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Reshaping the United States' Anti-Trafficking Legislation: The Need for Uniform Reporting and Victim Rehabilitation

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Reshaping the United States’ Anti-Trafficking Legislation: The Need for Uniform Reporting and Victim Rehabilitation

Bryant Cross
Honors Thesis
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I. INTRODUCTION

AMERICA’S HUMAN TRAFFICKING EPIDEMIC

“More than 150 years after Lincoln's Emancipation Proclamation, slavery is illegal almost everywhere. But it is still not abolished—not even here, in the land of the free. On the contrary, there is a cancer of violence, a modern-day slavery growing in America by the day, in the very places where we live and work. It's called human trafficking.”

Senator Josh Hawley – April 3, 2017
The CNN Freedom Project

Framing the United States’ Human Trafficking Problem

Trafficking in persons—also referred to as ‘human trafficking’—persists throughout the globe in the twenty-first century, directly threatening the safety and freedom of millions of human beings and negatively affecting communities in every region of the world. According to the Trafficking in Persons Report (TIP Report), an estimated 24.9 million persons fell victim to human traffickers in 2019. Of the nearly 25 million estimated victims, some 10 million are believed to be subject to either forced labor (including debt bondage) or forced sexual exploitation—the two most prevalent forms of human trafficking in the United States. In response to the rising awareness of trafficking in persons both around the globe and in the U.S., Congress authorized the “Victims of Trafficking and Violence Protection Act” in 2000. Yet, despite governmental recognition of the seeming prevalence of the trafficking industry, non-governmental organizations (NGOs) like the Polaris Project estimate a continual increase in trafficking in the U.S. from 2000 to 2019. This apparent upsurge in human trafficking may indicate both an increased national awareness as well as a growth of the trafficking industry. In either case, the problem of human trafficking in the U.S. is a serious one, and certain actions
must be taken to determine the severity of the trafficking problem, halt the growth of the trafficking industry, and provide legal relief for survivors of human trafficking.

**The Great Lakes Region**

In this paper, I analyze human trafficking estimates and statistics, as well as trafficking-related vacatur and expungement laws. In order to create a concise sample, I narrowed my study to include only the five states found in the Great Lakes Region. I employ the term “Great Lakes Region” to reference the states of Illinois, Indiana, Michigan, Ohio, and Wisconsin. In determining which states to include in my study, I first chose to examine a single border-state—my homes state of Michigan. After choosing the first state, I expanded my study to the four states with physical land bordering Michigan, as human trafficking often deals with the transfer of human beings across state lines.

In the Great Lakes Region, state trafficking estimates dramatically increased over the last two decades, according to the NGO Polaris Project. These estimates differ greatly, however, from the statistics offered by the Federal Bureau of Investigation’s (FBI) Uniform Crime Report (UCR). The UCR statistics referenced in this paper cover trafficking-related “arrests by crime type” in each Great Lakes Region state from 2012 to 2018. The statistics are astoundingly low, with no state reporting more than two trafficking arrests per year until 2018. UCR statistics drastically differ from the Polaris Project’s “Hotline Statistics.” The Polaris Project’s estimates of “likely cases of human trafficking” typically remain in the hundreds—Wisconsin is the sole exception with as few as 27 cases reported in a single year (see “Wisconsin: Chart 1”). Notably, Polaris Project’s estimates are not made up of definitive human trafficking cases, and may overestimate the number of cases in any given state. Contrastingly, the FBI does not enforce
participation in their annual Uniform Crime Report, leading to incomplete statistics that likely underestimate the total number of trafficking cases in each state. The disparity between Polaris Project estimates and FBI trafficking statistics is concerning and represents a lack of clarity regarding the severity of human trafficking in the United States. While the severity of human trafficking within the United States is likely much higher than either the Polaris Project or FBI statistics indicate, no concrete, reliable data exists to enforce such an argument. To fix this problem, the Federal Government must invest in more reliable and expansive data collection regarding the topic of human trafficking in the United States.

The states in the Great Lakes Region also provide wide-ranging examples of trafficking-related vacatur and expungement laws. Vacatur laws allow victims of human trafficking the chance to appeal for the dismissal [vacation] of any criminal charges earned because of their role as a victim of trafficking. Expungement laws allow victims to fully erase their records, often opening up previously unavailable job and housing opportunities. vii Vacatur and expungement laws often work hand-in-hand, dismissing charges and erasing a victim’s record in a single proceeding. The differences between each state’s vacatur and expungement laws indicate a lack of uniformity in the legal treatment of trafficking survivors. Likewise, the timeline in which trafficking survivors can apply these laws and seek legal remedies varies. In my analysis, I compare the vacatur and expungement laws of Great Lakes Region states to those of California—a state with model trafficking-related vacatur and expungement laws. The discrepancies in both the statistical and legislative areas reveal the need for reshaped anti-trafficking efforts at the state and federal level.
Thesis Statement

I contend that two legislative actions—the formation of uniform vacatur and expungement laws for trafficking victims and the enforcement of Uniform Crime Report participation—would form an effective foundation for future anti-trafficking efforts. Trafficking victims who accrue criminal records while under their trafficker’s control likely question whether escape through legal processes is even possible. If victims fear a punitive legal response—in addition to anticipating a potentially violent response from their trafficker—they will not seek freedom through legal channels. Similarly, for survivors who do escape the trafficking industry, legal repercussions may greatly limit their job and housing opportunities, pushing victims back into the sex or hard-labor industries and increasing the chance that they fall victim to traffickers once more.

Because of the limited opportunities offered to victims who escape the trafficking industry with criminal records, I believe that vacatur and expungement laws are essential to the victim rehabilitation process. While “rehabilitation” inherently implies reactivity rather than proactivity, offering survivors opportunities to move past their trafficking experiences and reenter their respective communities proactively works against the growth of the trafficking industry. Since a job and a home are essential to rehabilitation, vacatur and expungement laws play a significant and proactive role in the anti-trafficking movement. While the creation of nationally uniform laws primarily occurs through Congress, the State’s traditional sovereignty over criminal law makes the introduction of trafficking-related vacatur and expungement laws through Congress unlikely. Instead, I assert that uniform vacatur and expungement laws must come through the Uniform Law Commission—allowing individual states to maintain jurisdiction over criminal law while also creating uniform protections for trafficking survivors.
To provide concrete national trafficking statistics, I contend that Congress must enforce complete local and state agency participation in the Federal Bureau of Investigation’s (FBI) Uniform Crime Report. The Uniform Crime Reporting (UCR) Program offers an annual report on crime data in the United States. The FBI does not force participation in UCR, relying, instead, on voluntary agency participation in the report. In the following section, I analyze the “Arrests by Crime” statistics offered by the UCR for each of the Great Lakes Region States. Unfortunately, the lack of participation by local agencies means that each annual report provides incomplete data. The validity of the United States’ democracy relies, in part, on “We the People’s” knowledge and consideration of the state of our nation and the Government’s handling of national issues. Understanding the apparent trafficking in persons epidemic requires concrete statistics—statistics that go beyond the drastically differing data offered by NGO estimates and incomplete government reports. I assert that the Federal Legislature should enforce local and state participation in the UCR, specifically requiring all agencies to report all trafficking-related arrests, convictions, and expungements from year to year. While these two plans of action do not promise to end trafficking in the United States, they may act as a carefully-constructed legal foundation on which later anti-trafficking efforts may build. Uniformity—in both legislation and information—is essential to the fight against human trafficking.

Further Background: Congress Misses the Mark

The need for uniform vacatur and expungement laws and concrete trafficking statistics comes in the wake of nearly two decades of ineffective anti-trafficking efforts. Specifically, the apparent increase in trafficking in persons in the U.S. since 2000 has led some law scholars to
question the effectiveness of the Trafficking Victims Protection Act.\textsuperscript{ix} When Congress

authorized the original act in 2000, its stated purpose was:

“To combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.”\textsuperscript{x}

Despite the seemingly direct intentions of the TVPA, each reauthorization of the act fails to properly consider a number of components crucial to the prevention of further trafficking in persons and the protection of trafficking victims—two of the “Three P’s” central to Congress’s “three pronged approach.”\textsuperscript{xi} Federal Legislators’ decision to create legislation covering the prevention of trafficking, the protection of victims, and the prosecution of traffickers followed an upsurge of acknowledgement of the trafficking epidemic at the turn of the century. Congress indicated this recognition in the opening pages of the TVPA, estimating that human trafficking victimized “700,000 persons annually” worldwide, emphasizing that “approximately 50,000 women and children are trafficked into the United States each year” [emphasis added].\textsuperscript{xii} Interestingly, as reauthorizations of the act were passed in 2003, 2005, 2008, 2013, and 2017; Congress’s inclusion of trafficking in persons estimates and/or statistics disappeared. For the sake of transparency, the Federal Legislature must once again offer trafficking statistics to the public, through the UCR. This public report should include the number of trafficking-related arrests, convictions, and expungements in each state, annually.

Congress must also reshape its framing of the trafficking in persons problem. Federal legislators used the original TVPA to acknowledge the prominence of the global human trafficking epidemic, consequently minimizing Congress’s acknowledgement of the prevalence of trafficking in persons within U.S. borders. The inclusion of world-wide human trafficking estimates is necessary in the accurate framing of the trafficking epidemic as a whole. Yet, the
first—and only—statistic of trafficking in persons concerning the United States focuses solely on individuals who are brought into the country, rather than those who are trafficked within the United States, by American residents. The language used in the introductory section of the original TVPA indicates that the United States acts as a transit or destination state for human trafficking, rather than an origin or source of trafficking in persons. By sustaining this narrative, legislators initially depict the United States as a spectator of the trafficking in persons epidemic. This narrative supports the idea that Congress was right to focus trafficking legislation on the assistance of foreign nations struggling to combat the human trafficking industry—rather than focusing on the prevalence of the issue within the 50 states.

Congress’s international framing of the trafficking in persons epidemic forced state legislators—rather than federal legislators—to lead the anti-trafficking efforts within United States borders. As the series of TVPA reauthorizations progressed over time, notable changes occurred, primarily, through the practice of omission. Subsequent authorizations of the act cover prevention, and some aspects of protection, in higher volumes than prosecution—despite the original TVPA’s initiation of a “three-pronged approach” which also emphasized prosecution. This trend displays legislators’ apparent efforts to re-center the TVPA’s focus on human trafficking victims. Even with this increased focus, Congress—within the most recent TVPA of 2017—still fails to consider federal vacatur and expungement laws as an effective way to protect trafficking victims. Thus, this responsibility has largely fallen to the states. States must offer some degree of consistency when determining the protective and rehabilitative legal processes offered to victims. Through the Uniform State Law Commission, states could work to establish uniform vacatur and expungement laws throughout the United States. In this way, trafficking survivors would receive consistent treatment in all states.
Analysis of Key Literature

Due to the relative newness of the modern anti-trafficking movement, literature on the topic of trafficking in persons is limited.¹ Experts on the topics of sex work and trafficking—such as Dr. Ronald Weitzer and Nicole Bromfield—cite the lack of concrete data as a key issue in the fight against human trafficking. Weitzer—a sociologist at George Washington University—examines four central, yet largely problematic, claims often made regarding the scale of human trafficking worldwide, including:

- “The number of trafficking victims worldwide is huge;
- The magnitude of trafficking is steadily growing worldwide;
- Human trafficking is the second or third largest organized criminal enterprise in the world, after illegal drug and weapons trading; and
- Sex trafficking is more prevalent and/or more serious than labor trafficking.”²

Weitzer argues that “...much of the discourse, policymaking, and enforcement [surrounding human trafficking] has lacked an evidence basis,” and continues by noting that a majority of “popular writing on human trafficking has been anecdotal or sensationalistic, and most scholarly publications are either general overviews of the problem or critiques of the literature.”³ Weitzer also contends that “definitional problems” present issues, claiming that “the lack of consensus on a definition of trafficking” thwarts ant-trafficking efforts.⁴ However, agreed upon definitions of human trafficking are found at both the international and national level. The Palermo Protocol offers an accepted international definition of human trafficking, and the TVPA offers the same for the U.S.’s federal legislation. Weitzer concludes by advocating for extensive micro-level research which—he believes—will identify trafficking hubs and assist in

¹ Note: Scholars like Nicole Bromfield distinguish between modern anti-trafficking movement (beginning with international and national legislature at the turn of the 21st century) and the anti-trafficking movement of the Progressive Era, led by reformers like Jane Addams (129).
protecting victims and prosecuting perpetrators. While Weitzer’s work accurately presents the stark reality of the widespread misconceptions surrounding human trafficking, his argument to improve anti-trafficking efforts through micro-level research does not fully acknowledge the time-sensitive nature of the trafficking epidemic. Individual studies conducted by non-governmental agencies in cities or towns—the response favored by Weitzer—may be too time-consuming to effectively halt the moving human trafficking industry. I argue, instead, that a more widespread, efficient path toward improvement may occur through two key legislative changes—enforced participation in the UCR and the introduction of uniform vacatur and expungement laws.

Similar to Weitzer, Nicole Bromfield—a professor of Social Work at the University of Houston—critiques the presentation of trafficking data while offering, at the same time, a comprehensive look at the history of human trafficking in the United States. Specifically, Bromfield criticizes anti-trafficking NGOs, claiming that many organizations “perpetuate the exaggeration of the scope of sex trafficking in the United States” because it bolsters the organizations’ funding. Bromfield also makes the claim that “[t]here is no uniform data collection system that tracks the number of human trafficking victims in the United States.” Although my findings align with Bromfield’s critique of U.S. NGOs, her second key argument is brought into question through the existence of the FBI’s Uniform Crime Reporting (UCR) Program. The UCR offers yearly, state-by-state “arrest by crime type” reports which include human trafficking offenses. Bromfield’s argument maintains weight in the fact that state-level agencies are not forced to provide data for the UCR. Nevertheless, a uniform mode by which human trafficking data is collected exists, thus increasing the potential to acquire immediate, concrete data, if all agencies were forced to participate.
In an insightful critique of the TVPA, George Washington University’s MaryAnne McReynold offers seven recommendations for policy changes in an effort to better protect trafficking victims while, at the same time, effectively punishing traffickers. McReynold’s work focuses, primarily, on offering restitution and other forms of protection to victims after they escape the trafficking industry. Significantly, McReynold’s article also highlights the significance of trafficking victims’ minimal access to important information. McReynold writes:

“...the victim may not realize that his or her predicament is unlawful. After all, forced labor and sex abuse may not be crimes in a victim’s country of origin. Furthermore, a victim in the U.S. has limited access to information that will help him or her to determine what constitutes criminal activity on American soil.”

McReynold’s claim that victims may not know whether or not the actions of the trafficker are legal must be considered, but legislators must also acknowledge that victims may not know whether or not their own actions will place them in legal harm. Due to the extreme variance, by state, of vacatur and expungement laws, victims are unlikely to know if crimes they’ve committed due to their role as trafficking victims may result in severe consequences. Thus, uniform vacatur and expungement laws may be the first step toward improving legal protections for trafficking victims in the United States.

Baltimore School of Law’s Jessica Emerson and Alison Aminzadeh also offer an important critique of federal anti-trafficking legislation. Specifically, Emerson and Aminzadeh highlight how the lack of federal trafficking-related vacatur laws harm trafficking survivors. The authors share the story of Shamere McKenzie—a young woman forced into human trafficking and prompted to facilitate the transportation of other victims while her own life was threatened. After McKenzie escaped her trafficker, she fully cooperated with prosecutors. Yet, McKenzie was still prosecuted and forced to register as a sex offender.
Aminzadeh argue that federal vacatur laws must be introduced, since state laws cannot combat federal charges brought against trafficking victims.

Although I stand with Emerson and Aminzadeh’s push for federal vacatur laws, the likelihood of Congress introducing such laws in the near future is low. My work builds on these authors’ work, offering a potential first step toward reaching their goal of federal vacatur and expungement legislation for trafficking victims. Given the States’ traditional jurisdiction over criminal law, Congress has been hesitant to incorporate extensive criminal legislation in Federal legislation [see Conclusion: “State and Federal Roles in Criminal Law”]. In fact, at least two attempts have been made to create federal vacatur and expungement laws for victims of trafficking. Neither attempt has been successful, leaving the States to form legislation for the relief and rehabilitation of trafficking survivors. Unfortunately, this means that trafficking victims charged federally will receive less rehabilitation opportunities, through legal means, than those charged at the state level. However, because of the traditional roles of state and federal legislatures, most trafficking victims are charged at the state level, where anti-trafficking often go beyond the legislative floor set by Congress’s TVPA. Thus, I contend that the Uniform Law Commission (UCL) must first establish model anti-trafficking vacatur and expungement laws for states to adopt. While I agree with Emerson and Aminzadeh’s push for federal vacatur laws, I assert that the establishment of uniform laws through the UCL is the most likely path to providing legal remedies for the majority of trafficking victims. Ideally, the success of UCL vacatur and expungement laws would lead to the formation of federal vacatur and expungement laws for trafficking survivors.
Overview of Analysis

In the following sections, I examine human trafficking estimates as well as the current vacatur and expungement laws of states in the Great Lakes Region. To offer a more concise analysis of a connected body of states, I limit my analysis to the U.S. states of Illinois, Indiana, Michigan, Ohio, and Wisconsin. In the second section of the paper, I compare state human trafficking estimates offered by the Polaris Project’s [an NGO] National Human Trafficking Hotline (NHTH) with statistics offered by the FBI’s UCR. While the Polaris Project’s numbers are drawn from the national hotline, the UCR received data from law enforcement agencies—although, as previously noted, not all agencies are required to participated. Through my analysis of estimates in the Great Lakes Region, I emphasize the vast separation between NGO estimates and law enforcement reports, and also provide explanations for statistical trends when possible. I contend that federal legislation—perhaps through a reauthorization of the TVPA—should require the participation, of all law enforcement agencies, in the FBI’s UCRP.

In the third section, I examine the current vacatur and expungement laws in the five aforementioned states. I also compare the laws of states in the Great Lakes Region to the laws of California—the state with the most protective vacatur and expungement laws. By analyzing these laws, I hope to highlight the inconsistencies among state legislation and, thus, the inconsistent manner in which trafficking victims are offered legal assistance and the hope of a future outside of the trafficking industry. This inconsistency among states within a single region is particularly concerning considering the movement often involved in the trafficking of human beings. To combat two of the most significant issues with anti-trafficking efforts in the United State—namely, the misrepresentation of statistics and the lack of consistent laws protecting trafficked victims—two separate steps must be taken. First, Congress must, through federal
legislation, enforce complete participation in the FBI’s Uniform Crime report. Second, the Uniform Law Commission must draft and propose model vacatur and expungement laws for trafficking victims. Accumulating concrete statistics for trafficking-related arrests, convictions, and expungements would provide the U.S. Government with data necessary to improve anti-trafficking efforts. Offering state-by-state statistics to the public, through the FBI’s Uniform Crime Report would also provide the general public with a solidified understanding of human trafficking in the States—allowing Americans to more effectively serve their democratic roles. Likewise, uniform vacatur and expungement laws would likely lessen the number of trafficking victims who return to the trafficking industry—or other forms of illegal sex work—as these laws would offer a route for survivors to increase their work and housing opportunities. While the legislative changes I propose will not end human trafficking in the United States, they could provide significant and efficient improvements to the government’s anti-trafficking efforts and to the lives and futures of trafficking victims.

II. THE PRESENTATION OF HUMAN TRAFFICKING DATA: STATISTICS AND ESTIMATES IN THE GREAT LAKES REGION

Rising Awareness

Undoubtedly, the apparent rise in human trafficking is influenced, at least in part, by an increased awareness of the trafficking in persons epidemic in the United States. The trafficking industry itself may not have grown since the turn of the century, but public awareness has heightened drastically in the last two decades. According to Dr. Edith Kinney of San Jose State, “Human trafficking re-emerged as a hot topic in the U.S. media in the 2000s.”xxix A simple
search of the New York Times’ archives solidifies Kinney’s claim, offering proof of the drastic transition that came with the turn of the twenty-first century. The archives of the New York Times indicate that the term “human trafficking” was referenced in only 8 of the publication’s articles prior to the year 2000. The term first appeared in an article published in 1974. Since January 1, 2000, however, some 1,700 New York Times articles have included the term “human trafficking.” It is difficult to determine what prompted the sudden, increased awareness in human trafficking, but it is clear that the twenty-first century brought the issue to the forefront of both journalism and legislation in the United States.

The introduction of national and international anti-trafficking legislation further indicate the increase in awareness that came with the turn of the century. In addition to the enactment of the United States’ TVPA, the year 2000 also introduced the “Protocol to Prevent, Suppress and Punish Trafficking in Persons.” This protocol, established by the United Nations, reveals an international recognition of the trafficking problem. In 2019, the seemingly heightened awareness of human-rights violations appears to influence the presentation of human trafficking data. Trafficking in persons’ statistics differ greatly between NGO’s and governmental agencies. Concrete data—not estimates or incomplete reports—is necessary. The federal government currently operates data-gathering systems more than capable of collecting and presenting human trafficking data accurately. The FBI directly collaborates with participating local agencies to report trafficking-related arrests, while NGO’s like Polaris are dependent upon tips offered over the phone or the internet. To avoid the continual presentation of contrasting statistics—made evident in the following analysis—the Federal Government must enforce state and local agencies’ participation in this national data-gathering process.
The Presentation of Trafficking Data

The need for concrete trafficking data offered through a uniform reporting system is made evident through an examination of the two primary sources of human trafficking data in the United States. The (NGO) Polaris Project’s “National Trafficking Hotline” and the FBI’s Uniform Crime Report currently stand as the key sources of trafficking estimates and statistics, respectively. Both the Polaris Project’s Hotline Statistics and the FBI’s Uniform Crime Report are shaped by particular biases which influence the presentation of information. To ethically weigh the data offered by each source, I must acknowledge the manner in which each data-gathering process works. For NGO’s, there is a clear incentive to overemphasize the problem of human trafficking—both to increase financial support from donors and to provoke shock in and, then, action by Americans who view or hear about the Hotline Statistics. Contrastingly, law enforcement agencies may be motivated by a desire to frame their town, city, or state as a safe place to live or visit. The structure of both the hotline and the UCR reveal these biases.

First, it is important to note that the term “cases,” as used by the Polaris Project, does not align with the term’s use by governmental agencies or law enforcement. Rather, the hotline “uses the word ‘case’ to represent distinct situations of trafficking reported to the hotline.” The Polaris Project notes that “[a] case can involve one or more potential victims of trafficking and can be reported to the hotline through one or more conversations via call, text, email, online report, or webchat.”\textsuperscript{xxxii} While the Polaris Project specifically highlights the possibility that a single reported case may, in reality, involve multiple victims, it is important to establish that multiple sources may also contact the hotline in reference to a single victim. For example, in 2015 the hotline fielded 243 total calls from the state of Indiana, but “indicated that [only] 53 were likely
human trafficking cases based on facts reported at the time."xxxiii 2 When each of these possibilities are taken into consideration, the hotline’s provided number of human trafficking cases becomes much less concrete and is prone to indicate higher case totals in comparison to other organizations’ estimates. While the statistics may offer direct and accurate insight into the number of reports received by the hotline, these numbers do not necessarily indicate concrete, known cases of human trafficking.

Likewise, I find it important to reemphasize the flaws within the FBI’s data-gathering processes for the annual Uniform Crime Report. The FBI receives local and state-level statistics on a volunteer basis, rather than requiring all lower-level agencies’ participation. In 2018, the FBI included the number of participating agencies within each state—data which is lacking in reports from all other previous years. Local agencies who do not wish to share human trafficking related arrest records are not forced to offer those statistics. Law enforcement at the state and local levels may be motivated to withhold this information for a number of reasons. Towns or cities with any number of trafficking-related arrests do not attract new residents or visitors. Thus, it is unlikely that law enforcement agencies in areas where human trafficking arrests have occurred will participate in the Uniform Crime Report unless they are required to by state or federal law. I contend that Congress must take action and enforce complete participation in the Uniform Crime Report. The inconsistent presentation of trafficking data among various sources is made evident through an examination of trafficking estimates and statistics in the Great Lakes Region. The following analysis of estimates and statistics in each Great Lakes Region state reveals the need for concrete, agency-reported trafficking data.

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2 Note: The total “likely human trafficking cases” appear to be adjusted by the Polaris Project as new information becomes available. The updated data for the State of Indiana indicates 54 cases—adding one “likely” case to the initial total of 53.
Illinois Estimates and Statistics

Hotline Estimates:

In 2018, Illinois reported the ninth most human trafficking cases to the National Human Trafficking Hotline. The 296 cases reported in the 2018 year marked the highest number of cases reported in the state to date. As indicated below, the number of cases reported in Illinois rose steadily from 2012 to 2018 with the exception of a slight decrease in 2015 (see Illinois: Graph 1). The highest upsurge of reports in Illinois occurred between 2017 and 2018 with an increase of 103 cases in 2018. A similar, although less drastic leap occurred between 2015 and 2016, where the total number of cases rose by 80 in 2016 (See Illinois: Chart 1).

The National Human Trafficking Hotline statistics for the state of Illinois appear to indicate a growing awareness of the issue of human trafficking within the state. However, it is difficult to weigh this potential increase in awareness against the possibility that human trafficking has merely become more prevalent within the borders of Indiana. The NHTH statistics for each state included in this study exhibit a similar rise in reported cases

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Human Trafficking Cases Reported in Illinois</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>105</td>
</tr>
<tr>
<td>2013</td>
<td>146</td>
</tr>
<tr>
<td>2014</td>
<td>144</td>
</tr>
<tr>
<td>2015</td>
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<td>2016</td>
<td>203</td>
</tr>
<tr>
<td>2017</td>
<td>193</td>
</tr>
<tr>
<td>2018</td>
<td>296</td>
</tr>
</tbody>
</table>

(Data from the National Human Trafficking Hotline)

Illinois: Chart 1
from 2012 to 2018, making the consideration of these two potential factors particularly important when studying the presentation of human trafficking data in the states of the Great Lakes Region. As efforts to end trafficking in persons continue, anti-human trafficking advocates in all areas must seek to better understand the relationship between rising social awareness and the seemingly growing human trafficking market.

Uniform Crime Report Statistics:

The FBI reported trafficking statistics drastically different than the estimates of the Polaris Project’s hotline from 2012 to 2018. Not a single human trafficking arrest was reported,
to the FBI, by Illinois agencies in the last seven years (see: “Arrests by Crime: Illinois” Chart).

The inclusion of “prostitution and commercialized vice” and “sex offenses” statistics is meant to highlight the possibility that law enforcement officers might, at times, initially arrest traffickers—or trafficking victims who are forced to coerce other victims—for a different violation. Notably, reports of such offenses largely decreased over the seven-year span covered in this study. In 2012, agencies reported 2,148 arrests for “prostitution and commercialized vice.” This number dropped to 304 in 2015 and 115 in 2018 (see “Arrests by Crime: Illinois” Chart). The same trend is evident in the reporting of other “sex offenses,” with higher arrests reported in 2012 (549 arrests) and 2013 (562 arrests) than were reported in 2017 and 2018 (236 and 350 arrests, respectively). While law enforcement officers may have initially arrested human traffickers or trafficking victims for these other offenses—namely, “prostitution and commercialized vice” or other “sex offenses”—I submit that the low number of trafficking-related arrests reported in Illinois were due, primarily, to a lack of agency participation.

While participation data is not available for the 2012-2017 data, the number of participating agencies in the 2018 Uniform Crime Report reveals that the low arrest numbers are likely due to a lack of participation. In 2018, only two of the more than nine-hundred Illinois agencies participated in the most recent UCR (see “Arrests by Crime: Illinois” Chart). Illinois’ 0.002 participation percentage offers incomplete human trafficking data and reveals the need for enforced participation in the FBI’s Uniform Crime Report. Illinois’ low participation offers incomplete human trafficking data and reveals the need for enforced participation in the FBI’s Uniform Crime Report.
Indiana Estimates and Statistics

Hotline Estimates:

NGO estimates and FBI statistics of trafficking in persons in the state of Indiana further reveal the disconnect between the two reporting systems. In Indiana, the number of human trafficking cases reported to the National Human Trafficking Hotline remained fairly static from 2012 to 2015 (see Indiana: Graph 1). During this four-year period, the number of reported cases ranged from 50 to 57. In Indiana, the largest year-to-year increases in case totals mirrored the trends seen in Illinois’ statistics. From 2015 to 2016, Indiana’s reported human trafficking cases increased by a total of 30—the second largest increase in the past seven years. Then, in 2018, the case total rose by 50, marking Indiana’s largest spike in reported cases in a one-year span (See Indiana: Chart 1). In comparison to other states in the previously defined Great Lakes Region, Indiana reported the second fewest human trafficking cases from 2012 to 2015—a comparative trend which continued from 2016 to
2018, despite the number of reports in Indiana nearly doubling from 2015 to 2017. Only Wisconsin reported fewer human trafficking cases from 2012 to 2017 (see Wisconsin: Chart 1). In the 2018 calendar year Indiana reported 142 likely cases of human trafficking to the National Human Trafficking Hotline, ranking 22nd in the United States (see Indiana: Chart 1). However, the statistics offered by the Polaris Project’s national hotline offer a skewed picture of trafficking in persons in the state of Indiana. Indiana’s consistent, state-wide efforts in the anti-human trafficking campaign evidently factor into the low number of cases reported to the NHTH. In 2005, Indiana established the Indiana Protection for Abused and Trafficked Victims (IPATH) task force. IPATH is a “statewide coalition of state agencies, law enforcement, service providers, faith based and community groups collaboratively working to prosecute traffickers, protect and serve victims and prevent future trafficking.” In an effort to combat human traffickers, IPATH assists in the growing number of tips offered to the State of Indiana Office of the Attorney General (OAG). According to the OAG, IPATH received 130 tips—defined as “notifications of suspected human trafficking”—in 2014 and 275 tips the following year (see Indiana: Chart 2). In 2016, IPATH received a staggering 520 tips, nearly doubling the number of tips received for a second straight year (see Indiana: Chart 2). The number of tips reported by IPATH from 2014 to 2016 far outweigh the National Human Trafficking Hotline statistics for the state of Indiana. IPATH reported nearly triple the number of calls received by the NHTH in 2014, with the number of reports fielded in 2015 equaling more than five times the number
felded by the NHTH (See Indiana: Chart 1, Indiana: Chart 2). The most extreme disparity between fielded tips occurred in 2016, when IPATH reported 520 tips compared to the NHTH’s 84 reported calls (See Indiana: Chart 1, Indiana: Chart 2).

The Indiana Office of the Attorney General states: “Not all of these reports were confirmed to be human trafficking and there is the possibility of duplicate notifications.”

States like Indiana, with established means of fielding human trafficking tips, are more likely to report fewer suspected trafficking cases to the national hotline. Thus, despite a lack of concrete data, the number of probable human trafficking cases in Indiana likely exceeds the number of reports fielded by the National Human Trafficking Hotline—as indicated by statistics offered by IPATH (see Indiana: Chart 2). Unlike the Polaris Project’s hotline and the IPATH estimates, the FBI’s Uniform Crime Report indicates very few cases of human trafficking in Indiana from 2012 to 2018.

*Uniform Crime Report Statistics:*

The Arrests by Crime Report for the state of Indiana enforces the trends evident in the Illinois statistics. While more than half of the Indiana’s agencies participated in the 2018 report, only six human trafficking-related arrests were reported (see “Arrests by Crime: Indiana” Chart). Prior to 2018, no other trafficking-related arrests were reported to the FBI. However, high numbers of arrests for related offenses were consistently reported. While this may indicate that traffickers were initially arrested for non-trafficking offenses and later convicted of a human trafficking offense after an investigation and court proceedings, it may also simply indicate that other sex offenses occur at high rates in Indiana. Notably, like Illinois’ “Arrests by Crime” data, Indiana’s statistics show an almost yearly decrease in the number of “prostitution and commercialized vice” and other “sex offenses” arrests (see “Arrests by Crime: Indiana” Chart).
In both 2012 and 2013, more than 1,100 “sex offenses” were reported in Indiana. In 2017 and 2018, the reported arrests dropped to 536 and 627, respectively. The same trends are evident in reported “prostitution and commercialized vice” arrests, with arrests reports decreasing from 2012 to 2018. Thus, even if the low number of trafficking-related arrests could be justified through high reports of other related offenses, the FBI’s Uniform Crime Report would likely underestimate the total trafficking-related offenses in the state of Indiana. Statistical trends evident in every offense examined in the preceding chart indicate the need for enforced

**Michigan Estimates and Statistics**

*Hotline Estimates:*

Michigan trafficking estimates further trends made evident in the analysis of both Illinois and Indiana. According to the National Human Trafficking Hotline, the number of estimated human trafficking cases in Michigan increased annually from 2012 to 2018 (see Michigan: Chart 1). The largest year-to-year incremental change occurred between 2015 and 2016, when the total number of cases increased by nearly 100. Similarly, in 2018, Michigan reported a similar rise with 78 more cases than the previous year. Each of these statistical leaps aligns with trends evident in both Illinois’ and Indiana’s statistics. Of the five states included in this analysis, only Ohio consistently reported more human trafficking cases to the Polaris Project’s hotline (see Ohio: Chart 1).

From 2012 to 2018, Michigan consistently reported higher numbers of potential human trafficking cases
than the majority of states. In 2012, the mitten state reported the 15th most cases (69) in the United States. From 2013 to 2014 Michigan climbed to the 12th position on the Polaris Project’s report with 117 and 135 cases reported, respectively. Michigan rose to 8th [151 cases in 2015] and 7th [249 cases in 2016] before settling in the 6th position in 2017 and 2018.xxxvii The high year-to-year estimates reported in Michigan are likely sufficient reasons for concern. However, these estimates are far from concrete, making it difficult to determine the true prevalence of human trafficking in the state. Furthermore, the FBI’s Uniform Crime Report does little to solidify these estimates.

*Uniform Crime Report Statistics:*

Like the previously examined states, the Uniform Crime Report’s statistics for Michigan reveal incredibly low numbers of trafficking-related arrests. No trafficking arrests were reported until 2018, when three traffickers were arrested for involuntary servitude (see “Arrests by Crime: Michigan” Chart). Despite low arrest reports, Michigan agencies participated in the UCR at a much higher rate than all Great Lakes states, apart from Wisconsin. In 2018, 87% of Michigan agencies participated in the FBI’s report (see “Arrests by Crime: Michigan” Chart). The state’s high participation rate makes Michigan’s trafficking-related arrest reports more reliable than reports offered by the previous states.

Even so, the high reports of other related arrests—namely, “prostitution and commercialized vice” and other “sex offenses”—may play a role in distorting the actual number of human traffickers arrested by Michigan agencies. In some cases, a trafficker might be arrested for a lesser sex offense before law enforcement determines the offender’s role in a sex trafficking operation. When this occurs, the offender would then be charged—not necessarily arrested—for the excess offenses, and then, potentially, convicted of trafficking-related charges.
Since the Uniform Crime Report does not include specific charge or conviction statistics, it is difficult to interpret the actual number of human traffickers detained and held legally responsible for their crimes in any given state. Because of this, I submit that a re-structured Uniform Crime Report include the number of trafficking-related charges and convictions in every state. Uniform trafficking reports are essential to understanding the trafficking industry in the United States and bettering anti-trafficking efforts.
Ohio Estimates and Statistics

Hotline Estimates

Similar to Michigan, Ohio consistently reports high numbers of human trafficking cases in comparison to the rest of the United States. Ohio reported the fourth most cases in the U.S. from 2015 to 2017. During this period the only states with more trafficking cases reported were three key southern border immigration states: California, Texas, and Florida. In 2018, Ohio dropped one spot to the fifth position as New York rose to the fourth place rank. Ohio’s consistently high rankings are alarming, and the state’s close proximity to the statistics of California, Florida, Texas, and New York remain both concerning and perplexing.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Human Trafficking Cases Reported in Ohio</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>81</td>
</tr>
<tr>
<td>2013</td>
<td>137</td>
</tr>
<tr>
<td>2014</td>
<td>158</td>
</tr>
<tr>
<td>2015</td>
<td>289</td>
</tr>
<tr>
<td>2016</td>
<td>375</td>
</tr>
<tr>
<td>2017</td>
<td>365</td>
</tr>
<tr>
<td>2018</td>
<td>443</td>
</tr>
</tbody>
</table>

(Data from the National Human Trafficking Hotline)

Ohio: Chart 1

California, Florida, and Texas report a high number of human trafficking cases annually for similar reasons. These three states make up a sizable portion of the United States’ southern border and, thus, house substantial immigrant populations. According to Human Trafficking Search (HTS), “Traffickers are drawn to California because of its large immigrant population and booming global economy... Many traffickers come to California because of easy access to the California-Mexico border.” While sex trafficking remains prominent in Californian cities like Los Angeles, forced labor—or slave labor—also persists in Californian agriculture. Although Texas also reports high rates of labor trafficking, HTS indicates that runaways may in fact make up the largest percentage of trafficking victims in the
state. Michelle Lillie states:

“Houston is home to almost 6,000 runaway minors and an estimated 1 in 3 runaways are lured in sex trafficking within 48 hours of running away from home.”

Florida and New York share multiple characteristics that appeal to human traffickers. Both states are home to high immigrant populations and large cities. The “close proximity of international ports and... concentration of many formal and informal industries where severe labor rights violations can go undetected” also assist traffickers.

Three key characteristics are shared by the states producing the highest number of human trafficking cases each year: 1) each state makes up a portion of the nation’s southern border 2) each state houses high immigrant populations, and 3) each state is home to multiple high population cities. While Ohio does account for a portion of the U.S.’s northern border, the main characteristic Ohio shares with California, Texas, Florida, and New York is that the state is home to multiple high population cities like Columbus, Cleveland, and Cincinnati. While the overall state population clearly plays a role in the number of calls received by the NHTH, the distribution of a state’s population undoubtedly influences traffickers’ decision-making.
Uniform Crime Report Statistics

The Uniform Crime statistics for the state of Ohio solidify the trend set by the previously examined states. In Ohio, only one human trafficking-related arrest was reported from 2012 to 2018. The offense—a “human trafficking – commercial sex” offense was reported in 2017 (see “Arrests by Crime: Ohio” chart). Like Indiana, only half of Ohio agencies participated in the 2018 “Arrests by Crime” report. Ohio statistics differ from the previously studied states in one key manner: the number of arrests for “prostitution and commercialized vice” and other “sex
offenses” did not steadily decrease from 2012 to 2018. Instead, reported arrests for these offenses remained fairly consistent until 2018. From 2013 to 2017, more than 1,100 “prostitution and commercialized vice” arrests were reported annually. Likewise, during this period, at least 500 “sex offenses (except rape, and prostitution and commercialized vice)” were reported each year (see “Arrests by Crime: Ohio” Chart). Like all other Great Lakes Region states, the number of trafficking-related arrests reported by Ohio agencies differs greatly from the Polaris Project’s estimates for the state. To offer concrete human trafficking data, the Government must bridge the gap between the high NGO estimates and the low agency reports. Ohio’s estimates and statistics further this assertion.

**Wisconsin Estimates and Statistics**

*Hotline Estimates*

Wisconsin consistently reported fewer human trafficking cases to the HTHL than Illinois, Indiana, Michigan, and Ohio. State population plays a significant role in the low number of reports offered to the NHTH, as Wisconsin’s population is the smallest of the Great Lakes Region states. Wisconsin is home to over 5.8 million persons—almost 1 million fewer than Indiana—making the state nearly half as populous as Michigan, Ohio, and Illinois. When taking each states’ population into consideration, the low number of human trafficking cases reported in Wisconsin becomes less impressive.
Despite the low number of cases reported annually, Wisconsin’s hotline statistics mirror trends noted in previous states’ statistics. When viewing data from 2012 to 2018, a clear distinction is evident between the years 2012 to 2015 and 2016 to 2018. In 2016, the number of reported cases increased by 16, then rose by 25 (2017) and 43 (2018) in subsequent years (See Wisconsin: Chart 1). This trend aligns with the augmentation of reported human trafficking cases in all five states included in this study. The widespread increase in reports during the 2016 to 2018 years may simply indicate a rising awareness of the human trafficking epidemic in the United States. However, there are no clear indications as to why awareness may have suddenly escalated in 2016 as opposed to other years. Legislative changes—like the addition of expungement/vacatur laws or heightening penalty for trafficking in person—occurred in any Great Lakes state in 2016. While the reasoning behind the 2016 spike remains unclear, the overall year-to-year increase in reported cases—a movement evident in the region as a whole—is undoubtedly influenced by rising nation-wide awareness.

**Uniform Crime Report Statistics**

Wisconsin offers, perhaps, the most reliable Uniform Crime statistics of any of the Great Lakes Region states—at least for the FBI’s 2018 report. In 2018, 424 out of 443 Wisconsin agencies participated in the FBI’s “Arrest by Crime” report (see “Arrests by Crime: Wisconsin” Chart). Wisconsin’s nearly perfect participation percentage (95.7%) offers dependable insight
into the number of trafficking-related arrests in 2018. In that year-long span, 18 offenders were arrested for “involuntary servitude” and one was arrested for “commercial sex acts.” However—

<table>
<thead>
<tr>
<th>Year</th>
<th>Offense</th>
<th>Number of Arrests</th>
<th>Number of Participating Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>&quot;Human Trafficking - Involuntary Servitude&quot;</td>
<td>1</td>
<td>424 out of 443 (95.7% Participation)</td>
</tr>
<tr>
<td>2018</td>
<td>&quot;Human Trafficking - Commercial Sex Acts&quot;</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>2018</td>
<td>&quot;Prostitution and Commercialized Vice&quot;</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>2018</td>
<td>&quot;Sex Offenses (Except Rape, and Prostitution and Commercialized Vice)&quot;</td>
<td>1,612</td>
<td>N/A</td>
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<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>2017</td>
<td>&quot;Human Trafficking - Commercial Sex Acts&quot;</td>
<td>0</td>
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<td>452</td>
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<tr>
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<tr>
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<tr>
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<td>0</td>
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<td>&quot;Prostitution and Commercialized Vice&quot;</td>
<td>383</td>
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<td>2012</td>
<td>&quot;Sex Offenses (Except Rape, and Prostitution and Commercialized Vice)&quot;</td>
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<td>N/A</td>
</tr>
</tbody>
</table>

Data taken from the FBI's Uniform Crime Reporting Program (UCR) - "Crime Data Explorer"

as noted in the reports for previous states—some human traffickers might be arrested for other sex offenses and later charged and convicted of trafficking-related offenses. The incredibly high number of arrests reported for “prostitution and commercialized vice” and other “sex offenses” in Wisconsin indicate that a larger number of human traffickers may have processed through the legal system in the state during this seven-year period. Thus, despite the reliable arrests reports offered by Wisconsin in 2018, the state's reporting still reveals the need for a re-structured
Uniform Crime Report that included trafficking-related arrests, charges, and convictions in each state. To offer reliable data, I also content that the Federal Legislature must enforce local agencies’ participation in the Uniform Crime Report.

**Bridging the Gap Between NGOs and the UCR**

The trafficking-related estimates and statistics described above reveal significant issues with the presentation of human trafficking data in the United States in the first two decades of the twenty-first century. The Polaris Project’s estimates lack concrete data and are based on tips offered through phone calls or the Hotline website. The NGO’s estimates are also prone to overestimating trafficking cases, as multiple tips or reports offered by different sources may concern the same, single incident. Likewise, the FBI’s Uniform Crime Report lacks complete participation and, thus, may underestimate human trafficking arrests. The UCR’s “Arrests by Crime” report is also limited in that it does not offer statistics for offenders charged and convicted of human trafficking. Law enforcement might arrest a trafficker for a non-trafficking offense before determining the offender’s role in the trafficking industry, charging him or her of trafficking-related offense, and convicting them of trafficking crimes. Since NGO’s like the Polaris Project do not have access to certain law enforcement data, I submit that the most effective path toward creating reliable, uniform human trafficking statistics must come through the FBI’s Uniform Crime Report.

I contend that Congress must enforce complete local-agency participation in the annual Uniform Crime Report. I believe this enforced participation is not only possible. If advocates of state sovereignty fight against enforced participation, Congress could offer federal funds to states willing to enforce complete participation. In this way, states would be encouraged to participate
if the direct enforcement of participation through legislation is not effective. The FBI must also expand the UCR to include trafficking-related arrests, charges, convictions, and expungements. In doing so, the Federal Government would create a full picture of law enforcement’s handling of the trafficking in persons issue in the United States. The data included in this report would likely act as an informational foundation for anti-trafficking efforts in years to come. While details of these trafficking-related arrests, charges, convictions, and—to some degree—expungements would be available to governmental agencies like the FBI, I submit that only the state totals of each category should be available to the general public. In offering general trafficking-related statistics to the public, the Government would present American voters with the information necessary to practice their democratic duties—such as voting—in an effective manner. By limiting publically accessible data to mere numbers, the identities of trafficking victims would also remain protected.

However, even if these legislative changes were to occur, I assert that the Polaris Project’s Hotline would retain its significance. One of the issues with the current presentation of trafficking data is that the Polaris Project’s “Hotline Statistics” are given unwarranted weight by media and other NGOs. A simple “human trafficking statistics” search on Google reveals how many non-governmental agencies and media sources cite the Polaris Project’s numbers as the authoritative statistics for human trafficking in the United States. However, the Hotline Statistics are mere estimates. As previously noted, Polaris uses the term “case” to describe “...distinct situations of trafficking reported to the hotline. A case can involve one or more potential victims of trafficking and can be reported to the hotline through one or more conversations via call, text, email, online report, or webchat.”\textsuperscript{xliv} Perhaps most importantly, the “Hotline Statistics” do not require the involvement of law enforcement. This last facet of the statistics is what separates the
Polaris Project’s work from the FBI’s Uniform Crime Report. The Hotline Statistics are raw estimates of probable cases of human trafficking in a given state. The Polaris Project may still offer data that the FBI cannot offer, since the FBI would remain limited to reporting confirmed arrests, charges, and convictions of traffickers who were caught. The Hotline offers a glimpse into the potential size of the trafficking industry beyond law enforcement’s current reach. Thus, the Polaris Project’s data is still significant, but it must be given its proper weight in the human trafficking conversation. The Hotline cannot offer concrete statistics; it can only offer estimates of “likely” cases of human trafficking. Polaris Project must reconsider the presentation of their statistics, and emphasize the limits of the Hotline’s estimates. Comparatively, I contend that Congress must enforce complete participation in the Uniform Crime Report (UCR), and the FBI must expand the report to include trafficking-related arrests, charges, convictions, and expungements in each state. These numbers would provide concrete statistics for the trafficking in persons problem in the United States. Although these numbers would not offer a complete picture of the trafficking industry—as many, if not most, traffickers are not arrested, charged, and convicted each year—but these statistics would serve as an informational foundation from which anti-trafficking efforts could build and, in the process, improve the fight against trafficking in persons. In the following section, I delve into a second foundational change that, I contend, might weaken the human trafficking industry in the United States.
The Significance of Victim Rehabilitation

Like the establishment of concrete trafficking statistics, I believe that victim rehabilitation plays an important role in combatting the seemingly growing human trafficking industry in the United States. While “rehabilitation” inherently implies reactivity rather than proactivity, offering survivors opportunities to move past their trafficking experiences and reenter their respective communities proactively keeps trafficking victims from returning to illegal sex or labor industries. Vacatur and expungement laws allow trafficking victims the opportunity to cancel charges and erase records that may have kept them from finding both work and housing. Since a job and a home are essential to rehabilitation, vacatur and expungement laws play a significant and proactive role in the anti-trafficking movement.

The Effects of Trafficking-Related Convictions

Sex trafficking survivors, in particular, suffer greatly from trafficking-related convictions. Kelly is a sex trafficking survivor from California with prostitution convictions on her record. Despite being convicted when she was only 16-years-old, Kelly’s prostitution charges prohibited her from taking any employment opportunity that placed her in close proximity with children. After escaping the trafficking industry in the 1990s, Kelly was unable to expunge her prostitution convictions until 2018. Even with California’s addition of expansive anti-trafficking vacatur and expungement laws in 2015, moving past years of victimization was not an easy legal task for Kelly. “I just won’t ever get a job doing these things,” she said, following the expungement of her records. “Everyone is going to judge me and I have to keep reliving my past.” The lack of
job and housing opportunities are not the only issues trafficking survivors face; they are also forced to deal with extensive mental and emotional pain that comes with seeking legal relief from their past victimization.

Similarly, Jill ³ was subject to human trafficking from 2004 to 2014, compiling a considerable list of arrests and convictions while she victimized. Like Kelly, Jill was arrested and convicted on prostitution charges. However, she was also had “...shoplifting, and other offenses directly related to her trafficking experience” added to her criminal record.⁴⁴⁸ The legislation of the states which Jill was convicted—California and Nevada—granted Jill legal relief from her trafficking-related convictions and her record was sealed with the help of Jill’s attorney.⁴⁴⁹ What is concerning, is the vast differentiation between trafficking-related vacatur and expungement laws in each state. If Jill were convicted of trafficking-related charges in Illinois, Michigan, or Wisconsin; she would have only maintained the option to seek the vacation of her prostitution charges. In each of the aforementioned states, other non-violent offenses are not subject to vacatur or expungement laws, even if they occurred as a direct result of human trafficking. I argue that the inconsistency among state vacatur and expungement laws is extremely problematic, as it offers varying legal remedies to victims who are, at times, transported across state borders without their consent. I also submit that the introduction of uniform, model vacatur and expungement laws might keep trafficking survivors from returning to the trafficking industry after finding that job and housing opportunities are limited because of their trafficking-related convictions. In this way, uniform vacatur and expungement laws with expansive protections for trafficking survivors could play a key role in combatting the growth of the trafficking industry in the United States.

³ Note: The victim’s name was changed for privacy reasons.
Defining Vacatur and Expungement

The terms “vacatur” and “expungement” are often grouped together, particularly in the media’s covering of anti-trafficking efforts in the legal sphere. Yet, there are important differences between these two types of laws—differences that are heightened when considering their impact on trafficking victims. In vacating a judgement, a court may alter a previous ruling by rescinding, “canceling… or render[ing] [the initial judgment] null or void.” In states where vacatur laws apply to trafficking victims, the laws primarily cover prostitution charges and no other non-violent charges often accrued by trafficked victims. In the state of California, vacatur laws allow victims of human trafficking the opportunity to appeal for the dismissal of any non-violent criminal charges earned “while he or she was a victim of human trafficking” (California Code, Penal Code PEN § 236.14). California’s legislature properly acknowledges the controlling role of human traffickers, and offers victims the opportunity to remove from their records the judgement for actions the victims were forced to commit. I contend that future federal legislation covering human trafficking related vacatur laws should mirror the vacatur laws designed by California lawmakers.

Expungement laws, although similar to vacatur laws, provide further separation between an individual and his/her criminal charges. While vacatur laws simply cancel a legal judgement, expungement laws actually delete the record of a judgement. The expungement of a prior conviction erases its record from state or federal records, “direct[ing] the court to treat the criminal conviction as if it had never occurred.” Erasing a trafficking victim’s past convictions is likely to open up job and housing opportunities previously unavailable due to his/her record. In the current hyper-information age, expunging trafficking-related records may offer victims more
promising work and living opportunities than the mere vacation of their charges. However, ideal anti-trafficking legislation would enforce the automatic expungement of trafficking-related records as soon as the vacation of the records is granted. Thus, granting vacatur may allow for a more efficient expungement of criminal records, quickening the full rehabilitation process for victims of human trafficking.

Vacatur and Expungement Laws in the 21st Century

In twenty-first century America, information is a commodity. Unfortunately, this reality often impacts victims of human trafficking in an increasingly negative manner. Victims freed from the human trafficking industry typically enter the free world with a number of criminal convictions. In addition to prostitution charges, trafficked victims often acquire convictions for non-violent crimes. Victims might resort to stealing personal hygiene products like toothpaste, deodorant or tampons; potentially leading to theft charges. Other victims—particularly victims of sex trafficking—are sometimes convicted for criminal possession of a weapon after carrying a knife to protect themselves on the job. Finally, victims of sex-trafficking may be forced into drug addictions by traffickers or pimps hoping to minimize their victims’ ability to fight back, and maximize victims’ seeming reliance on their trafficker for survival. The criminal record accrued by many victims may prevent them from finding opportunities outside of the trafficking industry. In an interview with the Legal Talk Network, Colleen Chien, professor of law at Santa Clara University School of Law, states:

When somebody is trying to make a decision among a lot of candidates, whether it be for a job process or a housing application or some other decision that requires screening a lot of people, [they will] look for whatever data [they] can access. And criminal [data] happens to be accessible at a much higher level than it’s ever been before… [W]hen it’s viewed, it can be factored into a lot of decisions… and [may be used to] put somebody in a category in which they don’t necessarily belong.
With the rising availability of information, including criminal records and “mugshot” images, the significance of vacatur and expungement laws becomes heightened. Individuals forced—either directly or indirectly—to commit non-violent crimes while captive to human traffickers must be offered efficient legal processes to cancel non-violent charges and erase related records. Each state in the Great Lakes Region clings to different vacatur and expungement laws than the rest of the states in the region. The differences among various states’ laws are problematic, as they offer wide ranging legal relief to individuals forced into similar criminal activity in different states—sometimes a state to which the victim did not willingly travel. The following analysis reveals key differences between trafficking-related vacatur and expungement laws of Great Lakes Region states and concludes with an analysis of California’s model vacatur and expungement legislation. I created charts with key components of each state’s anti-trafficking vacatur and expungement laws to simplify the presentation of these complex laws.

**Illinois Vacatur and Expungement Laws**

Illinois’ vacatur and expungement laws for victims of human trafficking are limited in that they require victims to go through a lengthy rehabilitation process between they can seek vacatur of convictions for their trafficking-related offenses. According to Illinois Compiled Statutes, vacatur laws for human trafficking victims specifically apply to:
“(a) Any person who knowingly performs, offers or agrees to perform any act of sexual penetration as defined in Section 11-0.1 of this Code for anything of value, or any touching or fondling of the sex organs of one person by another person, for anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution” (720 ILCS 5/11-14).lvii

<table>
<thead>
<tr>
<th>VACATUR AND EXPUNGEMENT LAWS - ILLINOIS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Do state vacatur laws applicable to (adult) victims of human trafficking exist?</strong></td>
</tr>
<tr>
<td>Yes. 725 ILCS 5/116-2.1</td>
</tr>
</tbody>
</table>

*AEmphasis within quotations added*

Section 11-14 references victims of human trafficking, stating:

“_it is an affirmative defense to a charge under this Section that the accused engaged in or performed prostitution as a result of being a victim of involuntary servitude or trafficking in persons as defined in Section 10-9 of this Code” (720 ILCS 5/11-14 [c-5]).lviii
Section 11-14 continues to describe the manner in which cases involving juvenile victims of human trafficking should be handled. According to Illinois state law, if “a person suspected of or charged with” prostitution is under 18 years of age, “that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of... the Juvenile Court Act of 1987” (720 ILCS 5/11 [d]). Illinois legislation clearly distinguishes between adults and minors when referencing prostitution, human trafficking, and vacatur laws applicable to each of these crimes. Illinois Compiled Statutes lack clarity, however, regarding the timeline in which an individual seeks a vacatur of convictions, in particular. ... In Illinois, the expungement of records is available in a number of situations. Petitioners can seek expungement of a record when his/her "arrest or charge not initiated by arrest...” resulted in:

- “acquittal, dismissal, or the petitioner's release without charging...
- a conviction which was vacated or reversed” or,
- “an order of supervision and such supervision was successfully completed by the petitioner... or an order of qualified probation... and such probation was successfully completed by the petitioner” (20 ILCS 2630/5.2 - (b) [1]).

In Illinois Legislation, the expungement process is directly linked to vacatur processes. According to state law, the vacatur of a conviction can initiate the expungement process. Unlike some states, the vacatur of a conviction in Illinois does not, however, directly result in the sealing of records. Trafficking victims who receive a vacatur of convictions must then petition for expungement. In most cases, the expungement of records is not available until the trafficking victim is two-years removed from the supervision of a court-accepted supervisor (20 ILCS 2630/5.2 - (b) [2, i]). Trafficking victims are expected to seek “assistance in addressing the
trauma associated with being trafficked” prior to seeking the vacatur or expungement of their
criminal records (725 ILCS 5/116-2.1, 3).\textsuperscript{lxii} Illinois law effectively forces freed trafficking
survivors to follow a legal timeline that likely limits the survivors’ work opportunities and
housing options for at least a two-year span. Overall, the state’s vacatur and expungement laws
do not bode well for the rehabilitation of trafficking victims. The lack of direct connectivity
between vacatur and expungement processes lengthens the time between an individual’s escape
from the trafficking industry and their obtaining of a clean (legal) slate.

**Indiana Vacatur and Expungement Laws**

Indiana vacatur and expungement laws are even more restrictive than those of Illinois,
although the lengthy wait-time between conviction and the application of vacatur laws does not
exist. Indiana Law allows trafficking adult trafficking victims to seek vacatur of convictions in
which: the victim “did not [cause] bodily injury to another person” and can prove “by a
preponderance of the evidence” (more than 50% chance the claim is true) that:

1. they were “a trafficked person at the time [of] the offense...”

2. “the offense did not [cause] bodily injury to another person...” and,

3. they were “coerced... or under the control of another person” when they
   committed the offense (IC § 35-38-10-2).\textsuperscript{lxiii}

The Indiana Code offers broad vacatur opportunities for trafficking victims, not limiting
the coverage of vacatur laws to prostitution charges alone. Rather, trafficking victim who meets
the requirements of Indiana Code § 35-38-10-2 may seek vacatur of all non-violent convictions
on their record. Indiana vacatur law closely reflects California law, but with one significant
exception. California vacatur laws can dismiss any non-violent criminal charges the movant
earned “while he or she was a victim of human trafficking” (California Code, Penal Code PEN § 236.14).³xiv Contrastingly, Indiana Code requires that the movant (victim applying to or petitioning the court) have been “coerced… or under the control of another person” when the offense occurred (IC § 35-38-10-2).³xiv This requirement forces victims to convince the court, by

<table>
<thead>
<tr>
<th>VACATUR AND EXPUNGEMENT LAWS - INDIANA</th>
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</thead>
<tbody>
<tr>
<td>Do state vacatur laws applicable to (adult victims of human trafficking exist?</td>
</tr>
<tr>
<td>Yes. IC § 35-38-10-2</td>
</tr>
<tr>
<td>*Vacating conviction of trafficked person; requirements... Sec. 2. A person who committed an offense that did not result in bodily injury to another person is entitled to have the person’s conviction vacated if the person proves by a preponderance of the evidence that: (1) the person was a trafficked person at the time the person committed the offense; (2) the offense did not result in bodily injury to another person; and (3) at the time the person committed the offense, the person was: (A) coerced; or (B) under the control of another person.</td>
</tr>
</tbody>
</table>

*Emphasis within quotations added

a preponderance of evidence, that an action—which may have occurred years before the victim’s petition—was committed while the victim was under the control or coercion of their trafficker. Even if the petitioner proves they were a victim of human trafficking at the time of the arrest, they may not be able to prove they were under direct control or coercion when they committed
the illegal act. The inclusion of such stipulations may prevent a high percentage of trafficking
victims from receiving the benefits of trafficking related vacatur laws. In some instances,
stipulations like the ones found in Indiana’s vacatur statute may keep trafficking victims from
even attempting to petition for vacatur of convictions earned during their victimization.
Interestingly, the same stipulations included in the code covering vacating convictions for adult
victims/offenders are included in the law covering vacating convictions for juvenile
victims/offenders (IC § 31-37-22-11). This, too, is concerning. The trafficking industry
exists through force, fraud, and coercion; often meaning that minors are more susceptible to
victimization. Indiana Legislators’ decision to hold juveniles to the same expectations as adult
victims/offenders is problematic, and should change. Even so, Indiana’s vacatur and
expungement laws for adult victims are much more expansive than other Great Lakes states’
legislation. By offering vacatur of convictions for non-violent crimes—not only prostitution—
Indian offers trafficking survivors the opportunity to vacate and expunge a vast number of crimes
committed as a result of their being trafficking.

**Michigan Vacatur and Expungement Laws**

Michigan vacatur and expungement laws closely resemble those of Illinois, in that there
is a concrete waiting period between a victim's conviction and their ability to seek a vacatur of
the trafficking-related conviction. Michigan legislation is also problematic in that it limits
vacatur of convictions to prostitution offenses. According to Section 780.621 of Michigan
Compiled Laws, victims of human trafficking (of 16 or more years of age) may apply for the
vacation of a number of convictions including:
- “...accost[ing], solicit[ing], or invit[ing] another person... to commit prostitution or to do any other lewd or immoral act” (MCL 750.448).

- “...receiv[ing] or admit[ting] to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, or who knowingly permits a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation...” (MCL 750.449).

- “...aid[ing], assist[ing], or abet[ting] another person to commit or offer to commit an act prohibited under section 448, 449, or 449a...” (MCL 750.450).

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**VACATUR AND EXPUNGEMENT LAWS - MICHIGAN**

<table>
<thead>
<tr>
<th>Do state vacatur laws applicable to (adult) victims of human trafficking exist?</th>
<th>Do state vacatur laws applicable to juvenile victims of human trafficking exist?</th>
<th>Can the vacatur / expungement of charges / records occur in a single legal proceeding?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. MCL 780.621 (4) <em>(4) A person who is convicted of a violation of section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local ordinance substantially corresponding to section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.</em></td>
<td>Yes. MCL 712A.18e <em>(Application for entry of order setting aside adjudication... ... (1) ...a person who has been adjudicated of not more than 1 juvenile offense that would be a felony if committed by an adult and not more than 3 juvenile offenses of which not more than 1 may be a juvenile offense that would be a felony if committed by an adult and who has no felony convictions may file an application with the adjudicating court or adjudicating courts for the entry of an order setting aside the adjudications...)</em></td>
<td>Yes. (although there remains a one-year waiting period before vacatur availability.)</td>
</tr>
</tbody>
</table>

*Emphasis within quotations added*
Notably, Michigan vacatur laws do not cover non-violent crimes, outside the realm of prostitution, for adults. The broad construction of section 712.A18e leaves room for the potential vacatur of non-violent crimes committed by trafficking victims when the victim was 16 or less years of age. As Shared Hope International indicates, “...only prostitution-related offenses may be vacated as a right; vacatur of other offenses is a conditional privilege” [emphasis added]. However, in Michigan, vacatur of the previously described offenses automatically results in the sealing of records. The automatic sealing of vacated offenses removed the need for trafficking-related expungement laws in state legislation. I believe the direct connectivity between vacatur laws and the sealing of records bodes well for survivors of human trafficking. However, Michigan Legislators’ failure to incorporate the vacatur of non-violent crimes for trafficking victims is concerning. If victims of human trafficking are forced—either directly or indirectly—to steal for their own health or survival or, or illegally obtain a weapon for their own safety, vacatur laws should offer victims the opportunity to remove these charges.

Ohio Vacatur and Expungement Laws

Ohio vacatur and expungement laws bring an important facet of legislation to the conversation of anti-trafficking efforts. That is, that as long as expungement laws for trafficked victims exist, vacatur laws are not entirely necessary. Shared Hope International notes that the Ohio Revised Code “does not mandate a waiting period [for expungement applications], and makes vacatur automatic upon granting expungement.” Ohio state law offers trafficked
survivors convicted of either solicitation, loitering to engage in solicitation, or prostitution the opportunity to apply for the expungement of convictions incurred as a result of their trafficking victimization. While violations of sections 2907.24, 2907.241, or 2907.25 are noted as requirements for expungement applications, Ohio law states that “the record of conviction of any offense” can be expunged [aside from aggravated murder, murder, or rape] (Ohio R.C. § 2953.38). This wide coverage of convictions lets trafficked survivors remove all other records of convictions through the expungement process.

<table>
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</thead>
<tbody>
<tr>
<td>Do state vacatur laws applicable to (adult) victims of human trafficking exist?</td>
</tr>
<tr>
<td>No--not specifically vacatur laws. However, expungement laws are available to trafficking victims. Ohio R.C. § 2953.38 <em>(Any person who is or was convicted of a violation of section 2907.24 (Soliciting), 2907.241 (Loitering to Engage in Solicitation), or 2907.25 (Prostitution) of the Revised Code may apply to the sentencing court for the expungement of the record of conviction of any offense, other than a record of conviction of a violation of section 2903.01 (Aggravated Murder), 2903.02 (Murder), or 2907.02 (Rape) of the Revised Code, the person's participation in which was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application may request an order to expunge the record of conviction for more than one offense, but if it does, the court shall consider the request for each offense separately as if a separate application had been made for each offense...)</em></td>
</tr>
</tbody>
</table>

*Emphasis within quotations added*
Like Indiana, Ohio law requires applicants to “demonstrat[e] by a preponderance of the evidence that [their] participation in the offense... was a result of the applicant having been a victim of human trafficking” (2953.38 (E) 1b). Although I do not agree with the inclusion of such a stipulation—as it may be difficult to prove, even when true—Ohio legislators indicate an important comprehension of trafficked victims' lack of control. When reviewing the application, the judge is specifically asked to consider “whether the applicant's judgement or control was impaired by the administration... of any intoxicant, drug, or controlled substance, and the threat of withholding... food, water, or any drug” (2953.38 (E) 2a). These indirect forms of trafficker-control must be considered when asking whether an applicant committed a violation as “a result of...having been a victim of human trafficking” (Ohio R.C. § 2953.38).

**Wisconsin Vacatur and Expungement Laws**

In Wisconsin state law, vacatur and expungement are directly referenced in a shared statute (973.015). A judge may order vacatur of convictions and expungement of records in the same legal proceeding, allowing efficient reparations to be made to victims of sex trafficking. Yet, Wisconsin's trafficking-related vacatur and expungement statute directly indicates a major fault in many states' framing of the human trafficking epidemic in the United States. Of the states in the Great Lakes Region, Wisconsin legislators are the only ones who specifically reference solely victims of sex trafficking in trafficking-related vacatur and expungement laws. Others do so indirectly by only allowing the expungement of violations like prostitution and solicitation.
Like all states who limit expungement applications to these violations, Wisconsin fails to properly address the issue of labor trafficking. Victims of labor trafficking may be directly or indirectly forced—like sex trafficking victims—to commit non-violent crimes in order to survive the inhumane supervision provided by their traffickers or overseers. The exclusion of labor trafficking victims is yet another reason to legally allow survivors of human trafficking to apply for the expungement of all non-violent crimes committed during their victimization.

**VACATUR AND EXPUNGEMENT LAWS - WISCONSIN**

<table>
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<tr>
<th>Do state vacatur laws applicable to (adult) victims of human trafficking exist?</th>
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<th>Can the vacatur / expungement of charges / records occur in a single legal proceeding?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Wis. Stat. 973.015 (2m) At any time after a person has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for a violation of s. 944.30, a court may, upon the motion of the person, vacate the conviction, adjudication, or finding, or may order that the record of the violation of s. 944.30 (prostitution) be expunged, if all of the following apply:</td>
<td>Yes. Wis. Stat. 973.015 specifically references &quot;adjudicated delinquent.&quot;</td>
<td>Yes (973.015).</td>
</tr>
<tr>
<td>(a) The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC 7101 to 7112.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) The person committed the violation of s. 944.30 as a result of being a victim of trafficking for the purposes of a commercial sex act.</td>
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<td></td>
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<tr>
<td>(c) The person submitted a motion that complies with s. 971.30, that contains a statement of facts and, if applicable, the reason the person did not previously raise an affirmative defense under s. 939.46 or allege that the violation was committed as a result of being a victim of trafficking for the purposes of a commercial sex act.</td>
<td></td>
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</tr>
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</table>

*Emphasis within quotations added*
California: Model Vacatur and Expungement Legislation

In the state of California, vacatur laws allow victims of human trafficking the opportunity to appeal for the dismissal of any non-violent criminal charges earned “while he or she was a victim of human trafficking” (California Code, Penal Code PEN § 236.14). California vacatur laws require petitioners to “establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking (California Code, Penal Code PEN § 236.14).

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<tr>
<td>Do state vacatur laws applicable to (adult) victims of human trafficking exist?</td>
</tr>
<tr>
<td>Yes. CA Penal Code § 236.14 *(a) If a person was arrested for or convicted of any nonviolent offense committed while he or she was a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of Section 647, the person may petition the court for vacatur relief of his or her convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.</td>
</tr>
<tr>
<td>Yes. CA Penal Code § 236.14 applies to adjudications.</td>
</tr>
<tr>
<td>Yes. (CA Penal Code § 236.14)</td>
</tr>
</tbody>
</table>

*Emphasis within quotations added

State legislation allows petitioners to seek the vacatur of most non-violent convictions, providing a list of excluded offenses in the concluding portion of Section 236.14. This allows not only victims of sex trafficking, but also victims of labor trafficking the chance to receive vacatur of convictions and expungement of records accrued because of their
victimization by the trafficking industry. California’s legislature properly acknowledges the controlling role of human traffickers, and offers victims the opportunity to remove from their records the judgement for actions the victims were forced to commit. California’s vacatur law “...does not mandate a waiting period,” and “…record expungement is automatic upon granting vacatur.” I contend that future federal legislation covering human trafficking related vacatur laws should mirror the vacatur laws designed by California lawmakers. At the close of the following section, I offer a brief general overview of what might be included in model vacatur and expungement legislation.

IV. CONCLUSION

TAKING ACTION: A TWO-PART RESPONSE

State and Federal Roles in Criminal Law

To properly consider the manner in which uniform trafficking data and vacatur and expungement laws should originate in the United States, I first considered the traditional jurisdiction of criminal law in the United States. Understanding the traditional roles of the federal and state governments is essential in determining how the government can offer necessary legal provisions to victims of human trafficking. Due our nation’s division of powers—which shape the roles and trends of national and state jurisdictions—enforced participation in the Uniform Crime Report and consistent trafficking-related vacatur and expungement laws must come about through separate means. I argue that Congress should enforce complete participation in the Uniform Crime Report, so as to provide concrete trafficking-related arrest statistics throughout the nation. To create uniform vacatur and
expungement laws, I argue that the Uniform State Law Commission should draft expansive vacatur and expungement laws that states may then adopt for the sake of the trafficking victims within their borders.

My reason for seeking each of these legislative changes through differing processes is largely due to the traditional roles of the federal and state governments. The birth of the U.S. Constitution in 1787 established a limited government in which the Nation shared power with the States. However, certain authorities granted by the Constitution, to either the Nation or the States, lack clarity and provoke continuous debate surrounding the roles of the Federal and State governments. The Supremacy Clause of the U.S. Constitution institutes the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States [as] the supreme Law of the Land.” The final portion of the Supremacy Clause states that “...the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” In effect, the Supremacy Clause indicates an intention to create a nation bound, at least in part, by a single, uniform code.

The legal effect of the Supremacy Clause is an adherence to what is often called the “preemption doctrine.” The preemption doctrine holds that “certain matters have such a national character that federal laws must supersede state laws.” If national matter surfaces—such as a seeming rise in the trafficking of persons throughout the country—then legislation passed by Congress usurps any conflicting state-level legislation. When this occurs, trafficking-related Federal law becomes the foundation on which all related State laws are formed. States may offer more legal provisions for Americans living within their borders; but States cannot offer less provisions. For example, if Congress were to create federal vacatur and expungement laws for
trafficking victims, then states must acknowledge the provisions of those laws as the minimum requirement for State vacatur and expungement processes related to trafficking victims. Federal law establishes a legislative floor. States may heighten the ceiling through the addition of more expansive provisions—so long as they adhere to the Constitution. Thus, in theory, forming model vacatur and expungement laws at the Federal level would improve legal provisions for and, thus, the rehabilitation of trafficking victims in the United States. Unfortunately, the States are traditionally granted the power to determine criminal law.

The fact that States have, traditionally, held jurisdiction over criminal law is largely due to the Constitution’s Tenth Amendment. The Tenth Amendment establishes that, “...powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Since countless modern issues are not referenced in the Constitution, the States often interpret the Tenth Amendment as granting them legislative jurisdiction over a number of legal areas. Specifically, the States have embraced the general authority to define and punish crimes. Since the Constitution only explicitly grants the Federal Government criminal jurisdiction over a handful of crimes—treason (Art. III § 3), piracy, and counterfeiting (Art. I § 8)—the powers to determine other criminal law “are reserved to the States.”

Rachel Barkow—Professor at New York University School of Law—acknowledges another, practical reason for States’ jurisdiction over criminal law. Barkow writes, “[S]tates have the primary responsibility for law enforcement in the United States and typically must pay the incarceration costs for those prosecuted, whether by local-level or state-level prosecutors.” Since States are forced to fund their own prisons, they prefer to control the laws that determine whether a person is incarcerated. Notably, the cause for which I am advocating—namely,
improved and uniform vacatur and expungement laws for trafficking victims—would not increase incarceration costs for states. In truth, vacatur and expungement laws deal with the very opposite action, as they lessen punitive measures. However, increasing the role of the Federal Government in defining and enforcing criminal law is viewed as a slippery slope. Academics and judges alike already believe that crime in the United States is “overfederalized.” Thus, it is very unlikely that Congress is the best channel for the introduction of uniform anti-trafficking laws. Instead, the Uniform Law Commission provides a better route for the introduction of such laws.

Answering the Call for Uniform Vacatur and Expungement Laws: The ULC

The Uniform Law Commission (ULC) is a non-profit organization tasked with drafting model laws for the States to adopt individually. The ULC “studies and reviews the law of the States to determine which areas of law should be uniform.” When the ULC recognizes an area of law in which consistency among states might be beneficial, the organization creates and proposes model legislation. Each state may then adopt the proposed law. It is important to note that no states are required to adopt laws proposed by the Commission. The process by which the majority of the States adopt uniform legislation may be slow. Even so, many ULC acts have seen quick, large-scale success over the years. The Commission’s “Controlled Substance Act” has been adopted by 36 of the U.S.’s states and providences. The majority (22) of the states and providences adopted the Controlled Substance Act within two years of the ULC’s proposal. While the ULC cannot guarantee efficient adoption of the laws they draft, the history of many of their legislative ventures indicates the States’ desire to move toward uniformity without Federal intrusion. The States do not advocate for variety; they advocate for sovereignty. When it comes
to criminal law, it is evident that each state wants the final word on legislation within their borders. Because of this, states are more likely to adopt ULC laws and enact legislation on their own terms. I believe this is true for trafficking related vacatur and expungement laws.

The ULC deals, inherently, with interstate legal issues. Human trafficking is an interstate legal issue. Trafficking, at its core, involves transfer—often across state borders, and likely with the consideration of varying state laws penalizing traffickers and their victims. The ULC must take note of the rising estimates of trafficking in persons. Since its formation, the ULC has successfully drafted and proposed legislation including, but not limited to: The Attendance of Out-of-State Witnesses Act, Adult Guardianship and Protective Proceedings Jurisdiction Act, and The Controlled Substances Act—all of which provided consistent legislation in areas where a lack of uniform laws impacted the lives of Americans. One act in particular—the Uniform Criminal Records Accuracy Act (UCRAA)—is especially pertinent to the topic of this paper. The UCRAA was completed by the ULC in 2018, and deals with legal issues directly related to the experiences of many human trafficking survivors. The ULC states:

“The [UCRAA] is designed to improve the accuracy of criminal history records, commonly called a rap sheet, that are frequently used in determining the eligibility of a person for employment, housing, credit, and licensing, in addition to law enforcement purposes. The act imposes duties on governmental law enforcement agencies and courts that collect, store and use criminal history records, to ensure the accuracy of the information contained in the rap sheet.”

The UCRAA’s consideration of how an individual’s criminal record impacts their employment and housing opportunities must be applied to the legal standing of trafficking victims. While the UCRAA seeks “to improve the accuracy” of such records, an act including uniform vacatur and expungement laws could improve the application of trafficking-related laws. Victims of human trafficking should not suffer long-standing punitive damages for crimes committed while under the control or coercion of their traffickers. The Uniform Law
Commission should draft and propose an act including model vacatur and expungement laws for victims of human trafficking. The ULC has found success in forming similar legislation in the past, and their ability to offer, to the States, continued sovereignty over criminal law makes the UCL the most likely channel through which the introduction of such legislation might be successful.

Shaping Legislation to Remodel the FBI’s Uniform Crime Report

The Uniform Criminal Records Accuracy Act also offers an outline for potential legislation concerning the presentation of human trafficking data in the United States. Since the Uniform Crime Report (UCR) is run by a Federal Agency (the Federal Bureau of Investigation), forcing complete participation in the UCR cannot come through a States-centered commission like the Uniform Law Commission (ULC). The enforcement of complete participation must come through Congress. Nevertheless, the focus on accurate, uniform data presentation in the Uniform Criminal Records Accuracy Act (UCRAA) could be applied to federal legislation enforcing state and local participation in the FBI’s annual Uniform Crime Report.

The Federal Government must create a full picture of law enforcement’s handling of the trafficking in persons issue in the United States. As previously noted, I assert that the construction of this data occur through the already existing Uniform Crime Reporting System run by the FBI. However, if the Uniform Crime Report were expanded to include data regarding trafficking-related arrests, charges, convictions, and expungements; then certain considerations must be made to protect the privacy of trafficking victims while also clearly presenting data to the people of the United States. Transparency is essential in a democracy, but I do not believe that details of trafficking cases must be included in the publicly accessible portion of the FBI’s
UCR. Dissemination of confidential, personal information of offenders and victims is not necessary in providing transparent human trafficking data. Rather, I contend that the only data the FBI should present to the public are the number of trafficking-related arrests, convictions, and expungements in each state. By offering general trafficking-related statistics to the public, the government would present American voters with the information necessary to effectively practice their democratic duties. Details of these arrests, convictions, and expungement processes should not be required to be made public, but necessary governmental agencies should be able to receive more detailed information according to the guidelines. City or county-specific data would then be available to whatever governmental agencies are deemed necessary recipients by either Congress or the FBI. This would promote interagency work while also protecting the personal information of the offenders and victims. It is my contention that a re-structured Uniform Crime Report would act as the informational foundation for governmental anti-trafficking efforts for years to come.

The inherently deceptive nature of the trafficking industry makes it impossible to know the true magnitude of the United States’ human trafficking problem. However, enforcing full participation in a revamped Uniform Crime Report and forming uniform vacatur and expungement laws through the ULC are, I believe, the first two steps toward improving anti-trafficking efforts in the United States. Prior to the 2017 authorization of the Trafficking Victims Protection Act, the U.S. Government had largely failed to acknowledge the need for concrete human trafficking statistics and improved victim rehabilitation. In 2019, the acknowledgements made in the 2017 TVPA have yet to provoke large-scale change in America’s fight against trafficking in persons. The anti-trafficking movement is time-sensitive, and the introduction of improved, effective anti-trafficking legislation must come quickly. The human trafficking
problem in the U.S. is significant, and any actions taken to combat this problem must work to: 1. Determine the severity of the trafficking problem, 2. Halt the growth of the trafficking industry, and 3. Provide legal relief for survivors of human trafficking. It is my assertion that the two aforementioned actions—namely, the formation of uniform vacatur and expungement laws for trafficking victims and the enforcement of Uniform Crime Report participation [as well as the reshaping of UCR data presentation)—would form an effective foundation for future anti-trafficking efforts.
RESHAPING THE UNITED STATES’ ANTI-TRAFFICKING LEGISLATION

Notes


xiii Ibid, 3.


Ibid, 7.

Ibid, 21.


Bromfield, “Sex Slavery and Sex Trafficking of Women in the United States,” 134.


Jesica Emerson and Alison Aminzada 239-240

Ibid.


“Uniform Crime Reporting (UCR) Program.”


Ibid, 7.

Ibid.

“Ibid.”


Ibid.

Ibid.


Lillie, “Top 3 States for Human Trafficking.”

Ibid.


The Polaris Project the American Bar Association, Brooklyn Law School, and the University of Baltimore School of Law, State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking, 9.
RESHAPING THE UNITED STATES’ ANTI-TRAFFICKING LEGISLATION

xlviii Ibid, 11.

xl ix Ibid, 11.


lvii 720 ILCS 5/11-14

lviii 720 ILCS 5/11-14 [c-5]

lix 720 ILCS 5/11 [d]

lx 20 ILCS 2630/5.2 - (b) [1]

lxi 20 ILCS 2630/5.2 - (b) [2, i]

lxii 725 ILCS 5/116-2.1, 3

lxiii IC § 35-38-10-2

lxiv California Code, Penal Code PEN § 236.14

lxv IC § 35-38-10-2
lxxi IC § 31-37-22-11
lxxii MCL § 750.448
lxxiii MCL § 750.449
lxxiv MCL § 750.450

lxxvi Ibid.
lxxvii Ibid.
lxxviii Ohio R.C. § 2953.38
lxxix Ohio R.C. § 2953.38 (E) 1b
lxxxi Ohio R.C § 2953.38 (E) 2a
lxxi Ohio R.C. § 2953.38
lxxx Ohio R.C. § 2953.38
lxxiv Wis. Stat. § 973.015
lxxv California Code, Penal Code PEN § 236.14

lxxii U.S. Const. art. VI.
lxxiii Ibid.
lxxv U.S. Const. amend. X.
lxxvi U.S. Const. amend. X.


Bibliography


