex.

Indiana's solicitation statute does not distinguish between purchasing sex with a child and purchasing sex with an adult (I.C. §35-45-4-3). Because children in prostitution are considered trafficking victims, and because purchasing sex with children directly fuels the demand to traffic more children, the authors recommend that:

The Indiana General Assembly amend I.C. 35-45-4-2 (Patronizing a prostitute) to distinguish between purchasing sex with adults and purchasing sex with children. Purchasing sex with an adult should be punishable as a Class A misdemeanor for a first offense, requiring a fine or participation in Indianapolis' John School as a diversion. All subsequent offenses should be punishable as a Level 6 felony, punishable by a $1,000 fine to be diverted to a trafficking victims' fund, and/or imprisonment. Purchasing sex with a child should be punishable as a Level 5 felony for a first offense, punishable by a $5,000 fine to be diverted to a trafficking victims' fund and/or imprisonment. All subsequent offenses should be punishable as a Level 5 felony and mandatory registration as a sex offender. The statute should preclude offenders from asserting that they were not aware that the prostitute was a child or that they believed the prostitute was an adult.

The goal of a demand-based strategy is not to fill the jails and sex offender registries with men who purchase sex—the goal is to deter a large population of relatively average men (Hunt, et al., 2012) from purchasing sex. Indianapolis' John School has a relatively low recidivism rate (M. MacGibbon, Personal Communication, October 25, 2013), and therefore is ideal for educating and deterring first-time offenders from soliciting sex. Prosecution has been shown to be an effective deterrent for men who purchase sex (Smith & Vardaman, 2011), and so repeat offenders of the first section should be adequately deterred by the threat of prosecution for a felony.

The second half of the recommended change is designed to act as a heavy deterrent to men who actively seek out sex with children and those who are willfully blind to the age of a prostitute. Once it becomes clear to buyers that purchasing sex from a child will be punished on the same level as a child sex crime, they will be much less likely to seek out sex from a younger prostitute and will be incredibly reluctant

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17 I.C. 35-42-4-9 (Sexual Misconduct with a Minor) is also a Level 5 felony
to buy sex from a woman if there is any possibility that she is underage, particularly since they will be barred from claiming an age mistake defense. While barring an age mistake might seem harsh, it is necessitated by the alarming amount of men who are willing to overlook all indications that a girl might be underage. Finally, studies have shown that nearly all buyers would be deterred by the threat of being placed on a sex offender registry (Farley, Schuckman, Golding, House, Jarrett, Qualiotine, & Decker, 2011). Men who disregard this threat and repeatedly purchase sex from children cross the line from a john to a predator and a sex offender, and should be punished appropriately.

If the Indiana General Assembly declines to enact the above changes to the solicitation statute, the authors recommend that:

*Indiana law enforcement units arrest and prosecute both prostitutes and buyers equally, consistent with the way the law is written.*

If the legislature enacts the proposed changes, the authors recommend that:

*Indiana law enforcement units target buyers more than prostitutes, particularly buyers of children, consistent with the proposed severity of solicitation compared to prostitution.*

**Practical Issues**

**Enhancing the Responses of Police Departments**

While law enforcement in Indianapolis have made significant progress in handling human trafficking cases, most law enforcement units in Indiana have yet to engage in counter-trafficking operations (Sgt. J. Daggy, Personal Communication, October 18, 2013), with a few exceptions.

Most law enforcement units have focused their attention on other issues, such as the drug war, since property forfeiture from arrests and convictions in those cases can result in a significant revenue stream to their departments. In addition, most police forces are not experienced with the unique nature of trafficking cases, and are often unwilling to invest into trafficking cases the extensive amount of time and patience necessary to enable prosecutors to win a conviction. Additionally, police departments that do investigate trafficking currently do not have the funding to pursue cases where the trafficker leaves Indiana (Sgt. J. Daggy, Personal Communication, October 18, 2013). If the FBI does not take the case, it is extremely unlikely that the trafficker will ever face a jury in Indiana.

In order to incentivize law enforcement to investigate human trafficking cases, the authors recommend that:

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18 See page 29
The Indiana General Assembly amend I.C. 34-24-1-1 to explicitly allow law enforcement to seize a trafficker’s profits and any property used to commit trafficking. Additionally, the authors recommend that IPATH train law enforcement units on the amended statute in order to make them aware of the extent and nature of property they can seize in trafficking cases.

In addition, the authors recommend that:

Indiana police departments large enough to accommodate a permanent Human Trafficking Unit follow the example of IMPD, the Hammond Police Department, and the Lake County Sheriff in creating a Human Trafficking Unit.

Since it would be impractical (both from a financial and human resources perspective) to expect every police department in the state to establish a Human Trafficking Unit, the authors recommend that:

The Indiana State Police (ISP) establish a Human Trafficking Unit tasked with assisting smaller law enforcement units across Indiana with investigating human trafficking cases. All law enforcement units should adopt IMPD’s protocol to determine if a prostitute is a sex trafficking victim. If local law enforcement determines that a prostitute is a sex trafficking victim, they may investigate the case themselves or contact the ISP Human Trafficking Unit for assistance. If local law enforcement closes the case themselves, they are entitled to the entire value of assets forfeited. If local law enforcement partners with the ISP to close the case, forfeited assets should be split 50/50 between the two agencies.

Finally, the authors recommend that:

The Indiana General Assembly establish a fund to allow law enforcement to pursue certain trafficking cases that leave Indiana. This fund could either be available to all law enforcement units or to the ISP Human Trafficking Unit, who could be assigned responsibility for all cases that leave the state.

Enhancing the Responses of Legal Professionals

Most prosecutors in Indiana have not filed trafficking charges (M. Hutchison, Personal Communication, March 3, 2014). Prosecutors do not file trafficking charges for many reasons, including uncertainty about the statute, fear of bad case law, the low felony level compared to other crimes, lack of evidence, and uncooperative victims (M. Hutchison, Personal Communication, March 3, 2014; Adams et al., 2012). Amending the human trafficking statute to carry more severe penalties, clarifying ambiguity, and incentivizing law enforcement to conduct more thorough human trafficking investigations will alleviate some of these issues, but more can be done to enhance the ability of prosecutors to punish traffickers.

Even though human trafficking is a complex crime, it is possible for county prosecutors to prosecute these cases. In 2012 alone, state prosecutors in Ohio charged 17 human trafficking cases and had convicted seven defendants by mid-2013 (Office of the Ohio Attorney General, 2013). It is worth noting that, even at that time, Ohio’s human trafficking statute was different from Indiana’s statute in three critical ways: 1. It clearly defined the words “compelled” and “involuntary servitude,” 2. It clearly identified which statute
applied to buyers and which applied to traffickers, and 3. It was punishable as a first-degree felony (Shared Hope International, 2012). While the authors were unable to collect data about why there were an inordinate number of prosecutions in Ohio under this statute (compared to other states) (Adams et al., 2012), the authors suspect that the clarity of the statute and the severity of the sentence helped convince prosecutors to file trafficking charges. Amending the Human Trafficking statute in the ways the authors have suggested will empower Indiana prosecutors in the same way that Ohio’s statute empowered its prosecutors.

In addition, since there is no case law interpreting the human trafficking statute, the authors recommend that:

The Indiana General Assembly and the Indiana Attorney General’s Office prepare and publish an analysis of the Human Trafficking statute in order to guide prosecutors, trial judges, and (in the future) appellate judges in applying the law as the legislature intended it to be applied. The analysis should include: The legislative intent of each section of the statute, including what would and would not constitute trafficking under each subsection of I.C. 35-42-3.5-1; and an analysis of current Indiana case law on the sufficiency of evidence, jury instructions, the rights of defendants, potential defenses (entrapment, mistake of fact, etc.), evidentiary issues, and anything else that might apply to appellate review of a human trafficking prosecution.

This analysis would serve three primary purposes. 1. It would allow prosecutors to confidently charge individuals under the statute, since they will know exactly which statute applies to a situation. 2. It will give prosecutors an idea of how the appellate courts should interpret the statute and/or rule on the merits of a trafficking case, and give them confidence to act accordingly. 3. It will provide a resource to the Indiana Court of Appeals and the Indiana Supreme Court when they are inevitably faced with a trafficking appeal. When the appellate courts are first asked to interpret the human trafficking statute or are asked to apply existing case law to a human trafficking prosecution, the courts would probably defer to a publication of the Indiana General Assembly that answered those questions. This will help ensure that the case law, as it develops in Indiana, is friendly to human trafficking victims, and that the statute does what the General Assembly wants it to do.

Conclusion

In the past five years, Indiana has made great strides towards protecting trafficking victims and punishing their exploiters. The analysis and recommendations in this thesis are designed to transform Indiana into a state that is at the forefront of protecting the lives and dignity of human trafficking victims, make Indiana a model for other states to emulate, and to fulfill the promise made in Article I, Section 37 of the Indiana Constitution, which declares that “There shall be neither slavery, nor involuntary servitude” within the Hoosier State.

19 See pages 33-36 for recommendations regarding ambiguity and sentencing
References


**Legal References**

**Constitutions & Treaties**

U.S. Const. art. 1 §8
U.S. Const. amend. X
U.S. Const. amend. XIII
Ind. Const. art 1, §37

**Statutes & Rules**

8 C.F.R. §214.11 (Alien victims of severe forms of trafficking in persons)
I.C. §1-1-2-1 (Hierarchy of Law)
I.C. §5-2-6-3 (Purpose of Institute)
I.C. §11-8-8-4.5 ("Sex Offender" Defined)
I.C. §11-8-8-5 ("Sex or Violent Offender" Defined")
I.C. §11-8-8-7 (Registration With Law Enforcement Authorities)
I.C. §22-2-2 (Minimum Wage)
I.C. §31-9-2-29.5 (Crime involving Domestic or Family Violence [juvenile code])
I.C. §31-11-1 (Who may marry)
I.C. §31-34-1-4 (Parent, guardian or custodian allowing child's participation in obscene performance)
I.C. §31-35-3-4 (Petition; Conviction of Certain Offenses)
I.C. §33-37-5-23 (Sexual Assault Victims Assistance Fee)
I.C. §34-24-1-1 (Seizure of Vehicles and Other Property)
I.C. §34-24-1-4 (Hearing; Burden of Proof, Disposition of Property)

SEX TRAFFICKING & PROSTITUTION: WHERE DOES INDIANA STAND?

I.C. §35-40-5 (Victim Rights)
I.C. §35-40-5-1 (Right to Fairness)
I.C. §35-40-5-2 (Release or Escape from Custody of Perpetrator)
I.C. §35-40-5-3 (Right to Confer with Prosecuting Attorney’s Office)
I.C. §35-40-5-4 (Consideration of Victim’s Safety)
I.C. §35-40-5-5 (Right to be Heard at Sentencing or Release)
I.C. §35-40-5-6 (Presentence Reports)
I.C. §35-40-5-10 (Right to be Informed of Victim’s Rights)
I.C. §35-40-5-11 (Defense interview with child victims of sex crimes)
I.C. §35-40-6-1 (Applicability of Chapter)
I.C. §35-40-6-2 (Victims to be Treated With Dignity)
I.C. §35-40-6-4 (Victim Assistance Program)
I.C. §35-40-6-6 (Threat of Harm to Victim)
I.C. §35-40-6-7 (Notification Requested by Victim)
I.C. §35-40-6-10 (Victim to be Informed of Status of Case)
I.C. §35-42-1-1 (Murder)
I.C. §35-42-3-5 (Human & Sexual Trafficking)
I.C. §35-42-4 (Sex Crimes)
I.C. §35-42-4-1 (Rape)
I.C. §35-42-4-3 (Child Molesting)
I.C. §35-42-4-4 (Child Exploitation)
I.C. §35-42-4-4(c) (Possession of Child Pornography)

I.C. §35-42-4-5 (Vicarious Sexual Gratification)
I.C. §35-42-4-6 (Child Solicitation)
I.C. §35-42-4-8 (Sexual Battery)
I.C. §35-42-4-9 (Sexual Misconduct With A Minor)
I.C. §35-42-4-10 (Unlawful Employment Near Children)
I.C. §35-42-4-11 (Sex Offender Registry Offense)
I.C. §35-43-5-4 (Fraud)
I.C. §35-45-4-2 (Prostitution)
I.C. §35-45-4-3 (Patronizing a Prostitute)
I.C. §35-49-2-2 (Matter or performance harmful to minors)
I.C. §35-45-4-4 (Promoting Prostitution)
I.C. §35-45-6-1(e) (Definitions, “Racketeering Activity”)
I.C. §35-50-2-4.5 (Level 2 felony)
I.C. §35-50-2-5 (Level 3 felony)
I.C. §35-50-2-5.5 (Level 4 felony)
I.C. §35-50-2-6 (Level 5 felony)
I.C. §35-50-5-3 (Restitution Order)

Ind. R. Evid. 412 (Sex-Offense Cases: The Victim’s or Witness’ Sexual Behavior or Predisposition)

N.Y. Crim. Proc. §440.10 (Motion to Vacate Judgment)

18 U.S.C. §1581 (peonage)
18 U.S.C. §1582 (Vessels for Slave Trade)
18 U.S.C. §1583 (Enticement into Slavery)
18 U.S.C. §1584 (Sale into Involuntary Servitude)

18 U.S.C. §1591 (Sex Trafficking of Children or by Force, Fraud, or Coercion)

18 U.S.C. §1592 (Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor)

18 U.S.C. §1593A (Benefiting Financially from Peonage, Slavery, or Trafficking in Persons)


18 U.S.C. §1595 (Civil Remedy)

18 U.S.C. §1593 (Mandatory Restitution)


22 U.S.C. §7102 ( Trafficking Victims Protection Act: Definitions)

22 U.S.C. §7105 ( Protection and Assistance for Victims of Trafficking)

29 U.S.C. §§201-209 (Fair Labor Standards Act)
Acts of Congress


Cases


In re B.W., 313 S.W. 3d 818 (Tex. 2010)


United States v. Cephus, 684 F. 3d 703 (7th Cir. 2012)


Legal Dictionaries


Appendix: Interview Questions Used

Social Service Providers:
What role should the government play in combating human trafficking and caring for victims?

Are social service providers in Indiana equipped to provide the services victims of human trafficking are entitled to by law?

Should there be state-run shelters for trafficking survivors?

Should the state allocate money to private organizations for the running of shelters for trafficking survivors?

What are the most pressing concerns for survivors of trafficking post-rescue?

Are Indiana shelters and charities equipped to address the needs of trafficking survivors?

What are the best ways to prevent trafficking survivors from being retrafficked?

Should women in prostitution be prosecuted as criminals? Why or why not?

Should men who purchase sex be prosecuted as criminals? Why or why not?

Does the state of Indiana currently do enough to protect those who have been trafficked?

Are Indiana’s human trafficking laws sufficient to deter traffickers?

Does Indiana see a high rate of re-arrest for women in prostitution?

What, if any, changes should be made to the Indiana code to further protect women in prostitution and trafficking victims?

What is an appropriate length of time for a survivor of trafficking to be in a shelter or rehabilitative facility?

What should be done to ensure the safety of women in prostitution who want to exit prostitution but fear retribution from pimps or law enforcement officials?

Have you worked with the IMPD on cases in the past? In what ways do you collaborate?

In your experience, what percentage of women in prostitution are primarily motivated by a drug addiction?

What are the reasons women work as prostitutes?

Law Enforcement:
How many prostitutes do you estimate the IMPD arrests on a weekly basis? Monthly? Yearly?

When was the human trafficking unit formed? How long have you been on this unit? Vice Unit?
How does the IMPD find trafficking victims?

When IMPD encounters a trafficking victim, what is the protocol?

What kind of training do you receive to work with trafficking victims?

Are there any things you would like to do to aid the fight against trafficking as a police officer that you either do not have the authority or funds to do?

What would you like to see the Indiana legislature do to make your job easier?

How often do you encounter human trafficking victims in your work?

Who typically prosecutes human trafficking crimes in Indiana, the state of Indiana or the federal government?

What do you think of the John School in Indianapolis? Is it a good idea, does it work?

What else do you think Indiana should do about sex buyers (Johns)?

Is there anywhere that we can find data on human trafficking and prostitution related crimes in Indiana?

Would you be willing to pass along our information to colleagues that might be interested in working with us?

Legislators:
What made you get involved in supporting Indiana's sex trafficking bills in the past?

Do you think that the additions to the sex trafficking statute reduced the prevalence of sex trafficking in Indiana? Why or why not?

Do you believe sex trafficking is still a serious issue in Indiana and/or Indianapolis? Why or why not?

Do you think the legislature should add or remove anything from the sex trafficking statute?

Do you believe that prostitution can exist without sex trafficking, or do you think that we need to get rid of prostitution in order to stop sex trafficking?

Do you have any colleagues who would be willing to talk to us?

Does the legislature fund the victim assistance programs outlined in IC 35-40-6?

Lawyers:
How many sex trafficking charges have been filed by the state of Indiana in the last few years?

Have any of those led to convictions?
How do Indiana prosecutors decide whether or not to file sex trafficking charges in Indiana court?

Who typically prosecutes sex trafficking crimes, county prosecutors, the Indiana Attorney General’s office, or the U.S. Attorney?

How often do sex trafficking victims claim their rights under I.C. 35-40-6-1 (Prosecuting Attorney Duties and Victim Assistance Programs)?

If a person is convicted of sex trafficking, the Indiana Code says that “the court shall order the person convicted to make restitution to the victim of the crime” under I.C. 35-50-5-3(k). Will a court issue that order even if the restitution would be paid through funds earned from illegal activities (prostitution, drug dealing, etc).

Would Indiana Evidence Rule 412 (Rape Shield Rule/Evidence of past sexual conduct) apply to a sex trafficking victim? Could it be used to protect them during a trial?

How many prostitution cases do you estimate that your office handles in a year?

Do you follow any procedures to ensure that the prostitute is not a sex trafficking victim or a minor?

Are prosecutors and their staff trained to recognize the signs of sex trafficking?

If a woman is convicted of prostitution and the state finds out later that she was a sex trafficking victim when convicted, is there a way for her to get that conviction vacated? How is that done?

Other:
What activities are you involved in that are helping stop human trafficking?

What do you think of the Indianapolis community’s response to human trafficking?

What do you think the greatest need is in the anti-trafficking effort in Indiana?
IRB HUMAN SUBJECTS RESEARCH APPLICATION AND PROTOCOL FORM

PRINCIPAL INVESTIGATOR INFORMATION
The Principal Investigator (PI) MUST be a Ball State University Faculty, Staff, or Graduate Student. A BSU faculty must be the PI for any Undergraduate Student research.

Principal Investigator Name: Grace Kozak
Current Degree: Other
Department: Social Work
Email: gksharritt@gmail.com
Phone Number: +1 (317) 519-5874
Affiliation: BSU Undergraduate Student

Principal Investigator Research Experience:
1. Have you ever been a Principal Investigator? [ ] Yes [ ] No
2. How many years have you been conducting research in any capacity? [ ] 2 Years
3. Have any of your prior studies been suspended or terminated by BSU or a third party? [ ] Yes [ ] No
4. Have you or any member of your research staff ever been sanctioned for unethical behavior in research activities? [ ] Yes [ ] No

Principal Investigator Agreement:
I have read and understand the Ball State University's "Policy for the Protection of Human Subjects in Research," as stated in the Faculty and Professional Personnel Handbook, and I agree:

a. to accept responsibility for the scientific and ethical conduct of this research study,
b. to obtain IRB approval prior to revising and altering the research protocol, informed consent, or study documents, and
c. to immediately report any serious adverse events and/or unanticipated problems as a result of this study to the IRB within 24 hours.

KEY PERSONNEL
List all Key Personnel (including Faculty Advisor), other than the PI, who will have a role in the research project (Thesis and Dissertation Committee Members are not required unless they will work with you on your research project):

<table>
<thead>
<tr>
<th>Personnel Name</th>
<th>Department/Organization</th>
<th>Role on the Study</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chris Kozak</td>
<td>Political Science</td>
<td>Co-PI</td>
<td>Conducting research for project</td>
</tr>
<tr>
<td>Sandra Shelly</td>
<td>Social Work</td>
<td>Faculty Advisor</td>
<td>supervising research</td>
</tr>
</tbody>
</table>

HUMAN SUBJECTS RESEARCH TRAINING

3/18/2013- v. 4
COLLABORATIVE INSTITUTIONAL TRAINING INITIATIVE (CITI)

As of January 1, 2010, Ball State University policy requires that all Principal Investigators, Faculty Advisors, and all Key Personnel complete the CITI Training. To comply with the educational requirement, you and all key personnel (including faculty advisor) must have completed the online training modules on the protection of human subjects. For more information and link to CITI’s website, please go to the Office of Research Integrity website.

Have you and all key personnel completed the required online training modules?  ☐ Yes  ☐ No

NOTE: If this is your first BSU IRB submission, please include a PDF copy of your CITI Training Certificate, along with your Key Personnel.

Responsible Conduct of Research Training Modules (RCR): If your project is federally funded by the National Science Foundation, you and all key personnel (including faculty advisor), must complete the Responsible Conduct of Research Training Modules on CITI, along with the Basic/Refresher Course or Biomedical Course.

OTHER TRAINING

Are there any specialized training(s) required for your project (i.e., certification for medical procedure, training in crisis response, etc.)?  ☐ Yes  ☐ No

EXPORT AND DEEMED EXPORT CONTROL

The information below is required to be answered as part of the Federal Export and Deemed Export Control Regulations and as part of Ball State University’s Export/Deemed Export Control Program. These regulations apply to any transfer of, release of, or access to, controlled technologies/organisms either to a foreign country or by a non-permanent resident foreign national in the United States.

KEY DEFINITIONS:

**Foreign National**: An individual who is not a natural-born US citizen or;
- (1) is granted permanent residence, as demonstrated by the issuance of a permanent resident visa (i.e., “Green Card”);
- (2) is granted US citizenship; or
- (3) is granted status as a “protected person” under 18 U.S.C. 1324b(a)(3).

**Dual-Use**: The technology/organism has both civilian and military uses.

**Fundamental Research**: “...basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.” (15 CFR §734.8) In general, for research to be considered “fundamental,” it needs to have unrestricted access and/or dissemination (such as through publications, public presentations, available on the internet, etc.). Proprietary results/products (or where these will not be publicly available) are generally not considered fundamental research.

**Released**: When technology or organisms are available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology.

**Technology**: Specific information necessary for the “development,” “production,” or “use” of a product.

**Use**: Specific information necessary for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing of a product.

1. Does the research involve any of the situations below?
a. US Federally funded and the funder will control/restrict the release of research results/products.
b. Research is funded by and/or will flow through a foreign government
c. Involves proprietary technologies and/or computer/communications source codes.
d. Uses technologies/organisms that are classified as "dual-use."
e. The research/data/product has (or will have) release and/or access restrictions (beyond reasonable/customary review period).
f. Research involves classified information/technology.
g. Technology/software/data being used is under the exclusive control of the US Government.
h. Involves controlled/restricted weapons, law enforcement, security/surveillance, and/or non-publicly available encryption technologies and/or information.
i. Uses GPS technologies in a foreign country.
j. Technology/software/information will be transferred to, released to and/or left in a foreign country.
k. Involves items known to be on the Commerce Control List by the Government Printing Office (GPO). The file is updated every 48 hours.
l. A member of the research team is a non-permanent resident foreign national.

☐ Yes (Complete this section) ☐ No

If the research/data/product is classified as "fundamental research" or determined to be exempt from Federal Export Control or Deemed Export Control regulations then no special license(s) will be required. If controlled Exports/Deemed Exports are (or will be) involved, then specific Federal Licenses may be required.

RESEARCH PROJECT INFORMATION

Project Title: Sex Trafficking & Prostitution: Where Does Indiana Stand?

*The Project Title must match all documents and IRBNet.

SUBJECT INFORMATION

Total Number of Participants (Estimate or Range): 12-18

Age of Participants: Minimum Age 30

Maximum Age 60

Gender: Both Male and Female

SUBJECT POPULATION

Check all that apply:

☐ Normal Adult Population (18 years or older)
☐ Students (18 years or older)
☐ Children (Minors)/Students (0-17 years)*
☐ Pregnant Women (Physical Experiments, Examinations, or Medical Research)*
☐ Prisoners*
☐ People with Diminished Capacities*
☐ Persons undergoing and/or receiving Health, Medical, Rehabilitative, Treatment/Services, etc. *
☐ Persons undergoing Social/Psychological Counseling*
☐ Other (Explain):

SUBJECT RECRUITMENT

1. Will the research project be advertised on any media? ☐ Yes ☐ No

RECRUITMENT PROCEDURES

Describe your recruitment procedures:
We will contact people with knowledge of human trafficking and prostitution laws as well as people who are familiar with the best practices for care of victims of human trafficking via e-mail and telephone and ask them if they are willing to be interviewed.

**SUBJECT INCLUSION/EXCLUSION CRITERIA**

**Inclusion Criteria:** A set of conditions that must be met in order for subject(s) to participate in the study (including age of the participants)

participants must be over the age of 18 and have knowledge of human trafficking and prostitution.

**Exclusion Criteria:** A set of conditions that the subject(s) may not be allowed to participate in the study.

Anyone under the age of 18

**POTENTIAL RISKS/DISCOMFORTS TO THE SUBJECT(S)**

Will there be any anticipated or potential risks or discomforts to the subject(s) during the study?

The federal regulations (45 CFR 46) define minimal risk, "...the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves that those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

Yes ☐ No ☑

**DECEPTION/COERCION OF SUBJECT(S)**

Deception - Witholding information for the purpose of the study.

Coercion - Intimidating, threatening, or force to participate.

Will this project involve either Deception or Coercion? ☐ Yes ☑ No

**MINIMIZING THE SUBJECT(S) RISK**

Will there be any precautions and safeguards required to minimize the risk(s) to the subject? ☐ Yes ☑ No

If Yes, describe the precautions and safeguards that will be in place to minimize the risks to the subject. For research involving the risk or physical injury, describe the available emergency care in the event of a research-related injury. For research involving psychological risks, describe any plans for intervention (including reporting that may be mandated by federal/state law or licensure) and the events or subject responses that would prompt the exercise of such plans.

We will not be asking any personal questions of our subjects. We will ask them questions related to their field of work and expertise and their opinions on legislations and social services. We will make it clear through their consent form that they are under no obligation to answer our questions and can choose to stop answering our questions at any time.

**SUBJECT AND STUDY BENEFITS**

Will there be any benefits to the subject and/or to the study? ☐ Yes ☑ No

If Yes, Explain: This study will benefit the experts we will be interviewing for information because they are experts in combating human trafficking and in assisting women in prostitution. They will benefit from our literature review and recommendations because it will help them to serve women in prostitution and victims of trafficking more effectively.

**PROJECT SITE LOCATION**

Provide the following information where you will conduct your study (location of data collection, interviews, etc.)

Check all that apply:

☐ Ball State University Campus (including Burris Laboratory School)

☒ Off-Site Locations or Schools
Locations/Schools: We will be meeting with our subjects in person or by phone in a place that is convenient for them.

- Internet (Be sure to read any policy regarding data ownership and protection)
- Online Survey Sites (Check all that apply)
- IU Ball Memorial Hospital (Contact Alfreda Bright- abright@iuhealth.org. BMH's IRB)
- International Countries
- U.S. Based Field Study
- Other

LETTER OF SUPPORT: Any research that is conducted at a non-BSU institutions or organizations is required to obtain a Letter of Support. The Letter of Support must be on the institution or organization's letterhead and signed by a person of authority to grant access to the site for the study (i.e., Director, Manager, Principal, Superintendent, etc.). The Letter of Support must be uploaded on IRBNet as part of your package submission. An email message is NOT sufficient to meet this requirement.

In cases where sites, agencies, etc., have not been identified yet (original submission), please indicate this in the Application and make sure to upload the letter on your IRBNet project number once the letter is obtained. This is handled as a Modification process once the project has been approved.

COLLABORATIVE/MULTI-SITE RESEARCH PROJECTS
Will the proposed research project be conducted as a collaborative research (i.e., research that involves two or more institutions/oranizations that hold Federalwide Assurances*) and have duly authorized IRB's?

*Federalwide Assurance: An institution committing to the Department of Health Human Services that will comply with the requirements in the HHS Protection of Human Subjects regulations at 45 CFR part 46.

- Yes
- No

FUNDING
Have you applied for funding or have receive funding for your project? (Yes)

SIGNIFICANT FINANCIAL CONFLICT OF INTEREST, CONFLICT OF INTEREST/CONFLICT OF COMMITMENT STATEMENT
If your research project is Federally Funded, either directly (ex., you are the grant recipient) or indirectly (ex., you are the sub-awardee), have you (PI) and your BSU research team members (faculty, staff, and/or students) filled the Annual Significant Financial Conflict of Interest (SFIC) Disclosure Form?

- Yes
- No

If No, Please Explain: Our project is not federally funded

I and all applicable BSU research team members have also reviewed the BSU "Policy on Conflict of Interest and Conflict of Commitment" and have filed, or will file all necessary paperwork (if applicable). This includes student researchers. The policy can be found in the BSU Faculty and Professional Handbook.

DATA- COLLECTION, STORAGE, AND SECURITY
1. Will any information regarding the participant's identity (e.g., name, DOB, SSN, ID Number, address, phone, etc.) be collected on

- Yes
- No

We will obtain the names and titles of the study participants because we will be interviewing them.
If Yes, explain why and what security measures will be taken: for their expertise in their field and want to attribute their knowledge correctly. We will protect this information on a password protected computer, and if the participants consent, we will use this information to identify them in the paper.

If you are collecting identifiable information, will the information be stored with the participant’s responses?

- ☑ Yes
- ☐ No

If Yes, explain why and what security measures will be taken: Because we are doing interviews for information and not for data, we want the information we obtain from our subjects to be stored with the names of the people we obtain them from. This information will be stored on a password protected computer.

2. Are you planning on using the participant’s identifiable information on publications or publications?

- ☑ Yes
- ☐ No

If Yes, explain: We would use their names and titles to establish their credibility as a source of information if and only if they give their consent.

3. Will you be using Audio or Video Recording for your project?

- ☑ Yes
- ☐ No

Will the recordings be used for presentations or publications?

- ☑ Yes
- ☐ No

4. Where will the data (electronic/paper) be stored during and after the study is complete? (Check all that apply):

- ☐ Locked Cabinet/Office
- ☑ Password Protected Computer/Flash Drive/DVD/CD or other Storage Media
- ☐ Home
- ☐ Other

5. How long will you keep the data (raw and final)?

5 months

If your data (raw and final) is retained indefinitely, please provide an explanation for why and make sure that you have an explanation on the informed consent:

6. Who will have access to the raw and final data besides yourself? (Check all that apply):

- ☑ Faculty Advisor
- ☐ Research Team (Co-PI, Research Assistant, Graduate Assistant, etc.)
- ☐ Off Campus Collaborator or Consultant
- ☐ Sponsor
- ☐ Federal Agency (NIH, FDA, NSF, etc.)
- ☐ Other

DATA CONFIDENTIALITY/ANONYMITY

**Anonymous Data:** Defined by where the researcher(s) may not identify the subject with his/her data at any time during the study.

**Confidential Data:** Defined by when coding the identity of the subject and his or her data by using personal identifiers, there exists a means for identifying the subject.

Indicate whether your data is Anonymous or Confidential and explain what provisions will be taken to maintain privacy and security:
Neither. We will be interviewing our subjects, and when we use information from their interviews we will use their names and titles to add legitimacy to the information they give us if and only if they give consent. If they do not give consent to being named, we will keep their information confidential and give them code names.

**SPECIAL TYPES OF DATA**

1. **Family Educational Rights and Privacy Act (FERPA)**
   A. Will educational records or information found in educational records, as defined by FERPA be used?
   - Yes
   - No

2. **Health Insurance Portability and Accountability Act (HIPAA)**
   A. Will health, medical, or psychological records or information found in medical/health records, as defined under HIPAA be used?
   - Yes
   - No

**COMPENSATION**

1. Are subjects being paid or receiving incentives for participating in the study?
   - Yes
   - No

2. Are subjects being reimbursed for expenses (travel, gas, food, hotel, etc.)?
   - Yes
   - No

3. Will students receive extra credit for a course if they participate in the study?
   - Yes
   - No

4. Will students receive class or departmental research credit for their participation?
   - Yes
   - No

5. Is there a completion bonus?
   - Yes
   - No

6. Will there be compensation for research-related injury?
   - Yes
   - No

7. Other (Please Explain):

If you are using BSU funds, you will need to contact the BSU Office of University Controller (765-285-8444) or visit their website for procedures and policies regarding tax information to be collected from participants.

**SUBJECT FINANCIAL EXPENSES**

Will subjects have any financial expenses to participate in the study (i.e., travel, gas, food, hotel, etc.)?
   - Yes
   - No

**NOTE:** If a subject has to travel to the location site to participate in the study via car, plane, train, bus, etc., they will incur financial expenses.

**STUDY PROTOCOL**

**STUDY PURPOSE**

State the objectives of the research and, when appropriate, any hypotheses you have developed for the research.

The objective of this study is to evaluate Indiana's human trafficking and prostitution laws as well as the social services available to women in prostitution and victims of trafficking. They will be evaluated for effectiveness and compared to other state laws and social services. We will make recommendations for Indiana legislation and social services based on our data collection.

**RATIONALE**

Explain the need for the research. Describe the data that the project is expected to provide and how the data will contribute to existing information in the field. Provide a concise description of the previous work in the field.

**NOTE:** If you are planning on using students in your class as research participants, please explain why you want to use them in your study.

There is little written analysis of Indiana's human trafficking laws and social services, and the state legislature could benefit from an
objective evaluation and comparison of their laws and laws of other states. This research will provide a framework for the improvement of laws and social services to benefit victims of human trafficking and women in prostitution.

RESEARCH REFERENCES/CITATIONS
List any references/citations that you researched based on your study purpose and rationale for your project. If there are no references citations used for your project, please explain why.

We do not have any references or citations at this time. We will be conducting a literature review along with our interviews and by the end of our research we will have an extensive list of citations.

METHODS AND PROCEDURES
Describe the study and design in detail and all procedures in which the subject will be asked to participate. If surveys and questionnaires are used for the study, how will they be returned to the researcher? If the research involves more than one visit to the research location, specify the procedures to take place at each session, the amount of time for each session, the amount of time between sessions, and the total duration of the sessions. If multiple researchers will be involved in the project, identify who will conduct which procedure(s).

Our study will consist of a literature review and interviews of experts in their respective fields of policy and social services. The information they give us in their interviews will be compared and synthesized with the information gained from our literature review, and the information will be used to make recommendations for the future of Indiana's human trafficking and prostitution laws and social services. The subjects will not be required to travel, we will either do phone interviews or interviews in person (we will travel to them) for approximately 20 minutes per interview. The two PIs will split the responsibilities of interviewing equally.

INFORMED CONSENT
Please indicate what type(s) of Informed Consent (IC) will be used for this study? (Check all that apply)

- Adult (18 years or older)
- Parental Permission (Minors: 0-17 years old)
- Child Assent (Minors: 0-17 years old - This must be written in age appropriate language)

Informed Consent Process/Signature Waiver
Are you applying for an alteration of the Informed Consent process or a waiver of the Informed Consent signature requirement? (Yes No)

PLEASE NOTE: If English is NOT the primary language of the participants, then the Informed Consent must be also be translated in the participant's native language. Include the translated Informed Consent with your package and a statement as to how (or by whom) the Informed Consent was translated.

PROJECT DOCUMENTS
Check the box(es) of ALL the documents you submitted for your project on IRBNet:

- Application and Protocol Form
- Adult Informed Consent(s)
- Parental Permission Consent (for Minors)
- Child Assent (for Minors)
- Recruitment Letter(s)
- Survey/Questionnaire/Interview Questions
- Data Collection Forms
- HIPAA/FERA Documents
- Media Permission Form(s)
- Letters of Support
- Debriefing Letter(s)

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☐ CITI Training Certificates
☐ Other (Explain):

IRBNet Electronic Signature:

A new package created for submission for your project must be electronically signed in IRBNet by you, the Principal Investigator (and Faculty Advisor, if you are a student). Your signature indicates your certification that the information provided in this document is accurate and current.