

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

*Briefing Sheet for Prosecutors
April 2012*

Goals of the Study

This briefing sheet presents the results of a two-year study funded by the U.S. Department of Justice, National Institute of Justice and conducted by researchers at Northeastern University and the Urban Institute that examined challenges in the identification, investigation and prosecution of human trafficking cases. This study also sought to identify local practices that would help improve the ability of law enforcement agencies to identify, investigate and successfully prosecute human trafficking cases. A multi-method approach based on

reviews of 140 human trafficking cases and in-depth interviews with 166 individuals representing law enforcement, prosecutors and victim services providers in twelve counties across the U.S., was used to answer the research questions outlined below. In this briefing sheet we review the report's main findings specific to state prosecution of human trafficking cases and offer a series of recommendations to improve the human trafficking prosecutions.

Research Questions:

- 1) What are the characteristics of local human trafficking investigations and prosecutions?
- 2) Are certain types of human trafficking offenses more likely to be prosecuted under new human trafficking laws or other criminal offenses?
- 3) What are the organizational, structural or cultural factors that inhibit or facilitate the prosecution of human trafficking cases?

Findings from the review of human trafficking cases

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The patterns described below should not be generalized beyond the counties studied. In the study sites we found:

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

Challenges to State Prosecution of Human Trafficking and Recommendations

Low prioritization of human trafficking and lack of awareness about the problem: Prosecutors noted a lack of awareness about the problem of human trafficking in their local community and failure of government officials, including some police chiefs and chief prosecutors, to prioritize the problem of human trafficking.

Recommendation: Education and awareness raising are needed from the Department of Justice and national organizations that support state attorneys generals and district attorneys about the need to prioritize the problem of human trafficking and its impact on local communities.

Lack of experience with state human trafficking laws: Respondents cited a lack of precedent and case law on human trafficking as major deterrents to prosecuting a case using state human trafficking statutes. We encountered local prosecutors who were unaware that their state had human trafficking laws or were unfamiliar with the elements of the crime. Prosecutors in our study were often the first in their state to prosecute a human trafficking case using state anti-trafficking laws. No state prosecutors in our sample prosecuted a case of labor trafficking. When state prosecutors accepted human trafficking cases for prosecution, they normally used existing laws such as rape, kidnapping, pandering, or promoting prostitution. Prosecutors cited a variety of reasons for charging human trafficking cases with non-trafficking offenses including: perceived lack of judge and jury familiarity of human trafficking, legal ambiguity of new statutes, lack of awareness about the human trafficking statute, lack of victim cooperation, and fear of losing high-profile cases.

Recommendation: Human trafficking training needs to be developed and offered by organizations that support state law enforcement and prosecutors. These trainings should be coordinated and address:

- Information about state human trafficking statutes. Summaries of legal strategies and human trafficking case law.
- Best practices for acquiring and utilizing corroborating evidence in human trafficking cases including improving interviews with human trafficking victims.
- The impact of trauma and violence on victim behavior including criminal behavior and testimony and techniques for presenting evidence at trial even with a victim who may be perceived as less credible.

Lack of legal guidance: State and local prosecutors were often operating on their own with little or no source of legal guidance to draw on for things such as human trafficking-specific prosecutorial techniques, how to handle common defense tactics, or human trafficking specific case documents such as motions or jury instructions. In every site, when prosecutors who had taken human trafficking cases to trial using state anti-trafficking laws were asked where they went for guidance on processes such as jury instructions, they said they created them themselves and had wished they had a resource or fellow state prosecutors to consult.

Recommendations: State-specific toolkits should be developed to provide prosecutors with information on updated state human trafficking laws, as well as legal strategies and common legal impediments in human trafficking cases. Additionally, the toolkit should include documents such as model motions or jury instructions, and contact information for local prosecutors in each state with experience prosecuting trafficking cases who could be called for guidance.

Lack of institutional infrastructure: Most state and local prosecution agencies lacked specialized units or personnel dedicated to human trafficking. If

a trained and dedicated prosecutor was assigned to handle sex trafficking cases, they were often responsible for child sex crimes cases or sexual assault. As a result, some law enforcement officials stated that they did not know where to refer human trafficking cases, especially labor trafficking cases.

Recommendation: Individual prosecutors or units should be assigned to handle sex and labor trafficking cases. These prosecutors should be responsible for leading proactive human trafficking investigations. Protocols should be developed between state and federal prosecuting authorities to guide law enforcement in their decisions to refer cases to federal authorities.

Reliance on reactive case identification

strategies: Prosecutors often indicated they had not received cases from law enforcement or the cases they received lacked evidence necessary to precede with prosecution. Law enforcement and prosecutors in all study sites were unclear of where labor trafficking cases would be referred for state prosecution. Law enforcement officials commonly expressed frustration when the human trafficking cases they brought to prosecutors were rejected due to evidentiary concerns. This was common with single victim, adult or foreign victim cases. Law enforcement was reluctant to investigate human trafficking cases when they perceived prosecutors were disinclined to charge offenders.

Recommendation: Prosecutors should approach human trafficking from a proactive, problem solving perspective, initiating and guiding investigations of human trafficking. Law enforcement needs guidance

and clarity for prosecutors about the types of evidence necessary to facilitate successful prosecutions, particularly when victims are often reluctant to testify in human trafficking cases. Additionally, new partnerships should be developed between prosecutors' offices and other investigatory agencies such as those that enforce workplace violations or licensing codes to expand knowledge and promote the identification of human trafficking victims, particularly those victims of labor trafficking.

Reliance on victim testimony lack of capacity to meet victim needs:

Prosecutors overwhelmingly described victim reluctance to testify or lack of cooperation more generally as the biggest challenge they faced prosecuting human trafficking cases. Often prosecutors reported that without cooperating victims they could not proceed with a prosecution. Yet, few services existed within prosecutors' offices or many local communities to provide coordinated and specialized support and assistance to meet the unique needs of human trafficking victims.

Recommendation: Police, prosecutors and victims service providers should commit to long-term support for victims. These services are many and vary by type of trafficking experience and victim background characteristics, but include health, mental health, and most importantly specialized housing. Since most human trafficking prosecutions take between one and two years to complete, a similarly long-term victim support plan will likely increase the number of successful prosecutions successful rehabilitation of victims.

Amy Farrell, Ph.D.
Jack McDevitt, Ph.D.
Rebecca Fahy, M.A.
Stephanie Fahy, M.A.

Authors and sponsorship

Colleen Owens
Meredith Dank, Ph.D.
William Adams, M.P.P.



Urban Institute
Justice Policy Center



This project was supported by Award No. 2009-IJ-CX-0015 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. The opinions, findings and conclusions or recommendations expressed here are those of the authors and do not necessarily reflect the views of the Department of Justice.

