

**The Bill Blackwood
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Sex Trafficking Investigation

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ABSTRACT

Sex trafficking and domestic minor sex trafficking (DMST) are not new problems for law enforcement agencies, but in recent years, technology has made trafficking more profitable and less risky of arrest than most crimes. The arrests and convictions for trafficking crimes are relatively low (Aronowitz, 2009). This is partially due to the lack of attention by investigating agencies. Every agency has budgetary restrictions as well as official and unofficial priorities in their investigations units. Many times an uncooperative victim, let alone a hostile victim, means a quick closure of a case, cases often classified as cleared by exception. Sex trafficking victims are often very difficult and view law enforcement as the enemy. In addition to the difficulty of the victims, evidence in these cases tends to be obscure and somewhat difficult to obtain, making trafficking cases less than appealing to the average investigator. Although sex trafficking investigations are difficult, law enforcement agencies are the best tool society has to identify its victims. These victims' physical, mental, and emotional recovery require the assistance from both governmental and non-governmental entities. Law enforcement is also needed in its traditional role to identify the offenders who need to be brought to justice. Sex trafficking cases present unique challenges that require uniquely trained investigators to be successful; for that reason, each law enforcement agency should invest in training their personnel to competently investigate instances of sex trafficking.

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INTRODUCTION

Human trafficking and the sub-category of sex trafficking are relatively recent additions to the body of law in the United States and within the State of Texas. There remains confusion in the public, media, and even within the ranks of law enforcement between human trafficking and the smuggling of illegal immigrants into the country. Regardless of this confusion, there has been public consensus that human trafficking, and in particular sex trafficking and domestic minor sex trafficking (DMST), are worthy of attention by law enforcement (Peters, 2015). The primary difference between sex trafficking and DMST is simply the victim's age dividing them into those over 18 years old as sex trafficking and those under 18 as victims of DMST. The recent film *Taken* presented a Hollywood stylized version of international DMST that rivals the accuracy of TV methamphetamine cooks who work with clean glassware and white lab coats in clean well-lit laboratories. The reality of sex trafficking is far less glamorous. Sex trafficking/DMST at the most common and basic level is female and male persons forced into prostitution. The real life impact of DMST on American families was recently evidenced in hearings in the United States Congress in January of 2017 that addressed the continued sex trafficking of children facilitated by the internet marketplace Backpage.com (Committee on Homeland Security and Governmental Affairs (CHSGA), 2017). The Senate Homeland Security and Governmental Affairs (2017) Permanent Subcommittee on Investigations questioned the owners and senior staff of Backpage.com on its website's facilitation of DMST through acting as a classified ad service for escorts throughout the nation. The website is well known to law enforcement and has been commonly used for prostitution and the trafficking of minor children. Three

parents of minor children who had been trafficked for prostitution on Backpage.com testified to the devastating effect DMST had on their families. One father testified his 15 year old daughter came back to him after her rescue looking different, wearing clothes he had never seen with her hair cut and dyed, but moreover she was a different person mentally and emotionally having been raped, beaten, and drugged by her trafficker who forced her to submit to prostitution for his benefit (CHSGA, 2017). These victims suffer the effects of abuse for a lifetime.

The newness of the trafficking law is one of a group of challenges Texas law enforcement officers face with sex trafficking/DMST. The Trafficking Victims Protection Act (TVPA) signed into law in 2000 by President Clinton addressed the disproportionate victimization of women and girls by their recruitment into crimes related to prostitution (Legal Information Institute, n.d.). The act recognized that while some women were transported across international borders to facilitate the crimes, others were forced into commercial sex acts within their own home states by force, fraud, and coercion. This act outlawed both trafficking for commercial sex and forced labor, often called modern day slavery (Legal Information Institute, n.d.).

Following the lead of the national government, Texas addressed trafficking in the 78th legislative session in 2003, adding subsection 20A Trafficking of Persons to the Texas Penal Code. This law made trafficking illegal in the state and defined the term trafficking to mean “transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means” (Texas Penal Code §20A, 2003). Causing a person to engage in prostitution and other sex crimes by force, fraud, or coercion were specifically prohibited. The statute also relieved the burden of proving force, fraud, or coercion in

the instances minors were trafficked, allowing that trafficking could be charged if minors were caused by any means to engage in forced labor or services including commercial sex. The statute lists and includes offenses related to promotion of prostitution, sexual assault, and indecency, which allows prosecutors to charge violators with trafficking, with the listed lesser included offenses or with both charges. This leeway has created an unintended consequence as persons who meet the elements of trafficking are often charged with lesser crimes only, making quantifying the numbers of traffickers actually convicted difficult. This reluctance to prosecute cases as Texas Penal Code 20A Trafficking is one of a number of difficulties faced by prosecutors and investigators (Farrell, Owens, & McDevitt, 2013).

This paper explores several reasons law enforcement agencies need specially trained personnel to investigate trafficking offenses, in particular sex trafficking/DMST incidents. The Texas Commission on Law Enforcement (2017) mandates officers receive four hours training focused on human trafficking which includes all types of trafficking. Courses are available that focus on the recovery of victims who might be encountered by chance on traffic stops and during calls for service by patrol officers. This training is beneficial to remove victims from immediate danger on the street (TCOLE, 2017). However successful prosecutions depend on thorough investigations, conducted by well trained, knowledgeable officers, who have the time necessary to invest in complex and often frustrating cases. These cases deserve attention because the public expects law enforcement to protect victims, investigators need to be trained in the intricacies unique to sex trafficking/DMST cases, and the DMST victims are routinely the most difficult officers will encounter (Farrell et al., 2013). For these

reasons, law enforcement agencies should address sex trafficking/DMST by designating and training officers to investigate sex trafficking/DMST.

POSITION

The public is concerned about sex trafficking/DMST and rightfully expect local law enforcement to address it. Trafficking is an international problem it is the fastest growing crime in the world and only surpassed by drugs and weapons (Walker-Rodriguez & Hill, 2011). Because of size and complexity, trafficking is often seen as something that is a distant problem. In the United States, advocates, media, and sensational cases have brought sex trafficking/DMST into the public eye. Even with increased recent attention, sex trafficking/DMST is misunderstood, under reported, and consistently in the shadows of society where it thrives. The effects of sex trafficking/DMST on its victims are mental, emotional, and physical and present for life. These victims are some of the most vulnerable members of society, very often they are foster children, children with dysfunctional homes who become runaways and fall into trafficking for survival (Institute of Medicine, 2013).

The Polaris Project (n.d.), a nonprofit, nongovernmental organization (NGO) is dedicated to assisting victims of human trafficking. Polaris has operated the national human trafficking hotline since 2007; the hotline's mission is to connect human trafficking victims with services that can assist them and keep them safe. They have received over 22,000 calls in that time period related to sex trafficking. These calls are received from concerned citizens who may have encountered a situation they believe may be trafficking or from victims desperate for help in escaping their situation. The majority of the calls, over 70%, to the hotline this year are related to reports of sex

trafficking/DMST (Polaris Project, n.d.). The National Center for Missing and Exploited Children (NCMEC) (n.d.) is a national clearing house dedicated to protecting children from exploitation; most of their cases have some type of an online component. Most often the children reported missing to NCMEC are children who have voluntarily run away from their homes. NCMEC estimates that one in every six children reported to them as missing were likely sex trafficking victims. Even more staggering is that 86% of the number of the missing children who flee their homes are in foster care or receiving social services in the care of the state at the time of their flight (NCMEC, n.d.).

The strategies needed to successfully investigate sex trafficking/DMST cases are somewhat different from those of traditional investigations. Most crimes traditionally investigated by law enforcement agencies involve a combination of witness interviews and collection of tangible physical evidence. Sex trafficking/DMST cases often center on electronic evidence. When a victim is recovered, any phones, tablets, or computers he or she has in possession will likely contain the best evidence of the crime (Sprague, 2013, p. 163). The data on these devices can be deleted remotely if steps are not taken to guard against this. Investigators need to have boilerplate search warrants available for these electronics, as well as subpoenas for phone records (Johnson, 2017). Many victims are advertised on websites such as Backpage.com, but victims are offered on any web platform that is intended for dating or social media (Institute of Medicine, 2013). Capturing this information is equally important and works best when an investigator has been trained where to look; this data is also perishable if not recovered quickly and deliberately. Investigators must also have the skill set of a sexual assault investigator, as this by its nature is a crime of sexual violence. The ability to patiently

interview a person about the most uncomfortable subjects is very important (Peters, 2015).

Investigators should have a network of contacts including Child Protective Services (CPS) and NGOs who can provide services or shelter for victims at any time of the day or night. Many NGOs tend to provide services needed by victims such as shelter, medical, and mental health services. These NGOs can help reintegrate victims into society with job training and long term case management (Peters, 2015). An investigator with contacts and relationships is needed to know who can help a particular set of contingencies. These relationships are critical to any resulting case but even more to the long term success of any victim recovery. Agencies who train their officers in the investigation of human trafficking cases are about four times more likely to investigate these cases than their counterparts who do not train (Institute of Medicine, 2013).

Sex trafficking/DMST victims can be very difficult and require the time and attention of a well-trained investigator (Farrell et al., 2013). Farrell et al. (2013) stated that in trafficking cases, 35% of the victims contacted by law enforcement are themselves arrested or taken into custody as juveniles. Some of these arrests can be attributed to the lack of safe places to house the victims and the officer's having no better option to keep the victim safe (Farrell et al., 2013, p. 156). In other instances, victims are treated as prostitutes, criminalizing the victim, thus allowing the predatory trafficker to avoid capture (Alvarez & Canas-Moreira, 2015). Victims of sex trafficking /DMST seldom self-identify as victims; they often believe they are in a romantic relationship with their trafficker and seek to protect him. This sense of loyalty commonly

makes victims distrustful of law enforcement and resistant to provide truthful information. Often the victims have been too traumatized to provide accurate accounts of what has happened to them (Institute of Medicine, 2013). It is a common practice for traffickers to provide drugs to these victims to assist in controlling them; this tactic also makes the victim a less effective witness (Farrell et al, 2013). These factors work in a trafficker's favor if an investigator has only one interview with the victim. With multiple interviews allowing rapport to build and patience, investigators can gain better information (Farrell et al., 2013).

Law enforcement and the social services and NGOs who assist victims can have competing interests in the victim. Law enforcement agencies and prosecutors have a priority of seeking justice; the victim is useful to them in this sense as a witness to bring a case against a trafficker. The social services providers may see this as against the victim's interest as it can compromise her safety (Lutnick, 2016). Trained investigators are more likely to recognize this factor and address these concerns.

COUNTER ARGUMENTS

Those opposed to training specialized sex trafficking/DMST investigators might believe there is not a significant amount of trafficking in their jurisdiction. It is true that there is debate about the extent of sex trafficking. Because trafficking occurs on the fringes of society there are few accurate statistics on the true extent of the problem (Aronowitz, 2009). The Federal Bureau of Investigation (FBI) (2015) only added trafficking to the Uniform Crime Report (UCR) statistics in 2013. The 2015 statistics are the most recent data available; it shows there were 745 cases of commercial sex in the country. It also lists 98 cases occurring in Texas, with 30 of those

cases cleared. These numbers only represent the number of crimes reported to police (FBI, 2015).

An extensive study conducted in eight major cities concluded that the actual size of the sex trafficking/DMST problem was much greater than the arrest numbers showed, and that attempts to quantify the problem are only scratching the surface of the actual number of cases. This disproportionate relationship between the number of incidents and cases or arrests was due to the lack of understanding, political will, and allocation of resources toward the problem. This lack of response emboldened the traffickers because of the lower chances of arrest in trafficking as compared to other crimes (Dank et al., 2014). The study's estimate of the underground commercial sex economy in these eight cities ranged between 39.9 million to 290 million dollars (Dank et al., 2014). It is clear that the problem of sex trafficking/DMST is significant and needs to be addressed by law enforcement agencies as a serious problem.

A second argument employed by some contends that sex trafficking is only prostitution, and prostitution should be legalized. This argument contends that prostitution is a legitimate choice for women's employment and that restricting that choice by criminalizing prostitution infringes on her rights. Others argue that any woman who engages in prostitution is a criminal. Both views are flawed as a person's choice to enter prostitution may not be a choice at all (Raymond, 2013). The other view is that women involved in sex trafficking/DMST are victims; clearly minors involved in DMST are victims of various crimes due to their inability to legally consent to sex acts due to their age. These minors may not see themselves as victims, and they may not act as one would expect a victim to act. They are victims nonetheless. These children, often

from backgrounds of foster care, homelessness, and runaways, are more susceptible to victimization and deserve intervention and protection (Institute of Medicine, 2013). In the cases of adults, law enforcement agencies must not forget the factors of force, fraud, or coercion that exert such an influence on a person that her only option for survival is to submit herself to prostitution. Most women do not make a thoughtful decision to become a prostitute; that decision is made most often when all else fails (Raymond, 2013).

RECOMMENDATION

There is a clear need for law enforcement agencies to make sex trafficking/DMST cases, and thus victims, a priority. To accomplish this goal, each agency should designate and train specialized investigators to properly investigate these cases. The public is concerned with trafficking; even though the exact numbers of traffickers in a given area are unknown, they do exist. The victims of sex trafficking are most often the more vulnerable members of society, runaways and foster children who submit to trafficking to escape their everyday life. Because trafficking exists in the shadows, it is not encountered every day, but when agencies seek it out, they can easily find it within their jurisdiction. Sex trafficking/DMST cases are unusual and require skills that are unique to be successful. These cases often involve critical electronic evidence that is not obvious, and information is easily perishable if investigators are not trained to identify and recover it quickly. It is also important that investigators pursue working relationships with CPS and NGO's dedicated to trafficking victims before these resources are needed. Simply put, trained investigators do a better job of addressing sex trafficking/DMST than untrained investigators; an old saying that applies here is

“failing to prepare is preparing to fail.” In most types of criminal investigation, the victims encountered understand they have been victimized and are interested in assisting in their cases. Sex trafficking victims seldom identify themselves as victims and often view police as the enemy. Being prepared for this reality and expecting early resistance is a significant shift in mindset for an investigator and can seldom be obtained without specialized training in trafficking/DMST. Investigators who recognize what evidence to recover and how to interview and assist difficult victims will be successful more often. That ability is only gained through specialized training.

Unintentional opposition to effective sex trafficking/DMST investigation comes from police administrators who have to prioritize their resources. On the surface, it is typical to see many other criminal activities in far greater numbers than sex trafficking/DMST. However, this does not mean sex trafficking/DMST is not occurring; it is just more difficult to quantify. It is clear that sex trafficking/DMST numbers are far greater than those reported, and this underground economy being neglected by police encourages traffickers and endangers trafficking victims (Dank et al, 2014). The problems created by sex trafficking/DMST are significant and worthy of agency resources. A second argument against increased police response to sex trafficking is that it is only prostitution, and prostitution should not be criminalized. This argument assumes that an individual has a choice to engage in prostitution. Sex trafficking/DMST by its nature is not a choice as it is imposed on adult victims by force, fraud, or coercion, by definition, and clearly minors cannot consent to sex acts or agree to prostitution by virtue of their age.

The victims encountered in these cases are some of the most vulnerable that investigators will ever protect and serve. Special people with skills honed with training and a knowledge of services available are critical to the recovery of victims and the recovery of their wellbeing. Resources for any agency are limited, and the priority of locating sex trafficking cases will vary between agencies that actively seek out offenders and those who do not, but in either case, victims and traffickers will be encountered. Having a trained investigator who is up to the challenge of these cases enhances the agencies chances of success (Institute of Medicine, 2013). This role would best be assigned to an officer in a criminal investigation division or vice unit, and be in addition to other duties depending on agency size, but the training and ability to fill that special role would be invaluable when sex trafficking/DMST is encountered. For this reason, each agency should designate and train an individual, or small group of talented investigators, to be ready to step in and investigate sex trafficking/DMST when cases arise. Sex trafficking/DMST training is readily available and can be obtained through many sources such as Texas Department of Public Safety, in many instances at little to no cost to the agency.

The role of law enforcement in the social problem cannot be discounted. There are many agencies governmental and NGOs that are involved in the solution to the problem, but law enforcement is the tip of the spear in contacting the persons involved, victims and suspects, and identifying sex trafficking/DMST so that the other parts can begin to work (Institute of Medicine, 2013). With that responsibility, the preparation of personnel to respond is as important as any other task law enforcement may undertake.

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