

2016

## Human Trafficking: How a Joint Task Force Between Health Care Providers and Law Enforcement Can Assist with Identifying Victims and Prosecuting Traffickers

Megan Helton

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# HUMAN TRAFFICKING: HOW A JOINT TASK FORCE BETWEEN HEALTH CARE PROVIDERS AND LAW ENFORCEMENT CAN ASSIST WITH IDENTIFYING VICTIMS AND PROSECUTING TRAFFICKERS

*Megan Helton*<sup>†</sup>

## CONTENTS

I.	INTRODUCTION .....	434
II.	BACKGROUND .....	436
	<i>A. History of Human Trafficking Legislation .....</i>	<i>436</i>
	<i>B. Trafficking in Victims Protection Act: Congress's Findings.....</i>	<i>439</i>
	<i>C. Human Trafficking Presents a Problem to Law Enforcement</i> <i>because it is a Growing Criminal Enterprise in the United States....</i>	<i>440</i>
	1. Human Trafficking Operations and Structure.....	442
	2. Law Enforcement's Approach to Combating Human Trafficking .....	447
	3. Problems with Current Law Enforcement Approaches .....	449
III.	PROPOSED SOLUTION: HEALTH CARE PROVIDERS AND LAW ENFORCEMENT PERSONNEL SHOULD CREATE A JOINT TASK FORCE TO BETTER IDENTIFY VICTIMS AND PROSECUTE TRAFFICKERS .....	450
	<i>A. Health Problems Associated with Human Trafficking .....</i>	<i>451</i>
	1. Physical Health .....	451
	2. Mental Health .....	452
	3. Human Trafficking Victims Seek Medical Services.....	452
	<i>B. Proposed Model: Collaboration Between Health Care Providers</i> <i>and Law Enforcement.....</i>	<i>454</i>
	1. Health Care Providers Should Receive Human Trafficking Training .....	454
	2. Joint Task Force Between Law Enforcement and Health Care Providers.....	456
	<i>a. Joint Task Force .....</i>	<i>457</i>
	<i>b. Implementation.....</i>	<i>459</i>
IV.	OBSTACLES AND SOLUTIONS .....	460

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A. Legal Obstacles.....	460
1. Health Insurance Portability and Accountability Act .....	460
2. HIPAA Modification .....	461
a. Authorization of Disclosure of Human Trafficking Victimization Under HIPAA Privacy Rule.....	462
b. Justifications that Authorize the Disclosure of Abuse, Neglect and Domestic Violence .....	463
c. States Should Be Encouraged to Develop and Implement Human Trafficking Disclosure Policies .....	465
3. Fourth Amendment.....	470
B. Policy Obstacles .....	471
1. Autonomy .....	471
2. Increased Rate of Violence .....	472
3. Chilling effect on victims seeking medical treatment .....	473
V. CONCLUSION.....	473

## I. INTRODUCTION

Humans are renewable commodities. They can be bought and sold exponentially. Perpetrators of human sex trafficking realize the expendable nature of their victims and exploit them to their fullest potential. It is evident from the pervasiveness of the human sex trafficking epidemic that extreme measures must be taken in order to effectively rescue victims and convict perpetrators.

This Note proposes that the current approaches to combat human trafficking could be greatly improved if law enforcement and health care providers worked together to identify victims and prosecute traffickers. The four major categories of people who human trafficking victims come into contact with are their traffickers, the “johns,” health care providers, and law enforcement officials.<sup>1</sup> This Note proposes that law enforcement needs to train and work with health care providers to form a joint task force so that they can better identify, locate, and rescue human sex trafficking victims.

Legislation criminalizing human trafficking can be found at both the state and local levels of government.<sup>2</sup> However, the statutes used to charge and convict traffickers cannot effectively be implemented to their fullest extent if human trafficking victims are not discovered, identified, or rescued. If law enforcement agencies and human

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1. HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 14 (2009).

2. See, e.g., 22 U.S.C. §§ 7101-7113 (2000); OHIO REV. CODE ANN. § 2905.32 (West 2014); 18 PA. STAT. AND CONS.STAT. ANN. §3011 (West 2014); MI COMPILED LAWS ANN. § 750.462b (West 2014) (exemplifying a state’s trafficking in persons statute).

trafficking task forces were to utilize the resources and contacts of front-line workers who regularly interact with human trafficking victims, due to the nature of the services they provide, human trafficking victims could be better identified and prosecuted.

Section II of this Note describes the background of human trafficking as a criminal enterprise. Human trafficking is one of the largest global criminal enterprises. The section further describes how Congress, federal agencies, and state and local law enforcement have tried to combat the problem. Additionally, it discusses the criminal structure of a human trafficking operation, and how the current approach of tough legislation and reactive police work are not adequately combatting human trafficking.

Section III identifies the proposed solution to better combat human trafficking in the United States. It first identifies the physical, mental, and reproductive injuries sustained by victims of human sex trafficking. Then it discusses the proposed framework based off of a framework used for abuse cases to implement the joint task force between law enforcement agencies and health care providers. Finally, it discusses how to implement the model in order to start using the joint task force to identify victims of human trafficking.

Section IV identifies some legal and policy obstacles associated with the proposed solution. The legal obstacles addressed by this Note include HIPAA compliance, and Fourth Amendment privacy issues. Additionally, the Note address two policy concerns dealing with patient autonomy and the potential for increased violence against victims of human trafficking.

Human trafficking is a heinous crime that occurs across the United States. The private nature of human trafficking, the force used to dominate the victims, and the growing demand for sexual exploitation all contribute to the ever-expanding human sex trafficking epidemic.<sup>3</sup> Law enforcement officers would be in a better position to identify victims and prosecute traffickers if they worked in a joint task force with health care providers.

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3. See *Human Trafficking*, POLARIS PROJECT, [https://traffickingresourcecenter.org/type-trafficking/human-trafficking?qt-human\\_child\\_trafficking\\_tabs=0#qt-human\\_child\\_trafficking\\_tabs](https://traffickingresourcecenter.org/type-trafficking/human-trafficking?qt-human_child_trafficking_tabs=0#qt-human_child_trafficking_tabs) (last visited February 16, 2015) (stating that human trafficking thrives because of a high demand and low risk).

## II. BACKGROUND

Historically, human trafficking was not addressed on a global or domestic stage in a way that would adequately combat the problem.<sup>4</sup> With the development of a global definition of human trafficking, the establishment of it as its own criminal offense, and the United States' passage of the Trafficking Victims Protection Act of 2000 ("TVPA"), human trafficking began to be recognized as a global and domestic epidemic.<sup>5</sup>

Since the enactment of TVPA, various departments of the United States government have compiled statistics related to the human trafficking epidemic in the United States. The startling number of victims of human trafficking, as well as the propensity of this criminal enterprise to develop and prosper in the U.S., has led to increased federal, state and local level law enforcement efforts to combat human trafficking.

Human sex trafficking poses many problems to law enforcement associated with law enforcement's ability to identify victims and convict traffickers. The isolated nature of the human sex trafficking enterprise limits law enforcement's ability to come into contact with human trafficking victims, identify them as victims and prosecute their traffickers. Currently there is a gap between law enforcement's ability to identify victims, due to their lack of contact with victims, and the legislation set forth to criminalize human trafficking. Without identifiable victims, law enforcement cannot prosecute traffickers. Therefore, the limitations hindering law enforcement must be circumvented by a collaborative effort between law enforcement and health care providers to better identify victims and prosecute traffickers at a higher rate.

### A. *History of Human Trafficking Legislation*

Historically, human trafficking has been extraordinarily prevalent both in the United States and globally.<sup>6</sup> The first instance of an international attempt to address human trafficking was initiated by the United Nations in 1949 with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of

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4. Theresa Barone, *The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution*, 17 TEMP. INT'L & COMP. L.J. 579, 582 (2003) (stating that "both the legislative history and the judicial interpretation of these statutes blocked their effective use against modern forms of slavery").

5. *Id.* at 581-93.

6. *Sex Trafficking*, POLARIS PROJECT, <https://polarisproject.org/sex-trafficking> (last visited February 16, 2015).

Others.<sup>7</sup> More recently, in 1998, the General Assembly created an ad hoc committee open to all states for the express goal of negotiating an international convention against transnational organized crime.<sup>8</sup> On November 5, 2000, the General Assembly adopted the UN Convention Against Transnational Organized Crime.<sup>9</sup> One hundred twenty-five states, including the U.S., signed the convention.<sup>10</sup> The protocol set forward by the convention was prompted by the increased recognition of the involvement of organized crime groups in human trade.<sup>11</sup> One outcome of this convention was the creation of the definition of “trafficking in persons.” Trafficking in persons was defined as:

The recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, of 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 labor, or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>12</sup>

Because trafficking in persons was now a globally recognized crime with the criminal criteria set forth in one definition, the stage was set to identify the prevalence of human trafficking, prosecute perpetrators, and bring justice to the victims.

During the international pursuit to combat human trafficking, the United States undertook its own initiatives to domestically fight human trafficking. In November 1999, Congress proposed H.R. Rep. 106-487(I) in order to bring awareness to this pervasive criminal

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7. Barone, *supra* note 4, at 588. *See also* Convention for the Suppression for the Traffic in Persons and the Exploitation of the Prostitution of Others, G.A. Res. 317 (IV) (Dec. 2, 1949) [hereinafter Convention for the Suppression of the Traffic in Persons] <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>.
  8. Sean D. Murphy, *International Trafficking in Persons, Especially Women and Children*, 95 AM. J. INT'L. L. 407, 407 (2001).
  9. *Id.* at 407-08.
  10. *Id.* *See also* Convention for the Suppression of the Traffic in Persons, *supra* note 7.
  11. Barone, *supra* note 4, at 588.
  12. G.A. RES. 55/25, at 32, U.N. DOC. A/RES/55/25 (Jan. 8, 2001).

activity within the United States.<sup>13</sup> In its proposal, Congress found that “millions of people every year, primarily women and children, are trafficked within or across international borders.”<sup>14</sup> Congress found that 50,000 women and children were trafficked into the United States each year.<sup>15</sup> These startling findings prompted Congress to develop a better system to combat human trafficking.

Subsequently, Congress passed the Trafficking Victims Protection Act of 2000 in order to fight human trafficking. Prior to this enactment, the United States was in desperate need of one, comprehensive federal law that specifically dealt with human trafficking. Preceding TVPA, the punishment or sanction for human traffickers was only obtained through legislation aimed at various components of the human trafficking offense.<sup>16</sup> For example, the most effective means of prosecuting human trafficking, prior to TVPA, included the utilization of involuntary servitude and anti-slavery statutes.<sup>17</sup> However, these statutes inadequately dealt with the unique nature of human trafficking as a crime because the statutes were too narrowly focused and did not address issues of the modern day slave trade.<sup>18</sup> Among the facets of human trafficking components that were not addressed in the involuntary servitude statutes were “blackmail, coercion, and fraud.”<sup>19</sup> Without addressing these specific issues in regards to human trafficking, the prosecution of human traffickers under the anti-slavery statutes was “severely limited.”<sup>20</sup> It took a creative prosecutor to adequately indict and prosecute the perpetrators criminally. Consequently, previous prosecution under piecemeal laws never adequately confronted the severity of the actual crime of human trafficking.<sup>21</sup> Therefore, the U.S.’s new effort to combat human trafficking started to allow for a better way to prosecute and convict human traffickers.

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13. H.R. REP. NO. 106-487, PT. 1, at 2 (1999).

14. *Id.*

15. *Id.*

16. Barone, *supra* note 4, at 581.

17. *Id.* at 582.

18. *Id.* at 581.

19. *Id.* at 582.

20. *Id.*

21. *Id.* at 581.

*B. Trafficking in Victims Protection Act: Congress's Findings*

In 2000, Congress first enacted the Trafficking Victims Protection Act in order to better combat human trafficking in the United States. This was the first comprehensive law that sought to protect victims and prosecute human traffickers.<sup>22</sup>

While the TVPA was the first comprehensive human trafficking statute of its kind in the United States, it does not address all forms of human trafficking.<sup>23</sup> Rather, the scope of the TVPA only reaches to “severe form of trafficking in persons.”<sup>24</sup> Congress identified the two severe forms of trafficking as sex trafficking and involuntary servitude for labor.<sup>25</sup> The main element required for each of these crimes is the presence of “force, fraud, or coercion” by the trafficker as a means to dominate the victim, unless the victim was a minor who had not yet attained eighteen years of age.<sup>26</sup>

One main portion of the TVPA was dedicated to Congress's findings regarding the current state of human trafficking in the United States, which addressed the pervasive nature of human trafficking as well as the health-related injuries a victim can endure. Congress recognized that human trafficking is a form of slavery and acts as a degrading institution.<sup>27</sup> At least 700,000 persons annually, primarily women and children, are trafficked across international borders, and of that number, approximately 50,000 are trafficked into the United States each year.<sup>28</sup> Congress additionally recognized that the act of trafficking in persons is increasingly perpetrated by organized and sophisticated criminal enterprises.<sup>29</sup>

Additionally, Congress found that the sex industry has been rapidly expanding over the past several decades. Victims of the sex industry are often involved in sexual exploitation involving prostitution, pornography, sex tourism, and other commercial sexual activities.<sup>30</sup> Victims of sex trafficking are often introduced into the

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22. Amy Farrel et al., *Understanding and Improving Law Enforcement Responses to Human Trafficking* (2008), <http://www.northeastern.edu/humantrafficking/federal-state-responses-to-human-trafficking/> (last updated 2011). *See also* 22 U.S.C. §§ 7101-7113 (2000).

23. Barone, *supra* note 4, at 584.

24. 22 U.S.C. § 7102(9)

25. *Id.* at 584.

26. *Id.*

27. 22 U.S.C. §§ 7101 (2000).

28. *Id.*

29. *Id.*

30. *Id.*



world of human trafficking through force, fraud, and coercion.<sup>31</sup> The victims are often forced through physical violence including rape, sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and other forms of coercion.<sup>32</sup> The majority of sex trafficking victims are women and children who come from low-income, poverty-stricken areas with a lack of access to education and employment.<sup>33</sup> Often the traffickers will lure the women and children into the enterprise with false promises and hope for stable work, a steady income, and decent wages.<sup>34</sup>

Congress made an additional finding specifically addressing the grave health conditions that victims of human sex trafficking often experience. It is evident from the nature of human trafficking that victims will suffer and be exposed to numerous health related risks. Congress found that trafficking victims are exposed to deadly diseases, including HIV and AIDS, as well as other STDs.<sup>35</sup> Additionally, victims are also exposed to widespread brutality, and they are often worked or physically brutalized to death.<sup>36</sup>

*C. Human Trafficking Presents a Problem to Law Enforcement because it is a Growing Criminal Enterprise in the United States*

With the implementation of this Act, Congress exposed the widespread nature of human trafficking as well as the grave consequences associated with such an extensive criminal enterprise. The TVPA has set a domestic stage to promote the identification of human trafficking victims and the prosecution of human traffickers.

The TVPA was essential to the U.S.'s commitment to end human trafficking. Since its enactment, many governmental agencies have conducted studies and made findings regarding the human trafficking problem in the United States.<sup>37</sup> These studies indicate that the rate of human trafficking, as a criminal enterprise, has multiplied exponentially. In 2001 and 2002, the U.S. Department of State, Trafficking in Persons Report indicated that the number of people trafficked across international borders every year was estimated at

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31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *See, e.g.,* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2001); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2005); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2007).

about 700,000.<sup>38</sup> Subsequently, the Report in 2007 indicated that the number of victims escalated to approximately 800,000.<sup>39</sup> Further, the U.S. Department of State found that one million children were exploited by the global commercial sex trade every year, including victims within the United States' national borders.<sup>40</sup>

Additionally, as of 2000, there was an estimated 244,000 American children and youth at risk of child sexual exploitation<sup>41</sup> due to either their economic or family situations.<sup>42</sup> Further, out of 1.6 million runaway or thrown-away<sup>43</sup> youth, 38,600 are estimated to be at risk of sexual exploitation or endangerment.<sup>44</sup>

With rapidly increasing numbers of victims of human trafficking comes a growing number of criminal prosecutions for human trafficking perpetrators. The FBI has opened 751 trafficking cases between 2001 and 2007. Of these cases there have been a total of 185 convictions.<sup>45</sup> Additionally, the FBI Crimes Against Children Unit has opened 327 trafficking cases from 2004 to 2007 and has had a total of 182 convictions.<sup>46</sup> Further the Civil Rights Division/Criminal Section

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38. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2001).

39. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2007).

40. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2005).

41. RICHARD J. ESTES & NEIL A. WEINER, U. PA. SCHOOL OF SOCIAL WORK, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA, AND MEXICO* (2001), <http://www.gems-girls.org/Estes%20Wiener%202001.pdf>.

42. *Sex Trafficking in the U.S.*, *supra* note 6 (stating that perpetrators often seek out victims that are runaways, homeless, victims of domestic violence, sexual assault, war or conflict, or social discrimination).

43. "A throwaway episode is one that meets either of the following criteria: A child is asked or told to leave home by a parent or other household adult, no adequate alternative care is arranged for the child by a household adult, and the child is out of the household overnight. A child who is away from home is prevented from returning home by a parent or other household adult, no adequate alternative care is arranged for the child by a household adult, and the child is out of the household overnight." Heather Hammer et al., *Runaway/Throwaway Children: National Estimates and Characteristics*, NISMART 1, 2 (2002).

44. *Id.*

45. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-915, *HUMAN TRAFFICKING: A STRATEGIC FRAMEWORK COULD HELP ENHANCE INTERAGENCY COLLABORATION NEEDED TO EFFECTIVELY COMBAT HUMAN TRAFFICKING CRIMES* (2007).

46. *Id.*

and U.S. Attorney's Office have prosecuted 139 trafficking cases under TVPA.<sup>47</sup>

Human sex trafficking is a rapidly expanding crime that creates an urgent need to better identify and prosecute human trafficking cases. The TVPA set forth federal legislation to prosecute and convict human traffickers; however, it did nothing to assist in the identification of human trafficking victims. Nothing can be done until victims of human trafficking have been identified. The very nature of human trafficking as a crime thrives on isolation and abuse of the victims. Most frequently, human trafficking victims come into contact with their pimps, other victims, "johns," health care providers, and law enforcement officers.<sup>48</sup> If law enforcement and health care professionals worked together, a collaborative effort could be formed which would allow for a greater opportunity to identify victims and prosecute offenders.

Human trafficking is a criminal enterprise that thrives on isolation, secrecy, force, and abuse. The isolated nature of this crime limits law enforcement's ability to identify victims of human trafficking and prosecute their traffickers. Law enforcement has a limited ability to come into contact with and identify victims of human trafficking. This limits their ability to intervene in the situation, rescue the victims, and prosecute the perpetrators. Without a collaborative effort between law enforcement and social service providers, such as health care providers, who have a greater incidence of contact with human trafficking victims, numerous victims will go undetected. Therefore, a collaborative effort is essential to eradicating human trafficking.

#### 1. Human Trafficking Operations and Structure

Human trafficking is a crime that takes place in isolated circumstances. Due to the isolated nature of the crime, human trafficking is comprised of an intricate criminal structure that involves many components and players within the operation. The necessity for isolation and the structure of the criminal enterprise poses limitations on law enforcement's ability to identify victims of human trafficking. There are three essential components to human trafficking as a crime, that each contributes to the difficulty law enforcement experiences in trying to identify and locate victims. First, there is the organized

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47. *Id.* (noting that these numbers may be higher than the reported numbers because defendants may be charged with other crimes not just a human trafficking indictment such as kidnapping, immigration violations, or money laundering for strategic prosecutorial reasons.)

48. Clawson, *supra* note 1.

criminal structure of a human trafficking enterprise.<sup>49</sup> Second, there is the use of force, coercion, or fraud to maintain control over the victims.<sup>50</sup> Third, there is the unrelenting cycle of coercion used by the traffickers to maintain their control over their victims for long term sexual exploitation.<sup>51</sup>

First, human trafficking is a criminal enterprise that employs an intricate hierarchal business structure. The human trafficker is the essential person in charge of the human trafficking operation.<sup>52</sup> The trafficker, if he or she has more than one sex trafficking victim, often has a “bottom” who is typically a victim herself.<sup>53</sup> Typically the trafficker will employ the victim he has enslaved the longest as his bottom.<sup>54</sup> The bottom then turns from a victim in the sense of being bought and sold for sexual favors to the aggressor against the other sex trafficking victims.<sup>55</sup> The bottom will collect the money for the trafficker, maintain order and discipline, and help the trafficker lure other victims to join the enterprise.<sup>56</sup> The bottom also contributes to the day-to-day operations of the trafficking scheme along with the trafficker.<sup>57</sup>

In order to exert control over the victims, traffickers often use “force, drugs, emotional tactics, and financial methods to control their victims.”<sup>58</sup> Violence is one of the biggest forms of control that a trafficker uses to dominate his victims. Such violence includes gang rape and other forms of abuse that force the victims into submitting to the will of the trafficker.<sup>59</sup> Force and violence are extraordinarily prevalent in human trafficking enterprises.

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49. Amanda Walker-Rodriguez & Rodney Hill, *FBI Law Enforcement Bulletin: Human Trafficking*, FBI (2011), <https://leb.fbi.gov/2011/march/human-sex-trafficking> (last visited, Nov. 4, 2014).

50. 22 U.S.C. § 7102 (2000).

51. Elizabeth Hopper & Jose Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 INTERCULTURAL HUM. RTS. L. REV. 185, 193 (2006).

52. Walker-Rodriguez & Hill, *supra* note 49.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

Second, essential to the establishment of both a human trafficking enterprise and the crime of human trafficking is the use of force, fraud, or coercion to maintain control over the victims. While physical violence may be the assumed means of maintaining control over victims, there are other mechanisms that traffickers employ to ensure domination over their captives. The TVPA defines “coercion” narrowly, by only including three means of coercive force: threats of serious harm, threats of restraint, and threats involving the legal process.<sup>60</sup>

Noticeably absent from this definition is any means of mental or psychological coercion that a human trafficker would use to restrain and control their victims. The Uniform Act on Prevention of and Remedies for Human Trafficking (“Uniform Act”) was drafted by the National Conference of Commissioners on Uniform State Laws, and they recommend that all states adopt this act.<sup>61</sup> The Uniform Act expanded the definition of “coercion” to include such mechanisms of control exerted on victims.<sup>62</sup> With the expansion of the definition of coercion came the recognition that there is an association with forced drug use and human trafficking, where many victims are addicted to drugs or become addicted to drugs once they are lured into the

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60. 22 U.S.C. § 7102 (2000) (defining coercion as: “(A) threats of serious harm to or physical restraint against a person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process”).
61. UNIF. ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING (2013).
62. UNIF. ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING § 2(3) (2013) (expanding the definition of “coercion” to include: “(A) the use of threat of force against, abduction of, serious harm to, or physical restraint of an individual; (B) the use of a plan, pattern or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against abduction of, serious harm to, or physical restraint of an individual; (C) the abuse or threatened abuse of law or legal process; (D) controlling or threatening to control an individual’s access to controlled substance set forth in [insert the appropriate state code sections defining controlled substances]; (E) the destruction of, taking of, or the threat to destroy or take an individual’s identification document or other property; (F) use of debt bondage; (G) the use of an individual’s physical or mental impairment, where such impairment has substantial adverse effects on the individual’s cognitive or volitional functions; (H) the commission of criminal or civil fraud”) .

operation.<sup>63</sup> The traffickers will then use their ability to supply the victim with drugs as a means of control over those victims.<sup>64</sup> Drugs such as heroin and methamphetamine are commonly used to exert control over the victim by forcing them to become addicts,<sup>65</sup> and then making them engage in sexual acts to pay for their next drug fix. Drug coercion works in tandem with the symptoms and withdrawals associated with coming off a drug. Frequently, fear and pain of withdrawals will cause many victims of exploitation to perform acts that they would never have previously considered doing, solely to support their drug habit.<sup>66</sup> Therefore, the expansion of the definition of coercion in the Uniform Act was essential to the inclusion of human trafficking enterprises and the use drugs as a means of force to maintain control over their victims.

Finally, human traffickers monopolize and manipulate the human trafficking enterprise to perpetuate a cycle of coercion which further limits law enforcement's ability to identify victims. There is a distinct and often utilized cycle of coercion, where physical violence or mental coercion is employed by traffickers to maintain control over their victims. There are three main stages associated with the human trafficking control cycle. The three main phases are recruitment, initiation, and indoctrination.<sup>67</sup>

During the recruitment phase, traffickers will begin to identify potential victims.<sup>68</sup> TVPA indicates that "traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin."<sup>69</sup> Traffickers will take advantage of the power disparity as a means to coercively entice victims.<sup>70</sup> Vulnerability plays an essential role in identifying and recruiting victims of human trafficking. Once the victim is separated from family, friends, or familiar surroundings, he or she becomes increasingly susceptible to the trafficker's influence.<sup>71</sup>

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63. *Sexual Exploitation and Substance Abuse*, ALCOHOL REHAB, <http://alcoholrehab.com/drug-addiction/sexual-exploitation-and-substance-abuse/> (last visited Oct. 25, 2014).

64. Walker-Rodriguez & Hill, *supra* note 49.

65. *Sexual Exploitation and Substance Abuse*, *supra* note 63.

66. *Id.*

67. Hopper & Hidalgo, *supra* note 51, at 193.

68. *Id.* at 193.

69. 22 U.S.C. § 7101(b)(4) (2000).

70. Hopper & Hidalgo, *supra* note 51, at 194.

71. *Id.*

The second phase is the initiation phase. During this phase, the victim is first initiated into the world of trafficking.<sup>72</sup> Present in this new environment is the acceptance of a distorted system of reality in which the human trafficker exerts ultimate authority.<sup>73</sup> During this phase, victims are increasingly isolated from the outside world and they are prevented from leaving, having friends, or talking to others.<sup>74</sup> In extreme cases, traffickers may gang rape their victims in order to break the victim's will to resist.<sup>75</sup>

The final phase is indoctrination. In the indoctrination phase the trafficker will further develop and extend the trafficker's control over the victim.<sup>76</sup> During this phase, traffickers will use their dominant status to influence the victim's behavior and force them to participate in acts that conflict with the victim's morals or beliefs.<sup>77</sup> As researchers have noted, "Traffickers work to create an isolated community with its own rules and pressures to conform."<sup>78</sup> An isolated dynamic helps to ensure that victims remain submissive and destabilized.<sup>79</sup> Traffickers often utilize many mechanisms of control including physical impairment, exhaustion, and deprivation of necessities. Additionally, a prominent method of control utilized by human traffickers is fear. The fear inflicted upon a victim of trafficking is associated with such manipulations as holding the victim's legal documentation, debt bondage, economic deprivation, and lying about certain legal processes.<sup>80</sup> Further, traffickers strive to cultivate an atmosphere of fear for their victim by engaging in "unpredictable outbursts of violence."<sup>81</sup> This ultimately affects the victim by sending the messages "that resistance is futile, and that her life depends upon winning his indulgence through absolute compliance."<sup>82</sup> This creates a bond between the victim and perpetrator, albeit an anxious one, one in which the victim, due to

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72. *Id.*

73. *Id.* at 194-95.

74. *Id.* at 195.

75. *Id.* at 196.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 196.

80. *Id.* at 198.

81. *Id.*

82. *Id.* (quoting JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 77 (1992)).

isolation, relies on the trafficker and attempts to please the trafficker to avoid the violent outbursts.<sup>83</sup>

Furthermore, a connection is often made between the victim and trafficker due to the necessity of survival for the victim. It has been found that “captives begin to identify with their captors initially as a defense mechanism, but over time a traumatic bonding occurs.”<sup>84</sup> This connection further deepens the control sustained over the victim.

It is evident from the intricate structure and nature of human trafficking that law enforcement is presented with a monumental task of both identifying and prosecuting human traffickers. The isolated nature of the human trafficking enterprise, the use of extreme force and coercion, and the unrelenting cycle of abuse perpetuated by human trafficking all contribute to the serious limitations that law enforcement experience when it comes to their ability to identify victims of human trafficking.

## 2. Law Enforcement’s Approach to Combating Human Trafficking

With the enactment of the TVPA, both federal and state law enforcement agencies have enacted methods to combat human trafficking. The federal government has focused on the use of the Interagency Task Force established by the TVPA.<sup>85</sup> Also, the Civil Rights Division and the Department of Homeland Security of the Department of Justice have focused on the enforcement of human trafficking laws and the prosecution of these criminals. In 2007, the Civil Rights Division in the Department of Justice created the Human Trafficking Prosecution Unit within the Criminal Section.<sup>86</sup> Prosecutors within this unit work closely with Assistant United States Attorneys and law enforcement agencies to help with trafficking investigations, apply human trafficking statutes consistently, and identify multijurisdictional trafficking networks.<sup>87</sup> Further, prosecutors in this unit are able to “provide victim assistance resources, legal guidance and coordination between districts prosecuting overlapping criminal networks on a timely basis.”<sup>88</sup>

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83. *Id.*

84. *Id.* at 198-99.

85. 20 U.S.C. §7103

86. *Human Trafficking Prosecution Unit*, U.S. DEP’T OF JUSTICE <http://www.justice.gov/crt/about/crm/htpu.php> (last visited Nov. 4, 2014).

87. *Id.*

88. *Id.*



Additionally, the FBI has set forward initiatives that seek to fight trafficking and rectify the consequences of human trafficking. As part of its initiatives, the FBI continues to work with other local, state and federal law enforcement agencies. The FBI participates in over 85 human trafficking task forces and working groups throughout the country.<sup>89</sup> Additionally, the FBI employs Victim Specialists who work with victims to ensure their needs are met. These needs include both short-term and long-term accommodations such as immigration relief, housing, employment, education, job training, and childcare.<sup>90</sup>

Additionally, state and local law enforcement agencies have started to create initiatives to combat human trafficking. The federal government has incentivized state and local involvement in the fight against human trafficking. The 2013 Reauthorization of TVPA expanded the 2005 Reauthorization of TVPA block grant programs, which bestow grants to local law enforcement agencies for investigations and prosecutions of trafficking.<sup>91</sup>

To date, 49 states have passed legislation that criminalizes human trafficking.<sup>92</sup> While creating human trafficking statutes is a step in the right direction, states must further drive the fight against human trafficking by being proactive and combative in their efforts. It is imperative that state and local law enforcement agencies participate in the effort to combat human trafficking. It has been proposed that the human trafficking “war will be won or lost at the state and local levels.”<sup>93</sup>

While both the federal and state-level initiatives to fight human trafficking are steps in the right direction, the initiatives currently used by both federal and state level law enforcement lack a clear plan or set of guidelines that would help law enforcement better identify victims of human trafficking. Rather, each of the initiatives is a reactive approach that combats human trafficking once the victim is found. If federal and state-level initiatives developed plans to collaborate with social service agencies such as health care providers, more victims would be identified. Once more victims are identified, the use of the federal and state legislation and means of prosecution

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89. *Human Trafficking – FBI Initiatives*, FBI, [https://www.fbi.gov/about-us/investigate/civilrights/human\\_trafficking/initiatives..](https://www.fbi.gov/about-us/investigate/civilrights/human_trafficking/initiatives..)

90. *Id.*

91. Andrew Hall, *The Uniform Act on Prevention of and Remedies for Human Trafficking*, 56 ARIZ. L. REV. 853, 860 (2014).

92. *Government Responses to Trafficking*, NORTHEASTERN UNIV., <http://www.northeastern.edu/humantrafficking/federal-state-responses-to-human-trafficking/>.

93. Hall, *supra* note 91, at 871.

can be implemented at a higher rate. Therefore, the collaboration between law enforcement agencies and social service providers such as health care workers who come into contact with human trafficking victims is essential to the implementation of the human trafficking initiatives that have already been developed.

### 3. Problems with Current Law Enforcement Approaches

While there have been many ground-breaking initiatives started to combat human trafficking, gaps still exist. State and local level law enforcement agencies are the epicenter for coming into contact with, identifying, and rescuing human trafficking victims. Because of this, the greatest problem with identifying and rescuing human trafficking victims comes from the absence of local-level information, resources, and plans to combat human trafficking. Between 2007 and 2008 the Department of Justice noted that state law enforcement officials arrested 68% of trafficking offenders.<sup>94</sup> Therefore, the training of local law enforcement is a central component in the effort to fight human sex trafficking.<sup>95</sup>

One main issue that inhibits law enforcement's ability to identify and rescue victims is a lack of collaboration between nongovernmental service providers and law enforcement agencies, especially health care providers.<sup>96</sup> Collaboration can allow for better victim identification and perpetrator prosecution.<sup>97</sup>

While local law enforcement agencies come into contact with victims, it has also been established that human sex trafficking victims will also come into contact with health care providers.<sup>98</sup> Many times, if a human trafficking victim escapes, their first inclination is not to report to the police but rather to seek help at another

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94. Geneva Brown, *Women and Children Last: The Prosecution of Sex Traffickers as Sex Offenders and the Need for a Sex Trafficker Registry*, 31 B.C. THIRD WORLD L.J. 1, 29 (2011). See also Mike Dottridge, *Child Trafficking for Sexual Purposes*, ECPAT INT'L, 22-23 (2008) (stating internationally, education and training initiatives have increased the arrest and prosecution of sex traffickers), [http://www.ecpat.net/WorldCongressIII/PDF/Publications/Trafficking/Thenmic\\_Paper\\_Trafficking\\_ENG.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Publications/Trafficking/Thenmic_Paper_Trafficking_ENG.pdf).

95. Brown, *supra* note 94, at 29.

96. Theodore R. Sangalis, *Elusive Empowerment: Compensating the Sex Trafficking Person Under the Trafficking Victims Protection Act*, 80 FORDHAM L. REV. 403, 416 (2011).

97. Tiffany Dovydaitis, *Human Trafficking: The Role of the Health Care Provider*, 55 J. MIDWIFERY & WOMEN'S HEALTH 462, 462 (2010).

98. *Id.*

nongovernmental organization.<sup>99</sup> Victims often seek help at “organizations serving domestic violence and sexual assault victims, community health clinics, and groups that assist immigrants or people of a particular ethnicity.”<sup>100</sup> In fact, many task forces and agencies use victim services that help heal and reintegrate victims into society, but what is missing is a connection with health care providers that will allow early victim intervention and identification. Therefore, it is imperative that law enforcement agencies make an effort to train these groups of service care workers to recognize sex trafficking and report the incidents to law enforcement agencies.<sup>101</sup>

Once law enforcement agencies and health care personnel receive proper training in identifying and locating human trafficking victims, they can better establish collaboration networks with health care providers. Collaboration between health care providers and trained law enforcement personnel would allow for the identification and rescue of many more human trafficking victims. Without collaborative efforts between law enforcement agencies and health care providers, a gap will remain where potential victims of human trafficking will continue to remain in human sex trafficking enterprises, with only a slim hope of coming into contact with law enforcement officials.

### III. PROPOSED SOLUTION: HEALTH CARE PROVIDERS AND LAW ENFORCEMENT PERSONNEL SHOULD CREATE A JOINT TASK FORCE TO BETTER IDENTIFY VICTIMS AND PROSECUTE TRAFFICKERS

The proposal of this Note is that a joint task force should be created between law enforcement agencies and health care providers. Human trafficking victims suffer severe forms of physical and mental abuse. They are often subjected to extremely violent conditions, put in situations where their lives are in danger, and suffer greatly from unimaginable cruelty. The high rate of violence inflicted upon human trafficking victims creates a greater chance that they will come into contact with health care providers to receive medical care for their severe injuries.<sup>102</sup> If health care providers and a human trafficking task

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99. Robert Moosy, *Sex Trafficking: Identifying Cases and Victims*, 262 NIJ J. 1, 4 (2009), available at <http://www.nij.gov/journals/262/pages/sex-trafficking.aspx>.

100. *Id.*

101. *Id.*

102. Dovydaitis, *supra* note 97 at 462 (stating that health professionals are among the few professionals likely to interact with trafficking women and girls while they are still in captivity; and listing medical injuries

force worked together in a joint task force manner, their combined efforts would lead to a greater rate of identification of human trafficking victims. Working in conjunction with law enforcement would allow health care providers to better identify, treat, and intervene in human trafficking cases. It would allow law enforcement agencies to come into contact with more human trafficking victims and in turn prosecute and convict a higher number of human traffickers.

A. *Health Problems Associated with Human Trafficking*

Due to the violent nature of human sex trafficking victimization, sex trafficking victims will suffer from numerous physical, mental, and reproductive injuries. Frequently these injuries will be inflicted upon the victim by her trafficker, the bottom, or the client. Medical attention may be needed to attend to severe injuries. Human trafficking victims have reported instances of physical injuries and mental injuries, as well as reproductive issues that all require attention from a health care provider.

1. Physical Health

Many victims of human trafficking will experience severe health problems associated with the violence, sexual exploitation, and coercion or force used as domination and control mechanisms. A comprehensive study was conducted to discover and identify health problems associated with human trafficking.<sup>103</sup> The research indicated that many human trafficking victims suffered from neurological problems, headaches, dietary problems, severe weight loss, gastrointestinal symptoms, cardiovascular problems, and respiratory problems.<sup>104</sup> Additionally, victims of human trafficking often suffered from physical injuries that were associated with the violence they endured while in captivity.<sup>105</sup> Forms of this physical violence included forced sex, being punched, being kicked, enduring beatings, being threatened with a weapon, and strangulation.<sup>106</sup>

Additionally, victims of human trafficking not only suffered from the physical abuse inflicted upon them by their trafficker; they also

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that are associated with the severe abuse human trafficking victims endure).

103. Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 ANNALS HEALTH L. 61, 64 (2014).

104. *Id.* at 68-69.

105. *Id.*

106. *Id.* at 74.

experienced reproductive issues associated with the sexual exploitation they were experiencing. The reproductive issues the sex trafficking victims experienced included some form of a sexually transmitted disease, pain during sex, and urinary tract infections.<sup>107</sup> Many of the human sex trafficking victims also experienced reproductive issues regarding abortions and miscarriages.<sup>108</sup> Forced abortions are also highly prevalent among sex trafficking victims.<sup>109</sup> Forced abortions are characterized as abortions that are not willingly undertaken by the female victim, but rather forced upon them by their trafficker.<sup>110</sup> There is no doubt that the high rate of reproductive issues associated with human trafficking victims stem from the consequence of turning multiple “tricks,” sometimes upwards of ten or thirteen buyers per day.<sup>111</sup>

## 2. Mental Health

Substance abuse is one mental health concern related to victims of human trafficking. Victims are often addicted to alcohol, marijuana, cocaine, heroin, ecstasy, or PCP.<sup>112</sup> Many pimps or traffickers will give their victims addictive drugs as a measure of control or coercion.<sup>113</sup> Or many of the human trafficking victims turn to substance abuse as a mechanism for dealing with the immense amount of physical and mental anguish from which they are suffering.<sup>114</sup> Mental health and addiction are both large concerns when it comes to human trafficking victims.

## 3. Human Trafficking Victims Seek Medical Services

The health care system and health care providers have the ability to play an essential role in combating human trafficking. Health care providers are among the few professionals who are likely to come into contact or interact with human trafficking victims while they are in captivity.<sup>115</sup> Studies have suggested that approximately 28% of

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107. *Id.* at 71-72.

108. *Id.* at 72.

109. *Id.* at 73.

110. *Id.*

111. *Id.* at 72.

112. *Id.* at 75-76.

113. *Id.* at 76.

114. *Id.*

115. Dovydaitis, *supra* note 97, at 462.

trafficked women saw a health care professional while they were being held in captivity.<sup>116</sup>

Furthermore, a study showed that while human trafficking relationships are inherently abusive, a large portion of victims and survivors did receive some sort of medical care during their captivity.<sup>117</sup> Victims had the most frequent contact with hospitals and emergency rooms, and many often had contact with clinical treatment facilities, particularly those offering women's health services such as Planned Parenthood.<sup>118</sup> During these interactions, the study indicated that at least half of the victims indicated that the health care provider knew they were "working the streets" but failed to realize it was at the hands of a pimp or trafficker.<sup>119</sup> Even more disturbing is the notion that in roughly the other half of cases the doctor or health care provider failed to realize the situation entirely.<sup>120</sup>

Additionally, reproductive health issues are omnipresent among victims of human trafficking. As noted in the study, 71 percent of victims reported at least one pregnancy, abortion and miscarriages were experienced by more than half of the victims.<sup>121</sup> Consequently, health care providers who provide women's health services have a unique opportunity to identify and intervene in the human trafficking operation due to their heightened level of contact with the victims. Moreover, the study indicated that some victims engaged with the health care system to secure birth control.<sup>122</sup> Over half of the victims who participated in the study indicated that they went to a clinic to receive birth control measures, and even more startling, more than half of the victims obtained the birth control alone, without the presence of their trafficker.<sup>123</sup>

Due to the level of interaction between health care professionals and human trafficking victims, health care professionals are presented with a unique opportunity to identify and rescue victims.<sup>124</sup> Because of

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116. *Id.* (quoting FAM. VIOLENCE PREVENTION FUND, TURNING PAIN INTO POWER: TRAFFICKING SURVIVORS' PERSPECTIVES ON EARLY INTERVENTION STRATEGIES, <https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/Turning%20Pain%20intoPower.pdf>).

117. Lederer & Wetzel, *supra* note 103, at 77.

118. *Id.* at 77.

119. *Id.* at 78.

120. *Id.*

121. *Id.* at 72-73.

122. *Id.* at 80.

123. *Id.*

124. Dovydaitis, *supra* note 97, at 462.

this heightened level of contact between health care professionals and victims, if health care professionals worked with law enforcement task forces more victims could be identified and more perpetrators could be convicted.

*B. Proposed Model: Collaboration Between Health Care Providers and Law Enforcement*

If health care professionals and law enforcement officials worked together to identify and rescue human trafficking victims, the human trafficking problem would be fought on multiple fronts. In order to achieve this goal and effectively establish a collaborative task force there needs to be efficient health care training to identify and investigate potential victims of human trafficking, a human trafficking resource officer on call for health care locations, notice to the law enforcement officials assigned to the joint task force, and a safety plan implemented to keep the victim and other victims safe who are still under the trafficker's control.

1. Health Care Providers Should Receive Human Trafficking Training

There is a dire need for health care professionals to be trained to recognize the signs of human trafficking, identify the victims, and implement plans to intercept a victim from his or her captor. If health care professionals were trained to understand human trafficking and how a victim would present himself or herself in a health care facility, then a greater number of human trafficking cases would be identified and prosecuted. Specifically, front-line health care professionals should be trained to identify and further investigate potential victims of human trafficking. Hospitals, clinics, and emergency room workers are often the first professionals to come into contact with victims who are seeking help for medical issues.<sup>125</sup> There are many physical signs that are associated with human trafficking victims.<sup>126</sup> Once a health care provider establishes that the patient is indeed a victim of human trafficking, he or she can then intervene and deploy the protocols set forth by the joint task force to assist in rescuing the victim.

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125. *Id.*

126. *Id.* at 463 (stating that “physical” signs of human trafficking include: anxiety, chronic pain, cigarette burns, complications from unsafe abortions, contusions, depression, fractures, gastrointestinal problems, headaches, oral health problems, pelvic pain, PTSD, STIs, suicidal ideation, unhealthy weight loss, unwanted pregnancy, and vaginal pain). *See also* Lederer & Wetzel, *supra* note 103, at 82 (stating that when it comes to younger victims, clinics and abortion providers are uniquely situated to identify signs of human trafficking. Younger victims at these types of clinics may present signs of multiple abortions and evidence of coercion, such as an overly controlling older “boyfriend”).

Additionally, there are specific signs that health care workers should be alerted to that specifically relate to human trafficking victims.<sup>127</sup> Human trafficking training will allow health care providers to identify these specific indicators quickly and realize they may be dealing with a human trafficking victimization case. Moreover the Polaris Project, a national organization aimed at combating human trafficking, created a list of specific indicators that apply to sex trafficking victims that health care providers should be vigilant for when dealing with a potential human trafficking victim.<sup>128</sup>

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127. *Identify and Assist a Trafficking Victim*, U.S. DEP'T OF STATE, <http://www.state.gov/j/tip/id/> (last visited Nov. 4, 2014) (stating that specific signs of human trafficking include the person being unable to speak with the health care provider alone, their answers being scripted or rehearsed, their employer holding their identification, and the person may be acting submissive or fearful).

128. *Identifying Victims of Human Trafficking – What to Look for During a Medical Exam/Consultation*, POLARIS PROJECT, <https://www.traffickingresourcecenter.org/sites/default/files/What%20o%20Look%20for%20During%20a%20Medical%20Exam.pdf> (last visited Feb. 16, 2015). The specific indicators of human sex trafficking include:

“(1) the age of an individual has been verified to be under 18 and the individual is involved in the sex industry (2) the age of the individual has been verified to be under 18 and the individual has a record of prior arrests for prostitution (3) discrepancies in behavior and reported age—i.e. clues in behavior or appearance that suggest that the individual is underage but they are lying about their age; (4) evidence of sexual trauma; (5) multiple or frequent sexually transmitted infections (STIs), especially evidence of a lack of treatment for STIs; (6) multiple or frequent pregnancies; (7) individual reports an excessively large number of sexual partners, especially when it is not age-appropriate; (8) individuals who are under the age of 18 who express interest in, or may already be in, relationships with older adults or men; (9) use of language or slang relating to individual’s involvement in prostitution —i.e. referring to a boyfriend as “Daddy” or talking about “the life”; (10) evidence of controlling or dominating relationships —i.e. repeated phone calls from a “boyfriend” and/or excessive concern about displeasing a partner; (11) individual is dressed in inappropriate clothing (12) presence of unexplained or unusual scar tissue—potentially from forced abortions; (13) tattoos on the neck or lower back that the individual is reluctant to explain; (14) other types of branding — i.e. cutting or burning; (15) evidence that the victim has had to have sexual intercourse while on her monthly cycle—i.e. use of cotton balls or other products which leave residual fibers; (16) family dysfunction; (17) individual may either be in crisis, or may downplay existing health problems or risks; (18) individual may resist your help or demonstrate fear that the information they give will lead to an arrest, placement in social services, return to family, or retribution from trafficker.”



In order to facilitate and provide resources to fund the training of health care professionals, entities may be eligible to receive funds from the government. The 2013 Reauthorization of the Violence Against Women's Act ("VAWA") amended § 399P of the Public Health Services Act to allow certain eligible entities to receiving funding for the training of health care providers. The amended §399P states that the Secretary shall award grants for the "development or enhancement and implementation of interdisciplinary training for health professionals, public health staff and allied health professionals."<sup>129</sup> The amended section goes on to state that the grant money must be used to train medical professionals to identify and provide health services to individuals who have been victims of "domestic violence, sexual assault, or stalking."<sup>130</sup> While the Act does not specifically mention human trafficking, VAWA could either be amended to include human trafficking victimization or it could be interpreted broadly enough to understand that human sex trafficking victims are victims of sexual assault because they are forced to perform multiple sex acts a day.<sup>131</sup> If these measures are put in place, health care agencies would be able to apply for these grants to implement training in identifying and treating victims of sex trafficking.

## 2. Joint Task Force Between Law Enforcement and Health Care Providers

The current protocol for most health care professionals, when they identify a victim of human trafficking, is to provide the person with outreach cards or hotline numbers for local anti-trafficking services. Or the health care professional himself or herself might be instructed to call the National Human Trafficking Resources Center to report the incident.<sup>132</sup> However, this approach in no way confronts or solves the severe danger the victims face. Rather, it is the proposal of this Note that health care professionals and local law enforcement officers convene to form a joint task force in order to better combat the human trafficking epidemic.

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129. Violence Against Women's Act, 42 U.S.C. 2013 §13981 (2013); Public Health Services Act, 42 U.S.C. 280g-4 (2013).

130. Public Health Services Act, 42 U.S.C. 280g-4 (2013).

131. Lederer & Wetzel, *supra* note 103, at 72.

132. *Potential Trafficking Indicators for Medical Professionals*, POLARIS PROJECT, <http://www.state.gov/j/tip/id/> (last visited Feb. 16, 2015).

a. *Joint Task Force*

Joint task forces are multidisciplinary approaches used to combat problems facing society. There are many advantages to creating and maintaining a multidisciplinary task force that is used to combat a specific problem facing the community and the criminal justice system. The advantage of a “multidisciplinary anti-trafficking [t]ask [f]orce is the maintenance of a strategic, well-planned, and continuously fostered collaborative relationship among law enforcement, victim service providers, and other key stakeholders. A multidisciplinary response to human trafficking raises the likelihood of the crime being discovered, provides comprehensive protection of the victim, and increases coordinated investigative and prosecutorial efforts against the perpetrator.”<sup>133</sup> Members of this proposed joint task force would include one or two human trafficking resource officers, front line health care providers, and members of the local human trafficking law enforcement task force.

The human trafficking resource officer would be a person with health care training who is also extensively trained in the problems regarding human trafficking, solutions used to combat the problem, law enforcement strategies used to investigate human trafficking cases, and the legal process surrounding prosecution and conviction of human traffickers. The position of a human trafficking resource officer would resemble that of a social worker for abused children. The human trafficking resource officer would be specifically trained in both medical issues regarding human trafficking and law enforcement protocols and plans developed to combat human trafficking. The human trafficking resource officer would be someone who meets social service requirements that include both health care training as well as some law enforcement training related to human trafficking.<sup>134</sup> The

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133. Anti-Human Trafficking Task Force Strategy and Operations e-Guide, 25, [www.ovcttac.gov/TaskForceGuide](http://www.ovcttac.gov/TaskForceGuide) (last visited Feb. 16, 2015).

134. *Case Worker Privilege Fact Sheet*, COALITION TO ABOLISH SLAVERY, <http://www.castla.org/templates/files/factsheetcaseworker.pdf> (quoting CA EVID. CODE §1038(2)(b) which lists the relevant qualifications as someone who meets one of the following requirements: (1) is a psychotherapist; (2) has a master’s degree in counseling or a related field; (3) has one year of counseling experience, at least six months of which is the counseling of human trafficking victims; (4) has 40 or more hours of training and is supervised by a counselor. Additionally the training hours must include: (1) history of human trafficking; (2) civil and criminal law as it related to human trafficking; (3) societal attitudes towards human trafficking; (4) peer counseling techniques; (5) housing; (6) public assistance and other financial resources available; (7) referral services available; (8) privileged communications).

human trafficking resource officer would be the liaison between the victim, health care providers, and law enforcement task force in order to coordinate the collaboration and communication.

The front line health care providers would participate in this task force to the extent that they would be the first ones to encounter the victim, develop a relationship with the victim, and contact the human trafficking resource officer when they suspect a patient to potentially be a victim of human trafficking. It is imperative that health care workers receive training, which will allow them to identify and intervene in human trafficking situations.

The law enforcement task force will work jointly with the human trafficking resource officer and health care providers to investigate the crime and get the victim to a safe location. The functions of the human trafficking resource officer and the law enforcement officers would overlap and converge in several ways. The coordination of their duties is outlined in the chart below.

<b>Primary Decisions and Responsibilities During Investigation Stage<sup>135</sup></b>		
Human Trafficking Resource Officer	Law Enforcement	HTRO and Law Enforcement
<ul style="list-style-type: none"> <li>• Is the victim safe?</li> <li>• If not, what measures are necessary to ensure their safety?</li> <li>• Is the patient a human trafficking victim?</li> <li>• Will the victim return to that situation?</li> <li>• Are there continuing medical services that the victim must receive?</li> </ul>	<ul style="list-style-type: none"> <li>• Did a crime occur?</li> <li>• Who is the offender?</li> <li>• Is there evidence to arrest the alleged offender?</li> <li>• Has all the physical evidence been obtained and preserved?</li> <li>• Have witnesses been interviewed?</li> </ul>	<ul style="list-style-type: none"> <li>• Are there any other victims?</li> <li>• Should the victim be relocated to a safe environment?</li> <li>• Have the other personnel on the human trafficking task force been deployed to the location of the crime?</li> <li>• Has an investigation begun to determine the extent of the human trafficking crime in this case?</li> <li>• Develop a safety plan for the victim.</li> </ul>

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135. Table is based on Jill Goldman et. al., *Coordinated Response to Child Abuse and Neglect: The Foundation for Practice*, 67 (2003) (modeling Exhibit 9-3).

This proposed model sets up a unique and collaborative system where, during the initial stages of a human trafficking investigation, the health care system and law enforcement work together to first identify the patient as a human trafficking victim, and then conduct a plan to get that victim to safety, while simultaneously launching an investigation into the human trafficking operation to possibly rescue more victims, arrest the offender, and prosecute the crime.

The interaction between health care workers and human sex trafficking victims sets up a system where health care professionals are frontline investigators into this crime. Their interaction is key in locating and identifying victims who may never have come into contact with law enforcement officials. Through this proposed model, a larger number of human trafficking victims can be identified and rescued.

*b. Implementation*

There are several ways in which creating such a task force could be implemented in many communities. First, the federal government could offer monetary or grant incentives to both health care facilities and law enforcement agencies who adopt this model. The 2013 VAWA Reauthorization amended TVPA to expand local law enforcement grants for investigating and prosecuting human trafficking. The expanded grant is intended to be used to “train law enforcement personnel how to identify victims of severe forms of trafficking in persons.”<sup>136</sup> This grant money could be used to not only train law enforcement agencies but also to develop a human trafficking task force that utilizes health care professionals, and to train those health care professionals as well.

Additionally, state governments can offer incentives to hospitals and human trafficking task forces to undergo this training and adopt the model. Also, § 202(b) of VAWA allows for the government to award sex trafficking block grants. These grants can be used for “specialized training for social service providers, public sector personnel, and private sector personnel likely to encounter sex trafficking victims.”<sup>137</sup>

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136. Trafficking Victims Protection Reauthorization Act, 42 U.S.C. §14044c (2005).

137. Violence Against Women’s Act, 42 U.S.C. §202(b)(2)(B)(vii) (2013).

Finally, federal or state governments could offer to fund the creation of the task force and the training needed to implement the model.<sup>138</sup> It is essential to the implementation of this model that federal and state governments incentivize the execution of the joint task force.

#### IV. OBSTACLES AND SOLUTIONS

This Note recognizes that there may be several legal and policy obstacles that inhibit the full implementation of the proposed solution, or that must be worked through in order to fully implement this proposal. Such legal obstacles include complying with the Health Insurance Portability and Accountability Act (“HIPAA”) and Fourth Amendment issues. The policy issues that are created by the proposal of this Note include respecting a victim’s autonomy when disclosing the suspected victimization to law enforcement, and the potential for an increased rate of violence inflicted upon the victim once the disclosure is made. Each of these obstacles can be addressed and solved in a way that would allow for the joint task force to work collectively with health care providers to effectively identify victims and prosecute offenders.

##### A. *Legal Obstacles*

###### 1. Health Insurance Portability and Accountability Act

The basic principle of HIPAA was to protect certain health information from being disclosed absent an exception to the law or consent from the individual patient. A covered entity may disclose certain protected health information if the disclosure is authorized by the patient or permitted by a state or federal law.<sup>139</sup> Reporting under HIPAA is authorized when the health care provider suspects that his or her patient is a victim of abuse, neglect, or domestic violence.<sup>140</sup>

Many health care providers have developed and implemented policies and assessment instruments to investigate suspected cases of abuse victimization. In fact, the U.S. Department of Health and

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138. This would be preferable because Congress could allocate conditional funding, and it would also be able to organize and control these task forces while avoiding potential constitutional issues due to their heightened flexibility to distribute funds under the Spending Power. *See* U.S. CONST. art. 1, § 8, cl. 1.

139. 45 C.F.R. §164.512(b). While VAWA (2013) only authorizes sex trafficking block grants to four eligible entities in regions of the U.S. Once the government sees that these systems work, it increase the number of grants. *See* 42 U.S.C. §202(b)(1)(A).

140. 45 C.F.R. § 164.512(c) (2016).

Human Services has endorsed the Institute of Medicine's recommendation that intimate partner violence screening and counseling be a core part of women's health visits.<sup>141</sup> The endorsement comes from the recognition that physicians, especially OB/GYNs, are in a unique position to both interact with and identify victims of domestic violence.<sup>142</sup> With these assessment tools and proper training, health care providers can better identify victims of domestic violence and report the victimization when mandated.<sup>143</sup>

Similarly, victims of human trafficking interact with health care providers in much the same way as victims of intimate partner violence. Health care providers are similarly in a unique position to both identify victims and report incidents of the abuse. If HIPAA was modified to allow reporting for incidents of human trafficking to law enforcement, human trafficking victims would be identified at an increased rate, which would directly correlate with higher rates of prosecution and convictions of human traffickers.

## 2. HIPAA Modification

The HIPAA Privacy Rule limits and regulates the use and disclosure of certain protected health information ("PHI") by health care organizations that fall within the definition of a "covered entity."<sup>144</sup> The HIPAA Privacy Rule contains certain contingency disclosure provisions that allow covered health care entities to disclose patient information; 45 C.F.R. 164.512(c) allows a covered entity to disclose the PHI of a patient whom they believe to be a victim of abuse, neglect, or domestic violence to a government authority if: (1) the disclosure is required by a law; (2) the individual agrees to such disclosure; or (3) the disclosure is authorized by a state statute.<sup>145</sup>

The HIPAA Privacy Rule should allow covered entities to disclose PHI of patients they suspect to be victims of human trafficking, through explicitly listing it in the provision along with abuse, neglect,

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141. COMMITTEE ON CARE FOR UNDERSERVED WOMEN, AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS, OPINION NO. 518: INTIMATE PARTNER VIOLENCE 1, 1 (2012) (citing INST. OF MED., RECOMMENDATIONS, *IN CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS* 71-141 (2011)).

142. *Id.* at 3.

143. *Id.*

144. Stacy A. Tovino, *The Use and Disclosure of Protected Health Information for Research Under the HIPAA Privacy Rule: Unrealized Patient Autonomy and Burdensome Government Regulation*, 49 S.D. L. REV. 447, 450 (2004).

145. 45 C.F.R. § 164.512(c).

and domestic violence. Alternatively, state laws could be encouraged to include the authorization of disclosure of human trafficking victimization.

*a. Authorization of Disclosure of Human Trafficking Victimization Under HIPAA Privacy Rule*

The HIPAA privacy rule explicitly allows a covered entity to disclose protected health information (“PHI”) to a law enforcement agency or other social service agency when the covered entity reasonably believes that a patient is a victim of abuse, neglect, or domestic violence.<sup>146</sup> The disclosure is contingent on a law or regulation explicitly allowing the entity to make such a disclosure, or the individual agreeing to the disclosure.<sup>147</sup> Most states do have reporting laws that allow covered health care providers to disclose incidents of victimization that they perceive to be the result of intimate partner violence (“IPV”).<sup>148</sup> Most of these laws fall into four categories: “(1) explicitly requiring the reporting of IPV or competent adult abuse; (2) requiring the reporting of certain types of injuries caused by weapons; (3) mandating the reporting of injuries resulting from violent or non-accidental criminal conduct; and (4) not requiring or authorizing the reporting of IPV by health care professionals.”<sup>149</sup> Authorized reporting for IPV can be both analogous and distinguished from the proposal to authorize reporting for human trafficking. The situations are analogous because they both deal with violent victimization where the victim is at risk for serious injury from the offender. They are different in the sense that human trafficking, in some cases, is more severe, coercive, and violent form of victimization, where the victim is at more of a disadvantage to disclose the violence. Therefore authorization to disclose instances of victimization should be greatly encouraged in regards to human trafficking victimization.

One way disclosure of human trafficking victimization could be encouraged through legal means is to allow for health care professionals to be covered with immunity when they do report incidents of human trafficking victimization. In state statutes that allow for health care professionals to disclose health care information

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146. *Id.*

147. *Id.*

148. FAM. VIOLENCE PREVENTION FUND, NATIONAL CONSENSUS GUIDELINES: ON IDENTIFYING AND RESPONDING TO DOMESTIC VIOLENCE VICTIMIZATION IN HEALTH CARE SETTINGS 29 (2004).

149. Rebekah Kratochvil, *Intimate Partner Violence During Pregnancy: Exploring the Efficacy of a Mandated Reporting Statute*, 10 Hous. J. of Health L. and Pol’y 63, 77 (2009).

to law enforcement when they suspect someone is a victim of a crime or a patient received injuries that resulted from criminal conduct, there is usually a clause vesting immunity from civil and criminal liability.

In Ohio, a provision in its disclosure of criminal conduct statute states that “no disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.”<sup>150</sup> Ohio case law illustrates that physicians will not be held criminally or civilly liable if they report instances of abuse victimization.<sup>151</sup>

North Carolina’s, criminal conduct disclosure statute states that “any hospital . . . or physician . . . participating in good faith in making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report.”<sup>152</sup>

Finally, in Massachusetts, the statute provides immunity for any mandated reporter who notifies law enforcement of suspected cases of abuse; section 51A(g) states “no mandated reporter shall be liable in any civil or criminal action for filing a report under this section or for contacting local law enforcement authorities or the child advocate, if the report or contact was made in good faith, was not frivolous, and the reporter did not cause the abuse or neglect.”<sup>153</sup>

Since state statutes already provide immunity to health care professionals who disclose victimization of criminal conduct to law enforcement officials, these statutes would and should additionally cover the health care provider when he or she discloses an incident of human trafficking victimization because human trafficking is a crime of violence with grave physical and mental health consequences.<sup>154</sup>

*b. Justifications that Authorize the Disclosure of Abuse, Neglect and Domestic Violence*

The HIPAA Privacy Rule and corresponding state statutes allow covered entities to disclose incidents of victimization relating to

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150. OHIO REV. CODE ANN. 2921.22(H) (West 2014); *see infra* note 163 (providing an analysis for what constitutes “serious physical harm” and “harm to persons” that would allow disclosure under OHIO REV. CODE ANN. 2921.22 (West 2014)).

151. *Morgan v. Cmty. Health Centers*, No. 12Ca010242, slip op. at 1 (Ohio Ct. App. June 3, 2013).

152. N.C. GEN. STAT. §90-21.20(d). *See infra* Part IV.A.2.c. (discussing the North Carolina standard for reporting incidents of criminal violence).

153. MASS. GEN. LAWS Ch. 199 § 51(A)(g).

154. *See generally* Leder & Wetzel, *supra* note 103.



abuse, neglect, and domestic violence for three reasons: (1) there is a high prevalence of IPV; (2) there are extraordinary health effects associated with IPV; and (3) health care providers are in a unique position to identify and respond to abuse.<sup>155</sup>

First, the authorization to disclose PHI of a victim of abuse, neglect, or domestic violence is based on the justification that there is a high prevalence of intimate partner violence in the United States.<sup>156</sup> The high prevalence of IPV in society supports the authorization of disclosure to government agencies by health care providers who suspect victimization.

Second, the nature of IPV creates numerous health and safety effects that health care providers are uniquely positioned to identify and treat.<sup>157</sup> Due to the severe health risks associated with IPV, health care providers are in a unique position to help identify victims of abuse.

Third, the high prevalence of IPV and the unique health effects of such violence correlates with a health care provider's unique position to be able to identify victims of such violence. Many health care providers have implemented models that help to identify and screen patients that are suspected to be victims of IPV. Such models include victimization screenings which include asking the victim a certain set of questions or looking for physical indicators of violence.<sup>158</sup> When a health care provider is able to identify a victim or child who has been exposed to IPV early, they may be able to break the isolation and coordinate with domestic violence advocates to help the patient leave the relationship or understand the extent of their options and

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155. FAM. VIOLENCE PREVENTION FUND, *supra* note 148, at 4.

156. *Id.* (stating that it is estimated that between 20%-30% of women and 7.5% of men have been physically or sexually abused at the hands of their intimate partner. "IPV occurs in every urban, suburban, rural and remote community, in all social classes, and in all ethnic and religious groups including immigrant and refugee populations").

157. *Id.* (stating that victims of IPV may experience a wide range of adverse health effects due to the abuse including: "arthritis, chronic neck or back pain, migraine or other types of headache, sexually transmitted infections, chronic pelvic pain, peptic ulcers, chronic irritable bowel syndrome, and frequent indigestion, diarrhea, or constipation." Additionally, around 6% of all pregnant women are victims of violence during their pregnancy which can cause low weight gain, anemia, infections, and bleeding during the first or second trimester. IPV also creates a propensity for victims to develop serious mental health issues including "depression, posttraumatic stress disorder, anxiety, and suicidal ideations").

158. *Id.* at 6-7.

resources available to them.<sup>159</sup> Additionally, when health care providers are authorized to inquire about potential IPV victimization, as well as having resources available in a health care setting, it sends a prevention message that IPV is unacceptable in society, there are serious health consequences associated with it, and allows the patient to have important resources and assistance easily accessible to them.<sup>160</sup>

The very justifications that allow health care providers to disclose incidents of suspected abuse, neglect, and domestic violence under the HIPAA Privacy Rule correspond directly with reasons why human trafficking victimization should also be authorized under HIPAA. Human trafficking is immensely prevalent in the United States,<sup>161</sup> there are extremely grave and severe health consequences associated with the victimization of human trafficking, and health care providers are in a unique position to help identify and rescue these victims. Therefore, health care professionals should be able to disclose instances of human trafficking victimization to law enforcement.

*c. States Should Be Encouraged to Develop and Implement Human Trafficking Disclosure Policies*

State laws and regulations should be amended to include a provision that explicitly allows for health care providers to report incidents of human trafficking victimization. The HIPAA Privacy Rule allows covered entities to disclose incidents of abuse, neglect, and domestic violence when the victim either agrees to such disclosure or the disclosure is expressly authorized by a statute or regulation.<sup>162</sup> While the HIPAA Privacy Rule covers federal mandates for disclosure of victimization, state laws that provide for more stringent forms of disclosure will be given respect over the federal law.<sup>163</sup> Therefore,

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159. *Id.* at 6.

160. *Id.*

161. 22 U.S.C. § 7101.

162. 45 C.F.R. 164.512(c)(i)-(iii) (2016).

163. Judith A. Langer, *The HIPAA Privacy Rules: Disclosures of Protected Health Information in Legal Proceedings*, 78 APR WIS. LAW. 14, 16 (2005) (stating that “key to understanding the Privacy Rules is the concept of HIPAA preemption, that is, the relationship and interplay between state and federal privacy laws. The federal Privacy Rules provide for incomplete preemption of state law. In other words, where a state’s privacy law is contrary to and more stringent than the HIPAA Privacy Rules, state law will apply. Though the Privacy Rules define several different contexts in which state law is more stringent, generally a state law will be more stringent where it prohibits a use or disclosure of PHI that HIPAA would permit, or where it provides the individual

states are in a unique position to allow the disclosure of human trafficking victimization, even if the federal guidelines set forth in HIPAA are not amended to explicitly include the authorization.

Most states have statutes that allow health care providers to disclose incidents of IPV when the provider reasonably believes that the disclosure is necessary to prevent serious harm to the individual or other potential victims.<sup>164</sup> Indeed, some states already have statutes that are either broad enough to include incidents of human trafficking, or that expressly allow for such disclosure. Illinois, Ohio, and North Carolina are just three examples of states that have statutes broad enough to include incidents of human trafficking victimization in their authorized disclosure statute. Additionally, Massachusetts has a statute that explicitly states that health care providers must disclose incidents of human trafficking victimization when they suspect such victimization in children.<sup>165</sup> Further, case law in the respective states has been developed to interpret certain reporting provisions in each statute.

The Illinois statute states that “it is the duty of any person conducting or operating a medical facility, or any physician or nurse as soon as treatment permits to notify the local law enforcement agency . . . when it reasonably appears that the person requesting treatment has received: (2) any injury sustained in the commission of or as a victim of a criminal offense.”<sup>166</sup> Therefore, because the specific language allows the health care provider to report any injury “sustained in the commission of or as a victim of a criminal offense,” the health care provider would be permitted to disclose instances of human trafficking victimization. Furthermore, an Illinois Court of Appeals<sup>167</sup> held that because this criminal identification statute is more specific than the general provisions of the physician patient privilege statute, it is controlling. Thus, even though there is a state statute prohibiting disclosure of patient information, that statute is superseded by this disclosure statute when a patient presents with injuries caused by criminal conduct.<sup>168</sup> Therefore, disclosure of human trafficking victimization under the criminal identification statute is

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with greater privacy rights than HIPAA affords the individual”); 45 C.F.R. §160.202.

164. FAM. VIOLENCE PREVENTION FUND, *supra* note 148, at Appendix J.

165. MASS. GEN. LAWS Ch. 199 § 51(A)(g).

166. 20 Ill. Comp. Stat. Ann. 2630/3.2 (2015).

167. *People v. Kucharski*, 346 Ill. App. 3d 655, 688 (2004).

168. *See* 735 ILCS 5/8-802 (prohibiting disclosure of patient information).

authorized notwithstanding a statute that prohibits disclosure of medical records.

Additionally, in Ohio, O.R.C. Ann. 2921.22(A)(1) states that “except as provided in division (A)(2) of this section, no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.”<sup>169</sup> This statute broadly states that a physician who knows of any felony that has been committed must report the incident to law enforcement.<sup>170</sup> Further, O.R.C. Ann. 2921.22(B) states that “no physician . . . shall negligently fail to report to law enforcement authorities . . . any serious physical harm to persons that the physician . . . knows or has reasonable cause to believe resulted from an offense of violence.”<sup>171</sup> Human trafficking victimization would fall within this statute because the violent nature of human trafficking causes severe physical, mental, and reproductive injuries to victims of human trafficking,<sup>172</sup> and such injuries fall within the meaning of “physical harm to persons” and “offense of violence.”<sup>173</sup> In fact, “offense of violence” has been held to include acts requiring even the most minimal affirmative action, such as intentionally pointing a firearm at an individual.<sup>174</sup>

Additionally, case law has interpreted Ohio’s statutory language using the phrase “reasonable cause to believe.” In *Morgan v. Community Health Partners*,<sup>175</sup> the Morgan’s brought suit alleging

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169. OHIO REV. CODE ANN. 2921.22(H) (West 2014).

170. See OHIO REV. CODE ANN. § 2905.32(E) (West 2014) (stating that human trafficking is a felony in the first degree).

171. OHIO REV. CODE ANN. § 2921.22(B) (West 2014).

172. See generally Lederer & Wetzel, *supra* note 103.

173. OHIO REV. CODE ANN. § 2901.01(A)(3) (West 2014) (defining “physical harms to persons” as meaning any “injury, illness, or other physiological impairment, regardless of its gravity or duration”); OHIO REV. CODE ANN. § 2901.01(A)(5) (West 2015) (defining “serious physical harm to persons” as meaning any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment; (b) any physical harm that carries a substantial risk of death; (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; (d) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; (e) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain”).

174. See *State v. Cargill*, 991 N.E.2d 1217, 1218 (2013).

175. *Morgan v. Cmty. Health Centers*, No. 12Ca010242, slip op. at 1 (Ohio Ct. App., June 3, 2013).

that the hospital invaded her privacy and wrongfully disclosed confidential medical information to the police. Mrs. Morgan entered the hospital alone, bleeding heavily from a laceration to her scalp, and this laceration was located directly on top of her head.<sup>176</sup> Further, Mrs. Morgan could not explain how the injury occurred, or how she received other bruises that appeared on her body.<sup>177</sup> Pursuant to Ohio law, a physician must disclose a patient's serious physical harm to law enforcement when the person giving care had a "reasonable cause to believe" that the harm resulted from a violent offense.<sup>178</sup> Whether a person has "reasonable cause to believe" requires a determination of "whether a person of ordinary prudence and care would believe" that the circumstances at issue exist.<sup>179</sup> The court held that in light of the facts presented in this case, Community Health had reasonable cause to believe that Morgan was the victim of an offense of violence.<sup>180</sup>

Therefore, Ohio's statute is broad enough to include a human trafficking felony offense and victimization. Additionally, as case law has interpreted the statute,<sup>181</sup> when victims of human trafficking present with injuries or signs consistent with human trafficking victimization, this would give reasonable cause to believe that they were victims of criminal conduct. Therefore, the disclosure of human trafficking victimization is authorized in Ohio.

Moreover, the North Carolina statute N.C. Gen. Stat. §90-21.20 allows for disclosure of human trafficking victimization because it falls within the language of its statute. The North Carolina statute states in pertinent part that "cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include . . . every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence."<sup>182</sup> Human trafficking victimization involves criminal acts of violence including rape, sexual exploitation, and assault;<sup>183</sup> therefore, human trafficking victimization would fall under the language of this statute.

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176. *Id.*

177. *Id.*

178. OHIO REV. CODE ANN. § 2921.22(B).

179. *See* State v. Overholt, 9<sup>th</sup> Dist. No. 02CA0108-M, 2003-Ohio-3500, ¶ 22.

180. Morgan v. Cmty. Health Centers, *supra* note 175, at 7.

181. *Id.*

182. N.C. GEN. STAT. ANN. §90-21.20(d) (West 2008).

183. *See generally* Lender & Wetzel, *supra* note 103, at 69 (listing the physical injuries most prevalently seen in human trafficking cases).

Finally, in Massachusetts the disclosure statute explicitly states instances of human trafficking victimization in children must be reported to law enforcement. The Massachusetts statute reads, “A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from . . . [or] being a human trafficking victim” must report to either his or her supervisor if protocol dictates or directly to local law enforcement authorities.<sup>184</sup> Massachusetts case law has interpreted this “reasonable cause” standard to be a “threshold function, thereby implying a relatively low degree of accuracy.”<sup>185</sup> “Therefore, a presentation of acts which create a suspicion of child abuse is sufficient to trigger the requirements.”<sup>186</sup> Since this statute already includes mandatory reporting for incidents of human trafficking in children, and the threshold for determining abuse is set so low, physicians are in a great position to identify and report incidents of human trafficking victimization. Additionally, the statute should be amended to include adult victims of human trafficking who seeks medical attention.

As previously stated, the state codes allowing the disclosure of violence victimization are predicated on the fact that abuse, neglect, and domestic violence are extremely prevalent in the United States, there are serious health risks associated with this violence, and health care providers are in a position to identify the victims and break the isolation. Similarly, each of these justifications applies to human trafficking victimization. Since states have already moved toward including human trafficking victimization in their statutes or have broad enough statutes that would allow for disclosure of human trafficking, all states should amend their statutes and HIPAA should be amended to include such a provision. States should incorporate into their disclosure statutes the authorization for health care providers to disclose suspected human trafficking victimization. This will ensure health care providers are able to report such cases, without the danger of violating HIPAA simply because their patient is legally an adult.

Absent the proposed HIPAA modification and proposed joint task force numerous human trafficking victims will go unidentified, be subjected to further sexual exploitation, and continue to suffer severe abuse at the hands of their captor. This proposed solution will allow for a higher rate of identification and prosecution of human

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184. MASS. GEN. LAWS Ch. 199 § 51(A).

185. Care & Prot. of Robert, 556 N.E.2d 993, 998-99 (1990).

186. *Id.* at 999.

traffickers, which is essential to combat the egregious human trafficking epidemic in the United States.

### 3. Fourth Amendment

Some critics of the proposed authorization of the disclosure of PHI regarding human trafficking victimization may argue that it impermissibly infringes on the patient's right to privacy. However, this issue, in a parallel context, has already been addressed by the Supreme Court. In *Whalen v. Roe*,<sup>187</sup> the district court enjoined enforcement of the portions of the New York State Controlled Substance Act of 1972 which required the recording of persons receiving certain prescription drugs on the ground that it violates a person's right to privacy.<sup>188</sup> However, the United States Supreme Court reversed that decision, holding that such statute did not violate a person's right to privacy.<sup>189</sup> The Court reasoned that "state legislation which has some effect on individual liberty or privacy may not be held unconstitutional simply because a court finds it unnecessary in whole or in part."<sup>190</sup> The Court further reasoned that the requirement that disclosures of private medical information, which are often made to doctors, hospital personnel, insurance companies, and public health agencies, be made to representatives of the state having responsibility for the health of the community does not automatically amount to an impermissible invasion of privacy.<sup>191</sup> Therefore, no such privacy invasion existed by the disclosure of such information.

Similarly, a challenge to the constitutionality of the disclosure authorization for human trafficking victimization would also find that there was no invasion of the patient's privacy. In *Whalen v. Roe*, the appellees argued that their privacy was invaded because they had an individual interest in avoiding disclosure of personal matters.<sup>192</sup> An opponent of the disclosure authorization may make a similar argument, stating that human trafficking victimization disclosure infringes upon a patient's interest in avoiding disclosure of personal matters. Yet, as the Supreme Court has already held, disclosures related to personal health to agencies that set out to protect the health and welfare of the community do not necessarily infringe on a

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187. 429 U.S. 589, 591(1977).

188. *Id.*

189. *Id.*

190. *Id.* at 597.

191. *Id.* at 602.

192. *Id.* at 600.

person's privacy interest.<sup>193</sup> Additionally, HIPAA already allows for certain disclosures relating to abuse, which could arguably infringe on the patient's privacy, yet there has been no successful challenge to the constitutionality of the disclosure provision.<sup>194</sup>

### *B. Policy Obstacles*

In addition to the legal obstacles, there are public policy issues that would impede the rollout of this collaborative model. These include the need to respect victims' personal autonomy, the risk of increased retaliatory violence against victims whose cases are investigated, and a potential chilling effect on victims' willingness to seek medical attention if they fear police involvement.

#### 1. Autonomy

Authorized reporting regarding adult patients may seem to infringe on the patient's autonomous choice to receive medical care or to report incidents of violence and victimization. HIPAA mandates that health care providers report incidents of child abuse to the proper government agency.<sup>195</sup> Child and adult victims differ significantly in that children are often not in the position to make informed decisions or seek help in certain situations. However, adults are able to make decisions regarding whether or not they want to report situations of abuse, and they are often capable of doing themselves. Opponents of mandatory reporting for IPV state that mandatory reporting takes away the victim's autonomy and perpetuates the notion that victims of IPV cannot adequately take action on behalf of themselves due to their state of learned helplessness.<sup>196</sup>

While this may be true for victims of IPV, victims of human trafficking are often in a different situation than victims of IPV. The traffickers' use of force, fraud, and coercion effectively eliminates the victim's autonomy. The victims have virtually no choice in regards to their victimization. Additionally, the use of force, fraud, and coercion by the trafficker further eliminates the victim's ability to voluntarily choose to seek help or report their incidents of abuse. Therefore, while autonomy may be a large concern regarding reporting for IPV, a human trafficking victim's autonomous choice to report her own

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193. *Id.*

194. 45 C.F.R. §164.512(c).

195. 45 C.F.R. §164.512(b)(ii) (2013).

196. Kratochvil, *supra* note 149, at 92.



abuse is substantially outweighed by the condition and situation to which the victim has been subjected.

## 2. Increased Rate of Violence

Some opponents of mandatory reporting for IPV victims have stated that reporting actually increases the rate of violence between the victim and the perpetrator.<sup>197</sup> This is due to the fact that the abuser will often blame the victim for the disclosure made by the health care provider, and in turn lash out in a fit of violence.<sup>198</sup> The unique characteristics of IPV, including the risk of retaliatory violence and the cyclical nature of IPV, pose an increased risk of danger if law enforcement is contacted and they attempt to intervene in the situation.<sup>199</sup> This is especially true in situations where the victim refuses to leave the situation because the victim may not be ready to leave the relationship.<sup>200</sup> Opponents of reporting for IPV cite this reason as one of the main reasons that reporting may not be the best option, especially in precarious situations where there is an intimate relationship between the victim and the perpetrator.

While victims of IPV may be subjected to an increased rate of violence due to reporting laws because of the unique relationship between the victim and the perpetrator, that unique relationship is absent in cases of human trafficking victimization. Victims of human trafficking are not in engaging in an emotional relationship with their captors.<sup>201</sup> Rather, their captors have used force, fraud, or coercion to maintain domination and control over their victims. Authorized reporting of human trafficking victimization would not increase the risk of victimization of human trafficking victims because there is not emotional relationship compelling a victim to stay in the relationship, nor is there voluntariness component that creates a situation where the victim may want to remain in captivity. Absent the emotional bond and connection between a perpetrator and victim, the increased rate of violence is nonexistent because there is no continued relationship once law enforcement intervenes, rescues the victims, and arrests the human traffickers.

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197. *Id.* at 95.

198. *Id.*

199. *Id.*

200. *Id.*

201. *But see* Hopper & Hidalgo, *supra* note 51 at 198-99 (noting that in some cases victims do form emotional bonds with their captors as a survival mechanism).

3. Chilling effect on victims seeking medical treatment

Another possible negative consequence of mandatory reporting of IPV is that victims would be deterred from seeking medical treatment because they feared law enforcement involvement.<sup>202</sup> While this may be a valid concern regarding IPV, the characteristics that distinguish IPV and human trafficking victimization differentiate the ultimate deterrent effect mandatory reporting may have. IPV victims may have a greater ability to choose to go to the hospital to seek medical treatment for their injuries; most human trafficking victims lack even the most basic freedom of movement.<sup>203</sup> Traffickers often isolate their victims.<sup>204</sup> This creates a strong disconnect between human trafficking victims and society.<sup>205</sup> Additionally, traffickers will use intense psychological coercion to break the victims down.<sup>206</sup> “This chronic fear activation can lead to physiological changes that impair the ability of victims to mobilize the physical and psychological resources needed to escape.”<sup>207</sup> Therefore, when human trafficking victims are taken to the hospital by their captors or they seek it by themselves, they may be desperate for law enforcement involvement.

V. CONCLUSION

Human trafficking is a deplorable crime that exists in states, cities, and towns across the nation. Human trafficking legislation that imposes harsh sentences on some of the worst criminals can only be implemented once victims are identified and rescued. The gap between identification of human trafficking victims limits law enforcement’s and prosecutors ability to prosecute and convict the traffickers. A joint task force between law enforcement agencies and health care providers will certainly lead to a higher rate of victim identification and perpetrator prosecution. This joint effort will be an effective step in the eradication of the human trafficking epidemic.

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202. Carolyn J. Sachs, *Mandatory Reporting of Injuries Inflicted by Intimate Partner Violence*, 9 *AMA J. ETHICS* 842, 843 (2007).

203. Hopper & Hildalgo, *supra* note 51 at 192 (citing AMY O’NEIL RICHARD, *INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME* 15 (1999) <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>).

204. *Id.* at 209.

205. *Id.*

206. *Id.* at 192.

207. *Id.* at 208.