

BY FORCE OR BY CHOICE:
EXPLORING CONTEMPORARY TARGETED TRAFFICKING
OF NATIVE PEOPLES

by

April Dama Jackson Petillo

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As members of the Dissertation Committee, we certify that we have read the dissertation prepared by April D. J. Petillo, titled *By Force or By Choice: Exploring Contemporary Targeted Trafficking of Native Peoples* and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

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DEDICATION

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Abstract

Targeted U.S. domestic sex trafficking of Native peoples has been documented since the time of Custer (Deer 2010, Smith 2005, Smith 2003). According to a few, geographically specific studies this practice continues today (Juran, et al 2014, Minnesota Indian Women's Sexual Assault Coalition 2011, Pierce and Minnesota Indian Women's Resource Center 2009). The Trafficking Victims Protection Act of 2000 (TVPA), its subsequent reauthorizations and the Violence Against Women's Act (VAWA) 2013 reauthorization have encouraged activists in Indian Country, defined broadly, to believe that a change is possible within the system if they continue to raise the issue. But what if that strategy is flawed? Despite increasing awareness, it is clear that the United States policy environment has not yet experienced any significant change since the introduction of anti-trafficking law in 2000—especially for Native America. Using a tribal, feminist, critical race perspective alongside Native Nation (re)Building theory and a grounded, interdisciplinary focus, this study explores prominent public policy perceptions about how widespread the targeted domestic sex trafficking of Native peoples is in the United States. The first of its kind, this study reaches across broad geography and perspectives to locate synergies and ruptures that may also present opportunities for Native self-determination in creating effective Indian Country solutions. It also offers United States public policy suggestions helpful in addressing anti-trafficking legislative inefficiencies beyond Indian Country generally.

Chapter One

Stories People Tell: An Introduction To Contemporary Targeted Sex Trafficking of Native Peoples

The seeds that began this work were three stories—or moments in stories—that illustrated to me that there was a distinct disconnect between what might be possible what we'd come to accept as possible, in terms of addressing violence against Indigenous women in the United States. Working in and around Indian Country often requires an awareness of the significance of stories, as well as working with and being influenced by great storytellers. You learn that the goal isn't always to get to the point of a story right away, for the ability to ponder, adapt and make the story one's own lesson often takes time.

The first of those influential stories was Elsie Robert's—an orphaned, Native/Black mixed blood survivor of a brutal sexual assault in her teenage years—written as a new image of the Lakota Deer Woman living in the northern plains of the late 60's in Frances Washburn's *Elsie's Business*.¹ Walking with multiple marginalities,² Elsie—whose voice we never actually get to read in the novel—becomes a very visible symbol of crossed boundaries in the Native community in which she lived. In the words of the reader's guide and community grandfather, Oscar DuCharme, "Some rules must not

¹ Frances Washburn. 2006. *Elsie's Business*. Lincoln: University of Nebraska Press.

² Term borrowed from James Diego Vigil's theoretical framework which can be loosely defined as an interconnected web of ecological, socioeconomic, cultural, and psychological factors which leave the subject marginalized from the greater society. See James Diego Vigil. 1988. *Barrio Gangs: Street Life and Identity in Southern California*. Austin: University of Texas Press.

be broken. Elsie came to be as the result of broken rules, and then she broke some herself, and that's the heartbreak of it all."³

The second influential story came in the form of a conversation about what could be considered one of the main goals of Native Nation (re)Building. Manley Begay, Jr. shared the experience of presenting to a Native community of leaders about governance and developing a constitution more representative of the needs and understanding of their particular community. This tribe, like many others in the United States, struggled with a mismatched system given to them by the federal government. The existing system was antithetical to their understandings of legitimate leadership—which was more collaborative and without a few “leading figure heads” who made the majority of the decisions. Dr. Begay illustrated his points with numerous stories of Native nations succeeding at nation rebuilding, including constitutional reform, community building and economic sustainability. At the end of the presentation and after a few other comments, one listener stood up. He thanked Dr. Begay with the words, “Thank you and keep ‘em coming. We [in Indian Country] need more stories of hope.”

The last of these influential stories first appeared to me seemingly out of nowhere, though the more I went looking into the contemporary trafficking of Native peoples, the more repeatedly it came up. It is vague, and often spoken or written as an off-hand comment without details, names or even a very specific sense of place. It is the story, or perhaps cautionary tale, of the “boat women”—often referred to by another, much more derogatory term—in

³ Washburn, *Elsie's Business*, 4.

a community wherein Native women were regularly prostituted on boats at a harbor and sometimes forced or coerced their daughters to do the same. The Native community knew about but felt unable to do much to change the situation for the women, their daughters or themselves.

As I engaged the issue of contemporary sex trafficking of Native peoples, these three stories served as touchstones for developing modes of inquiry that asked: Where is the story of hope for the Native women understood as “working” the docks? Are these women contemporary Elsie—stoic, traumatized rule breakers embodying fears and at whom the larger community can suck its collective teeth? Should their stories propel the people who populate and influence the policy environment to create policy that does better? Is the issue large enough to capture the attention of the policy environment in and around Indian Country? These were the curiosities that cleared a path to the research that followed.

Generally speaking, public policy can be thought of as principled political action taken by decision making bodies of sovereign states to address a set of issues in a manner consistent with the state’s laws and customs. More broadly within the sense of governance, policy can be thought of as collected statements of intent to ensure that both subjective and objective decision making aligns with the overarching vision of who and how the overall system knows itself to be. Ideally, policy can not only serve and

protect preemptively; it can also provide stories of hope about who we are and how we prioritize.

In the course of this research, it became apparent that the diversity of Native America precisely means that there is no one story—or even few stories—that might be typical of contemporary targeted sex trafficking in Indian Country. The perceptions of the policy environment influencing Indian Country are that the circumstances vary widely but add up to these realities: it exists; we understand little about it; and the current system is unable to address Indian Country specific needs around it. This dissertation argues that there are indications that the policy environment has both enough incentive to respond and enough options available to address sex trafficking while simultaneously supporting Native self-determination.

I. Background & Problem Statement

The United States seemingly prides itself on vanguarding human rights throughout the world, especially where women and children are concerned, but what about human rights violations within the United States? Commercial sex trafficking of Native women and children⁴ is a place where political status, ethnicity and sometimes gender collide with United States law. The end result appears to specifically target Native peoples for less safety and protection. There has been scant consideration of the

⁴ Recruitment and coercion into commercialized sexual exploitation (CSE) and/or contemporary sex trafficking is not gendered. That said, the majority of data and literature deals specifically with the experiences of women as well as minors of any gender. Throughout this text, the sex trafficking of Native peoples is discussed with this understanding.

contemporary targeted trafficking of Native peoples⁵ throughout Indian Country and particular historical and legal circumstances may encourage broad exploitation of Native women and youth. As with sexual violence policy generally, a criminal jurisdictional maze complicates interventions in Indian Country. Currently, only two Native nations not subject to state law (via PL-280)⁶ have anti-sex trafficking codes. Effectively, in non-PL-280 Native nations without corresponding tribal code—the vast majority of Native communities—trafficking is technically legal. Additionally, United States anti-trafficking law’s international focus is imperfect at best in its effective exclusion of Indian Country. This study is a first of its kind, cross-sectional exploration of influential policy environments’ perceptions about how widespread contemporary targeted sex trafficking of Native people is in Indian Country. This study considers the research question “What is the

⁵ What exists are illuminating studies specific to Minnesota, Alaska and Oregon, of which the first two locations have seen considerable investigative and intervention efforts around sex trafficking of Native peoples in the particular. See generally Alexandra Pierce and the Minnesota Indian Women’s Resource Center. 2009. *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*. Minneapolis, MN: Minnesota Indian Women's Resource Center; Melissa Farley, Nicole Matthews, Sarah Deer, Guadalupe Lopez, Christine Stark, Eileen Hudson, the Minnesota Indian Women's Sexual Assault Coalition and Prostitution Research & Education. 2011. *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*. St. Paul, MN: MIWSAC; Task Force On The Crimes Of Human Trafficking, Promoting Prostitution, and Sex Trafficking. 2013. “2013 State of Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution and Sex Trafficking.” Anchorage, AK: State of Alaska Office of Boards and Commissions and Jason Juran, Joseph Scovel & Hayley Weedn. 2014. “Human Trafficking & Native Peoples in Oregon: A Human Rights Report” *American Indian Law Journal*.” Vol. 3, iss. I Fall 2014, pg. 40-158. Accessed January 13, 2015. [http://www.law.seattleu.edu/Documents/ailj/Fall%202014/AIJ%20Volume%20III-Issue%20I\(0\).pdf](http://www.law.seattleu.edu/Documents/ailj/Fall%202014/AIJ%20Volume%20III-Issue%20I(0).pdf).

⁶ Public Law 83-280, 18 U.S.C. § 1162, 28 U.S.C. § 1360 and 25 U.S.C. §§ 1321–1326 or Public Law 280 (PL-280) transferred federal jurisdiction over criminal offenses in Indian Country so that they were broadly concurrent with the state, for both six mandatory locations and nine states that voluntarily adopted the law.

policy environment perception of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country?”

II. Nature of the Study

As early as 2009 and spurred by reports of Native women unwillingly prostituted across reservation borders,⁷ academics and activists theorized about what this research—originally limited to Minnesota—could mean. While helpful, generally, these studies and similar work⁸ were small and local, mainly produced by service organizations, reliant on law enforcement impressions and not disseminated via scholarly sources.⁹ More recent work, conducted during the same time span as the study discussed here, has only slightly widened the scope and begun to rely on different perspectives. Overall and as a group, they do not provide a broad picture that accounts for regional or cultural diversity or control for change over time. This study and compilation of data, standardized to control for systematic and impressionistic bias, considers perceptions on causes and outcomes of sex trafficking across Indian Country, as well as its extent and historical depth.

This study incorporates a legal, socio-cultural non-empirical assessment of current understandings of sex trafficking in Indian Country

⁷ Pierce and MIWRC, *Shattered Hearts* (2009) and Farley, et. al, *Garden of Truth* (2011)

⁸ Supra footnote 5.

⁹ Alexandra Pierce and Suzanne Koeplinger. 2011. “New Language, Old Problem.” *Violence Against Women Net.org*, http://yawnet.org/summary.php?doc_id=2971&find_type=web_desc_AR (accessed August 27th, 2012).

within particular circles of influence and any intervention approaches, employing the following:

- A tribal feminist critical race legal analysis of public (secondary) data¹⁰ for indicators of sex trafficking of Native peoples.
 - This began with a search for data on the sex trafficking of Native peoples wherein survivors have been specifically recruited because of their ethnoracial identities. While there were some expansive and impressive studies on sexual violence against Native American women and children in the past two decades, few touched on sex trafficking specifically, broadly and substantially. The legal term “trafficking” is relatively new, even as the practice of trafficking is not. There are very few reports that speak to the sex trafficking of Native peoples. This study stands on the shoulders of those reports and focuses the majority of its analysis from where they begin.

Those publicly available data sources include the following.

- *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota* (2009)¹¹
- *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota* (2011)¹²
- “Human Trafficking & Native Peoples in Oregon: A Human Rights Report” (2014)

¹⁰ This includes public criminal and legal records, reports and media in Indian Country.

¹¹ This report is referred to regularly within this text. Hereafter this report is referred to as Shattered Hearts.

¹² This report is referred to regularly within this text. Hereafter this report is referred to as Garden of Truth.

- Two Tribal Codes on Sex Trafficking – Snoqualmie Tribe and Absentee Shawnee
 - The Trafficking Victims Protection Act (TVPA) (2000, 2003, 2005, 2008)¹³
 - Violence Against Women Reauthorization Act (VAWA) (2013)
- A blended tribal feminist socio-political analysis of community vulnerability using primary data from semi-structured interviews with key informants¹⁴ who address sex trafficking of Native peoples in and around Indian Country.
- A modified Native Nation (re)Building¹⁵ analysis of (primary) data¹⁶ on local responses to sex trafficking detailed in an anonymous survey of grassroots organizations, advocates and law officials in federally recognized Native nations.

Additional details about the study research design and methodology can be found in Chapter Three, “Navigating Layers: Mapping the Research.” Details on what was discovered about perceptions can be found in Chapter Four, “Findings: Perceptions in the Policy Environment,” and a full analysis, with commentary, can be found in Chapter Five, “The Policy Environment’s

¹³ Specifically these are the Trafficking Victims Protection Act of 2000 (P.L. 106-386), the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311).

¹⁴ Including officials, scholars and advocates.

¹⁵ Stephen Cornell and Joseph P. Kalt. 2007. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*. In *Rebuilding Native Nations: Strategies for Governance and Development*, ed. Miriam Jorgensen. Tucson: University of Arizona Press.

¹⁶ The primary data was gathered in a survey of Native nations’ grassroots organizations, advocates and law officials about local efforts to address issues of sex trafficking.

View of Sex Trafficking in Indian Country: A Multi-Tiered Analytical Discussion and Summary.”

III. Research Goals, Question & Purpose

Goals

The goals of this study concern policy. They are to 1) explore the understanding of contemporary targeted sex trafficking of Native peoples within the policy environment influencing interventions in and around Indian Country; and 2) provide information about the context of Native America to consider when attempting to think beyond the parameters that have become the norm in addressing anti-sex trafficking policy.

Research Question

What is the policy environment perception of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country?

Purpose

The research purpose was to consider the match between existing anti-trafficking law and the reality of targeted sex trafficking in Indian Country by comparing the

- definition(s) of sex trafficking as written in the law with the definitions used in making decisions about which laws are applicable in Indian Country,

- attitudes and responses on multiple levels (in terms of laws, legislation and their influences) with the needs of Indian Country as described by those working on the issue in Indian Country, and
- general sense of what interventions exist and are working in Indian Country with the work still left to do.

IV. Study Importance

This broad look at the policy perceptions of the extent and breadth of contemporary targeted sexual trafficking of Native peoples could impact anti-sexual violence public health efforts, public policy, and criminal jurisdiction legislation as well as the fields of American Indian Studies and Law. Specific to Native self-determination, this work offers suggestions and presents opportunities for Native communities to define safety and protection for themselves and act on those definitions. This study also intends to impact current United States anti-trafficking law generally by assessing legislative discussion on the topic as well as public (both Native and non-Native specific) discourse on the commercialized sex trafficking industry.

As of this research and writing there are fewer than ten scholars writing on the specific targeting of Native peoples by sex traffickers, a handful of Native nations considering the issue, and one federal government agency developing policy amidst considerable conversation about what should be considered sex trafficking. This study will help ground the policy conversation in people's actual subjective understandings of the experiences and interpretations of prostitution and missing community members as they may (or may not) relate to contemporary targeted sex trafficking of Native

peoples and anti-sex trafficking law. It will provide a full, robust exploration and description of the potential breadth and depth of sex trafficking of Native peoples as understood by people working in and with Indian Country. Additionally, the study includes legal, socio-cultural non-empirical assessment of current understandings of sex trafficking of Native peoples and any intervention approaches to help build more effective approaches to addressing targeted sex trafficking in Native communities.

V. Study Scope

Operational Definition of Terms

Sex trafficking

There are at least two legal and a few service provider definitions discussed within this text. For the purposes of this study, sex trafficking has been defined as the coercive control of a person to forcibly and/or fraudulently induce them to participate in sexual activity for the benefit and/or exchange, financially or otherwise, of another. On the surface, this benefit and/or exchange may appear to extend to the person coerced—such as in sexual engagement in return for survival goods or needs—but is ultimately a manipulation for the continued coercive control of the victim/survivor. The degree or amount of movement of the victim/survivor involved is less concerning than the coercive force and intended purpose behind the movement, thus relocation to another room, area in the neighborhood, or across reservation, county, state and/or international borders are all equally problematic. While rape can certainly be an element of sex trafficking, sex

trafficking is different because there are elements of exchange/benefit and a sense of ownership specific to perpetrators involved. While kidnapping is also sometimes involved, again this is different in that there is a specific intention to gain benefit from the sale or exchange of services/goods of the person under coercive control. Prostitution may be involved, but is neither the only form of sexual activity associated with sex trafficking nor is it the sole element required in this definition.

Indian Country

For the purposes of this study, Indian Country is broadly defined. Thus it includes the legal definition, explained in this excerpt from the Criminal Resource Manual for United States Attorneys provided by the U.S. Justice Department.

“Indian country” is defined in 18 U.S.C. § 1151 as including (1) federal reservations, whether created by statute or Executive Order, *see Donnelly v. United States*, 228 U.S. 243 (1913), including fee land, *see United States v. John*, 437 U.S. 634 (1978); *Seymour v. Superintendent*, 368 U.S. 351 (1962); (2) dependent Indian communities, *see Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998) (land that is neither a reservation nor an allotment which has been validly set aside for the use of the Indians as Indian land, and under the superintendence of the government); and (3) Indian allotments to which title has not been extinguished, *see United States v. Pelican*, 232 U.S. 442 (1914), and *United States v. Ramsey*, 271 U.S. 467 (1926). Although not specifically mentioned in section 1151, land held in trust

by the United States for a tribe or individual Indian is also accorded Indian country status. *Oklahoma Tax Comm'n v. Potawatomi Indian Tribe*, 498 U.S. 505 (1991). Acquisition of land in fee by a tribe, despite the restraint on alienation imposed by 25 U.S.C. § 177, has been held insufficient standing alone to create Indian country. *Buzzard v. Oklahoma Tax Comm'n*, 922 F.2d 1073 (10th Cir. 1993). Indian country status is not lost by cession to, or acquisition by, a state of civil and criminal jurisdiction pursuant to Pub. L. 83-280 ("Public Law 280") or similar act of Congress. See *California v. Cabazon Band of Indians*, 480 U.S. 202, 207 n.5 and text (1987).¹⁷

This study also includes the areas immediately surrounding Native lands—commonly known as border towns—and urban areas considerably populated with Native Americans such as Minneapolis, MN and Tucson, AZ. Native hubs¹⁸ in areas where there are tribes unrecognized by a United States governance entity (such as the federal or state entities) are included in this definition as well. In short, the term as used here encompasses areas where Native peoples gather or group themselves as communal units. The legal options discussed in this work should be understood to apply in areas where there is the option for tribal governance due to the existence of tribal councils or other forms of Native governance/leadership.

¹⁷ See United States Department of Justice. 2015. "United States Attorney's Manual, Criminal Resource Manual." United States Department of Justice, Offices of the United States Attorneys. www.justice.gov. Accessed March 1, 2015. http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00677.htm.

¹⁸ This term is borrowed from Renya K. Ramirez. 2007. *Native Hubs: Culture, Community, and Belonging in Silicon Valley and Beyond*. Durham: Duke University Press.

Targeted trafficking

“Targeting” as used here distinguishes the intentional seeking out of a particular characteristic for recruitment in sex trafficking. The specific targeting that this study distinguishes is based on ethnicity. As noted in this text as well as other reports, the characteristic sought may be connected to a number of other factors (such as surviving poverty or homelessness or rural origins). However, in this context those connections are flattened to become stereotypical assumptions about what is possible due to ethnicity. To a degree, this influences recruitment techniques and locations (i.e., pow wows or other Native gatherings rather than at a park or party).

Policy environment/people of influence

The process of policy making often involves input from politicians, lawyers, law enforcement, service providers, advocates, researchers and, to a certain extent, specific constituents in the geographical areas impacted. This study uses this understanding in discussing the policy environment and the people included in the circles of influence in the policy environment. In this case, the specific constituents and voices of survivors are represented via the advocates, service providers and researchers that have engaged with the issue of sex trafficking specifically in a way that touches Indian Country, as defined above, or worked in areas of policy influence in and around Indian Country and might encounter sex trafficking victim/survivors specifically.

Conceptual Framework

Theoretical Arguments

This study concerns the right of particular racialized, gendered and sexualized communities to freedom from violence and imposed servitude, the historical and continuing role of the United States government in creating an environment where such freedoms are denied, and multilevel accountability to correct these wrongs in quotidian and legislative ways. This study provides innovative theoretical thinking on

GOVERNMENT CREATED COMMUNITY VULNERABILITY: assessing the historical and socio-cultural elements that have made Native peoples appear to be a potential target group for trafficker recruitment.

LEGAL CRISES CREATED THROUGH CURRENT CRIMINAL JURISDICTION: reviewing relevant historical and current legislation impacting contemporary targeted sex trafficking of Native peoples, and suggestions for improvement in United States policy interventions impacting both Indian Country and the United States generally.

COMMUNITY BUILDING/ SUPPORT POLICY-MAKING: considering the elements which contribute to Indian Country community strengthening and building, through the lens of Native women's specifically gendered, racialized experiences.

Theoretical Frameworks

This study is necessarily phenomenological as it identifies how trafficking is perceived by the actors involved.¹⁹ Humanist, feminist and Indigenous researchers have acknowledged both the impossibility of research without preconceptions²⁰ and the importance of exposing how the researcher's impact as an interested and subjective actor frames the work.²¹ In general, the analytical methodological approach relies on Engaged Theory, a postmodern Critical Social Theory²² framework that moves from empirical analysis about the world's details—things, people and processes—to abstract theory about the social construction and social framing of those details.²³ As with many of the strains of Critical Social Theory, this methodology draws from knowledge across the social sciences and humanities.²⁴ I include feminist and postcolonial perspectives since this study focuses a great deal on

¹⁹ Edmund Husserl, translated by J.N. Findlay. 1970. *Logical Investigations*. London: Routledge and K. Paul.

²⁰ See Kenneth Plummer. 1983. *Documents of Life: an Introduction to the Problems and Literature of a Humanistic Method*. London: G. Allen & Unwin for humanistic commentary and critiques; Liz Stanley and Sue Wise. 1993. *Breaking Out Again: Feminist Ontology and Epistemology*. London: New York for feminist commentary and critiques as well as Shawn Wilson. 2008. *Research is Ceremony: Indigenous Research Methods*. Black Point, N.S.: Fernwood Pub.; Margaret Kovach. 2009. *Indigenous Methodologies: Characteristics, Conversations and Contexts*. Toronto: University of Toronto Press and Linda Tuhiwai Smith. 2012. *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books for discussion of indigenous research meanings and methods as well as indigenous critiques of usual means of Western research.

²¹ Towards that end, I acknowledge that I am situated as a non-Native researcher and African-American, feminist, sex-positive, anti-violence activist. This has potential to influence this work as well as the approach to mitigating these factors.

²² Postmodern Critical Social Theory generally seeks to politicizes social problems “by situating them in historical and cultural contexts, to implicate themselves in the process of collecting and analyzing data, and to relativize their findings” while including recognizing the crisis of representation. For more information on the topic see Thomas R. Lindlof, and Bryan C. Taylor. 2002. *Qualitative Communication Research Methods*. Thousand Oaks, Calif: Sage Publications. The quote in this footnote comes from that text, p. 52.

²³ Paul James. 2006. *Globalism, Nationalism, Tribalism: Bringing Theory Back in*. London: Sage. <http://site.ebrary.com/id/10218049>.

²⁴ Lindlof and Taylor, *Qualitative Communication Research Methods* (2002).

the experience at the intersection of gendered, racialized and colonized identities.

Methods

The mixed method design of this study uses a variety of data sources and methods, structurally encouraging multiple levels of triangulation for a full, robust exploration and description of the potential breadth and depth of perception about the targeted sex trafficking of Native peoples. Crucial to mitigating and/or eliminating external and researcher biases, the mixed method research design purposefully provides both depth and texture. It employs quantitative data to access the potential reach of this issue and qualitative data to enhance understanding and interpretation of the data on the beliefs about how widespread the sex trafficking of Native peoples is. The intended use of theoretical triangulation (a blend of theoretical frameworks) to interpret the phenomenon of study as well as methodological triangulation of method greatly reduces any intrinsic biases stemming from a single method or theory study. There is also a mix of methods used for a component of data triangulation, further enhancing the study by providing natural cross-checking of regularities in the research data and the opportunity to replicate results, albeit on a larger scale.²⁵

²⁵ See generally Norman K. Denzin. 1970. *Sociological Methods: A Sourcebook*. Chicago: Aldine Pub. Co. for a discussion of data triangulation, as well as its purposes and benefits.

VI. Conclusion

In some way, this particular form of sexual violence has been a concern for Native peoples for a considerable amount of time. While Native peoples are not immune to the traps of sex traffickers, there seems to be an inability for policy to address sex trafficking where it crosses Native American borders. This is clearly evidenced in attitudes expressed around the congressional arguments for the Anti-White Slavery Act of 1910, which eventually became known as the Mann Act. As one interviewee explained,

The Mann Act was passed in this kind of moment of hysteria about protecting the country's daughters, and within that language the congressmen were using when they were arguing for the passage of the law, they do not see Native women as the country's daughters at all. It is...very stark how much the White slavery discourse is, and it was reflected in the law, [reflective of] an idea that White was "the norm." So, in some ways I wasn't surprised at all to find that Native women very rarely appeared in the Mann Act investigations...

Around certain topics, there is a general sense that the format and size of tribal governance entities can sometime mean quick decisions about issues of importance to the communities governed. The fact that there are so few tribal codes concerning sex trafficking after initial concerns raised in 2009 seems to also indicate that there is reluctance for tribal policy to address where sex trafficking crosses Native American borders as well.

This dissertation study argues that there are viable options, if governance entities focus on principled political action to meet their multilayered obligations to address sex trafficking. The study highlights

where the policy environment agrees and the beliefs that thwart movement as well as where those stories of hope about who we are and how we prioritize are hiding in plain sight.

Coming chapters tell the story of contemporary targeted trafficking of Native peoples through the eyes of the policy environment. Chapter Two, “Piecing Together What the Literature Tells Us: A Review” provides an examination of the sparse body of literature combined with an examination of the legal contours around Indian Country generally, including a quick summation of the Marshall Model and criminal jurisdiction, to gauge the insights and challenges of what has been accepted as true about the place where sex trafficking, ethnorace and Indian Country meet. That review is followed by a detailed account of the plan and process used to build this effort to look at the topic from a different perspective than what has been done before, entitled “Navigating Layers: Mapping the Research” (Chapter Three). Chapter Four, “Findings: Perceptions in the Policy Environment,” then highlights the important findings from the data collected during the course of this study. There, three interrelated areas (Definitions; Attitudes and Responses; and Interventions and Creating Solutions) are used as a framework to explore the data and consider the indicated perceptions (within the Indian Country influential public policy environment) of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country. “The Policy Environment’s View of Sex Trafficking in Indian Country: A Multi-Tiered Analytical Discussion and Summary,” Chapter Five, takes a broad view of the findings within the framework used in Chapter Four to consider what the data suggests regarding the perception of how

widespread this phenomenon is in influential policy environments and what that means about the available policy options at this point in time. This text closes with Chapter Six, “Looking Forward: Conclusions and Suggestions for New Goals” which discusses how Indian Country might move forward to address the complex needs of Native America around contemporary targeted sex trafficking in a manner that reflects the content and character, in a larger sense, of who they know themselves to be.

Chapter Two

Piecing Together What the Literature Tells Us: A Review

VII. What We Know About Sex Trafficking Specific to Indian Country

The law and policy literature relevant to this discussion of domestic sex trafficking specific to Indian Country addresses sexual violence in Native American community,²⁶ United States Indian Country criminal jurisdiction and its resulting jurisdictional maze²⁷ and human (sexual) trafficking.²⁸ Literature on sexual violence in Native American community points to high prevalence rates of sexual violence simultaneously defined as 1) an epidemic²⁹ encouraged, over time, by United States policies of assimilation and control of Native communities³⁰ and 2) a human rights violation perpetrated via ineffective legislation which cripples effective law

²⁶ See generally the work of Andrea Smith and Sarah Deer in addition to specific reports from Amnesty International USA (2007), United States Department of Justice (Perry 2004, Tjaden & Thoennes 2000, 2001), Native American Women's Health Education Resource Center (2012), UN Special Rapporteur on the Right so Indigenous Peoples (2012); and popular journalism such as Dobie (2011) and Vanguard (2009).

²⁷ See generally the work of Carol Goldberg, Kevin Washburn and Sarah Deer (2004 and 2009) in addition to specific reports from Amnesty International USA (2007), Native American Women's Health Education Resource Center (2012), UN Special Rapporteur on the Rights of Indigenous Peoples (2012); and popular journalism such as Dobie (2011) and Vanguard (2009).

²⁸ Specifically within Native communities, see generally the work of Andrea Johnson (2012), Sarah Deer (2010), Melissa Farley, Benjamin Greer (2013), Sandy Pierce and Suzanne Koeplinger (vawnet.org) as well as popular journalism from Pember (2012) in addition to specific reports on particular areas such as Minnesota (Farley, Matthews, Deer, Lopez, Stark, Hudson, Minnesota Indian Women's Sexual Assault Coalition and Prostitution Research & Education Center [2011] and Pierce [2009]). For information on human (sexual) trafficking in general, see Anderson and Davidson (2003), the work of Global Alliance Against Traffic in Women, Amnesty International (2004).

²⁹ See generally Native American Women's Health Education Resource Center (2012).

³⁰ See generally the work of Andrea Smith, particularly Andrea Smith. 2005. *Conquest: Sexual Violence and American Indian Genocide*. Cambridge, MA: South End Press as well as the work of Sarah Deer, particularly Deer, Sarah. "Federal Indian Law and Violent Crime: Native Women and Children at the Mercy of the State." *Social Justice*. Vol. 31, issue 4 (98) (2004): 17-30.

enforcement.³¹ The literature often focuses on the statistic that one in three Native women will experience rape in her lifetime.³² It is necessary to understand that this statistic is based on *what survivors have felt able or compelled to report*. Instances where reporting might incur threats and further physical, psychological or emotional safety violations, or instances where survivors are simply unable to report sexual violence, are not included or considered in that statistic. Generally, these kinds of threats and violations can include concerns about reporting perpetrators of the same oppressed community.³³ Further, due to the intensely enforced secret nature of this crime, the psychological chokeholds used by perpetrators and the relative newness of legal and policymaker consideration of this crime, instances of sex trafficking easily fall under the category of “challenging to report.”

³¹ See generally Amnesty International USA (2007) and UN Special Rapporteur on the Right so Indigenous Peoples (2012).

³² United States Department of Justice (Perry 2004, Tjaden & Thoennes 2000, 2001).

³³ As Bletzer and Koss (2006) suggested, there has been some “attention has been paid in rape accounts to the influence of variation in social or cultural background, such as racial-ethnic differences...(e.g., Sorenson, 1996; Wyatt, 1992)” sometimes including descriptions of “the likelihood of reporting rape by women of non-White background, and [other studies] explore how attitudes vary, based on a woman’s ethnicity, of what constitutes rape (for Hispanic and/or Anglo, see Fischer, 1987; for Black and/or White, see Foley, Evancic, Karnik, King, & Parks, 1995)” (6). For a description of how a survivor’s awareness of their social location impacts the likelihood of their sharing their experience(s) of rape see Patricia A. Washington. “Disclosure Patterns of Black Female Sexual Assault Survivors.” *Violence Against Women*. Vol. 7, issue 11 (2001): 1254-1283 as well as Mary P. Koss. “Rape: Scope, Impact, Interventions, and Public Policy Responses.” *American Psychologist*. Vol. 48, issue 10 (1993): 1062. For an examination of these impacts for children, see Lisa Aronson Fontes. 1995. *Sexual Abuse in Nine North American Cultures: Treatment and Prevention*. Thousand Oaks, CA: SAGE Publications, Inc. For insightful information on the legal responses which have complicated rape disclosure patterns, see generally Susan Estrich. 1987. *Real Rape*. Cambridge, Mass: Harvard University Press.

Beyond the challenge of encouraging survivor reports, much has been written on the difficulty created by United States criminal jurisdiction which invests the responsibility of Indian Country's safety via federal or state prosecutorial authority.³⁴ Currently, the United States justice system's prosecutorial scheme allows for federal use of other jurisdictional law (such as state or tribal) via the Assimilative Crimes Act (ACA) (18 U.S.C.A. § 13) when there is not adequate federal law to prosecute.³⁵ However, as Washburn notes, "[t]he system designed to address criminal justice and public safety in Indian Country simply does not work."³⁶ More to the point, to Native peoples ...the institutions of federal criminal justice may well feel like a vestige of a colonial power...Indeed, because the federal government is sometimes viewed as a villain in Indian country, defendants may sometimes even see themselves as martyrs and may be able to evade the most difficult aspects of introspection that can be produced by a judgment of guilt.³⁷

³⁴ See generally the work of Carol Goldberg, Kevin Washburn and Sarah Deer (2004 and 2009).

³⁵ The ACA is a federal statute which allows congressional adoption of state criminal laws for areas of exclusive or concurrent federal jurisdiction if the crime is not punishable under federal law. If a criminal offense has been committed on lands that have been reserved or acquired by the federal government (in this case Native lands held in trust, etc.) and the offense is not a federal offense, state law can be applied under the ACA. This essentially incorporates applicable state or tribal laws, using them as gap-fillers for federal criminal law through federal enforcement. This Act applies to state laws existing at the time of the offense without regard to date of enactment, whether before or after passage of the Act, and whether before or after federal acquisition of the land where the offense was committed.

³⁶ Sarah Deer, "Relocation Revisited: Sex Trafficking of Native Women in the United States." *William Mitchell Law Review*. Vol. 36, issue 2 (2010): 621-683, 150. See Kevin K. Washburn, "The Federal Criminal Justice System in Indian Country and the Legacy of Colonialism," *The Federal Lawyer*. Vol. 52 (March/April 2005): 40.

³⁷ Deer, "Relocation Revisited" (2010), 151 quoting Washburn. See Washburn, "Legacy of Colonialism."

This contradicts true community accountability—something generally prized in tribal nations.³⁸ Without community legitimacy and accountability, a perpetrator might view conviction as a twisted badge of honor rather than a punishment.

Considering the literature on targeted sex trafficking, the fact that much of Indian Country must adhere to the current United States anti-trafficking laws presents additional jurisdiction-created challenges. The United States has anti-trafficking laws³⁹ which, based on the Indian Country Crimes Act (ICCA),⁴⁰ are extended to Indian Country. If the trafficker *is* non-Native, there is no loophole—United States laws apply. In that instance, safety for vulnerable Native citizens is dependent on the response rate and ease of maneuvering around the maze of law, policy and the jurisdictional gaps⁴¹ that connect the Indian Country and the United States criminal legal systems. United States declination rates of sexually violent criminal cases in Indian Country have a history of being notoriously high.⁴² In fact, as of 2010

³⁸ Ibid.

³⁹ Public Law 106–386 (Victims of Trafficking and Violence Protection Act of 2000) or TVPA, which has the stated purpose 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.”

⁴⁰ This legislation is also referred to as the General Crimes Act. The Indian Country Crimes Act, or General Crimes Act (18 USC 1152), originated from there, creating federal court jurisdiction for certain types of offenses committed by Indians against non-Indian victims as well as all offenses committed by non-Indians against Indian victims. For more details, see the discussion “Criminal Jurisdiction in Indian Country” on page 56 of this text.

⁴¹ See generally Sarah Deer, “Federal Indian Law and Violent Crime” (2004).

⁴² For details on the declination rate in general, see Riley, Michael. 2007. “Lawless Lands.” four part series. *The Denver Post*. 11/21/2007 Retrieved at http://www.denverpost.com/ci_7429560 on August 20th, 2014. For an example of how the United States government has and is addressing this issue, see United States Government Accountability Office. 2010. U.S. Department of Justice Declinations of Indian Country Criminal Matters (GAO-11-167R). Retrieved at <http://www.gao.gov/assets/100/97229.pdf> on August, 20th, 2014. The Tribal Law and Order Act of 2010 requires the Department of

reports, United States Attorneys declined to prosecute nearly 52 percent of violent crimes that occurred in Indian country; generally more violent cases were declined than non-violent cases and 67 percent of cases declined were related to sexual abuse.⁴³ This was the case even with the option to use tribal law, where it applies, via ACA. Notably, this is an improvement from previous years' investigations. In areas with considerable geographical distance between reservations and criminal scene investigators with the jurisdiction to begin investigations, there often needs to be considerable physical injury to require quick response.⁴⁴ As one veteran BIA tribal officer shared during a conversation about a project concerning sexual violence on a Montana reservation, "Perpetrators know that this is the case, too."⁴⁵

However, ICCA is explicit that crimes committed by one Native American against another Native American are exempt. Additionally, there has been mention by some scholars focused on sex trafficking of Native

Justice to provide annual reports to Congress on prosecutorial declination rates in Indian Country, all of which are provided in the link provided above. The declination rate has dropped from approximately 50% in 2010 and prior to 34% in 2013, 31% in 2012 and 37% in 2011. Interestingly, a quick examination of the crimes and offenses reported in the Legal Information Office Network System (LIONS), a case-management system used for the report, during 2013 are feasibly connected to sex trafficking—"trafficking" was only mentioned in terms of drug trafficking specifically and then only 4 times in the text. United States Government Accountability Office. 2013. "U.S. Department of Justice Indian Country Investigations and Prosecutions."

<http://www.justice.gov/sites/default/files/tribal/legacy/2014/08/26/icip-rpt-cv2013.pdf>.

Accessed March 17, 2015.

⁴³ United States Government Accountability Office (2010).

⁴⁴ References to this are common both in published literature and personal communication during related research. Generally see Riley's "Lawless Lands" series (2007), AIUSA (2007), Deer (2004). This was regularly mentioned as a part of conversations with tribal crime scene investigators. (personal communication, Michael Begay, then Senior Criminal Investigator of the Navajo Nation Police 5/5/2011; Gail Smith, Executive Director of Native Action, April 7th, 2011; "Tiger," Northern Cheyenne Police Officer and Criminal Investigator, April 7th, 2011.)

⁴⁵ Personal communication, "Tiger," Northern Cheyenne Police Officer and Criminal Investigator, April 7th, 2011.

peoples that there are only about three non-PL-280 Native nations with anti-sex trafficking code.⁴⁶ Thus even where the federal impulse is to invoke ACA, effectively, in the majority of Native America, trafficking is *technically legal*.

Specifically considering the impact of sociopolitical and economic issues in Indian Country,⁴⁷ the ICCA exemption for Native on Native crime is relevant because poverty and (inter)generational trauma, which the literature indicates increases likelihood of entering prostitution,⁴⁸ has also been linked to generational prostitution and child trafficking in Native families.⁴⁹ In some areas, this may be exacerbated by current increases in both reservation and urban gang activity which is specifically and sometimes exclusively Native,⁵⁰ as is highlighted in the literature on sexual violence in Native communities,⁵¹ Native gangs,⁵² and targeted sex trafficking of Native peoples in specific areas of the United States.⁵³ Additionally, Native communities have become more attractive to “criminal enterprises due to jurisdictional limitations and resource shortages.”⁵⁴ In the last 5 to 10 years,

⁴⁶ Benjamin T. Greer, 2013. “Hiding Behind Tribal Sovereignty: Rooting out Human Trafficking in Indian Country.” *Journal of Gender, Race and Justice* 16, (2): 453 and personal correspondence. Also, see generally Johnson, “A Perfect Storm” (2012). For more thorough discussion of the legislation hinted at here, please see the legal analysis section of Chapter Five, “Putting it All Together: A Discussion, Conclusions and Recommendations Around Sex Trafficking in Indian Country.”

⁴⁷ See generally Cornell and Kalt (2000), Deloria (1998), Jorgensen (2007), and Wilkins and Stark (2010).

⁴⁸ See generally *Shattered Hearts*; Deer, “Relocation Revisited” (2010); and Johnson, “A Perfect Storm” (2012).

⁴⁹ See *Shattered Hearts* and *Garden of Truth*.

⁵⁰ See Hailer (2008).

⁵¹ See Deer, “Relocation Revisited” (2010).

⁵² See Hailer (2008).

⁵³ See Deer, “Relocation Revisited” (2010) as well as Pierce and Koepplinger, “New Language, Old Problem” (2001).

⁵⁴ See Deer, “Relocation Revisited” (2010).

Native gangs based in Indian Country and other “criminal enterprises” have trended towards more sex trade than drug trade, since the penalties and costs are lower while the income garnered from these types of crimes keeps growing.⁵⁵ Thus this is not purely a non-Native on Native experience and, based on location, not a crime.

That said, the United States anti-trafficking laws as writ are not a perfect fit.⁵⁶ For the purposes of this review, it is important to note that, generally, the law’s main focus is 1) movement of person/persons for 2) commercial sexual exploitation (CSE) through 3) force, fraud or coercion. According to the few, limited scholarly examinations of the sexual trafficking of Native peoples, the United States’ focus on “international” sex trafficking and movement is myopic, ignoring the crisscrossing of the various types of Native sovereign borders that happen within United States borders.⁵⁷ This also ignores the trafficking which may happen out of a victim’s home or neighborhood,⁵⁷ neither of which meet the quality of movement required by federal anti-trafficking law. Sex may not always be exchanged for money, but rather food, drugs, housing, or any other number of basic survival goods.⁵⁸ Cash poor areas of Indian Country are no exception to this and women there may be trafficked for survival or addiction needs which are not always understood as extensions of the exchange or CSE required by law. Further,

⁵⁵ Personal communication, Benjamin Greer, September 7th, 2012.

⁵⁶ For more thorough discussion of United States anti-trafficking legislation discussed briefly here, please see the legal analysis provided in the chapter “Putting it All Together: A Discussion, Conclusions and Recommendations Around Sex Trafficking in Indian Country” and the excerpt provided in the Appendix, “Human Trafficking & Native Peoples in Oregon: A Human Rights Report – Legal Obligations With Regard to Human Trafficking”

⁵⁷ Deer, “Relocation Revisited” (2010), 683; Johnson, “A Perfect Storm,” 6-17-18.

⁵⁸ Pierce and Koeplinger, “New Language, Old Problem” (2011), 3

when put to use, U.S. law requires the survivor to assist with prosecution of the trafficker “in every reasonable way.”⁵⁹ Youth involved in CSE are legally assumed to be victims by federal law while adults must prove force, fraud, or coercion was used to be eligible for services. Adult CSE survivors may find it difficult,⁶⁰ if not unreasonable, to prove that their participation was involuntary when sex trade by-products⁶¹ exist and can be used in court. While it may be reasonable to presume that this type of evidence is only proof of feigned compliance and potentially the most effective survival strategy previously available to the victim at the time,⁶² it is challenging to counter such evidence in court. Pierce and Koeplinger (2011) add that

In addition to the US federal law, forty U.S. states have passed state laws criminalizing sex trafficking [with varying] criteria for establishing victimization. For example, Arizona law⁶³ requires adult victims to prove the trafficker used force, fraud, or coercion.⁶⁴ In contrast, Minnesota does not require victims of any age to prove the means [of inducement]...the behavior of the trafficker is the basis of criminal charges.⁶⁵

⁵⁹ See 22 U.S.C. § 7102(8), 2000; 22 U.S.C. § 7105(b)(1)(a)

⁶⁰ Doreen Leidholdt. 2007. “Successfully Prosecuting Sex Traffickers: Testimony Before the Committee on the Judiciary, House of Representatives, United States.” Coalition Against Trafficking in Women. Retrieved from http://action.web.ca/home/catw/readingroom.shtml?x=113289&AA_EX_Session=b7cffca8e453e030ff433cdeda0e23c7

⁶¹ By products include, but are not limited to photos, videos and witness testimony.

⁶² J. Neuwirth. 2008. “Another Overview of William Wilberforce Trafficking Victim Protection Reauthorization Act (the TVPRA).” *Feminist Law Professors*. Accessed October 1, 2012. Available at <http://feministlawprofessors.com/?p=4285>.

⁶³ See AZ 13-1307.

⁶⁴ See generally Pierce and Koeplinger, “New Language, Old Problem” (2011).

⁶⁵ See MINN. STAT. § 609.321, subd. 7a, 2009.

Further, state prostitution laws often contradict TVPA by criminalizing youth prostitution⁶⁶ as well. There is also considerable flux in the “age of coercion” limits wherein “Safe Harbor” state laws—which view prostituting youth as victims rather than criminals—provide some relief. Where there is no anti-prostitution code or option to pursue “trafficking in humans” charges, then sexual assault and/or rape tribal code and/or United States law may apply.

Prominent and relevant sociohistorical, public health and political literature concerning violence prevention models⁶⁷ and the contemporary impacts of settler colonialism⁶⁸ are relevant to this discussion as well. There is considerable information on sexual violence prevention models but few that address people of color or Native peoples specifically. Of what does exist, much follows the trend of the broader body of sexual violence prevention literature and seeks out “individual explanations for violence (men beat women because of psycho-pathology or poor impulse control) or ... social/political explanations (battering results from gender-power inequities

⁶⁶ Pierce and Koeplinger, “New Language, Old Problem” (2011) notes that “As of August 2011, seven states (CT, IL, MN, NY, TN, VT, and WA) passed laws decriminalizing prostituted minors, but these vary as to which youth are eligible. Under New York’s “Safe Harbor” legislation, sexually trafficked minors under age 16 may be adjudicated in Family Court as “persons in need of supervision” and assigned to safe houses linking them to support services, but can still be prosecuted as delinquents if they have a prior prostitution arrest or were previously adjudicated in Family Court. Prostituted minors ages 16 and 17 are not eligible for diversion (Adcock, 2008). Minnesota’s “Safe Harbor” legislation removes prostituted children under age 16 from the definition of “delinquent child,” mandates first-time diversion for prostituted 16- and 17-year-olds, and allows prosecutors to continue diversion for minors entering the system a second time (ECPAT USA, 2011).”

⁶⁷ Generally see Heise (1998); Kershner, Haines, Harkins, Greig, Wiesner, Levy, Shah, Kim and Carr for Generation Five (2007); Krug (2002) and Patel, Simon, and Taylor (2012).

⁶⁸ See generally Smith (2008, 2011), Morgensen (2010, 2011) and Rifkin (2009, 2011, 2012).

and the historical construction of the patriarchal family)”,⁶⁹ which does not account for the interplay of both localized individual and larger societal forces creating the environment for the incident of violence. As an important counterpoint, Heise proposes a public health model, the Integrated, Ecological Framework, wherein violence (and why abusers abuse) is seen as a multifaceted response to a myriad of personal, situational, and sociocultural factors.⁷⁰ Initially developed to conceptually organize research on causes of child abuse and neglect,⁷¹ Heise’s framework adapts the previous framework to better understand the roots of domestic violence specifically. While more helpful than many of the violence prevention models reliant on only micro or macro explanations, there are factors specific to Native experience that this model does not directly address either, specifically the contemporary impacts of colonialism.⁷² Colonialism is an overarching (macro)reality that permeates downward through every system layer (of Heise’s model) in Native life by defining what is allowable for a person with particular identities according to colonial categories (i.e., Native, woman, poor, etc.). In turn, individual understanding of the limits and constructs of what is possible based on an identity development constrained by colonial categories radiates outward, impacting internal system levels again. Heise’s model, unaltered, simply misses the sites where external and internalized colonial rationalizations of (savage) violence and sexual excess do not correspond with a community’s

⁶⁹ Heise, “Intergrated Ecological Framework” (1998).

⁷⁰ Supra footnote 57.

⁷¹ Heise, “Intergrated Ecological Framework” (1998) citing J. Belsky, “Child Maltreatment: An Ecological Integration.” *American Psychologist*, 35 (1980): 320-335. According to Heise, this framework was also used by Carlson (1984), Dutton (1988), Edleson and Tolman (1992) and Corsi (1994) to approach similar experiences of violence.

⁷² Please see this discussion of this theory in Theoretical Frameworks for more detail.

sense of what is acceptable while said violence may appear commonplace anyway.

Another relevant departure from the usual violence prevention literature is the Institute of Medicine (IOM) Forum on Global Violence Prevention's "multisectoral, multidirectional dialogue"⁷³ exploring the contagious nature of violence, "describing possible processes and mechanisms by which violence is transmitted, examining how contextual factors mitigate or exacerbate the issue, and illuminating ways in which the contagion of violence might be interrupted."⁷⁴ The discussion here highlights a public health language of infectious disease.⁷⁵ Again, this model does not significantly aid in the discussion of "root causes." Initial questions that remain unanswered by this model include those about the origin of the violence contagion and how to account for violence brought into Indian Country as opposed to any violence that originated there.

To answer some of the questions left unanswered, many turn to Brave Heart's Historical Trauma.⁷⁶ Brave Heart and many that follow in her theoretical footsteps, such as Duran and Duran,⁷⁷ agree that any major social problems challenging Native Americans can be better understood and

⁷³ Deepali M. Patel, Melissa A. Simon, and Rachel M. Taylor, "Contagion of Violence: Workshop Summary" (Prepublication uncorrected proof, Institute of Medicine (IOM) Forum on Global Violence Prevention; Board on Global Health; Institute of Medicine, 2012): 1.

⁷⁴ *Ibid.*, 1.

⁷⁵ Please see discussion of this theory in the section "Applicable Theoretical Frameworks."

⁷⁶ Please see discussion of this theory in the section "Applicable Theoretical Frameworks."

⁷⁷ See generally Eduardo Duran and Bonnie Duran. 1995. *Native American Postcolonial Psychology*. Albany: State University of New York Press and Eduardo Duran. 2006. *Healing the Soul Wound: Counseling with American Indians and Other Native Peoples*. New York: Teachers College Press.

addressed by incorporating historical trauma concepts into the analysis. As mentioned earlier, this emphasis on biologically transmitted trauma can be understood to reify colonial biopolitics.

There is also the consideration of Lateral Violence,⁷⁸ wherein the organized, harmful behaviors felt towards an oppressor are instead expressed/directed within the oppressed group towards each other. These intergroup expressions of rage/frustration about the surrounding oppressive environment cannot be expressed towards the oppressor for fear of retaliation. Alone, this theory begins to address the atmosphere wherein sexual violence is created, but does not explain this internalized rage-against-oppressive-systems exists. Historical Trauma, and other theories like it, provides answers to why some of these intensely rage-filled actions against community members can and do exist. Historical Trauma creates the oppressed status (the why)—Lateral Violence is the “inappropriate” (group internalized) demonstration of “appropriate” rage-filled action within the group (the expression or tool). Thus, Historical Trauma has, over time, contributed to conditions that can lead to expressions of power over another via sexual violence or other disregard for another’s bodily integrity. Lateral Violence is the tool with which the oppressor gets the oppressed to maintain the status quo – giving some in the oppressed group the opportunity to feel

⁷⁸ This concept grew out of the medical field, looking at aggression between nurses, in particular. As a result, much of the early literature focuses on a medical context. See generally Martha Griffin. “Teaching Cognitive Rehearsal as a Shield for Lateral Violence: An Intervention for Newly Licensed Nurses.” *The Journal of Continuing Education in Nursing*, Vol. 35, Issue 6 (2004), 257-263; Joy Longo and Rose O. Sherman. “Leveling Horizontal Violence.” *Nursing Management*. Vol. 38, issue 3 (2007), 34- 37, 50,51; and Patricia Rowell. 2007. “Lateral Violence: Nurse Against Nurse.” *NursingWorld.org*. Accessed April 23, 2010. <http://nursingworld.org/mods/mod440/lateralfull.htm>.

some power via “authority” to repeat the original violation and normalize oppression as a means of consolidating a modicum of power within the group.

There are also a few newer models buried in the literature, often either not discussed or irregularly mentioned, which specifically include Native anti-violence organizers from their inception. These include Generation FIVE,⁷⁹ which for all intents and purposes, may be the most prominent example of a group integrating primary preventative approaches to justice and community action/support. Built out of the alternative justice movement, their Transformative Justice model uniquely speaks to the difficult issue of creating primary prevention opportunities in a culture that is sometimes guided by violent principles of power and coercion. As a result, the model used by Generation FIVE, as a means to “heal the trauma of past violence, reduce the level of violence we experience, and mobilize masses of people,” stresses individual and collective justice and safety as “equally important, mutually supportive, and fundamentally intertwined” thus only possible when worked on conjointly.⁸⁰ Ideally, through use of this model, any traumatized community can respond to violence by creating community healing and transformation rather than retribution and punishment.

Colonial Settler theorists contribute new ways to think about the issues of sexual violence in Native community. As Deer explains,

⁷⁹ Sara Kershner, Staci Haines, Gillian Harkins, Alan Grieg, Cindy Wiesner, Mich Levy, Palak Shah, Mimi Kim and Jesse Carr for Generation Five. 2007. *Toward Transformative Justice: A Libratory Approach to Child Sexual Abuse and Other Forms of Intimate and Community Violence—A Call to Action for the Left and the Sexual and Domestic Violence Sectors* (June 2007). Accessed April 12, 2011.
http://www.generationfive.org/downloads/G5_Toward_Transformative_Justice.pdf.

⁸⁰ *Ibid.*, 1.

Sexual assault mimics the worst traits of colonization in its attack on the body, invasion of physical boundaries, and disregard for humanity. A survivor... may experience many of the same symptoms—self-blame, loss of identity, and long-term depression and despair—as a people surviving colonization. The perpetrators of sexual assault and colonization thrive on power and control over their victims. The U.S. government,⁸¹ as a perpetrator of colonization, has attempted to assert long-lasting control over land and people—usurping governments, spirituality, and identity... Paradoxically, today authority over most sexual assaults on Indian reservations falls under the auspices of the federal government...⁸²

Native reliance on the United States' legal criminal system is simply not a natural one. Rifkin⁸³ might attribute some of this to the historical legacy of violence carried out on Native peoples' "peculiar"⁸⁴ bodies in the name of

⁸¹ Deer notes the impact, for better or worse, of PL-280, saying in an endnote "The major exception to federal jurisdiction is in so-called Public Law 280 states in which the state government has been granted jurisdiction to prosecute crimes on reservations. There are a number of tribes in which federal criminal authority has been largely replaced by the state authority." ("Relocation Revisited" [2010], 165).

⁸² Deer, "Relocation Revisited" (2010), 150.

⁸³ See Rifkin, "Indigenizing Agamben" (2009).

⁸⁴ Supra footnote 83. The use of peculiar mimics Mark Rifkin's discussion of the colonialist biopolitics inherent in settler colonial concepts of sovereignty and settler-state regulation of the "proper kinds of embodiment" as well as legitimate modes of collectivity and occupancy—what he calls bare habitance. Rifkin argues that colonial Native sovereignty, built on exception and peculiarity, functions as a placeholder with literally no place to land. He also points to the notion of Native peoples as a peculiar gendered, racialized, sexualized category which mirrors political distinctions as a "peculiar sovereign" leaving Native people dependent on a colonialist mirage. Mark Rifkin, "Indigenizing Agamben: Rethinking Sovereignty in Light of the "Peculiar" Status of Native Peoples". *Cultural Critique*. Vol. 73, no 1 (2009): 88-124.

claiming territory and defining sovereignty.⁸⁵ Morgensen, another who connects bio- and geopolitics to reflect on how a Settler nation fashions and creates itself, effectively links sexual colonization to the role of terror and resistance in a settler sexual hegemonic system.⁸⁶ While none of these works specifically address the issue of targeted sex trafficking of Native women, they do present ideas and issues worth exploring within this context. Namely, through an aggressive reading placed in the context of contemporary trafficking of Native peoples, Rifkin and Morgensen read together subtly suggest that the “peculiarity” heaped upon Native peoples might include a purposeful racialization of Native sexuality and Native sexual relationships. Between the two, non-Native “unpeculiar” sexuality can be seen as the “proper” sexual behavior of non-Native “rightful” United States citizens while “peculiar” sexuality was equated with all things Native or “non-citizen.” This racialized sexuality legitimizes control of Native bodies—through ownership of geography as well as physical and sexual space—and can be expected because they are “peculiar” non-citizens. In fact, this directive to coerce may be a part of a sexual hegemony set up to sustain the settler class. Those who are not “rightful citizens” are a threat, do not have the right of safety or protection provided by the nation-state and are thus, presumably, consumable without a true course for redress.

Aware of recent efforts to connect contemporary trafficking to the United States experience of chattel slavery via the moniker “modern day” or

⁸⁵ Supra footnote 83.

⁸⁶ See Morgensen, “Settler Homonationalism” (2010) and Petillo, “Unfolding the Dialogue” (2013).

“contemporary” slavery, it would be remiss to avoid consideration of the literature surrounding these theoretical efforts. Scholars such as Melissa Farley, a research and clinical psychologist at Prostitution Research & Education, do not mince words around this connection.

The sex industry, like other global enterprises, has domestic and international sectors, marketing sectors, a range of physical locations out of which it operates in each community, is controlled by many different owners and managers, and is constantly expanding as technology, law, and public opinion permit. Many governments protect commercial sex businesses because of the monstrous profits. Like slavery, prostitution is a lucrative form of oppression. And both slavery and prostitution are rife with every imaginable type of physical and sexual violence.⁸⁷

Farley and radical feminist thinkers such as Catherine MacKinnon (2001)⁸⁸ and Kathleen Barry (1979, 1995),⁸⁹ two of the most cited legal scholars in feminist jurisprudence, not only make the connection of prostitution to sexual slavery, but slavery which ultimately serves the state.

⁸⁷ Melissa Farley. “Sex for Sale: Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly.” *Yale Journal of Law and Feminism*. Issue 18 (2006): 109-145, 110.

⁸⁸ See especially Catherine MacKinnon, 2001. “Sex Equality: On Difference and Dominance.” In *Theorizing Feminism: Parallel Trends in the Humanities and Social Sciences*. 2nd ed., edited by A. C. Herrmann and A. J. Stewart, 232-53. Boulder, Colo.: Westview Press for comments on the connections between prostitution and slavery.

⁸⁹ See specifically, Kathleen Barry. 1979. *Female Sexual Slavery*. Englewood Cliffs, N.J.: Prentice-Hall and Kathleen Barry. 1995. *The Prostitution of Sexuality*. New York: New York University Press for discussion of “consent,” “forced,” and “free” sexual relations generally. Barry broadly defines sexual exploitation as the by which person(s) achieve sexual gratification, or financial gain, or advancement, through the abuse of a person's sexuality through abrogating of the abused person's human right(s).

This service to the state supplies multiple perimeter industries with a means to income, such as taxi drivers who receive extortion money for transporting “johns” in Nevada where prostitution is legalized.⁹⁰ Some scholars hint at the creation of an underground industry, where conversations about prostitution as a choice or as “a justifiable form of labor for poor women” support the misconceptions and stereotypes (of what prostitution is and what those who engage in it look like) that allow the general public to ignore the harms to women that are created in situations of force and coercive control as well as in their sexual and work lives.⁹¹ Even though some of the perspective that “...sexuality [is] a political system and...[we ought to] examine women's position in that system”⁹² is quite helpful, there are several important areas of lack for the purposes of this study. While all of the authors mentioned are clear in equating prostitution and pornography with trafficking—all of which they define as slavery—they are not always explicit that other activities included in the sex industry broadly (such as phone sex, sexual texting or nude dancing) might be considered trafficking unless they are directly linked to prostitution. Even pornography, which has its own set of harms, is redefined as “prostitution on film” by scholars such as Farley (2006)⁹³ and

⁹⁰ Farley, “Sex for Sale” (2006), 110.

⁹¹ Melissa Farley. “Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized.” *Violence Against Women*. Vol. 10, no. 10 (2004): 1087-1125. See also Catherine MacKinnon. 1989. *Toward a Feminist Theory of the State*. Cambridge, Mass: Harvard University Press and Catherine MacKinnon. “Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence.” *Signs* Vol. 8, no. 4 (1983): 635-658 for discussion about the ways that the state benefits from the subjugation—legally and otherwise—of women categorically.

⁹² Dorchon Leidholdt. 1990. “When Women Defend Pornography” in *The Sexual Liberals and the Attack on Feminism*, ed. Dorchon Leidholdt, Dorchon and Janice G. Raymond (New York, NY: Pergamon Press [Athene Series], 1990), 125-131, 126.

⁹³ See Farley “Sex for Sale” (2006).

Stark (2007).⁹⁴ The legal reality is that prostitution and all of these activities are considered trafficking but only in situations of force, fraud or coercion—not in all cases. This lack of clear legal interpretability leads to confusion for some, especially in realms where explicitness is key to interpreting applicability about what, if any, activities beyond pornography and prostitution can be specifically defined as trafficking. And while a number of these writers consider the implications of ethnorace in their work, there are few broad instances where the analysis itself either stems from an ethn racially derived analysis or prioritizes ethnorace in its consideration. Farley is the exception, in that her work with women of color and Indigenous women through the non-profit Prostitution Research & Education, provides research around specific instances highlighting the role of colonization and racism. Farley points out some connections here and names prostitution as a component of the legacy of colonialism in both Native and African American women’s lives. However, she does not pinpoint colonialist and racist systemic structural influences in survivor home communities or in individual survivor lives operating within a contemporary framework beyond the idea that the United States patriarchal system limits available, viable options and that racism within survivor home communities contributes towards that harm. Notably, Farley has been one of the researchers who actively includes exploration of the realities of transgender and male sex trafficking (through prostitution specifically). Further, while Farley’s work as a clinical psychologist has been used to shape anti-prostitution law in Europe, it has

⁹⁴ See Christine Stark and Rebecca Whisnant, eds. 2004. *Not For Sale; Feminists Resisting Prostitution and Pornography*. North Melbourne, Australia: Spinifex Press.

not been as widely used in developing United States law and policy as of yet. The reason for that is unclear, as Farley has been a long-time researcher on the topic and consulted with California State government as well as the United States Department of State Office to Monitor and Combat Trafficking in Persons, an agency which conflates the definition of sexual activities within sex trafficking as well. The lack of connection between Farley and United States anti-trafficking law specifically may be connected to her opposition to the idea that there is a qualitative difference between prostitution and human trafficking.⁹⁵ Legally speaking, there is a difference. Additionally, Farley has been regularly and soundly critiqued around methodology—with scholars expressing concerns about sampling bias aimed at marginalized populations of women prostituted⁹⁶ and the broad application of her findings about prostitution in the particular to all commercial sex activities widely. Further, the high levels of post-traumatic stress disorder (PTSD) that Farley has found in those who have been prostituted formerly have not been regularly reproduced in other studies conducted without Farley's involvement.⁹⁷ Her politics—considered extreme by some—have been considered too influential in her interpretations. This study adds that Farley and others of this ilk may sometimes unknowingly create additional barriers

⁹⁵ See Ann Cotton, Maria Reyes, Sybille Zumbeck, Dinorah Alvarez, Frida Spiwak, Melissa Farley, Ufuk Sezgin, and Jacqueline Lynne. "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder." *Journal of Trauma Practice* Vol. 2, issue 3 (2004): 33-74.

⁹⁶ See Ronald Weitzer. 2005. "Flawed Theory and Method in Studies of Prostitution." *Violence Against Women* 11, (7): 934-949.

⁹⁷ For example, an Israeli study used Farley's PTSD instrument in 2002 and found that a fraction of the population interviewed met the criteria for PTSD. See Bella Chudakov, R. H. Belmaker, Keren Ilan, and Julie Cwikel. 2002. "The Motivation and Mental Health of Sex Workers." *Journal of Sex & Marital Therapy* 28, (4): 305-315.

to intervention and practical policy building by conflating those coercively engaged in sexual activities other than prostitution with prostitution. This misstep potentially erases and silences survivors as well as those who see less of a definitive line connecting all prostitution to sex trafficking.

While consideration of the connections between the United States' historical "otherization" of displaced African women within chattel slavery and Indigenous women within its borders does shed theoretical light on the formation of the United States as a nation-state, the boundaries of the United States (ideal) national identity/citizenship and the nation-state crafting of bodies as "consumable" by "rightful" citizens, this section of the body of literature is tenuous, still developing and largely ignored by many Native Studies canons as well as scholars. Ultimately, the available literature provides some insights on the sex trafficking of Native peoples loosely wrapped in the cloak of sexual violence in Native communities. However, this insight is not usually directly connected to the contemporary issues of targeted sex trafficking of Native peoples nor is that insight usually considerate of its breadth and depth. The work of this study endeavors to move towards filling that gap.

VIII. The Legal Boundaries of Indian Country as Defined Within United States Law

In addition to peer reviewed and other literature discussed above, consideration of the legal and policy making environment surrounding sex trafficking specific to Indian Country requires an understanding of the foundations of Federal Indian Law as established within the Marshall Model

and doctrines and the subsequent United States Supreme Court decisions which have shaped their interpretation and application. This consideration also requires an understanding of certain fundamental principles and interpretations present in contemporary Indian Country criminal jurisdiction. These particular areas of the law are explained here.

The Marshall Model and Doctrines⁹⁸

The Diminished Tribal Sovereignty Doctrine refers to Marshall's 1823-1832 dicta on tribes' powers of self-government. Unless expressly removed by the Doctrine of Discovery,⁹⁹ these powers remain, thus Georgia state laws had no force within Indian boundaries (*Samuel A. Worcester v. The State of Georgia*, 1832 hereafter referred to as *Worcester*). Marshall begins with acknowledgement of tribes' complete sovereignty pre-contact and inherent powers of self-government (*The Cherokee Nation v. The State of Georgia*, 1831 hereafter referred to as *Cherokee Nation*). Diminishment begins with the Doctrine of Discovery (*Thomas Johnson and Graham's Lessee v. William M'Intosh*, 1823 hereafter referred to as *Johnson*), followed by treaty making (*Johnson*), such that tribal self-government power is subject only to the United States government (*Worcester*). By eventually allying with a stronger nation in a trust relationship, tribes are domestic dependent nations

⁹⁸ The details contained in this section come from Getches, et. al, *Cases; Canby, Nutshell;* and Wilkins and Stark, *American Indian Politics* unless otherwise noted. Direct quotes are from the court decisions themselves unless otherwise noted.

⁹⁹ Native sovereignty was limited in two ways—restriction on the conveyance of land to only the United States (*Johnson*) and the inability to engage in foreign relations or treaty making with a foreign nation (*Worcester*). Prof. Williams indicates that the third limitation is immigration (Sept. 1st, 2011 lecture). The results were federalization of the Indians relationship to the United States and the goal was to ensure United States national security.

(*Cherokee Nation*) in exclusive relationship with the United States. Cohen defines tribal sovereignty as self-governing power limited by federal statutes, protectorate relationship restraints, and treaty terms. Otherwise, tribes remain independent, self-governing political communities.¹⁰⁰ Only Congress can change tribal powers;¹⁰¹ the tribes keep all rights and powers that they have not expressly given up (Reserved Rights Doctrine, *United States v. Winans*, 1905.)¹⁰² Tribal sovereignty predates the Constitution (*Talton V. Mayes*, 1896), thus tribes have all those elements of sovereignty not inconsistent with their dependent status (*Mark Oliphant v. Suquamish Indian Tribe*, 1978).

The Trust Doctrine refers to the United States federal government's protectorate role with and responsibilities to federally recognized tribes. Native treaty-making (including the trade of land, some powers for protection from settler encroachment and violence, and other supports) belied United States expansion interests which were often counter to tribal interests. Using the racist language of the time, Marshall discussed tribes as weak "wards" dependent upon the protection of a "superior power" (*Cherokee Nation*) to teach civilization and survive post contact. This is the basis for the notion of the "guardian/ward relationship" as well as the idea of the United States government's charge to protect its "Indian pupils" and maintain the best

¹⁰⁰ See Felix S. Cohen, *Handbook of Federal Indian law, with Reference Tables and Index*. (New York: AMS Press, 1972).

¹⁰¹ This is through use of plenary powers granted the Commerce Clause and those named in *Lone Wolf v. Hitchcock* (1903).

¹⁰² With a firm basis in Worcester's tenet that "whatever hasn't been given up or taken away remains", *Winans* is also seen as an example of a 20th century court adhering to the Marshall Model in a way that benefits the tribes, especially modern era off-reservation fishing and hunting rights cases.

interest of the Indians unless the superior interests of the nation are involved. This doctrine invokes Court review of Congress' response to state action adverse to tribal best interests¹⁰³ as well as its handling of associated fiduciary responsibilities.

In general terms not specific to criminal jurisdiction, plenary power refers to congressional authority to assume the powers of dominion over tribes within United States borders. Loosely derived from inherited British Discovery Doctrine (*Johnson*), the United States acquired legal authority of “the exclusive right to ‘regulate’ [the discovering sovereign’s] relationship to the tribes within its territory” (*Johnson*) after winning the American Revolution. In constitutional law, plenary power is absolute power granted to a body requiring no review or limitations on the exercise of that power.¹⁰⁴ In federal Indian law, congressional plenary power finds its source in the trust relationship created by the manner in which tribal sovereignty has been diminished and is built on the concept of congressional obligation to fulfill those responsibilities. These obligations can be terminated at will and without tribal consent through congressional treaty abrogation (*Lone Wolf, Principal Chief of the Kiowas, et al v. Ethan A. Hitchcock, Secretary of the Interior, et al*, 1903 hereafter referred to as *Lone Wolf*)¹⁰⁵ and the

¹⁰³ Unlike federal law, the States do not owe tribes protection thus the supreme law of the land (federal) often supersedes state law in Indian matters. This effectively dictates the states' role in Indian federal law as well.

¹⁰⁴ Robert Williams Federal Indian Law (FIL) Lecture, August 23rd, 2011.

¹⁰⁵ A number of Supreme Court cases address this issue specifically. Jurisprudence has held that Congress can unilaterally abrogate United States treaty obligations with tribes to uphold trust obligations (*Lone Wolf*) although federal termination of tribe status does not abrogate treaty rights unless there was specific legislative intent in the form of a clear and unequivocal statement, to do so (*Menominee Tribe v. United States*, 1968). If a Termination Act does not specifically abrogate reserved hunting and fishing rights, these rights remain—

congressional use of these powers can be somewhat limited by Supreme Court review.¹⁰⁶ *Lone Wolf* further clarified roles and powers within this relationship. Specifically, while mutual negotiation was the norm, negotiation was Congress exercising absolute power over tribes since the greater power (plenary power) includes the options of negotiation and unilateral use of greater will. Plenary power also allows Congress to determine who is “Indian” and thus which tribes qualify to receive federal services under its trust obligations (*United States v. Sandoval*, 1913 hereafter referred to as *Sandoval*). As used in Indian law, this power is exclusive, preemptive¹⁰⁷ and absolute.

These doctrines and legal attitudes, which are the foundational laws about how the United States government and Indian Country are to engage with one another rely on colonial racial categories and distinctions—and still greatly influence law in Indian Country today. Additionally, this is the established structure which has shaped the interpretation and application of anti-trafficking law in Indian Country as well as some of Indian Country’s ideas about what is possible as sovereign states inside another sovereign state. This also serves as a sobering testimony to the United States government’s insistence on psychological dependence to define safety¹⁰⁸ and

no state can deprive a tribe (or individual members) of hunting and fishing rights guaranteed to them by federal treaty (*Kimball v. Callahan*, 1974).

¹⁰⁶ While it is not explicit, the court’s use of the canons of constructions to determine the constitutionality of congressional action can be understood as a practical review of congressional plenary power even if it is not a rendered decision.

¹⁰⁷ Congress may enact legislation which effectively precludes state government acting in Indian affairs.

¹⁰⁸ This is in reference to use of Native social controls. Consider especially the response in Lonewolf as an example.

protection¹⁰⁹ upon which rests all consideration of how the law must look at prosecutorial control.

Criminal Jurisdiction in Indian Country¹¹⁰

Native jurisdiction over Indian Country crimes was once exclusive. Prior to the interference of United States law, tribal and United States territorial distinctions were always clear—even when citizens, states and other representatives of the United States ignored them. This is evidenced by the language of the Commerce Acts, written into what would be adopted as the United States Constitution, during the Philadelphia Convention in 1787. Ethnoracial distinctions were also evident and grew in legal importance as criminal jurisdiction was created for Indian Country. The following details the laws, statues and decisions important to that development.

In the last of the six Nonintercourse Acts,¹¹¹ crimes committed by one Native against another were excluded from federal jurisdiction. The Indian Country Crimes Act, or General Crimes Act (18 USC 1152), originated from those acts, creating federal court jurisdiction for certain types of offenses committed by Indians against non-Indian victims and all offenses committed

¹⁰⁹ This is in reference to plenary power and the idea of “wardship” of Native nations. Consider especially Cherokee Nation.

¹¹⁰ The details contained in this section come from Getches, et. al, (2011), Canby (2009) and Wilkins and Stark (2010) unless otherwise noted. Direct quotes are from the court decisions themselves unless otherwise noted.

¹¹¹ Trade & Intercourse Acts of 1790, 1793, 1796, 1799, 1802, and 1834.

by non-Indians against Indian victims by the last major revisions of 1854. It did and does not apply to Native crimes against Natives.¹¹²

Because they were initially conceived as outside of the United States' jurisdiction¹¹³ and separate sovereign nations, *Worcester* held that states had no authority or jurisdiction within tribal boundaries in 1832. This was modified in the *James A. Draper v. United States* (164 US 240) 1896¹¹⁴ holding that under certain conditions state courts have exclusive jurisdiction over crimes committed by non-Indians against non-Indians in Indian Country.¹¹⁵

The Court affirmed tribal criminal jurisdiction in cases involving Indian parties in Indian Country (*Ex Parte Kan-gi-shun-ca [otherwise known*

¹¹² There are four exceptions. The three legislative exceptions are [1] offenses committed by one Indian against the person or property of another Indian, [2] any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or [3] any case where, by treaty stipulation, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively. "Notwithstanding its literal terms, the Supreme Court significantly narrowed the reach of 18 U.S.C. § 1152 in *United States v. McBratney*, 104 U.S. 621 (1882), holding that, absent treaty provisions to the contrary, the state has exclusive jurisdiction over a crime committed in Indian Country by a non-Indian against another non-Indian (*Draper v. United States*, 164 U.S. 240 [1896]). Subsequent decisions have acknowledged the rule. See, e.g., *United States v. Wheeler*, 435 U.S. 313, 325 n. 21 (1978); *United States v. Antelope*, 430 U.S. 641, 643 n. 2 (1977); *Williams v. United States*, 327 U.S. 711, 714 (1946)." (cited in Criminal Resource Manual 685; USAM 9-20.100) .

¹¹³ See generally Fletcher (2006) accessible at <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1156&context=facpubs>. (Arguing that the United States Founders did not conceive of Indian tribes as being part of the Federal Union because they were located outside the territorial bounds of the original thirteen states, , outside governmental entities thereby extra-constitutional).

¹¹⁴ via *United States v. McBratney* (104 US 621) in 1881.

¹¹⁵ "When the enabling act admitting a state into the Union contains no exclusion of jurisdiction as to crimes committed on an Indian reservation by others than Indians or against Indians, the state courts are vested with jurisdiction to try and punish such crimes. *United States v. McBratney*, 104 U. S. 621, to this point affirmed and followed....The provision in the enabling act of Montana that the "Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States" does not affect the application of this general rule to the State of Montana." *Draper* 164 US 240.

as *Crow Dog*], 1883 hereafter referred to as *Crow Dog*, using Nonintercourse Acts). Rooted in *Johnson*, this decision indicated the need for clear congressional expression of intent to shift jurisdiction if that was their desire.¹¹⁶ Congress indicated intent to maintain specific control via exercise of plenary power in the *Major Crimes Act* (MCA-1885).¹¹⁷ The MCA established federal jurisdiction for certain felonious¹¹⁸ offenses committed by Indians in Indian Country. In response, the Supreme Court upheld MCA’s constitutionality in *United States of America v. Kagama alias Pactah Billy, an Indian, and another*. (1886, here after referred to as *Kagama*) based in part on the Political Question Doctrine.¹¹⁹

The Termination Era saw enactment of Public Law 83-280, 18 U.S.C. § 1162, 28 U.S.C. § 1360 and 25 U.S.C. §§ 1321–1326 in 1953, transferring federal criminal jurisdiction and limited civil jurisdiction over tribes (with no tribal input or consent¹²⁰) located in six “mandatory states”¹²¹ which included

¹¹⁶ *Ex Parte Crow Dog*, 109 U.S. 556 (1883), pg 109 U. S. 557

¹¹⁷ 18 USC 1153

¹¹⁸ Felonies are crimes which carry a maximum penalty of more than one year imprisonment. At enactment, this MCA covered seven crimes which have been expanded to total 14 at this writing. Of those crimes listed now, the following are relevant to this discussion: kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), assault against an individual who is not yet 16 years, felony child abuse or neglect murder, manslaughter, rape and assault (18 USC § 1153 - Offenses committed within Indian Country).

¹¹⁹ This doctrine recognizes the court as an inappropriateness forum to address political issues better answered by the government’s political branches due to constitutional allocation of authority. The Court can only legitimately consider the constitutionality of political actions, not whether these actions were “done wisely or well”.

¹²⁰ President Eisenhower requested that the law be amended to include tribal consent. This clause was added in 1968, but did not function retroactively. [Droske (2008), 735].

¹²¹ Alaska, California, Minnesota (Red Lake Reservation was exempted), Nebraska, Oregon and Wisconsin).

some of the largest Native populations.¹²² Within PL-280 states, tribal sovereignty is further diminished, putting all crimes on tribal land under state jurisdiction even if the offender or victim is Native. In general, PL-280 provided for broad state concurrent criminal jurisdiction, for both mandatory states and nine states¹²³ that opted to accept PL-280.¹²⁴

The Indian Civil Rights Act (25 USC 1302(7)) limits tribal court criminal jurisdiction to offenses which carry a maximum penalty of no more than one year imprisonment (misdemeanors). However, if a tribal court meets certain Western legal standards, it can also prosecute felony offenses. Generally these standards that tribal courts must meet create a tribal court not unlike that familiar to those practicing United States law. The result is the tribal court adoption of components such as rules of evidence and pleading, and other requirements similar to these in state and federal courts.¹²⁵

¹²² This effectively impacted 23% of reservation residing Natives in the contiguous 48 states and all Alaska Natives according to the National Institute of Justice, United States Department of Justice, Public Law 280 and Law Enforcements in Indian Country – Research Priorities 3—4 (2005), *available at* <http://www.ncjrs.org/pdffiles1/nij/209839.pdf>. 65.

¹²³ Nevada (1955), South Dakota (1957, highways), Washington (1957, eight subject areas), Florida (1961), Idaho (1963, civil & criminal over seven subject matters, expandable with tribal consent), Montana (1963, over Flathead Reservation), North Dakota (1963, assuming civil, by tribal consent), Arizona (1967, water quality-repealed 2003 and air quality-repealed in 1986), and Iowa (1967, civil over the Sac and Fox Tribe). Post amendment, Utah accepted PL-280 in 1971. Droske (2008, pg.735), Emily Kane, *State Jurisdiction in Idaho Indian Country Under PL 280*, ADVOCATE, Jan. 2005, at 10, 10-11.

¹²⁴ Carole Goldberg-Ambrose, a PL-280 expert, has taken a position that, despite Congress's intent that PL- 280 reduce lawlessness, it has had the opposite effect, because tribal courts' power was limited and tribes subject to Public Law 280 were cut out of significant federal funding. (See Goldberg-Ambrose, 1997.) Public Law 280 has also been criticized for stunting the development of tribal judicial systems and preventing tribal courts from being respected as they were developing. (See Washburn & Thompson [2004]).

¹²⁵ Charles F. Wilkinson. 2005. *Blood Struggle: The Rise of Modern Indian Nations*. New York: Norton,pg. 290.

In *Oliphant v. Suquamish Indian Tribe* (1978) 435 US 191, the Supreme Court held that tribal courts have no jurisdiction over non-tribal members in Indian Country. *United States v. Anthony R. Wheeler* (1978), 435 U.S. 313, held that tribes retain jurisdiction to prosecute members for reservation crimes since the sovereign power to punish offenders was never given up. That jurisdiction "... is continued exercise of retained tribal sovereignty... [and is not] implicitly lost by virtue of their dependent status."¹²⁶

Albert Duro v. Edward Reina, Chief of Police, Salt River Department of Public Safety, Salt River Pima-Maricopa Indian Community, et al., hereafter referred to as *Duro v. Reina*, 495 U.S. 676 (1990), held that tribes could not prosecute non-member Indians for crimes committed on their reservations, effectively restricting tribal jurisdiction to tribal citizens within reservation boundaries. Perhaps noting Brennan's dissent, Congress unequivocally expressed intent, amending the Indian Civil Rights Act (25 U.S.C. § 1301) to include the power to "exercise criminal jurisdiction over all Indians" as a power of Native self-government and effectively reversed the decision (*the Duro Fix*). This was affirmed in *United States v. Billy Jo Lara*, 541 US 193 (2004), where the Court directly contradicted their *Oliphant* ruling, holding that tribal courts have criminal jurisdiction over all members of federally recognized tribes. This criminal jurisdiction case law does more than indicate the complicated juridical environment in which anti-trafficking law must be considered when applied to Indian Country. It also underscores how

¹²⁶ Wheeler, 435 U.S. 313, 324.

important racial categories become in the process of providing safety and protection in Indian Country. The legal focus on ethnorace originates in Western legal paradigms and, in some ways, can be thought to redefine the crime via reduced penalties in tribal courts and creating “redress according to race.”

There have been regular challenges and updates to thinking about criminal jurisdiction in Indian Country, but it does not seem to go far enough. The Tribal Law and Order Act of 2010,¹²⁷ extends and revises authority for the prosecution of, and response to, Indian Country crimes. Federal law and limitations around sexual violence prosecution are detailed, addressing federal and state accountability and coordination, empowering tribal law enforcement and governments, tribal justice systems, crime data collection and information sharing, as well as domestic violence and sexual assault prosecution and prevention. The act also extends allowable sentencing and fines (Rosenthal, 2010). The Violence Against Women Reauthorization Act of 2013 survived long delays in its enactment partially attributable to some political desires to avoid extensions of the Acts’ protections to on-reservation Native Americans.¹²⁸ At issue were fears harkening back to 1854 (*Indian Country Crimes Act*) and 1978 (*Oliphant*)—namely the fair treatment of and affording of constitutional guarantees to non-tribally affiliated/non-Native defendants if these offenses in Indian Country fall under tribal

¹²⁷ 2010 Tribal Law and Order Act. Pub. L. 111-211. 111 Stat. 151. The Department of Justice. July 29th, 2010. Retrieved from <http://www.justice.gov/usao/az/IndianCountry>. April 15th, 2011. TLOA amends the Indian Law Enforcement Reform, 2000 Indian Tribal Justice Technical and Legal Assistance, & 1968 Indian Civil Rights Acts.

¹²⁸ Violence Against Women Act Reauthorization of 2013. Pub.L. 113-4.

jurisdiction.¹²⁹ At the March 2013 signing, the need for tribal jurisdiction to address these crimes was recognized under law. As of 2014, three Native communities have been designated as able to enforce tribal jurisdiction in cases of sexual assault involving non-Native perpetrators.¹³⁰

And while these adjustments are certainly long overdue steps to correcting past United States encroachment on Native social control, do they go far enough in correcting those wrongs? The process of “being designated” is also a process of determining which Native justice systems are better at meeting a Western justice standard—which can be problematic, especially for Native entities where cultural ideas about legitimate leadership look nothing like the model of the United States. Additionally, in this jurisdictional schema, involvement of Native courts is still in the context of “redress according to race” which necessarily continues an extra-Native preoccupation with colonially defined ethnorace. Further and in the context of sex trafficking, these recent legal adjustments can generally recreate barriers to recognizing trafficking cases if the burden of proof remains the same as United States law. More specifically, this “special option” for tribal courts to hold prosecutorial jurisdiction in interracial cases are specific to domestic violence cases and include the additional proof that the victim/survivor was in an appropriately intimate relationship with her or his trafficker. That

¹²⁹ "If a Native American is raped or assaulted by a non-Indian, she must plead for justice to already overburdened United States attorneys who are often hundreds of miles away" Weisman (2013).

¹³⁰ These three communities are the Pascua Yaqui of Arizona, the Tulalip Tribes of Washington State, and the Umatilla Tribes of Oregon. Their jurisdiction is limited to domestic and dating violence as well as violations of certain protection orders. Via stipulations of the Act, they must also ensure that the constitutional rights of non-Indian offenders are protected.

places the victim/survivor in the precarious, uncomfortable position of seeking approval for the type of relationship in which the victimization has occurred to seek protection. That is similar to the absurd requirement that Native communities must sometimes prove how much they are a ward of the state to get the services and or support which originated in treaties rather than a need for guardianship. Additionally, these changes only have real impact on targeted sex trafficking in Indian Country if the ethnorace of those involved matches up precisely—which it might not. Thus, overall, these changes are simultaneously important and helpful in Indian Country while failing to address the targeted sex trafficking of Native peoples adequately.

Statutes and Supreme Court decisions have made distinguishing jurisdiction in Indian Country complex and racialized. Although there are recent revisions to precedent, jurisdiction for crimes in Indian Country remains largely determined by ethnorace of the perpetrator (Indian or non-Indian), ethnorace of the victim (Indian or non-Indian), and the type of offense involved. PL-280 and other state or tribal specific statutes can shift jurisdiction on particular parts of tribal land as well. As it is applied currently, criminal jurisdiction around sex trafficking of Native peoples does not address the real issues—the fact that the description of the crime may be specifically racialized by its lack of fit with other geographic and/or communal realities or the imposed legal limitations around criminal jurisdiction all together. Part of the impetus for these legislative changes is that Native communities need laws that are legitimate culturally. Native survivors of sex trafficking as well as Native peoples who are vulnerable to traffickers need laws legitimate and applicable to their realities in Indian

Country broadly—otherwise the new provisions are ineffective for their situations at best.

IX. Applicable Theoretical Frameworks: A Review

In addition to the gathering and analysis of primary data, Chapter Five of this study, “Putting it All Together: A Discussion, Conclusions and Recommendations Around Sex Trafficking in Indian Country,” provides three main discussions using a transdisciplinary theoretical approach in each. These frameworks also inform the goals of the study, and as such are helpful to understanding the research design and considerations in subsequent chapters of this work. The areas of discussion — Community Vulnerability, Legal Analysis and Community Building Support—are as described here.

Community Vulnerability

In what has come to be known as the United States of America, there are historical and socio-cultural elements specific to Indigenous experience which have created situations of vulnerability within Indian Country. Those elements make Native peoples a potential target group for trafficker recruitment. The discussion of this particular vulnerability and its development within this study relies on a blended tribal feminist socio-political analysis based on a modified Integrated, Ecological Model,¹³¹ an

¹³¹ This is a model developed by Lori Heise (1988), which will be modified for application in Native community for this study. See generally, Lori Heise. “Violence Against Women: An Integrated, Ecological Framework.” *Violence Against Women*. 4 (3) (1988): 263-264.

Indigenized view of Settler Colonial Biopolitics,¹³² Historical Grief/Trauma & Lateral Violence Theory¹³³ and modified Safety/Danger Zone Theory.¹³⁴ This theoretical review also highlights why a highly blended analysis using these frameworks is necessary. Heise's Integrated, Ecological Framework (Figure 1) suggests that intimate violence is the result of interactions between four levels of analysis, which Heise visualizes as concentric circles¹³⁵ moving from an innermost circle of personal history¹³⁶ outward to the immediate context in which abuse happens (microsystem).¹³⁷ These are enclosed in formal and informal institutions and social structures (exosystem) within which work, neighborhood, social and identity group influences exist. The outermost circle (macrosystem) contains the general views and attitudes of that culture at large. As writ, there are factors specific to Native experience that this model does not directly address such as the external and internal pressures of colonialism explained previously in Section I of this chapter. While Heise notes that several other theorists¹³⁸ emphasize the importance of the mesosystem¹³⁹ (another layer where the social environment¹⁴⁰ interacts with

¹³² This use is influenced by Scott Morgensen's (2010 & 2011) approach to Michel Foucault's concepts of biopolitics and Mark Rifkin's (2009) rework of Giorgio Agamben's bare life and biopolitics.

¹³³ This is based on Maria Brave Heart's work on Historical Trauma/Grief (1995, 1998, 1999, 2000) and Eduardo and Bonnie Duran's work on Native American Postcolonial Psychology (1995).

¹³⁴ This use is influenced by K. Tsianina Lomiawaima & Teresa McCarthy's definition in *To Remain an Indian: Lessons in Democracy from a Century of Native American Education* (2006), pg. 6-8.

¹³⁵ Heise, "Integrated, Ecological Framework" (1988).

¹³⁶ Personal history would influence each person's behavior in relationship.

¹³⁷ This is usually the family, other intimate or acquaintance relationship.

¹³⁸ See especially J. Edleson and R. M. Tolman. 1992. *Intervention for Men who Batter: An Ecological Approach*. Newbury Park, CA: Sage.

¹³⁹ This can also extend to interactions with more external, still small systems such as local social institutions, like the police, courts and social services.

¹⁴⁰ i.e., the microsystem.

smaller exosystem spheres¹⁴¹) she does not fully engage this idea.

Additionally, any model reliant on family systems which hopes to address Native concerns must consider sociohistorical and contemporary impacts of colonialism in analysis. The macrosystem analysis, modified by Edelson and Tolman (1992) and Dutton (1996), used here is built on hierarchical and colonial concepts, expressed as nesting (Figure 2). Within a Native context there is a living, known and influential history before colonial systems which contributes to identity. It seems necessary to recognize its impact on all interaction levels—personal history outward.

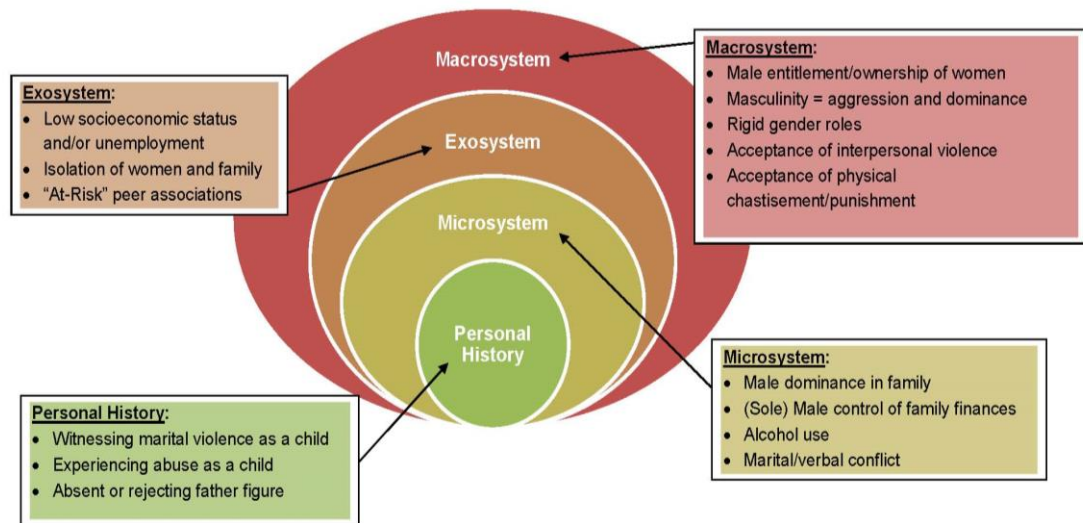
Native communities exist with the additional sociopolitical layer of colonial structure which effectively amps up the patriarchal and social factors that Heise discusses so well as potential building blocks to violence. I modify this model to allow room for the matrix of legal dependence, loss of or severely altered kinship ties and coerced psychological dependence that the settler colonial system has imposed on these communities (Colonialist Legal Circumstance, in the figure that follows). I also modify this model to incorporate macro and micro social factors that may influence violence (Figure 3). In that inclusion, it is necessary to consider the inherent biopolitics in colonialism altered geographical politics—from territorial boundary marking to use of coercive power to enforce those boundaries.¹⁴² I

¹⁴¹ e.g., workplace, extended family, or network of peers. Others have also represented this version of the same model as nested rectangles.

¹⁴² Scott L. Morgensen, "Settler Homonationalism: Theorizing Settler Colonialism Within Queer Modernities". *GLQ*. 16 (1-2) (2010): 105-131. See also April D. J. Petillo. "Unfolding the Dialogue: Where Transnational and Native American Studies Meet." *Arizona Journal of Interdisciplinary Studies*, 2, no. 1 (Spring 2013).

also consider socially constructed and managed notions of the “peculiar” that are “read”/imposed on people according to their racialized, gendered and sexualized experience.¹⁴³

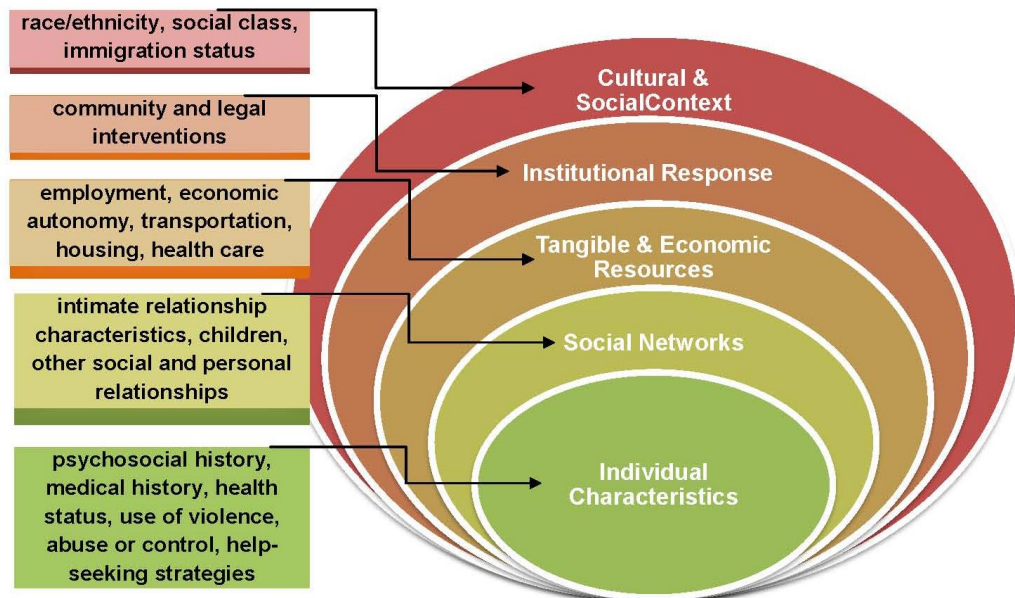
Figure 1: Factors Related to Violence Against Women at Different Levels of Social Ecology



Adapted from Lori L. Heise. 1998. "Violence Against Women: An Integrated, Ecological Framework." *Violence Against Women*. 4(3), 262-290, 265.

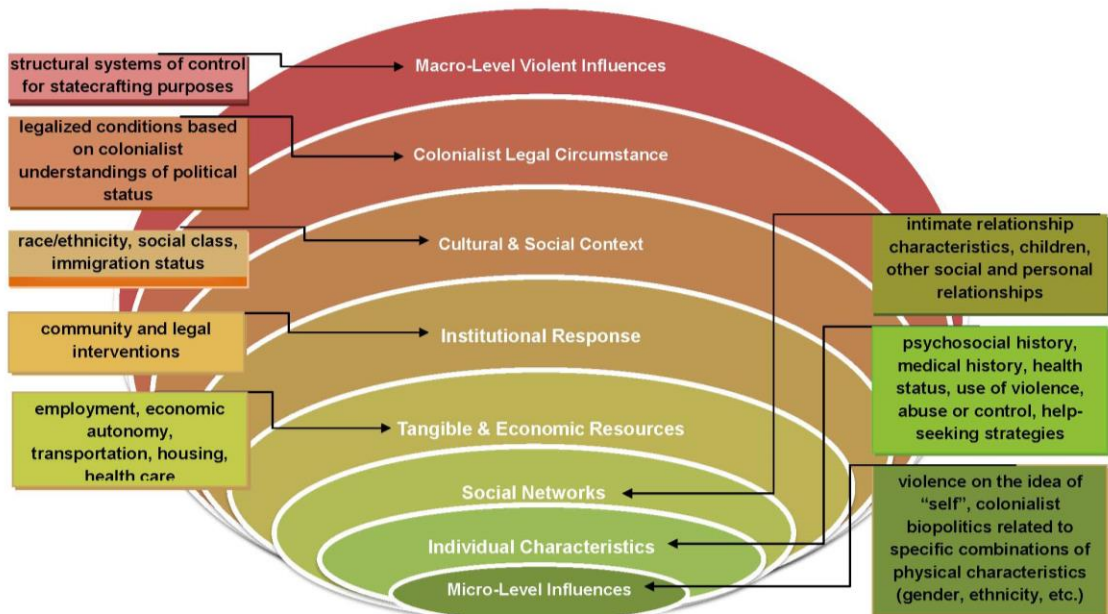
¹⁴³ See generally Mark Rifkin, "Indigenizing Agamben" (2009).

Figure 2: Nested Ecological Model of Intimate Partner Violence



Bronfenbrenner (1979), modified by Dutton (1996); Edelson and Tolman (1992). Adapted from description in Lori L. Heise. 1998. "Violence Against Women: An Integrated, Ecological Framework." *Violence Against Women*, 4(3), 262-290, 264-266.

Figure 3: Nested Ecological Model of Intimate Partner Violence Specific to Native America



Adaptation which considers the sociopolitical layer of colonialism impacting Native experiences

Many scholars use Brave Heart's psychoanalytic model of Historical Trauma, which recognizes the impacts of cumulative emotional and psychological wounding, emanating from massive group trauma, over a lifespan and across generations.¹⁴⁴ While helpful for explaining some of the challenges in Indian Country, it is problematic to set the traumatic past as a biological group characteristic as Brave Heart's model does. To do so, focuses our attention on the behavior and responses of trauma/oppression survivors and not the behavior and responses of the creators of traumatic experiences, harkening back to colonial biopolitics which equate Native people as the classical Savage.¹⁴⁵ That said, there *can* be the "social sharing of trauma." Considering how Historical Trauma might work as an element of "social sharing," we need to look at Lateral Violence—the organized, harmful behaviors expressed within an oppressed group towards each other.¹⁴⁶ Some define lateral violence as intergroup expressions of rage and frustration about the surrounding oppressive environment that cannot be expressed to or towards the oppressor for fear of retaliation. Hence, Historical Trauma creates the oppressed status (the why) and lateral violence is the demonstration of frustration within the group (the expression). Lateral violence also becomes the tool with which the oppressor indirectly gets the

¹⁴⁴ Brave Heart, 1995, 1998, 1999, 2000 as cited in Julie Anne Hailer. *American Indian Youth Involvement in Urban Street Gangs: Invisible Now More?* (Dissertation. University of Arizona, 2008.) : 54—56.

¹⁴⁵ Robert A. Williams, Jr. 2012. *Savage Anxieties: the Invention of Western Civilization*. New York: Palgrave Macmillan.

¹⁴⁶ See generally M. M. Rowe and Sherlock, H. 2005. "Stress and Verbal Abuse in Nursing: Do Burned out Nurses Eat Their Young?" *Journal of Nursing Management*, 13 (3), 242-248 and K. M. Stanley, Martin, M. M., Michel, Y., Welton, J. M., & Nemeth, L. S. 2007. "Examining Lateral Violence in the Nursing Workforce." *Issues in Mental Health Nursing*, 28, 1247-1265 for an understanding of this phenomenon in the workplace. Little has been written applying this concept in Native communities, specifically.

oppressed to maintain the status quo. Within this framework, some of the individual members of the oppressed group feel empowered by repeating or acting out the original oppression on other group members, thereby normalizing its infliction and consolidating their modicum of power. Thus, over time trauma imposed by external entities creates hostilities leading to intragroup expressions of power via sexual violence imposed on other group members.

Within the context of reiterated communal trauma unleashed laterally, we can see how community dynamics might create especially vulnerable populations within the oppressed group. The sociocultural theoretical framework of Safety/Danger Zone Theory highlights how, over time, the United States' process of both hampering and encouraging Native political and intellectual sovereignty has 1) reigned in cultural difference threatening to the national ideal and 2) controlled integration of safe elements of cultural difference into the national ideal.¹⁴⁷ Rather than focusing on United States judgments of cultural safety with regard to Native Americans, we can use Safety/Danger Zone Theory to consider possibilities when Native communities judge cultural safety and when sex trafficking survivors are considered a separate sociocultural group within the larger group. Survivors of sexual violence, especially sex trafficking, have qualities by necessity of this experience which can make them distinct from those in a community

¹⁴⁷ Lomawaima & McCarty, *To Remain an Indian* (2006). They found that federal control was assumed essential in defining what aspects of culture would fit within the national ideal as well as to the continuation of Indigenous culture. Thus the government was to determinate the cultural practices/differences that fell within/outside the safety zones of the ideal.

who have not. For many Native communities, the understanding is that sexual violence was not consistent in Native life until the Boarding School Era. Thus, knowledge of similar violent events are potentially re-traumatizing social reminders of that difficult past, creating unspoken/unacknowledged shame. Survivors might come to embody past grief (Danger Zone) for the community. The lack of survivor solidarity within Native communities is sometimes attributed to a sense that survivors must choose between two identities (Native or survivor) as though they are always mutually exclusive, as well as the intimate connection with the boarding school experience.¹⁴⁸

Synthesized, these all indicate that the root of sexual violence lies in an interactive disjuncture between varying systems from the most personal and individual levels to the most overarching and external within the container of Settler Colonialism. For Native communities, the initial break may be colonialism—with its considerable negative impact on Indigenous means of social control through kinship systems,¹⁴⁹ specific relationship to land and place,¹⁵⁰ as well as imposed definitions of what is safe and Native

¹⁴⁸ See Andrea Smith. 2008. *The Lives of Indigenous Women in a 'Post-Racial' and 'Post-Feminist' World*. Academic & Community Organizing, University of Texas, September 2008. Retrieved on April 10th, 2011. <http://www.archive.org/details/ZGraphix-TheLivesOfIndigenousWomenInAPostRacialAndPostFeministW817-2> and Andrea Smith. *Conquest: Sexual Violence and American Indian Genocide Speech*. Feminist Indigenous Voices Spring Lecture Series, Grand Rapids, Michigan, February 7th, 2005. Retrieved on April 10th, 2011. http://www.archive.org/details/andrea_smith-020706.

¹⁴⁹ Dr. Jennie Joe, personal discussion, April 17, 2012 and September 7th, 2012.

¹⁵⁰ For an analysis of the specific meanings and role that land and place play in Western Apache understandings of knowledge/wisdom as well as their role in oral tradition and traditional social controls, reference Keith H. Basso. 1996. *Wisdom Sits in Places: Landscape and Language Among the Western Apache*. Albuquerque, NM: University of New Mexico Press.

identity.¹⁵¹ Beneath that layer, the larger systems of Native surveillance outlined in United States law and policy¹⁵² and generally accepted research practices¹⁵³ interact with courts, police, cultural communities, workplaces, schools, social networks, extended families, neighborhoods, on through to nuclear family and personal experience as well as the perceived notion of how Indians should be. Historical Trauma and Lateral Violence are excellent ways to understand the potential impacts of colonization on an individual's personal history as understood in Heise's Integrated Ecology. Historical Trauma and Lateral Violence can also inform understanding of the underlying factors that create the environment in which community compliance, federal legal confusion and individual internal stressors combine to create the situation of a sexual violence incident. Elements of Heise's Integrated Ecology are excellent for understanding, in more detail, the influence of external stressors which might lead to a choice to perpetuate sexual violence. And, finally, the theoretical framework of Safety/Danger Zones provides a unique way to generally consider the unexpected barriers and implications of community healing around sexual violence. In primary prevention, these types of theoretical insights can be helpful for considering how to pair community initiative elements with a model allowing for

¹⁵¹ For discussion of the white myth of "the Indian" as well as its impact on both perception and law, see Berkhofer, *White Man's Indian* (1978). For discussion on the origins of the classical Savage as a means to develop western civilization generally see Williams, *Savage Anxieties* (2012) as discussed previously.

¹⁵² For discussion and trustworthy analysis of the historical and contemporary political, legal landscape of United States federal Indian policy consider Wilkins and Stark, *American Indian Politics* (2011).

¹⁵³ For deeper analysis of this see Linda T. Smith. 1999. *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books. Smith's counter-theory treatise on decolonizing Western research paradigms offers inspiration as well as witness to anti-colonial, anti-racist critical inquiry specifically Indigenous in context.

culturally defined justice to supplement and maximize imposed jurisdictional requirements rather than relying on United States legal systems alone.

Legal Analysis

The legal analysis provided in Chapter Five will review the potential application of United States anti- sex trafficking laws in Indian Country, considering the legal and social conditions dictated by United States criminal jurisdiction as well as the experiences uncovered in this study. The discussion of anti-sex trafficking legislation's effectiveness in Indian Country relies on Tribal Critical Race¹⁵⁴ and Feminist Critical Race¹⁵⁵ theories (a tribal feminist critical race legal analysis). This is a theoretical review of relevant, broad issues within Federal Indian Law, which places analysis of anti-sex trafficking laws' effectiveness in Indian Country into context.

The law is not always what it seems and any Critical Race Theory (CRT) scholar will tell you that the law's foundations lie in the ideologies and fears that bind up the status quo. Using a broad transdisciplinary base inclusive of critical perspectives, contemporary CRT scholars address legalized structural racism, sexism and classism at its intersections with other forms of subordination¹⁵⁶ such as immigration status, sexuality, culture, language,

¹⁵⁴ This lens will be heavily influenced by the works of Bryan Brayboy, Sarah Deer and Robert Williams.

¹⁵⁵ This perspective will be heavily influenced by the works of Sarah Deer, Andrea Smith, Kimberle Crenshaw and Derek Bell.

¹⁵⁶ Crenshaw, Kimberlé, "Demarginalizing the Intersection of Race and Sex: a Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *Feminist Legal Studies*. 3 (1989): 105-135; Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and the Violence Against Women of Color" *Stanford Law Review*, 43 (1993), 1241–1299.

phenotype/color, accent and/or surname.¹⁵⁷ What began with scholars such as Derrick Bell and Alan Freeman holding Critical Legal Studies (CLS) theorists accountable for examining the traditional legal system's legitimizing oppressive social structures and potential social transformation without a critical analysis of race/racism,¹⁵⁸ led to CRT theorists moving away from CLS because its framework restricted the ability to fully analyze racial injustice.¹⁵⁹ Women and people of color helped CRT address social injustice beyond the Black/White binary, by including gendered, classed, sexual, immigrant and language experiences and histories in the discussion.¹⁶⁰ The result is a CRT genealogy with branches that are decidedly not mutually exclusive nor in contention with each other. My analysis rests on theoretical intersections of Tribal Critical Race Theory (TribalCrit) and Critical Race Feminism (FemCrit)¹⁶¹ as applied in both law and education.

If we seek out the legal *Ursprung* (origin) behind the *Herkunft* (descent) into a colonized state,¹⁶² we discover that the tangled, constraining web that defines criminal jurisdiction in Indian Country - detailed generally

¹⁵⁷ Tara J. Yosso, "Whose Culture has Capital? A Critical Race Theory Discussion of Community Cultural Wealth," *Race, Ethnicity and Education* 8:1 (2005): 69-91:73.

¹⁵⁸ *Ibid.*, 71-73.

¹⁵⁹ *Ibid.* See also Richard Delgado and Jean Stefancic. 2001. *Critical Race Theory: an Introduction*. New York: New York University Press.

¹⁶⁰ *Ibid.*

¹⁶¹ Both strains of CRT are used in legal and educational disciplines. Influenced by both Paulo Freire and bell hooks, I recognize education's potential as a social justice project capable of liberating the oppressed, colonized masses as much as legal/policy apparatuses. For more on schools as liberatory social justice project, please see also Paulo Freire. 1970. *Education for Critical Consciousness*. New York: Continuum Publishing Company; Paulo Freire. 1973. *Pedagogy of the Oppressed*. New York, The Seabury Press; and bell hooks. 1994. *Teaching to Transgress: Education as the Practice of Freedom*. New York, NY: Routledge.

¹⁶² Michel Foucault. 1977. "Nietzsche, Genealogy, History" in *Language, Counter-Memory and Practice: Selected Essays and Interviews*, ed. Donald F. Bouchard, and Sherry Simon. Ithaca, N.Y.: Cornell University Press.

in section two of this review (“A Review of the Legal Boundaries of Indian Country as Defined Within United States Law”) - began over two and a quarter centuries ago with the Commerce Clause. This clause decrees Congress the sole power to regulate commerce with foreign nations, the states, and with the tribes.¹⁶³ Later, during the Marshall Era, the courts’ interpretations of this clause were broad, empowering Congress with jurisdiction over much of Indian affairs. With the advent of the Marshall Model decisions,¹⁶⁴ further articulated by Felix Cohen in *The Handbook of Federal Indian Law* (1941), the roles of the federal state (guardian protector), the courts (interpreter of efforts to meet trust responsibilities) and the tribes (protected, “helpless,” beneficiary wards) were outlined in relationship to one another. The inter-related principles of the Diminished Tribal Sovereignty Doctrine (*Johnson*), Trust Doctrine (*Worcester*), Congressional Plenary Power Doctrine (*Johnson*) and the Canons of Construction (*Worcester*) were defined in the model as well. Of the several legal concepts unique to the relationship between Native nations and the United States government, congressional plenary power in Indian affairs is the most antithetical to Native self-determination. Though presented in brief here, understanding how congressional plenary power hinders Native self-determination is helpful in assessing criminal jurisdiction in Indian Country.

As previously discussed, Native jurisdiction over Indian Country crimes was once exclusive, in all cases. Now, jurisdiction is still largely determined

¹⁶³ United States Constitution, Article I, Section 8, Clause 3

¹⁶⁴ The basis of federal Indian law, Marshall’s decisions in *Johnson v. McIntosh* (1823), *Cherokee Nation of Indians v. State of Georgia* (1831), and *Worcester v. State of Georgia* (1832) are still used both to support and diminish Native rights.

on a territorial basis, but is informed by rhetorical ethnoracial distinctions which, although always evident, have grown in legal importance as criminal jurisdiction has been created for Indian Country. Crimes in Indian Country (defined as lands within Indian reservations, dependent Native communities as well as restricted and off-reservation trust lands ¹⁶⁵) might fall under one of several jurisdictions based on the laws and statutes in force there.¹⁶⁶

In no uncertain terms, the current criminal justice paradigm established *for* Indian Country reinforces and reifies structural, political and representational intersectional categories¹⁶⁷ which continue particular racialized, gendered, sexualized and classed experiences/microaggressions.¹⁶⁸ The existing mess of statutes, laws and court decisions bind tribal governments seeking to more directly create and enforce safety for their citizens. This generates several incorrect notions that chip away at Native self-determination through “social structures centered around fear and hate,” which provide “a tumorous outlet for feelings elsewhere unexpressed.”¹⁶⁹ While there are sound arguments for Native nations to view federal policy establishing the federal government as fiduciary guardian, this relationship

¹⁶⁵ 18 USC 1151

¹⁶⁶ A more detailed legal history of the development of criminal jurisdiction will be provided in the dissertation, but due to length, is not appropriate for this overview.

¹⁶⁷ Crenshaw, “*Mapping the Margins*” (1991).

¹⁶⁸ These are specific interactions between those of different intersections of identity which can be interpreted as mostly non-physical aggression. These are brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color. See generally Derald Wing Sue, Christina M. Capodilupo, Gina C. Torino, Jennifer M. Bucceri, Aisha M. B. Holder, Kevin L. Nadal, Marta Esquilin, “Racial Microaggressions in Everyday Life: Implications for Clinical Practice,” *American Psychologist*, v62 n4 (2007): 271-286. For examples, of microaggression in action see also the Microaggression Project at <http://www.microaggressions.com/>.

¹⁶⁹ Patricia J. Williams. 1991. *The Alchemy of Race and Rights*. Cambridge, MA: Harvard University Press, 234 (definition of “spirit-murder”).

relies on the concept of wardship, which places Native communities in a childlike position. Within this framework, the subsequent current criminal jurisdiction does not serve Native self-determination. As it is writ, the confusing criminal jurisdiction map, dependent on colonial categories of territory and ethnoracial identity, requires constant referral to an outside authoritative source and/or reification of that source.

A cursory look at the development of criminal jurisdictional designations indicates that Native communities have rarely been consulted at the onset. Reliance on a more cooperative approach built into acts promoting consultation and tribal accommodation are moderately successful, but too easy, as was the case in the *Lyng v. Northwest Indian Cemetery Protective Association* (1988) decision, to interpret as mere policy statements desiring consultation or procedural requirements from federal agencies,¹⁷⁰ and not enforceable legal requirements “with teeth”.¹⁷¹

While more recent legal developments require consultation, the process for overturning past legislative oversights is lengthy and arduous at best. Further, some of the mechanisms for doing so are clearly not generally representative of Native or Native women’s experience. Especially notable is the Supreme Court, which has not been particularly open to exercising its role to support and expand Native sovereignty or self-determination since the

¹⁷⁰ David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr. and Matthew L. M. Fletcher. 2011. *Cases and Materials on Federal Indian Law*. St. Paul, MN: West Academic Publishing.

¹⁷¹ Ibid.

Rehnquist Court Era.¹⁷² The United States began the business of psychologically coercing dependence from contact: from weapons trade, transmission of disease, treaty protections, destruction of kinship systems, to this criminal jurisdiction scheme. Each phase of the relationship between Native leadership and the United States government has generally included the United States' attempts to redefine safety, homeland, language, sacred history, spirituality and ultimately the very intersections that determine identity *for* Native peoples.¹⁷³ Coupled with the colonialistic rush to impose normative United States defined identity rather than to honor Native defined cultural transformation, little time is left to cultivate Native specific and oriented response, reinforcing an image/mirage of who and what is Indian in the United States imaginary.¹⁷⁴ This imaginary is then used, sometimes by both Native and non-Native people, to make every day political decisions and build legal structures. The result is decision-making which is not in line with Native self-determination because, psychologically, there is little that is still authentically Native in it. There is simply little to any Native representation in the criminal jurisdictional structure as it exists now.

¹⁷² For more detailed analysis exploring the Rehnquist Court's use of the Marshall Model to reduce, rather than enhance, Native sovereignty and self-determination see Robert A. Williams, Jr. 2005. *Like a Loaded Weapon: the Rehnquist court, Indian rights, and the Legal history of Racism in America*. Minneapolis, MN: University of Minnesota Press.

¹⁷³ This argument is heavily influenced by Tom Holm, J Diane Pearson and Ben Chavis "Peoplehood: A Model for the Extension of Sovereignty in American Indian Studies," *Wicazo Sa Review*, 18, 1, (April 01, 2003): 7-24.

¹⁷⁴ This argument is heavily influenced by Scott Morgensen's work at the intersection of Queer and Native American Studies. Especially helpful is Morgensen's aggressive argument effectively linking settler biopolitics and sexual colonization examining the role of terror and resistance, queer modernities and a settler sexual hegemonic system. See Morgensen, "Settler Homonationalism" (2010) and Berkhofer, *White Man's Indian* (1978) which is also an influence.

Community Building/Support

It is not enough for American Indian Studies scholars to consider the historical impacts on Native community. We also need to concern ourselves with the current systems which support continued, contemporary Native continuity. Overall, this discussion considers elements which create opportunities for strengthening and community building in Indian Country and Native communities—including consideration of the cultural elements which support Native oriented solutions and approaches to address Native community vulnerabilities. This discussion looks at the role of Native community development as a means of community strengthening via Native Nation (re)Building¹⁷⁵ modified for a social service context. The analysis here also uses Yosso's¹⁷⁶ construct of Community Cultural Wealth, which considers the social wealth of historically marginalized and devalued communities and their forms of cultural capital. This theoretical review highlights how these specific economic and educational theories, respectively, can be—and are—applied in the context of a sociological understanding of the law in the case of trafficking of Native peoples.

Native Nation (re)Building, as described by the Harvard Project on American Indian Economic Development (HPAIED) and Native Nations Institute for Leadership, Management, and Policy (NNI), considers the

¹⁷⁵ Cornell and Kalt (2007).

¹⁷⁶ See specifically Yosso, "Whose Culture Has Capital?" (2005) and Tara J. Yosso, 2006. *Critical Race Counterstories Along the Chicana/Chicano Educational Pipeline*. New York: Routledge particularly for her examination of racialized myths that blame the victims for the current state of things and redirects our focus toward historical patterns of institutional neglect.

political acts that help Native nations manage practical and careful assertions of sovereignty. Jonathan Taylor states that it is the “enhanced capacity of Indigenous nations to realize their own cultural, educational, economic, environmental, and political objectives through foundational actions of their own design and initiation.”¹⁷⁷

Fueled by the 1975 Self Determination Act’s incentives and the political atmosphere of the time, a number of nations, and eventually mainstream university academicians, saw the benefits of rethinking how reservation business was handled. Nation (re)Building (Figure 4) processes come from observations of what did and did not work for United States tribes regardless of natural resource or land base.¹⁷⁸ Discussed in the language of economic development and as it is relevant to law and governance, this approach focuses on

1. **Practical self-rule** or exercise of contemporary de facto sovereignty which is not reliant on outside rule or outdated codes.
2. **Effective governing institutions** and tribal courts that are transparent as well as capable of maintaining order with a system in place that can get things done and address issues reliably. This includes
 - a. a legal framework that supports a **separation of powers** including keeping politics out of day-to-day business management
 - b. a system which promotes **stability and institutional memory** concerning past decisions and motivations, processes and agreements

¹⁷⁷ Jonathan Taylor, “*Native Americans in the 21st Century: Native Nation Building I*,” (unpublished presentation provided, Native Nation Building I Course, Dr. Begay, Fall 2011).

¹⁷⁸ Manley Begay, Jr., Lectures Spring 2011

- c. a serious commitment to dispute resolution as expressed in an **independent judicial system** able to independently enforce the constitution and tribal code.
3. **Strategic and future oriented thinking** in all decision making for the tribe that seeks broad solutions for the community as opposed to quick solutions or problem-solving for a few.
4. **Leadership** able to re-conceptualize past motivators, re-define current stories about the opportunities and mobilize effectively around that vision.
5. A communal sense of legitimacy that comes from an insistence on **cultural match or consistency** throughout the governance structure. Incorporating this approach in consideration of how to use reservation natural resources, location, human resource potential or political connections has helped numerous tribes evolve from federally dependent communities. Some economies that once revolved around federal subsidy with little respect from surrounding communities are now economic powerhouses¹⁷⁹ and community development leaders¹⁸⁰ which garner influence well beyond their reservation borders.¹⁸¹

¹⁷⁹ Consider wealth amassed in the Navajo Nation's Permanent Fund or via the Pascua Yaqui's Casino del Sol.

¹⁸⁰ Consider tribes who have reinvested their economic prosperity into stellar programs such as the Choctaw Nation of Oklahoma's community service sector and Falvmmichi program to combat domestic violence in the community or the Tohono O'odham Archie Hendricks, Sr. Skilled Nursing Facility and Tohono O'odham Hospice providing services to elders regardless of their ability to pay.

¹⁸¹ Consider the Mississippi Choctaw Band of Indians, one of the ten largest employers in the state with 50% local non-Indian employees or the Southern Ute who, through leveraging natural gas production profits, are able to influence the fiscal outlook in the Four Corners area.

Figure 4: Native Nation Building Model



It is worthwhile to specifically examine what is meant by cultural match. Based on discussion with Joseph Kalt and Manley Begay,¹⁸² appropriate cultural match is the foundation for economic development¹⁸³ as shared goals, norms of conduct and norms of authority are all culturally dependent. Further, the degree of match between a leadership selection

¹⁸² Class discussion, presentation on October 3rd, 2011. (Joseph Kalt, “Walking the Walk: Intergovernmental Relations as True Sovereigns” unpublished presentation and discussion for Native Nation Building I, Dr. Begay) October 3rd, 2011.

¹⁸³ Please see Appendix B.

process and a culture's definition of the structure,¹⁸⁴ scope,¹⁸⁵ location,¹⁸⁶ and source¹⁸⁷ of authority defines that leadership's legitimacy within that culture. Culture serves as the place where the decision to act or not is made.¹⁸⁸ Culture is also the place where a shift away from the idea that dependency on federal dollars is normal (which leads to continued fiscal dependency) can and does happen.¹⁸⁹ Thus, culture can be where a shift away from dependency on the United States for protection (or defining what safety can and should look like) can take place, which is the foundational change needed to appropriately address sexual violence, especially sex trafficking of Native peoples. Additionally, this can also be the location where Native survivors are first recognized as a specific contingent of sex trafficking survivors with their own policy needs. This has been, in many respects, the process which has fuelled the conversation thus far, as there are some who are still skeptical that there are any inherently Native needs to be met in addressing the issue.

¹⁸⁴ "The division of powers and responsibilities across such tasks as dispute resolution and enforcement (judicial affairs), law and rule making (legislative affairs), administration and implementation of policies (executive and bureaucratic functions), and external political, economic and military affairs (international relations)." Taylor, *Native Americans in the 21st Century* (2011).

¹⁸⁵ "The range of powers and responsibilities wielded by the government over the foregoing areas of authority. E.g., do the society's informal norms support or abhor governmental ownership of businesses? etc." Ibid.

¹⁸⁶ "The level of social organization—family, local community, affinal "band" organization, the tribe or nation—in which political power and responsibility are appropriately vested, according to a society's cultural norms." Ibid.

¹⁸⁷ "The mechanisms by which individuals who assume governmental roles and control over means of coercion acquire *legitimate* authority." Ibid.

¹⁸⁸ Stephen Cornell, Miriam Jorgensen, Joseph P. Kalt and Katherine Spilde Contreras, *Seizing the Future: Why Some Native Nations Do and Others Don't*. (Tucson, AZ: Native Nations Institute for Leadership, Management, and Policy, 2005).

¹⁸⁹ Ibid., 303.

Specifically concerning the Native Nation (re)Building¹⁹⁰ modified model, it can be said that strong economies are possible because of strong communities and that a strong economy invests in its community. From the perspective of a social justice academic activist, that social action is imperative in the model itself.

Yosso's work on Community Cultural Wealth (Figure 5) additionally informs the approach of this study, especially since addressing targeted sex trafficking of Native peoples touches on addressing sex. Native communities' reluctance to discuss sex/sexuality in Western ways has often been labeled backwards,¹⁹¹ contributing to an academic reputation as "difficult." Informed by Decena,¹⁹² Native sexuality discussions may be more apparent once the conversation is recentered on Native rather than Western standards. Then there is room for a tacit sexuality¹⁹³ which is unspoken, "neither secret nor silent"¹⁹⁴ and serves several purposes—involving protection, sacredness, and identity. Maintaining tacit knowledge has helped many languages, cultural traditions and sacred stories survive the worst United States assimilation policies. Surely it could help keep beliefs about human sexuality intact as well.

¹⁹⁰ Cornell and Kalt (2007).

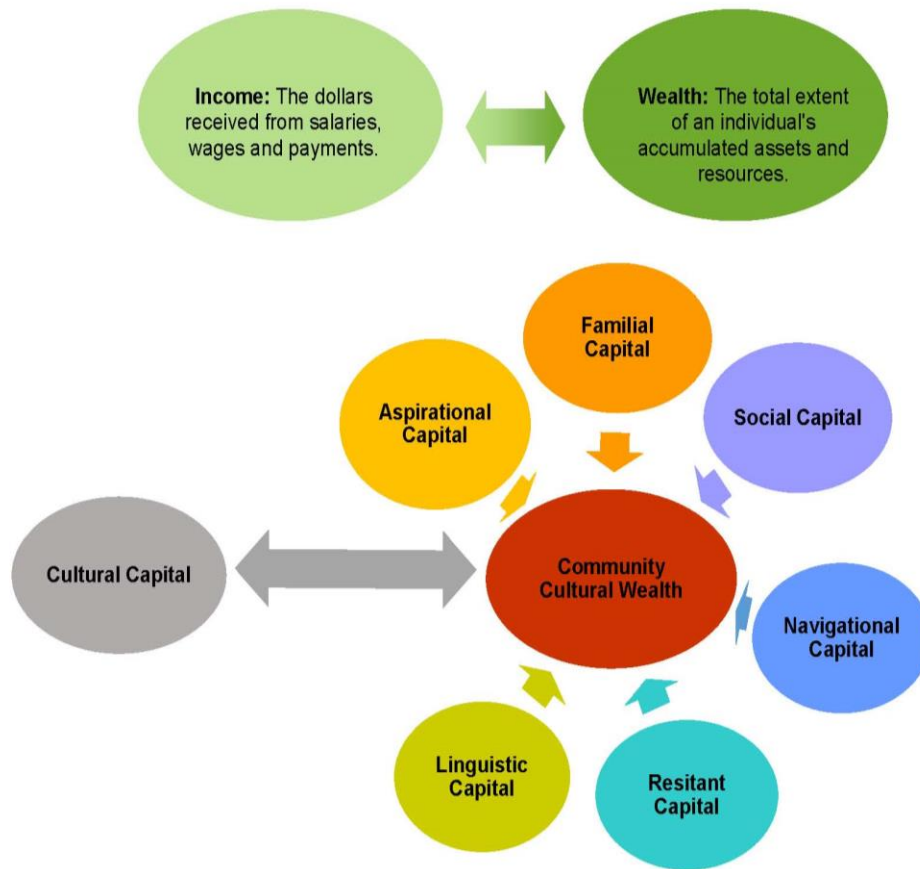
¹⁹¹ It is worth noting that this reluctance may be for very good reasons considering the Native communities who have experienced ancestral burial site disturbances, outside/Western researchers' misrepresentations or misuse of Native biological and natural resources.

¹⁹² See generally Carlos Ulises Decena. 2011. *Tacit Subjects: Belonging and Same-Sex Desire Among Dominican Immigrant Men*. Durham, North Carolina: Duke University Press.

¹⁹³ Decena's work focuses specifically on queer sexuality, but in the context that may not be necessarily so.

¹⁹⁴ Ibid, pg. 19.

Figure 5: Community Cultural Wealth Model



Adopted from Yosso, Tara J. "Whose Culture Has Capital? A Critical Race Theory Discussion of Community Cultural wealth." *Race, Ethnicity and Education*. 8.1 (2005): 69-91, 77-78. (Figure 2. A model of community cultural wealth. Adapted from: Oliver & Shapiro, 1995).

From a Community Cultural Wealth approach Native peoples’ “reluctance to talk” could be reframed as the privacy that Decena¹⁹⁵ observed his sample using to negotiate conflicting expectations and value systems. By invoking the power of privilege that escapes many people of color, Decena’s sample created a tacit sexual identity—often explicitly discussed or indexed under very specific circumstances, understood by a privileged, diverse set of

¹⁹⁵ Supra footnote 39.

social factors and requiring ongoing cooperation of the networks within which they exist.¹⁹⁶

Through images, traditional stories/oral tradition and a similar invoking of privileged knowing, Native peoples create privacy around culturally specific sexual identity by which the individual and her/his community can resist statecraft recalibration. Rather than seeing this as a problem to work around, we need to avoid asking Native communities to alter their perspectives on discussions of sex and power to meet our needs as social service providers and academics working within a Western construct. What we can do instead is pay attention to the holistic response with a focus on relevant cultural understandings of retribution which are legitimate in that particular community.¹⁹⁷

Throughout the literature around sex trafficking and the experience of Native peoples we can see that there are both historical and legislative ways that Native peoples have been targeted for different treatment. This difference in treatment (and subsequent different categorization in citizenship eligibility) could essentially socio-culturally mark Native peoples for phenomena such as trafficking.

As an institution built on the same system used to legitimize those colonialist classifications, interventions and redress for such treatment based in United States law alone are problematic at best. Between United States

¹⁹⁶ Thus becoming tacit knowledge for their surrounding communities.

¹⁹⁷ These points are discussed more fully in Petillo, "Unfolding the Dialogue" (2013).

attempts to conscript Native nations' status as sovereign states, federal Indian policy is filled with contradictions and laws built on fantasy which mostly serve to justify land and rights acquisition. As Native nations wage legislative wars to change those policies, are they re-enforcing categories and continued treatment of Native peoples as second class citizens?

In the context of sex trafficking of Native peoples and in specific ways, it would seem so. Placing continued focus on the racialization of the crime in Indian Country rather than the criminal behavior itself is a clear message that colonial categories are more important than the realities of sex trafficking Indian Country. This has left the majority of the work of assessing those realities on the community itself. The results of that have been extraordinary examples of will that come with their own challenges. Between questions about methodology and very specific geographic scope and reach, the minimally available research leaves many gaps in understanding the breadth and depth of the problem or perception, just as the law leaves gaps in bridging different governing entities' ideas about intervention and redress to create justice. At the very least, what is needed is knowledge of what people understand sex trafficking to be in Indian Country and how people suspect that they might encounter it. This study provides this with a particular focus on the policy environment influencing Indian Country policy and policy applications. This contribution to the body of literature on the topic may better help us understand where the fissures, fusions and inconsistencies are so that we may begin the work of figuring out how to better address those realities.

The object of this chapter has been a more thorough consideration of the nature of our current understandings of the contemporary targeted sex trafficking of Native peoples in Indian Country—the problem presented in Chapter One. In the process, the law and policy literature relevant to the issues, “domestic” sex trafficking specific to Indian Country as a component of sexual violence in Native American community, United States criminal jurisdiction in Indian Country and its resulting jurisdictional maze and human (sexual) trafficking have been reviewed.

What follows is a detailed account of the research design and methodology incorporating three integrated methods of inquiry into policy environment perceptions. The important findings resulting from the implemented research design are provided (Chapter Four), followed by analysis (Chapter Five) as well as conclusions and suggested ideas to consider next (Chapter Six).

Chapter Three

Navigating Layers: Mapping the Research

X. Research Philosophy and Approach

One goal of this work is to understand people's subjective understandings of efforts to address sex trafficking through policy. This includes consideration of how those in this study both experienced and interpreted the activities related to prostitution and the advent of missing community members as these instances may (or may not) relate to sex trafficking of Native peoples and anti-sex trafficking law. With a goal such as this, the study was necessarily phenomenological in nature—focusing on identifying a phenomenon through how it is perceived by the actors involved. Although the phenomenological goal was, essentially, to describe the phenomena of trafficking from a hypothesis-free or preconception-free perspective,¹⁹⁸ humanist, feminist and Indigenous researchers have acknowledged the impossibility of doing so without any preconceptions¹⁹⁹ as well as the importance of 1) making clear how interpretations and meanings might inform findings and 2) exposing how the researcher impacts the

¹⁹⁸ Edmund Husserl, translated by J.N. Findlay. 1970. *Logical Investigations*. London: Routledge and K. Paul.

¹⁹⁹ See Kenneth Plummer. 1983. *Documents of Life: an Introduction to the Problems and Literature of a Humanistic Method*. London: G. Allen & Unwin for humanistic commentary and critiques; Liz Stanley and Sue Wise. 1993. *Breaking Out Again: Feminist Ontology and Epistemology*. London: New York for feminist commentary and critiques as well as Shawn Wilson. 2008. *Research is Ceremony: Indigenous Research Methods*. Black Point, N.S.: Fernwood Pub.; Margaret Kovach. 2009. *Indigenous Methodologies: Characteristics, Conversations and Contexts*. Toronto: University of Toronto Press and Linda Tuhiwai Smith. 2012. *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books for discussion of Indigenous research meanings and methods as well as Indigenous critiques of usual means of Western research.

“frame” of the work as an interested and subjective actor rather than a detached and impartial observer.²⁰⁰

The study’s research question asks “What is the policy environment perception of how widespread the contemporary targeted sex trafficking is in Indian Country?” In recognition of the phenomenological humanist, feminist and indigenous research goals listed above, I acknowledge that I am situated as an African-American researcher that does not claim Native heritage. My research is steeped in Tribal, Critical Race Theory and Critical Ethnic Studies. I am a feminist, sex-positive, anti-violence activist frequently involved in grassroots community health activities. In my personal political life, my current beliefs are that

- Some marginalized people who engage in the sex industry experience it as their most viable option for survival within a narrowed field of possibilities due to socioeconomic factors defined by hegemony which prioritizes the desires of older, straight, white, moneyed cis-gendered men. Thus,
 - I cannot dictate the spectrum of viable survival options that people see for themselves,
 - Nor can I determine if someone’s perceived willing participation within this industry is empowering for them or not.
- Perceived willing participation in the sex industry should not

²⁰⁰ Supra note 146.

- Engender increased violence, manipulation or harassment nor be interpreted as broad acceptance of such, and
- This type of sex industry participation is very different than coerced, manipulated or forced sex industry participation. I define the latter as trafficking.

Among other things, any of these identities or beliefs, as well as perception of them, may have likely influenced the people and organizations who chose to respond to broad requests for participation. These factors may have also influenced the candor of participants. Some areas of Indian Country have a history of tense interactions with African Americans. Other areas, especially those connected to urban settings where large or small populations of African Americans dwell may have socialized stereotypes about people I might resemble. Yet in other places in Indian Country, my interest in this research outside of my perceived ethnic identity may have simply been confusing. For many within Indian Country, feminism is a concept that is particularly Western and undesirable. My hope was that the professional and personal connections that I have built as a budding American Indian Studies scholar within academic and broader communities, the service opportunities I have engaged, my reputation among colleagues who also work in these areas and the community “insiders” willing to “vouch” for me would win over some skeptics. Further, as a female researcher, my gender (and in some cases, my non-Native status) may have mitigated some challenges around my interest in the topic while posing other challenges

working with some elite participants.²⁰¹ In these instances, I relied on my research ethics and skills to create spaces where participants could choose to provide honest, open answers. I relied on a solid research design to reduce or eliminate biases created by these potential participant responses to my physical, political and ethnic positionality in the local social hierarchy. My academics, as well as my interest in law and policy, are informed by my Critical Race/Ethnic Studies, American Indian Studies and Sociology backgrounds—so I consistently seek to understand the interactions between and influences of social factors to individual choices and vice versa. Within this study, I also relied on the research design to mitigate researcher created biases concerning social institutions, individual choices and the weight of influence from any one societal sphere at play in the creation as well as the potential resolutions to the issue studied herein.

In general, the analytical methodological approach here relied on Engaged Theory, a postmodern Critical Social Theory²⁰² framework that

²⁰¹ This reference is to those potential participants functioning in the upper echelon of a society—invested or granted the authority to run programs and activities of major political, economic, legal, educational, cultural, scientific, and civic institutions. While Thomas Dye, the political scientist who developed Elite Theory and the subsequent model in 1972, was not likely concerned with applying this model to Native communities, it does follow that this work will put me in touch with Native elites in some communities. For more information on how this impacts research, see Neil Stephens. 2007. "Collecting Data From Elites and Ultra Elites: Telephone and Face-to-Face Interviews with Macroeconomists". *Qualitative Research*. 7 (2): 203-216. For more information on how this is impacted by researcher gender, see Diana E. Forsythe. 1999. "Ethics and Politics of Studying Up in Technoscience". *Anthropology of Work Review*. 20 (1): 6-11.

²⁰² Postmodern Critical Social Theory generally seeks to politicizes social problems “by situating them in historical and cultural contexts, to implicate themselves in the process of collecting and analyzing data, and to relativize their findings” while including recognizing the crisis of representation. For more information on the topic see Thomas R. Lindlof, and Bryan C. Taylor. 2002. *Qualitative Communication Research Methods*. Thousand Oaks, Calif: Sage Publications. The quote in this footnote comes from that text, p. 52.

moves from detailed empirical analysis about the world's details—things, people and processes—to abstract theory about the social construction and social framing of those details.²⁰³ Grounded Theory, though insightful for exploratory research, was not appropriate for this particular exploration. There were several obvious coding categories stemming from the legal definitions of sex trafficking which would necessarily dictate an analysis of existing law, thereby making this study incompatible with the schools of Grounded Theory Methods.²⁰⁴ Foundational to Engaged Theory is a) the requirement of reflection on how theoretical presuppositions may influence basic research components such as data collection and b) clarity on the levels of analysis from which theoretical claims are/can be made. Working with four consecutive levels of theoretical abstraction, engaged theory requires

²⁰³ James, Paul. 2006. *Globalism, Nationalism, Tribalism: Bringing Theory Back in*. London: Sage. <http://site.ebrary.com/id/10218049>.

²⁰⁴ Glaserian Grounded Theory relies on constant comparative method wherein hypothesis of what is going on is constantly re-evaluated according to the data collected at every stage of empirical research observations wherein theory emerges. Strauss & Corbin's approach is centered on criteria validation and a systematic process for abductive reasoning to a theory. While Constructivist Grounded Theory, which acknowledges the impact of the researchers' interactions with the data, the field and participants in the field in the construction of data and theory (rather than their "emergence"), it still focuses on the theoretical product as the ultimate aim. This research seeks to describe rather than develop theory. For more information on Grounded Theory in general, please see Barney G. Glaser and Anselm L. Strauss. 1967. *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Aldine Pub. Co. For information on Glaserian Grounded Theory see Barney G. Glaser. 1965. "The Constant Comparative Method of Qualitative Analysis." *Social Problems*. 12 (4): 436-445. For more information on the Strauss & Corbin approach see Anselm L. Strauss and Juliet M. Corbin. 1990. *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*. Newbury Park, Calif: Sage Publications. For more information on abductive reasoning, the form of logical inference moving from data description to a hypothesis accounting for the reliable data and seeking to explain relevant evidence, please see generally Lorenzo Magnani. 2001. *Abduction, Reason, and Science: Processes of Discovery and Explanation*. New York: Kluwer Academic/Plenum Publishers. For more information on Constructivist Grounded theory see Kathy Charmaz. 2008. *Constructionism and the Grounded Theory Method*. in J.A. Holstein & J.F. Gubrium eds., *Handbook of Constructionist Research*. New York: The Guilford Press, 397–412.

- #1. ***Empirical analysis*** based on generalizations from detailed descriptions of history and place which help to order “the world” without depending on further applied analysis. This usually involves developing empirical description using evidence about that which exists or occurs in the world (from observation, experience, documentation or experiment) or using others’ empirical research.
- #2. ***Conjunctural analysis*** identifying and examining the intersections of various patterns of practice, process and meaning using established sociological, anthropological and political analytics. My analytics include production,²⁰⁵ exchange,²⁰⁶ communication,²⁰⁷ and organization.²⁰⁸
- #3. ***Integrational analysis*** of social inclusion, differentiation and exclusion in relating to and distinguishing oneself from others, including the boundaries of community, identity/identification, genealogy, kinship and ethnicity. The hypothesized relevance of ethnicity and community identity to potential contemporary targeted recruitment strongly suggests that this type of analysis may be required.
- #4. ***Categorical analysis*** exploring ontological categories and their influence on the social phenomenon examined as well as the social order that creates and defines these categories. Just as the previous

²⁰⁵ Here, one can think of the production of knowledge and safety as commodities.

²⁰⁶ This alludes to the perceived benefits and/or rewards of legal choices and socially informed legal decision making.

²⁰⁷ The discourse or lack of discourse used concerning this issue.

²⁰⁸ This is in specific reference to legal organizational processes.

analytical step examined the ways that commonalities or differences are integrated, this analytical step considers the shifts and changes as related to performance and embodiment of these categories through space, (historical) time and epistemology.

As with many of the strains of Critical Social Theory, this methodology draws from knowledge across the social sciences and humanities.²⁰⁹ Additionally, I included feminist and postcolonial perspectives since this study focused a great deal on the experience at the intersection of gendered, racialized and colonized identities.

In questioning the policy environment perception of how widespread the contemporary targeted sex trafficking is in Indian Country, it is necessary to define what we mean by “sex trafficking.” Based on the empirical nature of this work, a formalized definition of “sex trafficking” beyond the commonly accepted legal definitions was not used. A minor goal was to understand informants’ understanding and use of the term, thus defining the term rather than asking how informants define the term would have been counterproductive.

The idea of Indian Country was expanded to better fit Native realities as well. The geographical space of Indian Country was more generously and broadly defined than it is in federal law—the origin of the phrase. Indian Country is defined in 18 U.S. Code § 1151 as

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the

²⁰⁹ Lindlof and Taylor. 2002. Qualitative Communication Research Methods.

issuance of any patent, and, including rights-of-way running through the reservation,

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Due to federal Indian policies such as Relocation—a United States act (Public Law 959) and program (the Adult Vocational Training Program) writ to encourage Native American movement from reservation lands, acquisition of vocational skills and assimilation into the mainstream thus vastly populating particular urban areas during the Indian Termination era²¹⁰—and the varied Western governmental schemes to acknowledge Native nationhood (i.e., federal recognition, state recognition and denial of any recognition), there are many Native locales that exist in the United States which would not meet the federal definition of Indian Country. To address this issue, community enclaves existing in areas where there are high concentrations of Native peoples were also included for the purposes of this study. This addition included urban settings such as Tucson, AZ or Minneapolis, MN where there has been an influx of Native peoples from nearby reservations as well as more rural “border towns” which neighbor reservations. In this study,

²¹⁰ Indian Termination, a United States policy of the mid-1940s to the mid-1960s, involved a series of pieces of legislation aimed at quickly assimilating Native Americans into mainstream American society, regardless of Native American consent or not. For more information on this policy and the legislation involved, please see Appendix C.

any references to Indian Country should be understood as referring to this broader definition of this geographical and geopolitical space. This broader definition also covers “traditional Native lands,” including land in dispute or occupied by unrecognized Native nations, with the understanding that some nations will not have the same governance options available to those with tribal councils or recognition. That said, many of the ideas presented can be applied and/or adjusted to fit the particular circumstances of particular Native entities.

The mixed method design of this study used a variety of data sources and methods, structurally encouraging multiple levels of triangulation for a full, robust exploration and description of the potential breadth and depth of sex trafficking of Native peoples (Figure 6). Crucial to mitigating and/or eliminating external and researcher biases, the mixed method research design purposefully provided both depth and texture. It employed quantitative data to access the potential reach of this issue and qualitative data to enhance understanding and interpretation of the data on how widespread the sex trafficking of Native peoples was considered to be. The intended use of theoretical triangulation (a blend of theoretical frameworks) to interpret this phenomenon of study as well as methodological triangulation greatly reduced any intrinsic biases stemming from a single method or theory study.

Figure 6: Research Design Framework



There was also a mix of methods used for a component of data triangulation, further enhancing the study by providing natural cross-checking of regularities in the research data and the opportunity to replicate results, albeit on a larger scale.²¹¹ This mixed method study included legal,

²¹¹ See generally Norman K. Denzin. 1970. *Sociological Methods: A Sourcebook*. Chicago: Aldine Pub. Co. for a discussion of data triangulation, as well as its purposes and benefits.

socio-cultural non-empirical assessment of current understandings of sex trafficking of Native peoples in Indian Country and interventions, employing

- 1) a tribal, feminist, critical race, legal analysis of public (secondary) data for indicators of sex trafficking of Native peoples,²¹²
- 2) a blended tribal, feminist, socio-political analysis of community vulnerability using primary data from semi-structured interviews with officials, scholars and advocates who address prostitution, sexual violence and sex trafficking of Native peoples and in Indian Country,²¹³ and
- 3) a modified Native Nation (re)Building²¹⁴ analysis of (primary) data on local responses to sex trafficking detailed in an anonymous survey of grassroots organizations, advocates and law officials in federally recognized Native nations.²¹⁵

Public Data

Public data analysis provides the opportunity to gaze back in time and incorporate any potential trends evident in the historical context of this issue. Additionally, this analysis also allows for the descriptions found in this exploratory study to be tested against past notions and actions in various locations (via data triangulation). While using this method could incur challenges,²¹⁶ the benefits listed above outweigh them. For this study, many

²¹² Please see the subsection *Public Data* (below) for more detail.

²¹³ Please see the subsection *Interviews* (below) for more detail.

²¹⁴ Cornell and Kalt (2007).

²¹⁵ Please see the subsection *Survey* (below) for more detail.

²¹⁶ These challenges could include non-standardized or poorly maintained databases and/or difficulty collecting and standardizing data from multiple sites. Lack of context for the data originally collected or data collected for specific purposes was also a problematic possibility.

of those challenges were further mitigated by coding detailed in the analysis portion of this discussion of the public data used.

The public data analysis plan was to consider public popular, scholarly and official criminal and legal records, as well as reports and media (accessible in person, online and archived) for perception of incidence of the sex trafficking of Native peoples. The initial search for information included the following, all specific to Indian Country defined broadly and Native peoples: prostitution rates,²¹⁷ gang activity,²¹⁸ type of sentencing and services available for those convicted of commercialized sex work, community discussion of sex trafficking, publicly available legal records specific to Indian Country,²¹⁹ specific tribal codes,²²⁰ Indian Health Service reports²²¹ and other large scale reports specific to Indian Country as available and accessible.²²²

Public Data Collection: The limited amount of scholarship in this area facilitated review of all available data. The data collection and review began September 2012, with extensive online canvassing for large scale reports from the Centers for Disease Control (CDC), Amnesty International USA (AIUSA), Native American Women's Health Education Resource Center

²¹⁷ This included the basic information of prevalence, timing and demographics.

²¹⁸ This included the basic information of type, prevalence and timing.

²¹⁹ This included court records, police reports, local media reports, etc.

²²⁰ This included online/public tribal codes and published legal analysis concerning prostitution and/or sexual violence.

²²¹ These service reports included specifically any publicly available statistical reports or, where possible, requested reports sans any identifying information including basic demographic and type of service statistics which would not violate HIPPA laws.

²²² These reports included publications from agencies and organizations such as CDC, AIUSA and NAWHERC, especially original dataset or subsets which might be available.

(NAWHERC) and the reports based in specific areas²²³ as well as legal documents, including applicable United States federal and state statutes, which addressed sex trafficking specifically. The texts of relevant state laws were gathered from anti-trafficking groups such as The Polaris Project (a nonprofit, non-governmental organization with a mission to combat and prevent human trafficking via direct services and public policy)²²⁴ and individual state organized anti-trafficking websites²²⁵ meant to educate the general public. This was a conscious choice to access information most likely used by legal and social service professionals seeking help for clients—documentation which was easily accessible and from easily understood resources. As much as possible, secondary data collection was document-driven, employing a document and respondent driven snowball method²²⁶

²²³ Such as the Minnesota based reports *Shattered Hearts* and *Garden of Truth*. Both of these reports are more fully discussed in Chapter Four.

²²⁴ The topic of sex trafficking is generally a contested topic. The Polaris Project has not been an exception. Both activists who claim “sex worker” status and some public health advocates critique the project’s lack of distinction between those who experience themselves participating in prostitution from a place of consent and those who experience coercion, advocacy around solutions steeped in law enforcement which can criminalize (and thus harm) sex workers as well as tactics which disperse the problem rather than actually addressing the issue of trafficking (See Julie Ruvolo. “Sex Lies and Suicide: What’s Wrong with the War on Sex Trafficking.” *Forbes.com*. June 26, 2012. Accessed March 10, 2015. <http://www.forbes.com/sites/julieruvolo/2012/06/26/sex-lies-and-suicide-whats-wrong-with-the-war-on-sex-trafficking/>). Polaris Project has also been critiqued for knowingly engaging false and misleading data exaggerating their statistics on trafficked sex workers and the age of entry into sex work. (See Robert Childs and Sex Work Activists, Allies and You. “Why are Sex Workers and Public Health Advocates Annoyed with Google?” *Dailykos.com*. December 21, 2011. Accessed March 10, 2015. <http://www.dailykos.com/story/2011/12/21/1047597/-Why-are-Sex-Worker-and-Public-Health-Advocates-Annoyed-with-Google#>.)

²²⁵ Many states have anti-trafficking coalitions, task forces and/or coalitions as well as Departments of Public Safety who support the prevention of trafficking by educating communities how to see the signs of trafficking and respond appropriately as well protect victim/survivors by providing information about Victim Services. Usually a simple Google search for “anti-trafficking coalitions” and a state name will return numerous options.

²²⁶ This concept is based on the idea of respondent-driven sampling which combines snowball sampling and structured incentives to address some of the deficiencies of the former. In this case with document analysis, I combined referencing sources used in multiple documents (a

modified for the particular source by gathering additional data leads from resources and references found in documents already collected in the process as well as in study interviews. Additionally, wide online searches for media reports detailing stories of trafficking and prostitution specific to Indian Country (as I have defined it here) as well as anti-trafficking and anti-prostitution legislative and political activism activity were conducted every three months during the study period to access unexpected leads and reports to include in the search for secondary data.

For data sets, a number of potential sources verbally agreed to share their general data early on. At the study inception, Benjamin T. Greer, former Special Deputy Attorney General, California Department of Justice Office of the Attorney General expressed interest in assisting this project as an unofficial “Special Advisor.”²²⁷ In that capacity, he agreed to make his resources, including datasets, available. Dr. Kevin Washburn, Assistant Secretary of Indian Affairs at the United States Department of the Interior and former Dean of the University of New Mexico School of Law, also previously informally agreed to share data on sexual violence in Indian

document version of the snowball technique) with a purposive sample selected based on the knowledge of a population and the purpose of the study—in this case the limited number of scholars writing on the subject as well as the specific areas of Indian Country where studies have been conducted. For more information on respondent-driven sampling, see Douglas D. Heckathorn. 1997. "Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations". *Social Problems*. 44 (2): 174.

²²⁷ Greer is a specialist on sex trafficking law and interested in this legal area as it pertains to Native communities. He has a pending publication on the topic, collected the data for the 2012 Report on Human Trafficking for the California Attorney General and is well connected among the Intertribal Council community. Currently we are also working together on an Indigenous People’s Law and Policy Program (IPLC) of the University of Arizona’s Roger’s College of Law project to draft a sample ordinance for consideration by non-PL-280 Native nations.

Country via his work on the Tribal Law and Order Act (Spring 2012). Since the time of that verbal agreement, he has been appointed to the Department of the Interior—which no doubt negatively impacted his ability to maintain that commitment.²²⁸ Reconfirming this, and other informal dataset agreements, was a part of the data gathering phase in 2013.

Public Data Analysis: This study component involved both quantitative and qualitative secondary data. A semi-structured set of predetermined codes based on legislative definitions of sex trafficking were employed for thematic content analysis assessing both known and emergent major reoccurring ideas to better understand what they indicate about the prevalent policy environment perceptions about the prevalence of targeted sex trafficking of Native peoples. For standardization, these predetermined codes were to be used across documents for common categorization of usual indicators of sex trafficking across the more qualitatively valuable documents (such as legal records, tribal codes, public journalism and similar text based reports) using a directed content analysis. Emergent codes were listed and assessed as indicators for exploratory insight during analysis as well as for future academic consideration. Indexing conducted in the same manner determined more prevalent themes as well as the usual terminology for discussing those themes and communal interactions/instances for future consideration as evidence of sex trafficking as well. With the more

²²⁸ It is worth noting that Assistant Secretary Washburn was able to get back in touch with an offer to share data and indicated that his data was not specific to sex trafficking. That contact was well after the data gathering phase of this research period. The time constraints of this project, as dissertation research, created barriers to using his data set for this particular study as it came during study writing and would involve considerable work to assess where specific instances of sex trafficking was included, if at all.

quantitative texts, descriptive data result triangulation (results comparison) was deemed particularly helpful for a fuller understanding of the prevalence these numbers suggested by providing insight into the conditions under which these incidents occur and validation of the results of each method used. It is worth noting that, at this writing, data on sex trafficking specific to Indian Country is rarely gathered in any formalized and/or standardized way because there has been no system set up to do so and the tools that exist have been controversial.²²⁹ Further, there has been no other study that has looked at the particular question posed here. That limitation also constricts this study's ability to compare or triangulate with other research, making further speculation on the usefulness of this process in comparison to other previous studies futile until data beyond what this study has been able to procure is obtained and reviewed.

Retrieved public records data was originally to be coded according to relevant key terms as defined in current United States anti-sex trafficking law, as indicated below, and further stratified by general categories.²³⁰ As data collection and review began, it became clear that use of a directed coding strategy and these predetermined codes assumed synergy in the functional definitions of sex trafficking generally as well as between the federal and Native community understanding of sex trafficking. Since this study concerns a phenomenon about which more description would be beneficial but existing literature is limited, a modified conventional/directed content

²²⁹ Please refer to the conversations about the critiques of Farley's work in Chapter Two for an example of the inherent issues.

²³⁰ The definition used to develop these codes can be found in the Relevant Findings, Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386.

analysis was employed instead. The analysis was conventional in that preconceived categories were replaced with categories found using an indicative method and names for categories flowed from the qualitative data itself. Additionally, the potential connections between categories and subcategories were explored. The analysis was directed in that theory and, in this context, existing laws suggested codes early on (predetermined codes) which were used to help frame the data investigations. Although not quite a deductive method,²³¹ key concepts/variables employed were derived from the existing literature and law.

The challenge of directed analysis found here was the potential for researcher and external legal bias to influence the definitions of and interpretations²³² of the experience of sex trafficking as it was understood in Indian Country and involving the targeting of Native peoples. This study addressed that concern by blending content analysis methods to both recognize the overarching role of the existing reports and laws while recentering the research focus on what might be found in exploration without predetermined categories. The challenge of conventional analysis is to maintain credibility by developing a complete-as-possible understanding of the context such that key categories are not missed. This study worked to meet the challenge to credibility posed by this method through prolonged engagement with the issue, variety (as much as possible) in the types of

²³¹ See discussion about deductive category development in Philip Mayring. 2000. "Qualitative Content Analysis." *Forum: Qualitative Social Research*, 1(2). Accessed March 10, 2015. <http://www.qualitative-research.net/fqs-texte/2-00/02-00mayring-e.htm>.

²³² Hsiu-Fang Hsieh and Sarah E. Shannon. "Three Approaches to Qualitative Content Analysis." *Qualitative Health Research*. November 2005. 15(9):1277-88, 1283.

reports and secondary data considered, and triangulation of methods and theory for more direct input useful in interpretation of study findings.

Table 1: Predetermined Codes	
involvement in sex trade	past rape or sexual assault in current situation
experience of force	rape or sexual assault in past, prior to current situation
experience of fraud	torture (mental, emotional or physical) currently
experience of coercion	past experience of torture (mental emotional, or physical)
experience of exploitation	forced starvation currently
involvement in prostitution (current)	past forced starvation
history of involvement in prostitution	forced imprisonment by other than legal authorities currently
involvement in sex tourism	past forced imprisonment by other than legal authorities
involvement in commercial sexual services	forced confinement by other than legal authorities currently
perception of poverty in home community	past forced confinement by other than legal authorities
perception of lack of education in home community	forced restraint by other than legal authorities currently
perception of under-/unemployment in home community	past forced restraint by other than legal authorities
perception of discrimination in home community	threatened (mental emotional, or physical) currently
experience of discrimination in home community	threatened (mental emotional, or physical) in past
perception of lack of opportunity in home community	psychological abuse currently
transported away from home community	past experience of psychological abuse
transported to unfamiliar destinations	abuse or threatened abuse of the legal process currently
isolation from family and friends	abuse or threatened abuse of the legal process in past
isolation from tradition/culture	no indicators of potential sex trafficking
isolation from support network(s)	
feelings of defenselessness	
feelings of vulnerability	
rape or sexual assault in current situation	

Early in the analysis of the collected data the predetermined codes provided above were replaced by emerging codes as the primary categories for analysis since they better reflected the understandings that the exploratory

data dictated. Thus, the aggregation and analysis of the data collected relied on the Emergent and Final Codes listed below. The predetermined codes were kept as helpful background reference for discussion and analysis. By way of an example, one point of data analysis was on the areas where participant perceptions of activities included in the legal definition of trafficking matched up with the actual legal language (Activities Involved and Activities Involved Locally). The types of sexual activities included in the categories of secondary data, interview source text analysis and those which populated the answer options available to survey respondents on related questions were generated from the predetermined codes.

Table 2: Emergent and Final Codes For Primary Analysis		
<u>Definitions</u>	<u>Attitudes & Responses</u>	<u>Interventions & Creating Solutions</u>
Activities Involved Activities Involved Locally Common Scenarios Recruitment Strategies Language Areas of Discord/Needed Improvement	About Native Community About Native Women Federal Law Enforcement State/Local Law Enforcement Tribal Law Enforcement Federal Policy State/Local Policy Tribal Policy Areas of Collaboration Federal & Tribal State & Tribal Law Enforcement & Service Provider Influential Legislation Data Collection Concerns	Service Provider Insight About Trafficking Survivors About Traffickers Tribal Code Needs Tribal Code Hopes Interventions

Secondary Data Used: All possible secondary data analysis is limited by the access any study has to the needed data, and this study was no

exception. Conversations with Department of Justice (DOJ) research personnel, Native policy research institutions such as the Native American Rights Fund (NARF), the National Congress of American Indians (NCAI) and Othayonih Research & Evaluation (the consulting firm of Alexandria Pierce, a prominent researcher in the area of sex trafficking of Native peoples) as well as legal scholars such as Sarah Deer (a prominent legal scholar in the area of sex trafficking of Native peoples) all indicated that there were little to no statistics being collected about sex trafficking specific to Indian Country or Native peoples.²³³ Thus, there were no Indian Health Services (IHS), Bureau of Indian Affairs (BIA) or criminal justice systems records to speak of which consider the specific trafficking of Native peoples or involvement of Native peoples in sex trafficking in any kind of broad scale way.

Legislatively, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) and the HR 757 Save Native Women Act (Alaska) were the only pieces of legislation to comment on trafficking of Native peoples somewhat specifically. Both generally used the language of the Victims of Trafficking and Violence Protection Acts (TVPA 2000, 2003, 2005, & 2008) and the Tribal Law and Order Act (TLOA 2010) — all of which address either the broader issues of trafficking in the United States or violence in Indian Country rather than this study's focus. That said, these laws also gave some insight into the components of trafficking which were able to garner enough

²³³ The informal phone conversations occurred in the summers of 2012 and 2013. The other conversations referenced here are study interview conversations completed between July 2013 and August 2014.

political support to become enacted public policy and were thus used in this analysis as secondary data representing federal interventions.

Tribal code could easily be considered the most localized of the legislative options in Indian Country. At the beginning of this study, key informants indicated rumors of three tribal codes in Indian Country addressing sex trafficking within their sovereign borders. Since there was and is no current broad based database of tribal code or widespread assessment of the types of offenses that are addressed in existing tribal code, this study relied on the insight and leads provided by both key informants and interviewees. This turned up two tribal codes that specifically addressed trafficking belonging to the Snoqualmie Tribe (SNOQ. TRIBAL CODE § 7.21) and the Absentee Shawnee Tribe of Oklahoma (CRIM. LAW CODE § 568). At the time of writing, the only widely available model for tribes to use in developing their own anti-sex trafficking codes and ordinances existed within the federal Sex Offender Registration and Notification Act revised in 2011 (SORNA 2011) (Title I of Public Law 109-248).²³⁴ SORNA 2011 defines trafficking as a crime requiring offender registration. Looking at this readily available and existing model tribal code allowed consideration of code which could have wide impact if implemented. Unfortunately, it also heavily relied on federal definitions without reference to nuances specific to Indian Country or tribal authority beyond registration. While certainly a small sampling of the nearly 600 tribal codes in existence, these tribal code choices provided a

²³⁴ At this writing, the author is aware that Deer, mentioned several times throughout this text, is in the process of developing a model tribal code specifically designed to address trafficking. However, a release date is unclear. (Personal interview with author, 10/9/2013).

snapshot of legislative action on a localized level to address trafficking in Indian Country but, ultimately, were not deemed different enough from federal definitions not to skew study results. The two specific anti-tribal codes were used while the model sex offender registration codes were not.

In terms of definitions, many relevant state laws mimicked the federal law and thus were excluded from the final analysis. This was a conscious choice to avoid weighting the federal definition in analysis unintentionally. That said, the exceptions were “Safe Harbor prostitution laws” in 18 states, including Minnesota. In these laws, minors that are potentially facing charges of prostitution are not criminalized within the United States legal system. The Polaris Project explains the reasoning.

...[W]hile the prostitution of a child is a form of human trafficking under U.S. federal law, many states still do not offer legal protections for minor victims, appropriate penalties to curb demand, or services to care for these severely victimized children. In many cases, these victims are treated as criminals or delinquents, which results in further harm to the child.²³⁵

Additionally, Alaska has had two recent statewide trafficking law efforts which focus on melding federal law into something that can apply more effectively in its particular landscape of broad geographical expanse with both isolated and remote areas. In a state where some areas can only be reached by boat or snowmobile half of the year or other areas have limited to

²³⁵ Polaris Project. 2013. “2013 Analysis of State Human Trafficking Laws: Safe Harbor—Protecting Sexually Exploited Minors.” Retrieved from <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/safe-harbor> on June 17th, 2014.

no permanent, localized state or tribal law enforcement access, the legal methods of protection and safety as well as definitions needed to bend to meet the reality that criminal activity may not include travel across great distances. Additionally, there is always a need to find new ways to encourage sex trafficking victims and survivors to participate in the prosecution of traffickers. Since there was little differentiating the majority of state laws otherwise, a summary report of the diversity among state Safe Harbor laws associated with trafficking and prostitution was used in this study's legal analysis and discussion. For the reasons detailed here, Alaska state anti-trafficking laws and AK SB 170 "An Act Relating to a Defense to the Crime of Prostitution for Victims of Sex Trafficking" were included in the general analysis as examples of local communities molding federal law to meet the local geographical and criminal realities.

Reports such as the oft-cited Garden of Truth and Shattered Hearts were and are required for any analysis on this topic. In addition, this study considered the 2013 State of Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution and Sex Trafficking and the very recently released Human Trafficking & Native Peoples in Oregon: A Human Rights Report (2014) for analysis as they looked specifically at the same issue within the same types of communities (Native American) but in two additional areas. For federal perspective, the report Sex Trafficking of Children in the United States: Overview and Issues for Congress (2011) is an example highlighting the shaping of congressional legislative attitudes about the issue as well as approaches before potential actions are brought to the floor for debate or vote. Since the goal of analysis of these reports was to fill in the

picture about trafficking experienced in Indian Country outside of Minnesota to better understand the broad policy environment perception of how widespread targeted sex trafficking is while providing detail to supplement the Maze of Injustice's (AIUSA 2007) and NAWHERC's perspectives on sexual violence in Indian Country, a number of these reports were reviewed but did not become part of the final analysis. The 2011 Overview to Congress mentions Native peoples only in terms of the Grants to Indian Tribal Governments Program and the Grants to Indian Tribal Coalitions Program and, thus, was used to inform the background research rather than as a tool for analysis. Similarly, the 2013 State of Alaska Task Force included only one specific mention of trafficking concerning Native peoples and was therefore considered more helpful to inform research than as a tool of analysis. What follows is a brief of the six reports, legislation and codes used for publically available secondary data.

A. Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota (2009)

This report, prepared by Alexandra (Sandi) Pierce for the Minnesota Indian Women's Resource Center (MIWRC), is known as one of the seminal works on sex trafficking in Indian Country. The report was informed by "four primary sources: two regional round table discussions with advocates [a total of 30 advocates working with American Indian women and girls], data from screening forms used by MIWRC staff during client intakes over a 6-month period, published materials [statistics, reports, and scholarly articles], and data or data output provided to MIWRC by the entities that collected those

data.”²³⁶ This included data from non-reservation Native women and girls collected during the 2006 Wilder Research study of homelessness in Minnesota as well as the Minnesota Student Survey data output tables provided by the Minnesota Department of Health and the Minnesota Department of Education. The report is specific to Minnesota reservation and non-reservation experience.

Impetus for the report came from several places. Minnesota Statute section 299A.79 requiring the Commissioner of Public Safety to address human trafficking in Minnesota was passed by the state legislature in 2006. The commissioner established the statewide Minnesota Human Trafficking Task Force per this statute to develop an appropriate and comprehensive plan and charged the task force to advise him on 1) the statewide trafficking via assessment and 2) the plan to address existent and prevent future human trafficking in Minnesota, through two statutory actions. Those actions were to:

1. Collect, share, and compile trafficking data among government agencies to assess the nature and extent of trafficking in Minnesota.
2. Analyze the collected data to develop a plan to address and prevent human trafficking.²³⁷

²³⁶ Shattered Hearts, pg. 16.

²³⁷ The original citation for this provided in the report is “Office of Justice Programs, (no date). Human trafficking task force. Minnesota Department of Public Safety. Retrieved May 1, 2009 from <http://www.dps.state.mn.us/OJP/cj/httf/about.htm>.” Since the writing of the report, legislation for this Task Force expired in 2011. Currently, the Task Force is convened by the MN Department of Health. Specific statute information can now be found at <http://mnhttf.org/public-policy/legal-statutesdefinitions/>, accessed February 25th, 2015.

The Minnesota Office of Justice Programs and the Task Force, with input from service organizations working with trafficking survivors, provided the legislature with annual reports and the community with training on varied aspects of providing safety for trafficking survivors.²³⁷

As part of its activities to produce the 2007 Human Trafficking Report, the Office of Justice Programs interviewed law enforcement personnel, nurses, and social service providers, asking questions about the characteristics and experiences of sex trafficking victims they had worked with. Based on their responses, the [Office of Justice Programs] estimated that at least 345 American Indian women and girls in Minnesota had been sexually trafficked in a three-year period.²³⁸

After that task force was created, a Native MIWRC client disclosed her experiences which fit the definition of sex trafficking, even though the client did not use this language. This spurred further investigation into the targeted sex trafficking of Native women in their greater community. In 2008, Minneapolis was identified by the Federal Bureau of Investigation as one of thirteen cities in the United States with a high concentration of criminal activity involving the commercial sexual exploitation of juveniles.²³⁹ Later that year, “Advocates for Human Rights released a sex trafficking needs assessment report, commissioned by the Office of Justice Programs and the Minnesota Human Trafficking Task Force...[which] noted the significant

²³⁸ *Shattered Hearts*, pg. 1-2.

²³⁹ *Shattered Hearts*, pg. 2, citing The Advocates for Human Rights, (September 2008). Sex trafficking needs assessment for the State of Minnesota. Minneapolis: The Advocates for Human Rights.

lack of information about American Indian trafficking victims and the relative absence of services to not only help them find safety, but to also heal from the trauma of life in prostitution.”²⁴⁰ *Shattered Hearts* was MIWRC’s attempt to begin to fill that gap in knowledge. Although the majority of the information provided was specific to prostitution and activities primarily connected to prostitution, the report did give helpful insight about the broader conversations around sex trafficking in Minnesota’s Native community at that time. The study also chose to “examine the impacts [of sex trafficking] that are specific to females.”²⁴¹ As a result, the report lacked substantial information about the situation of sex trafficked boys and men or two-spirit peoples of any gender—as well as the possibility that these subsets of survivors exist. It was also the first attempt to quantify the issue and either support or deny the bevy of anecdotal information about sex trafficking in Indian Country.

B. Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota (2011)

This report, written by Melissa Farley, Nicole Matthews, Sarah Deer, Guadalupe Lopez, Christine Stark, and Eileen Hudon is the product of a joint project of the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC) and the Prostitution Research & Education Center (PRE) and is also known as one of the seminal works on sex trafficking in Indian Country.

²⁴⁰ *Shattered Hearts*, pg. 2.

²⁴¹ *Shattered Hearts*, pg. 19.

The report was informed by 105 interviews, each lasting an hour and a half, of Native women in prostitution, which included

[Four] questionnaires that asked about family history, sexual and physical violence throughout their lifetimes, homelessness, symptoms of posttraumatic stress disorder and dissociation, use of available services such as domestic violence shelters, homeless shelters, rape crisis centers, and substance abuse treatment. [They] asked the women about the extent to which they connected with their cultures, and if that helped them or not. [They] asked about racism and colonialism. The questionnaires were both quantitative and qualitative.²⁴²

According to the report, the Coalition first began to hear anecdotal stories about sex trafficking and prostitution of Native women in 2001 and realized the need to gather more information. Eventually, they established collaborations with both Melissa Farley of Prostitution Research & Education Center and Sarah Deer at William Mitchell College of Law—both well-known scholars and anti-violence against women advocates in their respective fields. Garden of Truth was written to “assess the life circumstances of Native women in prostitution in Minnesota, a group of women not previously studied in research such as this. We assessed their needs and the extent to which those needs are or are not being met.”²⁴³ This report was, in many ways, a community effort supported by other local agencies providing services to sex trafficking survivors such as Breaking Free, who made it possible for their

²⁴² Garden of Truth, pg. 3.

²⁴³ Garden of Truth, pg. 4.

Native clients and participants to be interviewed in the same location where they received services. Minnesota Indian Women's Sexual Assault Coalition member and affiliated agencies—such as Mending the Sacred Hoop Coalition, Domestic Abuse Intervention Project, American Indian Community Housing Organization, Dabinoo'igan Shelter, Min-No-Aya-Win Human Services, Fond du Lac sexual assault advocates, and Program for Aid to Victims of Sexual Assault (PAVSA)—were also encouraged to send interested potential participants.

Much as with the Shattered Hearts report, Garden of Truth was specific to prostitution and activities primarily connected to prostitution and lacked substantial information about sex trafficked boys and men or two-spirit peoples of any gender. This may have been a result of the methodology—seeking participants from those participating in programs which were gendered and for women who identified in a specific manner.

C. Human Trafficking & Native Peoples in Oregon: A Human Rights Report (2014)

This report was prepared by the International Human Rights Clinic Willamette University College of Law with Jason Juran, Joseph Scovel and Hayley Weedn as lead writers, under the guidance and supervision of Professor Gwynne Skinner. Unlike the other two reports used in this study, this one, referred to as the Oregon report hereafter, takes a legal perspective on the issues including criminal jurisdiction in Indian Country, the TVPA and its applicability in Indian Country as well as insights from service providers. This was written as “a human rights legal fact-finding report that

sets out to measure whether federal, state, and local government officials are meeting their obligations under international, national and state law in prosecuting traffickers, protecting survivors, and preventing trafficking as it involves the Native population in Oregon.”²⁴⁴ Additionally, it adds to the literature by giving insight on sex trafficking as experienced by Native communities in another region of the United States. The report follows up on the college of law’s previous work “Modern Slavery in Our Midst: A Human Rights Report on Ending Human Trafficking in Oregon” which detailed “how well government (state and federal) officials in Oregon were doing with regard to their obligations under international, national, and state anti-trafficking laws to prevent human trafficking, prosecute traffickers, and protect survivors of human trafficking” and provided recommendations on how the state could better comply with their legal obligations.²⁴⁵ Since that first report, the authors recognized that the recommendations made there “did not sufficiently address these vulnerabilities and other aspects of human trafficking unique to the Native American community.”²⁴⁶ The Oregon report acknowledged, of the first report, that

“Some of [the] considerations [that were lacking] include[d]:
generational trauma leading to higher levels of foster care,
homelessness and thus more vulnerability to trafficking; lack of
resources for traditional healing; lack of trust in law enforcement due
to many factors; lack of understanding about complex jurisdiction and

²⁴⁴ Human Trafficking & Native Peoples in Oregon, pg. 1

²⁴⁵ Ibid.

²⁴⁶ Ibid.

cultural issues among law enforcement; and complex community relationships that often lead to underreporting and noncooperation with prosecutors. It also came to our attention that little was being done in Oregon (or elsewhere) to research, identify, and propose solutions for the unique aspects of human trafficking and Native Americans; nor were those who work in the area of human trafficking tracking incidences involving Native Americans (as is done with other identifiable populations).”

The report was informed by 46 interviews, three surveys completed by sheriffs “adjacent to reservation lands located in Oregon” (of which there were 14) and independent legal research. While valuable for its different approach, the Oregon report also focused on a narrow range of activities and gendered population.

D. Two Tribal Codes on Sex Trafficking –Snoqualmie Tribe and Absentee Shawnee

There are also important codes to keep in mind while considering this study’s findings—existing tribal codes which address sex trafficking directly, beyond sex offender registration. An excerpt of the text from each of the two known tribal codes which address sex trafficking directly are provided here.

SNOQUALMIE TRIBE SNOQ. TRIBAL CODE § 7.21. Sex Trafficking

(a) A person is guilty of sex trafficking when they are knowingly involved in the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which

the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.

(b) The buying of selling of children for any reason.

(c) Sex trafficking is a Class A offense.

[Class A Offenses Maximum Penalty: One (1) year in jail and/or \$5,000 fine and/or community service. Minimum Penalty: Six (6) months in jail and/or \$2,500 fine and/or community service. SNOQ. TRIBAL CODE § 17.2 (Sentencing Guidelines)]

ABSENTEE SHAWNEE TRIBE OF OKLAHOMA AST. CRIM. LAW
CODE § 568. Trafficking In Children

(a) It shall be unlawful to:

(1) Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or

(2) Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home; or

(3) Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an

institution or home or other place for maternity care or for the delivery of a child.

(b) "Child" means an unmarried or unemancipated person under the age of eighteen years.

(c) This section does not apply to attorneys or advocates licensed by the Tribal Courts receiving reasonable fees for legal services actually rendered in the course of lawful adoption proceedings, nor shall subparagraphs (a) (1) or (a) (2) apply to any bonafide social worker or government employee receiving their normal salary and making such placements as a part of their official duties.

(d) Trafficking in children shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

E. The Trafficking Victims Protection Act (TVPA) (2000, 2003, 2005, 2008)²⁴⁷

The TVPA is consistent with other anti-trafficking laws and treaties in that it combats trafficking by promoting the goals of the three Ps— prevention, protection and assistance for victims, and prosecution for traffickers. The aims of the TVPA are to promote interagency collaboration

²⁴⁷ The Trafficking Victims Protection Act of 2000 (P.L. 106-386), the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311).

among the executive branch and federal, state, and local law enforcement entities.²⁴⁸

The act divides human trafficking into two categories—transport of people for purposes of labor and/or sexual exploitation. According to the relevant findings defined in TVPA

Many of these persons are trafficked into the ...sex trade, often by force, fraud, or coercion. The sex industry ... involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services...

...Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin...

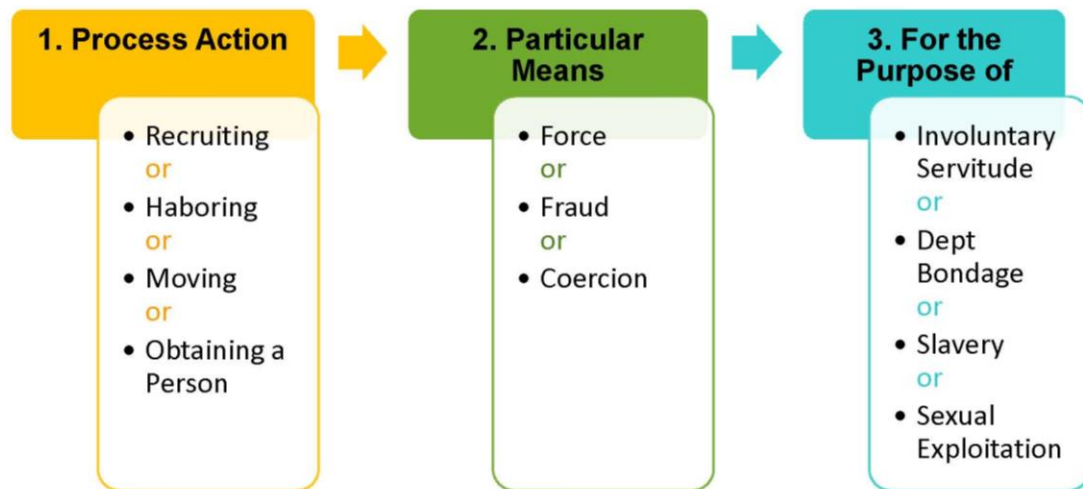
...Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable...

...Force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and

²⁴⁸ Oregon Study, pg. 27.

coercion. Coercion can be physical, physical restraint, threat of harm, or the abuse or threatened abuse of the legal process ...”

Figure 7: Three Elements Necessary to Meet Trafficking Definition (TVPA)



Adapted from: Fight Slavery Now at <http://fightslaverynow.org/why-fight-there-are-27-million-reasons/the-law-and-trafficking/trafficking-victims-protection-act/trafficking-victims-protection-act/>.

The TVPA generally defines sex trafficking as the

recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act [or subsection to involuntary servitude, peonage, debt bondage, or slavery] as well as in which a commercial sex act is induced by force, fraud, or coercion, or in which the person forced to perform such an act is younger than age 18...A commercial sex act is any sex act on account of which anything of value is given to or received by any person...Types of sex trafficking

include prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism.²⁴⁹

Unlawful conduct with respect to documents and attempting to commit any of these acts are crimes listed in the TVPA of 2000 as well. The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005)²⁵⁰ identified trafficking in persons offenses committed by federal contractors outside the United States as a separate crime.²⁵¹ Most US anti-trafficking efforts have historically focused on trafficking across international borders, but the 2005 reauthorization also highlighted the need to address the trafficking of U.S. citizens and permanent residents. This focus was particularly geared towards minor victims of sex trafficking or prostitution within United States borders.²⁵² Benefitting financially from peonage, slavery, or trafficking in persons, conspiring in an act of trafficking in persons, and fraud in foreign labor contracting were eventually criminalized under the 2008 TVPA reauthorization act.²⁵³

D. Violence Against Women Reauthorization Act (VAWA) (2013)

Amidst controversy and considerable debate, the reauthorization of VAWA (S.47) was enacted in 2013, including specific mention of sex trafficking. As the National Network to End Domestic Violence (NNEDV) 2013 policy brief indicates, “[o]f historical significance is language in VAWA

²⁴⁹ 8 U.S.C. § 1101

²⁵⁰ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109–164, § 103(a)(1), 119 Stat. 3558 (2005) [hereinafter TVPRA 2005].

²⁵¹ *See id.* § 3271

²⁵² 22 U.S.C §7103.

²⁵³ *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222(d)(1), 122 Stat. 5044 (2008) [hereinafter TVPRA 2008].

2013 that recognizes: (1) the inherent authority of Tribal law enforcement and Courts to protect Tribal communities against non-Tribal individuals who commit domestic or dating violence, or violate an order of protection; and (2) the rights of lesbian, gay, bisexual and transgender people to access VAWA protections and services without discrimination.”²⁵⁴ Relevant to this study is the act’s recognition of inherent tribal authority via § 904, wherein tribal courts are recognized as able to hear claims brought by tribal prosecutors against non-Natives for domestic and sex abuse crimes occurring on reservations where the victim is a tribal member. While tribal jurisdiction is limited to certain circumstances where 1) the non-Native offender must be in a “dating” or “domestic” relationship with a Native, 2) the crime charged must be based on the presence of the relationship and 3) either the non-Indian offender must reside or be employed on the reservation, or be the spouse, intimate partner, or dating partner of either a tribal member or a member of another tribe who resides in the tribes’ Indian country. Beyond that, § 904 also makes a number of stipulations about processes that tribal courts are to meet in addition to requirements laid out under the Indian Civil Rights Act. 25 U.S.C. §1302. While these changes were written to address domestic violence specifically, there is the possibility of tribal entities using these same conditions to prosecute a trafficker if the same sort of circumstances apply.

²⁵⁴ National Network to End Domestic Violence. 2013. “The Violence Against Women Reauthorization Act of 2013: Summary of Changes.” Nnedv.org. Accessed October 7, 2014. http://nnedv.org/downloads/Policy/VAWA2013_Summary.pdf. Pg 1.

Other benefits around the topic of sex trafficking in VAWA include the reauthorization of TVPA as part of a joint bill. And, within the language of the VAWA reauthorization, we find the definition

(28) SEX TRAFFICKING.—The term ‘sex trafficking’ means any conduct proscribed by section 1591 of title 18, United States Code, whether or not the conduct occurs in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States.

Which thereby links VAWA definitions to conduct proscribed by 18 U.S.C. § 1591. This code, “Sex trafficking of children or by force, fraud, or coercion” states that

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b)....

(e) In this section:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “coercion” means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

(4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity. SEC. 41201 (Creating

Hope Through Outreach, Options, Services, and Education for Children and Youth) wherein grants are authorized for program purposes associated with advocacy for and in response to youth as well as training to support staff and programs that operate in places of education.”

VAWA 2013 also opens the gateway to including programs that advocate for or provide services to those who work with sexually trafficked youth in grants authorized by the act. It “clarifies that victim services and legal assistance may be provided to victims of human trafficking, when trafficking is part of their domestic violence, dating violence, sexual assault or stalking victimization.”²⁵⁵

While these changes have been beneficial—especially in logically linking up concepts thus further elevating the legal importance of trafficking—the work of VAWA has only served to do this for youth who are survivors. It does not further clarify the meaning of the original piece of legislation nor does it provide guidance for those who would use it to do the work of defining trafficking on their own.

Interviews

Generally speaking, interviews provide the opportunity to gather real-life examples and stories as well as insight into interviewees’ ways of thinking.²⁵⁶ Considering the sensitive nature of this topic, interviews can also provide a more intimate space to address this issue, encouraging

²⁵⁵ Ibid., pg. 3.

²⁵⁶ See, generally, Carol A. B. Warren and Tracy X. Karner. 2010. *Discovering Qualitative Methods: Field Research, Interviews, and Analysis*. New York: Oxford University Press.

additional exploration of unanticipated issues or themes—even for interviewees who are not survivors but those who work with/advocate for survivors and bear witness to their stories of trauma. Specifically as used here, this component provides the opportunity for additional insight on the environments which influence legal choices and interpretations as well as the localized social conditions affecting the rates of prostitution, missing citizens and potential sex trafficking. This is also an opportunity to assess the commonalities and differentiation in current language and definitions used to discuss these issues locally, regionally and nationwide. While including interviews in the study design could heighten the social desirability issues²⁵⁷ created by my situated identity in the social hierarchy and potentially be a time-consuming method garnering limited generalizable data, these challenges were mitigated by the minimal extent, intended use and type of participants dictated by this design. It was determined that semi-structured format of conversation points rather than ordered questioning allowed for the interview participant to follow a conceptual trail of their own making.

The original research design included at least twenty semi-structured in-person and telephone interviews with regional intertribal councils (6),²⁵⁸

²⁵⁷ Perceived social desirability of the researcher can impact the validity and reliability of the data gathered. This influence can be about status (elite versus worker) or the combination of identity markers of the researcher compared to the participant. See, generally, Neil Stephens. 2007. "Collecting Data from Elites and Ultra Elites: Telephone and Face-to-Face Interviews with Macroeconomists." *Qualitative Research* 7, (2): 203-216.

²⁵⁸ Interviews would be conducted with the Law Enforcement or Human Services Committee Chair or the Chairperson based on which position within each council would be best able to respond to the questions posed. This was determined by short, informal preliminary interviews with Intertribal Council personnel when scheduling interviews.

field scholars (6),²⁵⁹ tribal attorneys active in areas with ongoing investigations (3) and service providers (5) to represent a wide range of perspectives on the policy environment surrounding this issue.²⁶⁰ The limited number of interviews as well as the option for telephone interaction greatly reduced the time and cost considerations for this component. As community elites, to a certain extent, the interview participants were often in a position to interact with people socially situated in a variety of ways. Previous exposure to other types of people, as well as the medium of the telephone, may have mitigated social desirability concerns. Additionally, this component was specifically included for verification and further explanation of data via triangulation, greatly reducing the need for this specific data to be generalizable across the entire data set.

Interview Data Collection: This key-respondent list and subsequent recruitment was informed by preexisting contact with Indian law and sex trafficking legal scholars and advocates. Interview invitations were supported, where possible, by research partners indicated elsewhere in this text. This respondent-driven sampling was created by combining research partner contacts with purposeful sampling of specific representatives doing work in this area and the limited number of scholars addressing this issue. In the initial research design, participants were going to be offered a

²⁵⁹ This includes legal scholars such as Greer and Deer, scholars focused on contemporary Native culture such as Lobo and Smith, and those who specialize in public health in Native communities such as Farley and Pierce.

²⁶⁰ Specifically, service providers would be community based groups which address social service needs for prostituted women, sexual assault survivors or those who specifically indicated that they provide services to sex trafficking survivors.

researcher developed resource guide as well as early access to study products which would include model guidelines for developing code to address this issue, rather than monetary incentives. Subsequent changes in the scope of study products²⁶¹ eliminated the possibility of offering those products. Instead, interviewees were offered future copies of the final findings, if desired.

Interviews were built around pre-determined conversation points²⁶² and questions covering the use of TVPA 2000, 2003, 2005, & 2008 as well as other anti-trafficking or similarly relevant laws and statutes available to Indian Country and/or in use in their jurisdiction, collaborative efforts among relevant jurisdictional authorities, the nature of reports of sexual victimization and/or missing, kidnapped citizens in their area, connections between gang or other similar activity and activities associated with the local sex industry.²⁶³ These were also informed by other study insights. The conversations were semi-structured so that the interviewer could seek clarity on issues as they were presented as well as address any areas or issues of importance which presented themselves in the conversation but were not pre-determined as relevant for the study.

At the time of recruitment and again at the beginning of the interview process, both in person and telephone participants were given the option to determine how the conversation would be documented. Options included

²⁶¹ Early in the course of conducting interviews, one of the legal scholars and one of the social researchers indicated that they were in the process of developing a model code. As area experts with more resources at their disposal, the strategic choice was made to avoid duplicative efforts.

²⁶² In this instance, conversation points which can be addressed in the conversations as appropriate, replace structured question order.

²⁶³ These questions are provided in Appendix A.

digital recording or (interviewer) hand written notes. Participants also had the option to agree to review the information they provided during the interview conversation once a transcript was completed to determine if any comments would be removed from study use. Once a transcript was approved, previous versions were destroyed. While a number of the legal scholars, advocates and lawyers declined the option, all interviewees were offered confidentiality and their information has been reported here without identifying information. Should their thoughts be directly quoted for future work in a way that identifies them, interviewees were offered both the opportunity to decline in the moment as well as in the future. As a precaution, all data collected was maintained using a triple lock method—kept electronically (no paper copies made), on a password protected portable drive, and locked in a cabinet behind a separate locked door. Any identifying information was kept in a separate location under the same triple lock conditions. Any information about scheduling and the administrative processes was destroyed immediately upon setting appointments or determining the invitee’s refusal to participate.

Interview Data Analysis: Planned to operate as a cross between the cultural, investigative and behavioral interview, this study element allowed for richer exploration of the contours of sex trafficking of Native peoples—uncovering “patterns, themes and categories important to [this] social reality.”²⁶⁴ Data gathered via this study component was standardized

²⁶⁴ Yan Zhang. 2009. “Qualitative Analysis of Content.” in Barbara M. Wildemuth, editor *Applications of Social Research Methods to Questions in Information and Library Science*. (pp.308-319) Accessed March 3, 2015. https://www.ischool.utexas.edu/~yanz/Content_analysis.pdf.

according to the codes used for public data analysis (see pages 105 and 106) for easier comparison to other interview findings collected as well as the other methods, collection and analysis within this design. Further, the additional emergent questions and discussion based on the interviewee's knowledge and behavior were coded by hand (line-by-line) on a computer using Excel software to

1. Search for phrases or general ideas related to sex trafficking found in transcript text,²⁶⁵
2. Define axial hierarchical code or group general ideas into code groups wherein related sub-code groups are contained.

As with the issues that arose with coding and content analysis for the public data element of this study, the study nature required adjustment in the plan for analysis of interview data. As mentioned in the Public Data Analysis discussion in Chapter Three, a modified conventional/directed content analysis was employed to address the potential for both for researcher and external legal bias to influence the definitions and interpretations²⁶⁶ of the experience of sex trafficking as it was understood in Indian Country and involving the targeting of Native peoples.

²⁶⁵ This process, somewhat like open coding, was used to come up with the broad grouping of ideas presented in the text and never meant to be the final coding structure on its own. Some would refer to this as data reading to derive code as well. See Matthew B. Miles and A. Michael Huberman. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. Thousand Oaks, CA: Sage; David L. Morgan. "Qualitative Content Analysis: A Guide to Paths Not Taken." *Qualitative Health Research*, February 1993. 3 (1), 112-121; and Janice M. Morse and Peggy A. Field. 1995. *Qualitative Research Methods for Health Professionals*. Second edition. Thousand Oaks, CA: Sage.

²⁶⁶ Hsieh and Shannon (2005), 1283.

The analysis was conventional in that preconceived categories were replaced with categories found using an inductive method²⁶⁷ and names for categories flowed from the qualitative data itself.²⁶⁸ Additionally, there were interviewer/researcher notes on each interview²⁶⁹ and the potential connections between categories and subcategories were explored.²⁷⁰ The analysis was “directed” in that theory, and in this context existing laws, suggested codes early (the predetermined codes mentioned earlier) which were used to help frame some interview questions. And as with the secondary data analysis, key concepts/variables employed were derived from the existing literature and law. Further, the interview conversation points were open-ended and the conversation allowed for, and incurred, targeted questions about the information shared.²⁷¹

The main benefit of the conventional analysis is “gaining direct information from study participants without imposing preconceived categories or theoretical perspectives.”²⁷² While not the goal of this study, a main benefit of the directed approach is the ability to support or extend a theory. Perhaps, more importantly, the challenge of directed analysis is the potential for researcher bias to influence both the interview/conversation as

²⁶⁷ See discussion about inductive category development in Philip Mayring. 2000. “Qualitative Content Analysis.” *Forum: Qualitative Social Research*, 1(2). Accessed March 10, 2015. <http://www.qualitative-research.net/fqs-texte/2-00/02-00mayring-e.htm>.

²⁶⁸ See Nancy L. Kondracki, Nancy S. Wellman, and Daniel R. Amundson. 2002. Content Analysis: Review of Methods and Their Applications in Nutrition Education. *Journal of Nutrition Education and Behavior* 34, (4): 224-230.

²⁶⁹ These were written afterwards with an identifying mark rather than name or date to ensure interviewee confidentiality.

²⁷⁰ Morse and Field, 1995, pg. 8.

²⁷¹ Hsieh and Shannon, 1283.

²⁷² Ibid, 1279-80.

well as interpretations.²⁷³ Via blending content analysis methods, this study both recognized existing theory and laws while recentering participants' direct insight. The challenge of the conventional analysis is to maintain credibility by developing a complete-as-possible understanding of the context such that key categories are not missed.²⁷⁴ This study worked to meet the challenge to credibility posed by this method using prolonged engagement with the issue and surrounding research broadly as well as triangulation of methods and theory.²⁷⁵

Some interviews also provided data beyond word choice thus, where possible, interviewer notes on non-verbal cues/codes were assessed for culturally appropriate understanding of non-verbal communication to determine attitude and level of comfort/discomfort. While generally considered an innovative data collection strategy reliant on face-to-face interviews and/or focus groups,²⁷⁶ attention to pauses, loss of words, lack of words, whispers/muttering, and "space fillers"²⁷⁷ which take into account regional, tribal and other cultural factors can provide additional context for the words actually uttered. Onwuegbuzie, Leech and Collins, provide a chart for use in determining non-verbal cues²⁷⁸ when debriefing interviewers which, with modifications, could have proven useful for this process. Due to the fact that the majority of interviews were conducted on the phone rather

²⁷³ Ibid, 1283

²⁷⁴ Ibid, 1279-80.

²⁷⁵ Ibid.

²⁷⁶ Anthony J. Onwuegbuzie, Nancy L. Leech, and Kathleen M. T. Collins. 2010. "Innovative Data Collection Strategies in Qualitative Research". *Qualitative Report*. 15 (3): 696-726.

²⁷⁷ Examples of space fillers would be increased use of "ums" and "you know" or other similar phrases over the course of conversation.

²⁷⁸ These are proxemic, kinesic, chronemic, and paralinguistic orientations. Onwuegbuzie, Leech and Collins, 2010, *Innovative Data Collection Strategies*, pg. 710.

than in person, there were few non-verbal cues to record effectively. These notations were included in researcher notes and were used to inform the analysis, but not presented directly as study findings.

It was determined that a semi-structured format of conversation points rather than ordered questioning allowed for the interview participant to follow a conceptual trail of their own making.²⁷⁹ For the purposes of this study, the hope was that a map of conceptual connectors might suggest ways to build community appropriate interventions by providing insight into the logical processing involved. The last element of data analysis in this component was to be concept mapping for each interview, which was then placed in the coding framework used to analyze the public data as a means of determining which points held the most relevance in the policy environment's perception of the prevalence of targeted sex trafficking in Indian Country.

Interviews Conducted: Seventeen individual confidential interviews, ranging in time from 30 to 90 minutes long, were completed between July 2013 and August 2014, based on interviewee availability. The list of invited interviewees began with the few legal scholars, service providers and researchers working specifically on sex trafficking in Indian Country at the time of this research.

Thirty five interview requests were sent via email—occasionally (5) with permission to use the name of a Special Advisor to the study for an introduction. Law Enforcement, Public Safety and Human Services committee members serving on the regional Intertribal Councils and

²⁷⁹ Hsieh and Shannon, 1283-4.

National Native organizations list available on the National Congress of American Indians' (NCAI) website were invited to participate as well. National Native public policy groups such as NCAI and the Tribal Law & Policy Institute as well as numerous Department of Justice researchers working in Indian Country were among the invitees. During the time of interview recruitment, the study author presented at several Native governance and academic conferences on existing laws on contemporary targeted sex trafficking of Native peoples in Indian Country, where additional research conversation invitations were extended. Through those face to face invitations, a few (2) interviewees learned about this study and agreed to participate. One interviewee was recommended to participate by a presentation attendee as well. Some interviewees also suggested people to contact as potential participants, which resulted in an additional (5) interviews.

Some of those who declined to participate (8) indicated that they did so because they felt ill-prepared to comment on the topic but recommended other colleagues and peers who would be a better fit. That garnered an additional five interviews. Several others simply declined to participate or give input due to lack of knowledge about this topic specific to Indian Country. This was, itself, worthwhile perspective about the lack of available information on this issue within environments associated with sex trafficking interventions, the law and its enforcement in Indian Country. The remaining five interviewees were contacted without previous knowledge of this study or researcher. All but one of the interview conversations were conducted by phone. The interview that was the exception was conducted in person. A

breakdown of the interviewee roles in relation to trafficking intervention is provided in the Study Participant Demographics section of Chapter Four, entitled “Findings: Perceptions in the Policy Environment.”

Interviewees were initially invited via an email briefly introducing the study and research question as well as the interview procedures and process of confirming their final approval for the information to be used as data. Emails and phone calls were offered to provide additional information, as desired, prior to the actual conversation that served as the basis of data collection. At the agreed upon conversation time, interviewees were again reminded that, with their agreement, the conversation would be digitally recorded, transcribed and forwarded to them via email for any corrections or additions. Academic interviewees tended to waive this right initially, but were still forwarded copies of their transcript for approval via the password protected email addresses that they provided. Once transcripts were returned and approved, the original transcripts and digital recordings were destroyed for those who desired it. Others are maintained under the same triple lock method used for the data collected in other components of this study. For interviewee demographics, please see “Findings: Perceptions in the Policy Environment” and Appendix A for the conversation points.

Survey

This study survey was designed as an opportunity for a larger sample of Indian Country and people working within Indian Country to directly comment on attitudes, goals and/or priorities on targeted sex trafficking of Native peoples. To truly understand the widespread perception of how

pervasive or not sex trafficking is in Indian Country this exploration needed to ensure geographic breadth beyond those available to engage in a research conversation. The study also needed to work with multiple levels of elites within the policy environment. While the ultra-elite of this target population may not be as likely to engage in a survey,²⁸⁰ mid-level elites and/or those in positions of knowledge about sex trafficking in their communities might be more likely to engage via anonymous survey participation. Since this component was administered without researcher input, in addition to the efficiency of data collection and easy data aggregation, the influence of social desirability was decreased and the chances of greater honesty in responses was increased. To balance the ease of data collection and aggregation, this component required the most initial work as the tools' success (reliability) was dependent on the clarity of the questions and directions. However, this study component strengthened the research design by allowing for triangulation across data points which included historical and current points in time and across regions in a way that used multiple collection methods.

Survey Data Collection: The survey was made available online and manually, by invitation of the researcher and research partners. Invitations were sent to or personally extended to the following arenas which cater to lawyers, policy makers, tribal council members, advocates/activists and lawyers/legal scholars working in Indian Country:

²⁸⁰ See Stephens, 2007 and Forsythe, 1999.

- website via TurtleTalk.com, a revered online information portal used by legal scholars and Native law practitioners throughout Indian Country and Canadian First Nations,
 - including career building sites, such as LinkedIn,
 - both an open link and embedded survey added to a website specific to this project,
- associations, coalitions and other professional organizations, as well as automated email lists and professional association social media sites serving the same,
 - this included officers and members of two Native law enforcement fraternal organizations, both with a national scope of membership, including The International Association of Chiefs of Police (50), individual tribal police departments (57) and The National Native American Law Enforcement Association (request to send to members).
- attendees as several professional as well as activist conferences,
 - this included personal invitations and stationed opportunities at locations such as the National Congress of American Indians' Mid- Year Meeting "Claiming Our Rights and Strengthening Our Governance" and 9th Annual Tribal Leader/Scholar Forum (with 1,000+ attendees), and

- conference presentations on the study subject and process, including the American Indian Studies Association Conference: Activism: Continuity, Resistance, Obligation (February 2014).
- Intertribal Councils in each region of the United States—with concentrated attention on law enforcement, human services and similar, related area committees within each Intertribal Council
- personal networks (of research partners and the occasional, interested interviewee),
- service provider networks, and
- word of mouth invitations via interviewees and those invited to interview who declined.

As an anonymous survey, invitations were sent out without tracking information to determine how survey respondents learned of the survey. And, while respondents were asked to create self-identification codes to distinguish individual responses from one another, no contact information was obtained for further inquiry. Because of these precautions to maintain the anonymous nature of the survey, no individual reminders for survey completion were planned. That said, efforts were made to send a round of “reminder invitations” out via the relevant social media sites, networks and automated email lists on a regular basis during every month of implementation.

The online survey was administered via a private, professional account with an online survey development cloud based company which guarantees

privacy and confidentiality for those who initiate such accounts. The manual survey option involved contact with the researcher via email, mailing of a paper copy of the survey in a minimally marked envelope with a self-addressed stamped envelope for the survey's return. Email requests for participation as well as social media specific to the audience, including a website and Facebook page, were used as part of the participant recruitment strategy whenever possible to negotiate the wide geographical scope of Indian Country.

As mentioned in other places within this text, due to the nature of the people targeted in this study—professionals with some computer skills and experience working in organizations likely already connected via email and Internet access—the use of digital resources to span the geographical diversity was not considered a study limitation. Translation of survey text into Native languages was not provided based on the desired characteristics of survey participants as well. While this research design choice could have created limitations in the study, it was not evaluated as vital enough to limit participation from the targeted response group and thus simply fell outside of the scope of the project. Hopefully, this omission will provide incentive for further academic investigation in this area—especially investigations targeting participation from a larger range of Indian Country.

The targeted population of participants was Native organizations, organizational representatives and professionals/scholars with particular

focus on sex trafficking responses and systematic interventions.²⁸¹ The original research design included a desired sample (N=184)²⁸² of federally recognized tribes. In this case, sampling was to be multifold with respondent-driven elements that combined research partner contacts and some snowballing techniques²⁸³ with purposeful sampling of specific communities stratified by region to ensure representation from communities with preliminary investigations²⁸⁴ and the Eastern regions which are rarely mentioned in the relevant literature and criminal jurisdiction.²⁸⁵ As discussed in the Survey Implementation portion of this chapter, that process was altered as a result of pilot testing.

Survey topics included discussions of trafficking in the local community (if any), grassroots efforts to address prostitution and gang activity, local law enforcement understandings of trafficking, as well as the local impact (if any) and legal jurisdictional efforts to address the issue in both United States and tribal systems. The survey tool was developed based on interview questions and interviewee responses, allowing for initial

²⁸¹ Seeking communities with such organizations and defining them as my unit of analysis eliminated the need to seek out people who self-identify as survivors of sexual violence. Survivor voices were included through careful consideration of feedback from social justice organizations who work in this area.

²⁸² There were 567 federally recognized Native nations, confidence level was 90%, 5% margin of error. The high confidence measures were to ensure statistical importance of study findings.

²⁸³ While this technique can be problematic, it is generally accepted when working with groups that are considered reluctant to engage in social research and/or the degree of sensitivity of the topic. While this study included both elements, this technique was used minimally. For more discussion on this see Georgia Robins Sadler, Hau-Chen Lee, Rod Seung-Hwan Lim and Judith Fullerton. 2010. "Recruitment of Hard-to-Reach Population Subgroups via Adaptations of the Snowball Sampling Strategy." *Nursing and Health Sciences* 12, (3): 369-374.

²⁸⁴ Such as Alaska, Oregon and Minnesota.

²⁸⁵ i.e., whether federal, state or tribal jurisdiction applies.

components to inform its creation. Based on the length of time involved in completing the interview component of this study, pilot testing began in the spring of 2014, with full implementation throughout that summer.

In terms of format, the survey included dichotomous and contingency questions paired with structured answer formats to assess respondent category of work or relation to the issue. Some sections utilized Thurstone, Likert, and Guttman Methods to measure assumptions about likelihood of trafficking, prostitution and vulnerable populations that go missing in respondent areas, what was likely to be determined as sex trafficking, and perceptions of appropriate responses to these incidents that may have been considered trafficking,²⁸⁶ respectively. As appropriate, scale and semantic differential questions with both structured and unstructured response options were used to measure likelihood of assessing trafficking according to study definition.

Survey Analysis: Data gathered via this study component were standardized and assessed according to the codes used for public data analysis (page 106) for easier comparison across study design. This triangulation allowed for a breadth of analysis across the study elements that could consider a wide range of position perceptions about how widespread the sex trafficking of Native peoples is as well as control for both external and researcher biases possible in any one element, method or portion of research.

²⁸⁶ The details of these answers might fall under United States anti-trafficking law. These exceptions also help point out where the exceptions lie.

Particular attention was given to the differences among regions and types of criminal jurisdiction to look for emerging patterns across Indian Country in comparison to the two areas where the majority of studies on the contemporary targeted sex trafficking of Native peoples took place. There was also consideration of changes over time, compared to the themes and language found in the secondary data analysis of public documents. Statistical analysis was descriptive in nature and exploratory, rather than seeking to determine causality. Again, the hope was that this omission would provide incentive for further academic investigation in this area.

Survey Implementation: Designed to be dependent on completion of study interview conversations, the survey pilot began May 2014 with success. Earlier discussions with key informants, community members, and issue researchers indicated that it was highly unlikely that 184 completed surveys would be possible in the time frame allotted according to study resources.²⁸⁷ This was largely due to the newness of the conversation about the connection between sex trafficking and Indian Country outside of specific scholarly circles. Although the intention to distribute the survey widely enough to cover all federally recognized tribes (566) remained throughout, the numerical goal was removed nine months prior to initiating the survey pilot. As the only tool out in the community at the time asking these kinds of questions, the additional pressure to have a specific sample size within a specific time frame and limited resources had the potential to drive the

²⁸⁷ As a matter of perspective, informal conversations with Department of Justice researchers and prosecutors doing somewhat similar work in Indian Country indicated that a 33% return rate, as I initially proposed, normally took a number of years and considerable resources.

exploratory process in a manner which might skew results. The decision was made to simply rely on a good implementation plan and equally good advertising, then allow the number of completed surveys to speak for themselves *without a goal*.

The online survey was implemented June 2014 through October 2014, a period of four months. For a month beforehand and throughout that time, the study was distributed through law enforcement networks and associations, tribal legal associations and popular legal information email lists, direct Indian Country service provider email solicitation, national Native public policy associations and networks, panel and poster presentations at tribal leadership venues and conferences, key informant professional networks, and word of mouth.²⁸⁸

Overall, the demographic reach was small but diverse enough to be considered somewhat representative of the population which influences the policy environment in Indian Country. In that four month implementation period, 49 surveys were completed spanning seven geographic regions: South Atlantic, Pacific, Mountain, West North Central, East North Central, West South Central and New England.²⁸⁹ Please see the Study Participant Demographics of “Findings: Perceptions in the Policy Environment” for more detailed information on survey participants.

²⁸⁸ More detail on this was provided on page 139-140.

²⁸⁹ The remaining two regions (Middle Atlantic and East South Central) were not represented in the survey responses.

XI. Research Protocols

Institutional Review Board

This study was not considered research according to relevant IRB guidelines. University of Arizona Indian Country specific IRB personnel indicated that this was considered legal investigation since both the interview conversations and survey tool involved speaking with people in their official roles rather than in ways which fall under Human Subjects regulations.²⁹⁰

The study allowed all tribal entities contacted in their official roles to dictate any local scientific and ethical review structure(s) and/or community advisory board(s) research approval processes needed for participation. No individual groups were contacted to discuss the particular situation outside of community public perception and/or publically available information. While no participant was asked to speak directly about the experience of a particular tribal entity, the study remained committed and open to participating in any tribal IRBs, as indicated and needed.

Research Interest/Support

At the time of this study there were fewer than ten scholars writing on this topic, a handful of Native nations considering the issue and one federal government agency developing policy. One of those scholars was a study special advisor (Greer). One agency indicated preliminary interest in collaboration. Conversations with the Office of Research & Evaluation at the

²⁹⁰ This was confirmed and approved as such on January 30th, 2013.

Department of Justice and the Office to Combat Trafficking in Persons also indicated interest in potential findings.

Research Partners:²⁹¹ Professor Robert Hershey of the University of Arizona’s Rogers College of Law Indigenous Peoples Law Clinic (IPLC), agreed to serve as an unofficial “Special Advisor” for this study in addition to Mr. Greer. As a legal scholar with a specialization in Indian Law and forty years’ experience, Hershey has been a Staff Attorney for the Fort Defiance Agency of Dinebeina Nahilna Be Agaditahe and a legal advisor for several Arizona tribes as well as a member of the White Mountain Apache, Hopi, Pascua Yaqui, and Tohono O’odham Tribal Courts. He has acted as an informant, graciously offering introductions and clues about where to connect with other legal scholars and lawyers as well as sending out invitations and posting announcements on behalf of the study. Additionally, Hershey has served as this author’s development supervisor for an IPLP project resource guide around sex trafficking Indian Country, for which some of the background literature and research for this text was originally produced. He has also provided valuable insight on the needs and culture of tribal law to aid in understanding the legal context of sex trafficking in Indian Country.

This chapter has provided a detailed account of the plans, adjustments and implementation of three integrated methods of inquiry into policy

²⁹¹ For information on others who have informally indicated some form of support, please see Appendix E.

environment perceptions of how widespread sex trafficking of Native peoples is in Indian Country specifically—a question derived from issues raised in the literature concerning the problem reviewed in the previous chapter, as defined in Chapter One. Understanding that there are a number of individual positions which inform the overall perspective, this exploratory study was designed to garner the benefits of a mixed method design with considerable triangulation of secondary and primary data to account for any number of external and internal biases that might skew overall findings. Through a survey of previous reports, confidential interviews and an anonymous survey, the study took a snapshot of perceptions. The important findings, based on that snapshot, are provided in the next chapter and are organized according to areas of inquiry determined by the emergent codes discussed previously. This is followed by a discussion focused on what that all means (Chapter Five) as well as conclusions and suggested ideas to consider next (Chapter Six).

Chapter Four

Findings: Perceptions in the Policy Environment²⁹²

XII. Research Question

The research question driving this study asked those operating in policy making circles for their perception of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country. The question was framed with the assumption that there is a contemporary phenomenon of sex trafficking that is, potentially, specific to Indian Country. Based on the understandings of those who make, enforce and provide services according to the boundaries and definitions provided by the law, this study simultaneously prioritized people operating within circles of policy influence and within Indian Country. Indian Country is defined here as areas deemed so by the law, including reservations and other Native nations' land holdings. This study also expanded its understanding of Indian Country to include the areas immediately surrounding sovereign tribal borders and urban enclaves where sizable Native communities serve as "a second homeland."

The findings of this study are presented within three general areas which answer interrelated questions. Those areas and related questions are:

- Area I: Definitions
 - What is sex trafficking?

²⁹² The author of this study does not identify as Native American, and as such can be considered to be speaking as outsider to the issue. The topic and data discussed here have been approached with humility and an awareness of the long history of oppressive policies and other institutional forms of cultural destruction wrought by colonization, which continues today. Any mistakes made, insensitivity shown, or offense or upset caused were unintentional.

- How is it understood and what does it look like in Indian Country?
- Area II: Attitudes and Responses
 - What are the responses from federal, local and tribal entities to the contemporary targeted sex trafficking of Native peoples?
 - What influences those responses?
- Area III: Interventions and Creating Solutions
 - What interventions are already in place in Indian Country to respond to the contemporary targeted sex trafficking of Native peoples?
 - What's working, and not, to address this issue in Indian Country?

For each area, this chapter provides

- the relevant major themes and ideas found in the secondary data,
- the insight provided from the collected survey responses for corresponding questions,
- the major themes found in interview conversations, alongside specific experiences and quotes,
- brief section summaries of major points found for each survey tool in areas where the data presented is more than one page, and
- a general summary of what the triangulated data indicates about each area.

Analyses of the Community Vulnerability, Legal and Community Building implications of these findings can be found in the following chapter, “Putting it All Together: A Discussion, Conclusions and Recommendations Around Sex Trafficking in Indian Country.”

XIII. Study Participant Demographics

This section provides a quick overview of the study components with information about the participants or reports used, as appropriate.

Public Data

This study began with a search for data on the sex trafficking of Native peoples wherein survivors have been specifically targeted for recruitment *because of* their ethnic identities. One of the preliminary findings is that there is little publically available data which specifically concerns the contemporary targeted sex trafficking of Native peoples.

The publicly available data sources used for this study include:

1. Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota (2009)
2. Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota (2011)
3. Human Trafficking & Native Peoples in Oregon: A Human Rights Report (2014)
4. Two Tribal Codes on Sex Trafficking – Snoqualmie Tribe and Absentee Shawnee

5. The Trafficking Victims Protection Act (TVPA) (2000, 2003, 2005, 2008)²⁹³
6. Violence Against Women Reauthorization Act (VAWA) (2013)

Survey

The online survey was implemented June 2014 through October 2014. Overall, the demographic reach was small but diverse enough to be considered somewhat representative of the population which influences the policy environment in Indian Country.

The breadth of recruitment methods used, including use of informant and other interested parties' networks, made it impossible to estimate the number of people who saw or heard about this study survey, and equally impossible to calculate the response rate. That said, it is likely that the limited pool of resources available to advertise this survey widely kept the response numbers small. Additionally, keeping the identities of the survey participants anonymous meant not obtaining contact information, but through the use of various hyperlinks to connect people to the survey the study was able to track the type of invitation that garnered the most response. Of the 49 respondents, the vast majority (80%) came from email invitations. The pool of 49 survey respondents was largely female and largely American Indian, Native or Alaska Native (Figures 8 and 9). The respondent who indicated "other" in the question about gender answered "Cherokee."

²⁹³ The Trafficking Victims Protection Act of 2000 (P.L. 106-386), the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311).

Those who indicated “other” in the question about ethnicity answered “Native” and “Irish.”

Figure 8: Survey Respondent Gender

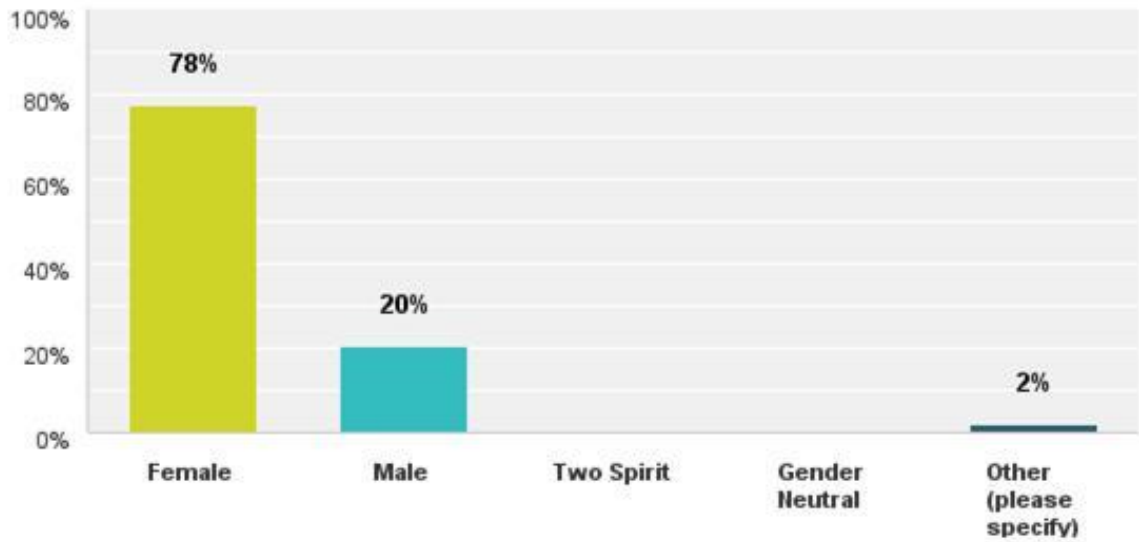
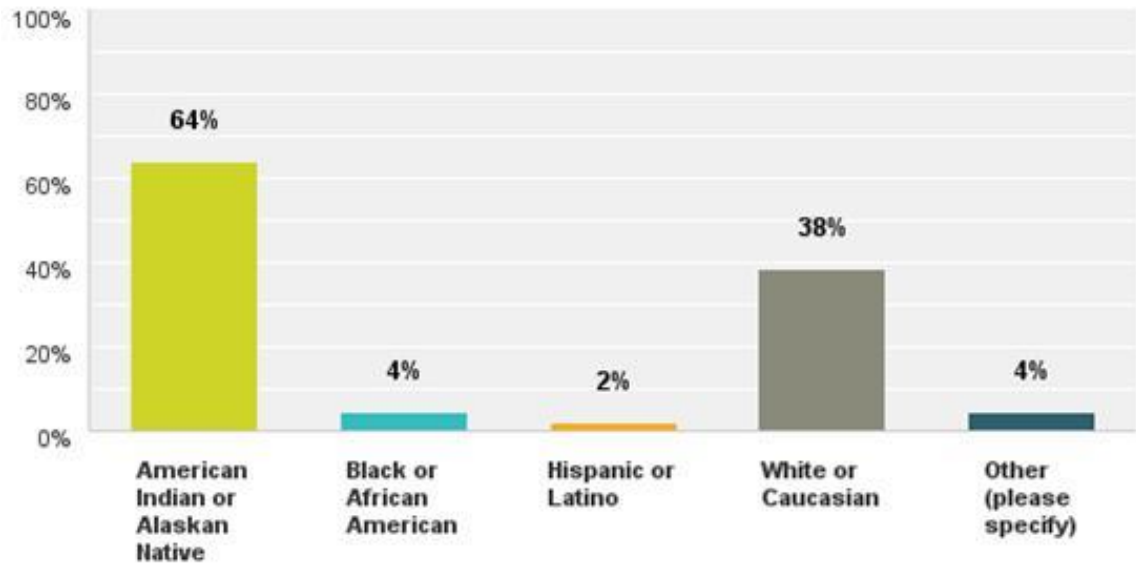


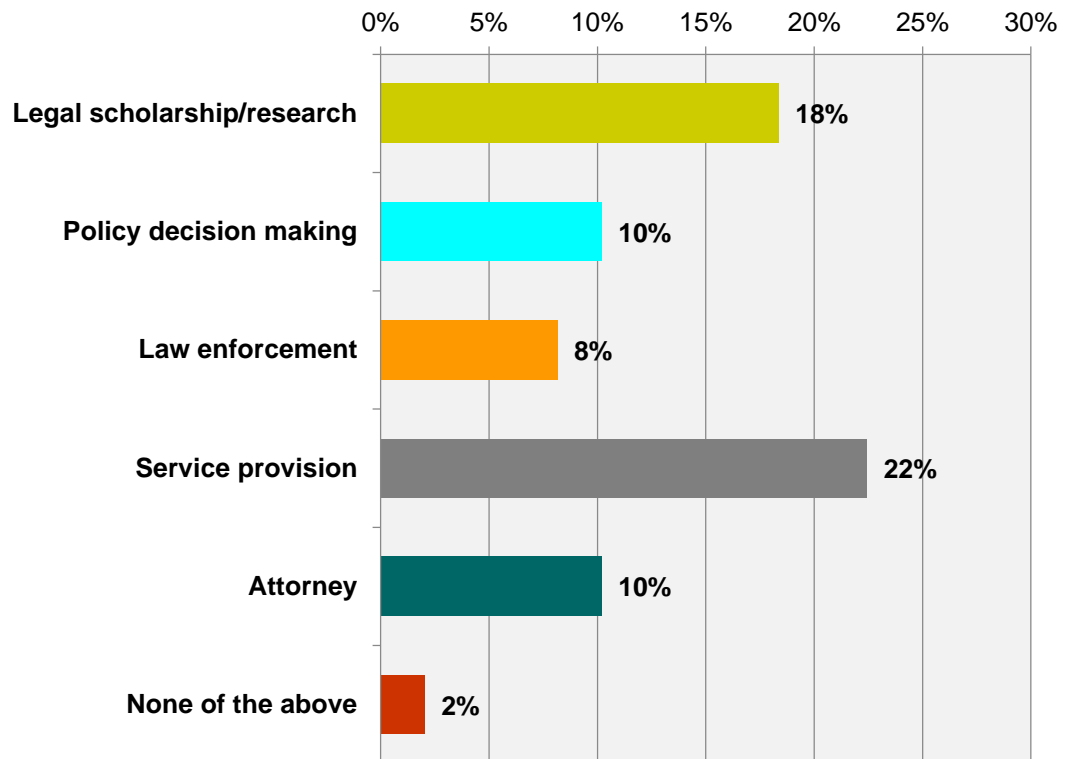
Figure 9: Survey Respondent Ethnicity



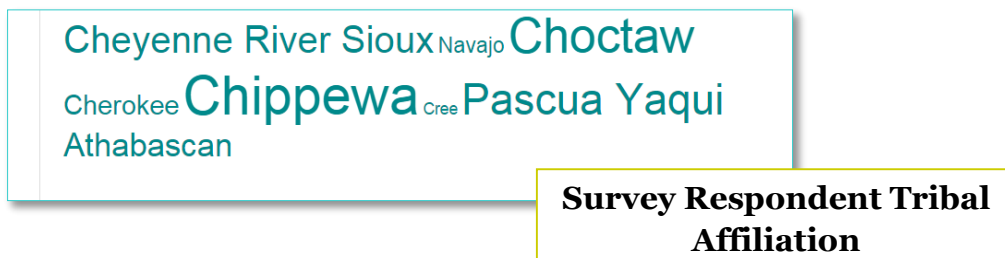
Respondents were asked to describe their job roles and/or titles to identify the professional perspective they brought to their interpretation of the law and what can be understood as sex trafficking. All 49 participants responded. All job titles and role descriptions were aggregated into Circles of Influence (Figure 10), or the categorical perspective that these types of titles and jobs indicated. Respondents had been in these positions from 1 month to 30 years.



Figure 10: Circles of Influence (Survey)



Only 71% of respondents answered the questions about tribal affiliation. Of those, 17% indicated no tribal affiliation at all. Respondents with tribal affiliations hailed from 24 different tribal communities (Figure 11)—assumed by the study to represent 2% of the total federally and state recognized tribal community entities.²⁹⁴



Survey respondents lived all over the United States (Figure 12), but were concentrated in the South Atlantic, Mountain and Pacific regions (71% total). The remaining two regions (Middle Atlantic and East South Central) were not represented in the survey responses.

²⁹⁴ This is based on the understanding that there are 566 federally recognized, 530 state recognized and 64 unrecognized Native nations throughout the United States, not including the Virgin Islands and Puerto Rico nor Native Hawaiians or Alaska Natives (N=1160). The number of federally recognized and state recognized nations comes from the National Conference of State Legislatures (“Federal and State Recognized Tribes” February 2015. *Ncsl.org*. Accessed March 12, 2015. <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx>). Since there is no regularly maintained list of unrecognized native nations, this study reviewed and cross checked the open sourced site, Wikipedia as a means to see what Native America might be updating about itself in terms of unrecognized status. (See “List of Unrecognized Tribes in the United States” last updated February 25, 2015. Accessed March 12t, 2015. *Wikipedia.org*. http://en.wikipedia.org/wiki/List_of_unrecognized_tribes_in_the_United_States.)

Figure 11: Tribal Affiliation (Survey)

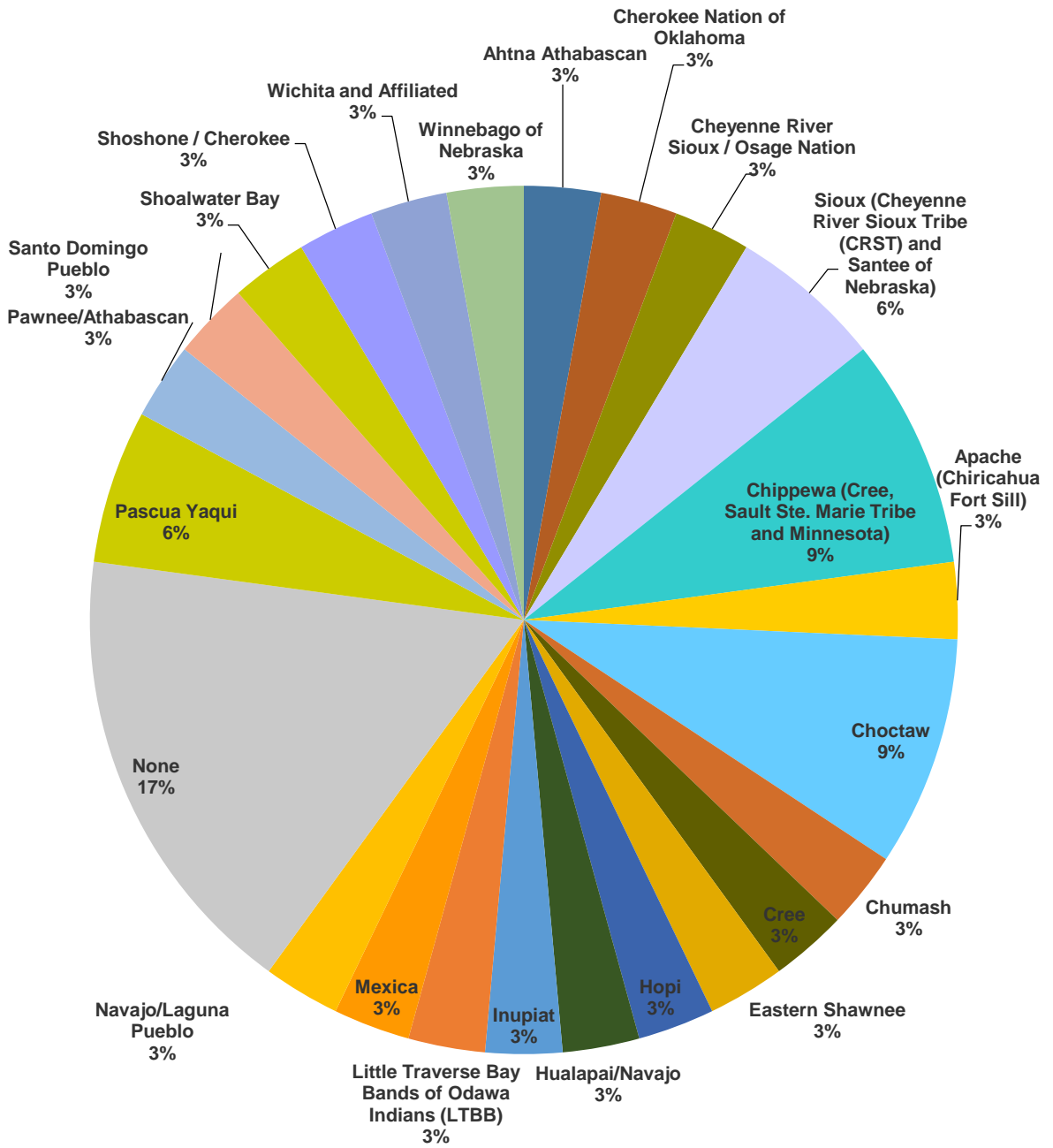


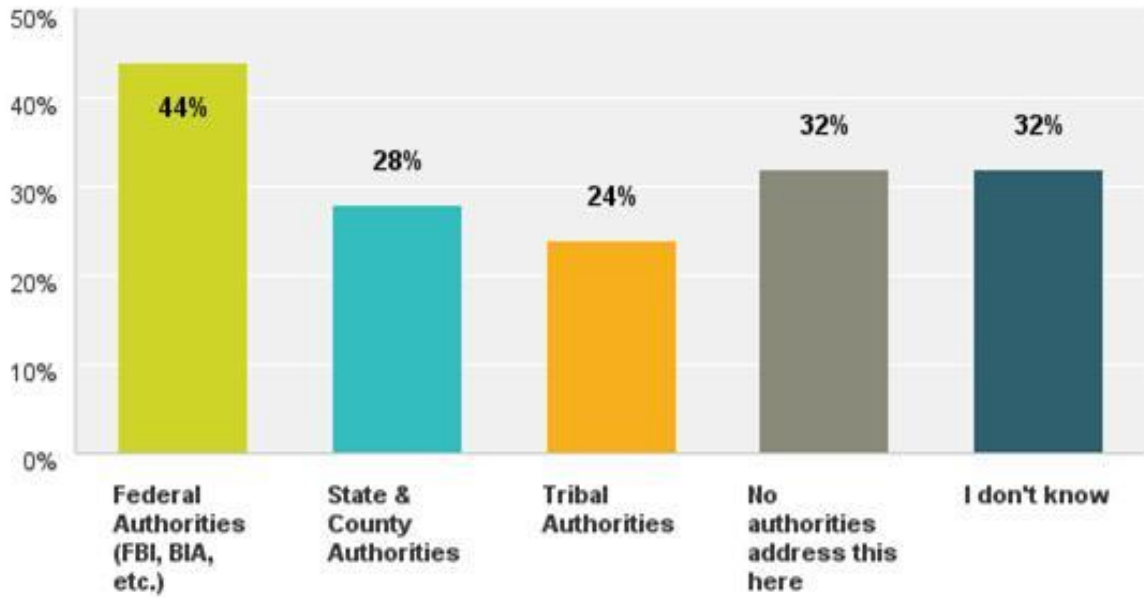
Figure 12: Where Survey Respondents Live



For the purposes of better understanding the data provided here, it is helpful to also know the elements that make up criminal jurisdiction in the areas that survey respondents called “local.” Survey participants were asked to indicate all of the authorities that might address sex trafficking issues for them locally (Figure 13). Not surprisingly, the majority of those who knew which authorities would address sex trafficking of Native peoples in their local area and felt that some authorities would do so, indicated primary federal jurisdiction (44%). Since there are few tribal codes in place to address contemporary sex trafficking of Native peoples, it is also not surprising that the participants indicating that tribal authorities might manage sex

trafficking issues for their area equaled just more than half of those indicating federal authority and considerably less than those indicating that no one addressed sex trafficking of Native peoples in their area.

Figure 13: Which law enforcement agencies address potential sex trafficking of Native peoples in your area? (Survey)



Interviews

Thirty five invitations to participate in a research conversation about contemporary sex trafficking of Native peoples in Indian Country were extended June 2013 through June 2014. Seventeen interview conversations were conducted between July 2013 and July 2014—sixteen by phone and one in person. Just under half of those invited to participate in a research conversation declined. Due to the topic, population of study (those in policy circles, essentially elites and ultra elites) and method, such a high declination rate could be expected. Some of those who declined to participate indicated that they did so because they felt ill-prepared to comment on the topic but

recommended other colleagues and peers who would be a better fit (response rate = 49%). As previously noted in the detail provided about this study’s research design, “Navigating Layers: Mapping the Research,” the lack of knowledge among an elite group that works with issues around health and wellbeing, domestic violence and sexual violence could reveal the level to which information is not readily available beyond a few, specific areas where research has already been conducted. This was considered a preliminary finding.

The interviewee pool was also largely female (82%) and Native (53%). It is worth noting that interviewees were not asked to identify ethnicity or “their local community.” Thus, both the ethnicity calculation here and the geographic calculation that follows (Figure 15) are based on their own disclosure during the conversation.

Figure 14: Interviewee Gender

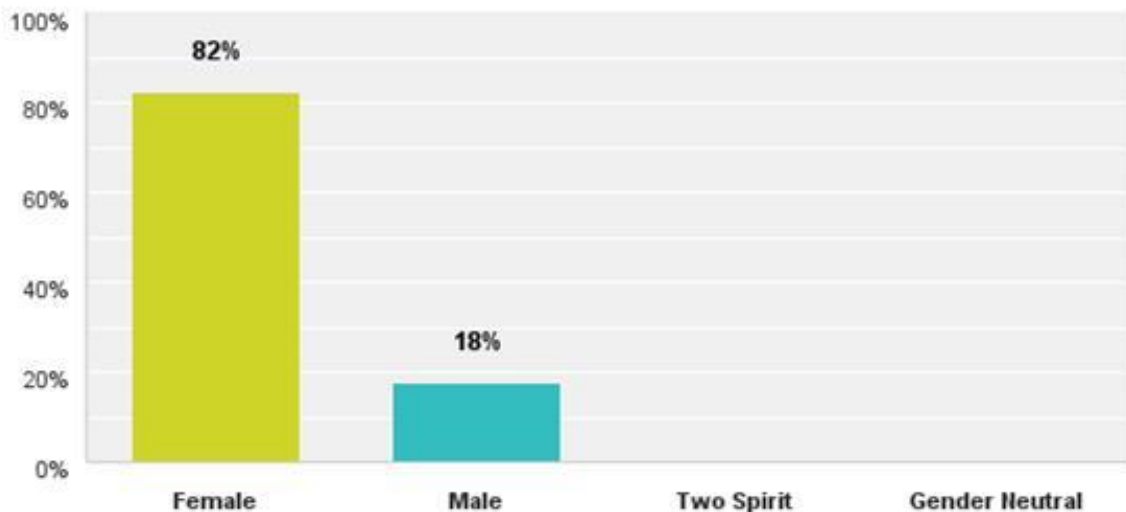
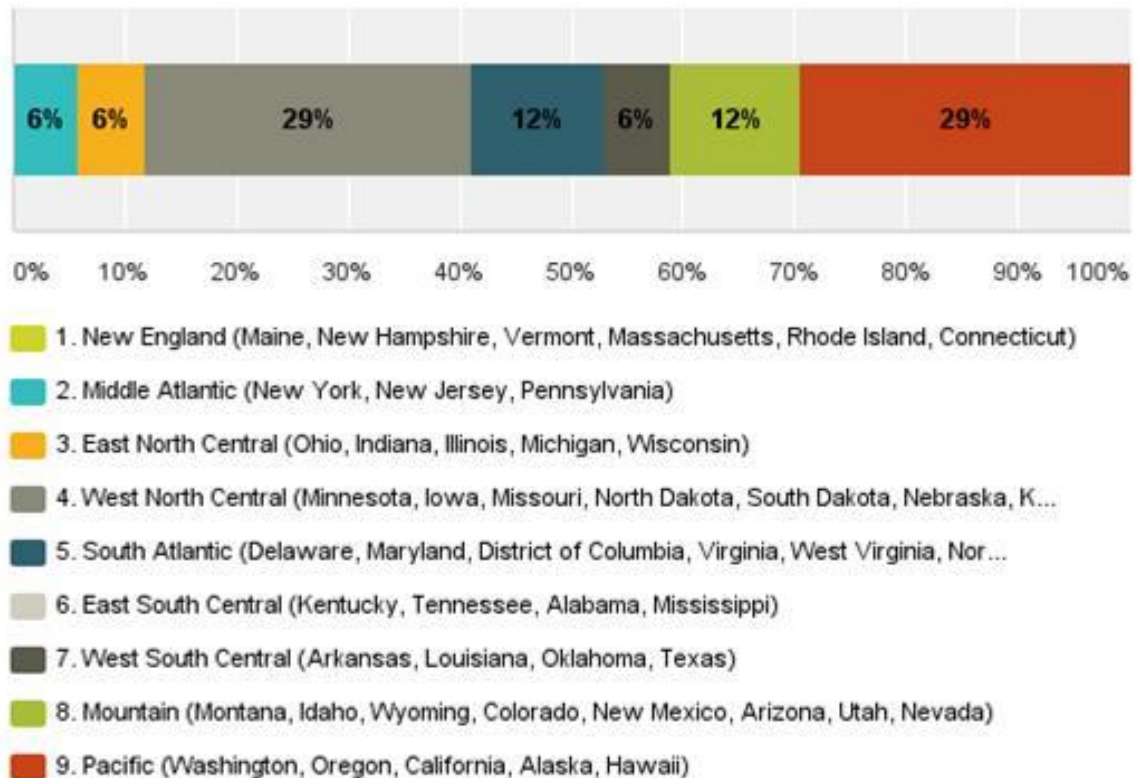


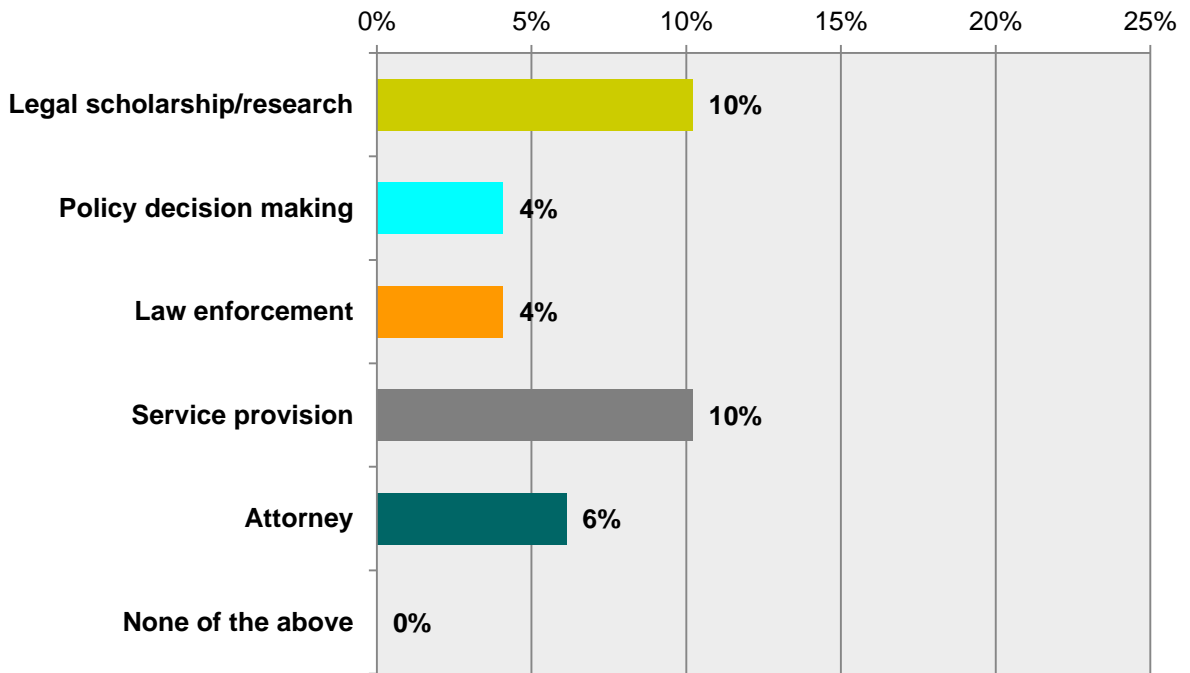
Figure 15: Where Interviewees Live



All job titles and role descriptions were aggregated into Circles of Influence (Figure 16), or the categorical perspective that these types of titles and jobs indicated. For the purposes of this study, this indicates that in addition to not meeting the original goal of 20 research conversations, those interviewed were not evenly represented—though the goal to represent perspectives beyond primarily law enforcement was met. Those in legal scholarship and research as well as those in service provision were the most represented (nearly a third each) while attorneys were the second most represented in this pool. Policy makers, such as politicians and upper

echelon tribal council members were some of the least represented (12%) – which can be expected of ultra elite informants.²⁹⁵

Figure 16: Circles of Influence (Interviewees)



²⁹⁵ For more insight on the challenges of interviewing the elite and ultra elite members of a group, please see Harriet Zuckerman. 1972. "Interviewing an Ultra-Elite." *The Public Opinion Quarterly* 36, (2): 159-175 and Neil Stephens. 2007. "Collecting Data From Elites and Ultra Elites: Telephone and Face-to-Face Interviews with Macroeconomists". *Qualitative Research*. 7 (2): 203-216. For more information on how this is impacted by researcher gender, see Diana E. Forsythe. 1999. "Ethics and Politics of Studying Up in Technoscience". *Anthropology of Work Review*. 20 (1): 6-11.

XIV. Findings—Area I: Definitions

What is sex trafficking? How is it understood and what does it look like in Indian Country?

Public Data

As mentioned previously, the federal legislation reviewed generally relied on the following definition:

- **Movement** (the “recruitment, harboring, transportation, provision, or obtaining of a person...”)
- For the purpose of **sexual exploitation** involving the exchange of goods (“a commercial sex act [or subjection to involuntary servitude, peonage, debt bondage, or slavery] as well as in which a commercial sex act”) and
- Is **against the person’s will** (“induced by force, fraud, or coercion, or in which the person forced to perform such an act is younger than age 18).

This came from the TVPA and was, subsequently, written into VAWA in the most recent reauthorization. Where this definition was broad about sexual activity that can be considered exploitative (“A commercial sex act is any sex act on account of which anything of value is given to or received by any person...Types of sex trafficking include prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism.”²⁹⁶), it was also broad about movement. That said, many interpret

²⁹⁶ 8 U.S.C. § 1101

movement to usually refer to state or national boundaries. The tribal codes reviewed for this study followed the same guidelines, essentially mimicking federal language. Both of the Minnesota studies were not specific about movement, although they repeatedly mentioned the coercive control exercised to move people off of reservations and the manipulation exercised to keep them from returning. They did, however, expand our understanding of the negative impact of focusing solely on children in some of our definition.

“In the U.S., the term “commercial sexual exploitation” is almost exclusively applied to children. The National Institute of Justice defines commercial sexual exploitation of a child (CSEC) as sexual abuse of a minor for monetary gain (emphasis ours), including any accompanying physical abuse, pornography, prostitution, and the smuggling of children for unlawful purposes. There is no parallel federal definition for commercially sexually exploited adults, who are instead defined as “prostitutes” unless they can prove force, fraud, or coercion and thus be considered victims of sex trafficking.”²⁹⁷

Thus Shattered Hearts relied on this definition:

“The exploitation of a woman’s or girl’s sexuality for financial or other non-monetary gains, in a manner that involves significant benefits to the exploiter and violates the exploited person’s human right to dignity, equality, autonomy, and physical and mental well-being.”²⁹⁸

The Oregon study used the following definition:

²⁹⁷ Shattered Hearts, pg. 19.

²⁹⁸ Ibid.

“Human trafficking occurs whenever a person is recruited or forced into prostitution, or other services or labor, by a third person;

- In the case of a child under age 18, no coercion is required;
- The key defining feature of human trafficking is that someone other than the survivor is making him or her available for sex or other services or labor (and receives something of value in return);
- This activity does not need to occur across state lines or internationally (it can happen within a unit as small as a family);
- Sometimes trafficking can appear as prostitution.”²⁹⁹

This definition provided a certain amount of clarity in its layperson’s language, but the most helpful clarity was in the redefinition of movement. In its effort to be specific and clear, the use of “movement” here was explicit that international borders need not be crossed to apply the term “trafficking.”

Thinking about sexual exploitation, both Minnesota reports are very specific that the focus of their exploration of sex trafficking is in the form of prostitution and closely related activities as gateways to prostitution. Garden of Truth begins with this note in their discussion of “Definitions.”

“Systems of prostitution include exchange of sex acts for food and shelter and other needs; outcall/escort/cell phone; Internet advertised prostitution; massage parlors; pornography of children and

²⁹⁹ The Oregon report, pg. 2.

adults; strip club prostitution; sauna-or nail parlor-based prostitution; live sex shows; street prostitution; peep shows; phone sex; international and domestic trafficking; mail order bride or servile marriages; and prostitution tourism. The authors understand trafficking to be a form of prostitution that involves third party control and exploitation. However, given the multiple legal definitions at the federal, state, and tribal levels and the varying degrees of understanding among those working on social justice issues and the general population, we are using the terms "prostitution and trafficking" to refer to the experience of women being used in the aforementioned variety of contexts.”

After this statement and through the rest of the report, it is easy to only think of and read the information provided as specific to prostitution. Further, discussion of women forced and coerced into activities less easily read as prostitution (such as phone sex, sex tourism or mail-order marriage) are only framed as *a means to be prostituted* or trafficked—not as *activity that would qualify as trafficking*.³⁰⁰ Shattered Hearts takes a similar approach. That said, they both use expansive language to include activities and hint at the idea that force, fraud or coercion might be better measured by considering the coercive control of bodies, regardless of the age of the person or the degree of movement involved. The problem is that only referencing other activity as gateways to prostitution—framed as the essential trafficking activity—essentially blinds us to and therefore negates the less

³⁰⁰ Garden of Truth, pg 25-27, “Locations Where Women Were Prostituted and Trafficked”

obviously forced or coerced activities (i.e., those not read as prostitution or a gateway activity).

Broadly, all three reports mentioned the fact that women and children were at risk and that the exchange involved goods and survival needs as often as money. The Minnesota reports mentioned gang involvement while the Oregon report introduced the idea that the characteristics of traffickers are much less consistent and might be dependent on varying demographic factors. There was minimal mention of men and boys at risk—although they were mentioned as potential victims. The reports were also reticent to mention the role that Native men might play, specifically, in this phenomenon as potential traffickers, buyers or participation in any way.

Section Summary

According to the publically available data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

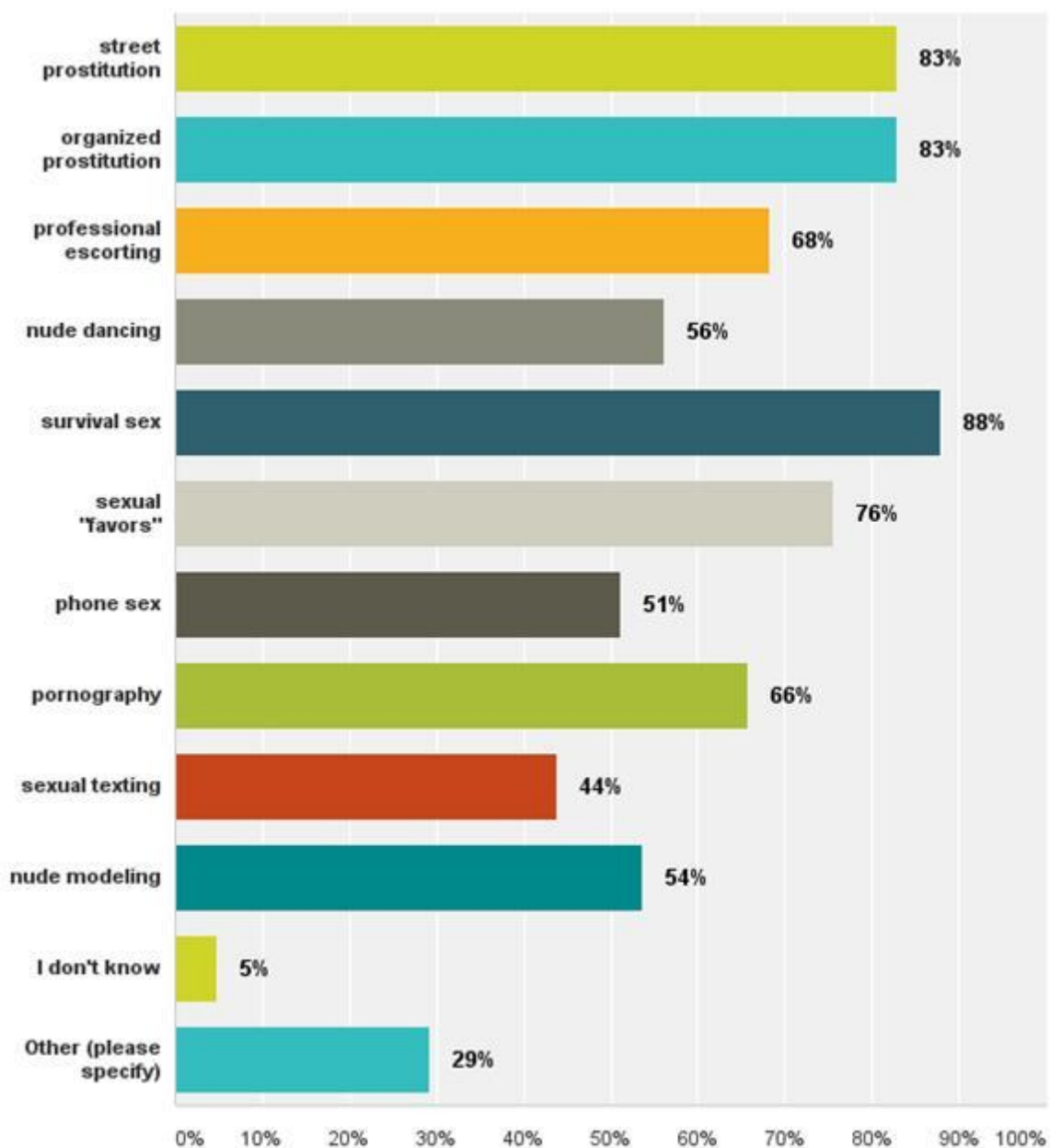
- Trafficking is activity directly linked to prostitution or prostitution-related/gateway activities, although other activities are mentioned.
- Movement is not as important as the coercive control of bodies to induce movement (i.e., what is required is control—not specifically movement)

- But if there is movement, it also includes forced/coerced crossing of Native sovereign borders (i.e., movement away from/off of reservation lands)
- The exploitation of adult women is as important as children’s exploitation, but not as easily defined. The most commonly perceived scenarios involve poverty and homelessness, previous sexual abuse, prostitution and gangs where drugs, survival needs and protection are used to manipulate the vulnerable into trafficking.
- Recruitment is discussed as involving specific Native events, reservation/home communities and everyday locations like school. The characteristics perceived to increase the appearance of community vulnerability are poverty, family dysfunction, location in a rural or isolated area and the legacies of colonialism.
- Exchange is exclusive to money or exchange of goods—survival needs (shelter, protection etc.), drugs and other needs might be traded.

Survey

Respondents were asked to describe sex trafficking by the activities that they understand to constitute it. The survey listed prescribed options based on a broad definition of “exchange,” such as “survival sex” in exchange for food, housing, protection or other basic life necessities or “favors” done for a boyfriend. The survey also used a broad definition for “sexual activity” beyond intercourse that might profit a trafficker, including nude dancing at a club or at private parties, phone sex and sexual texting (“sexting”), etc.

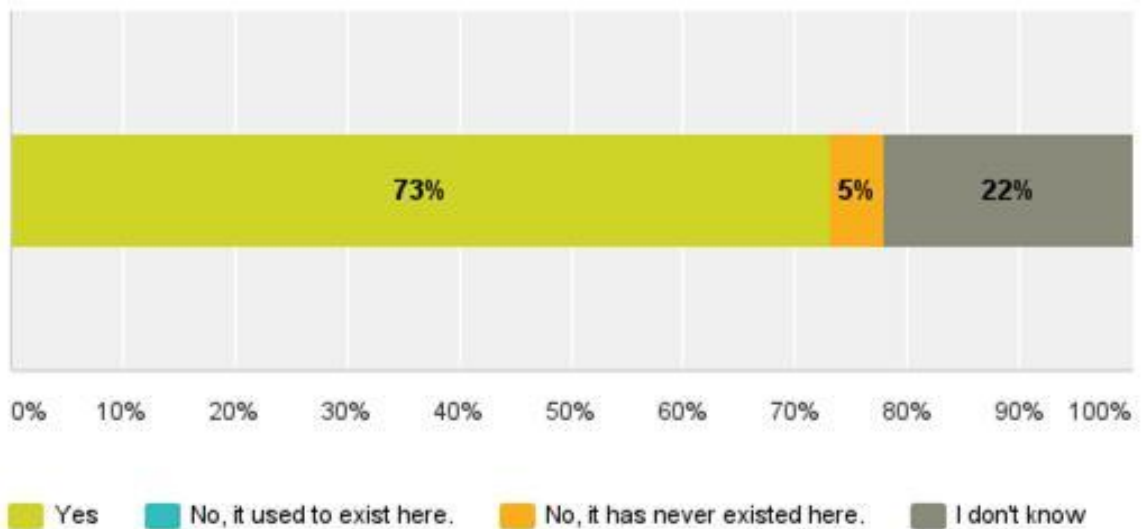
Figure 17: Sex Trafficking Activities (Survey)



Eighty-four percent of participants responded, with more than 3 out of 4 respondents indicating each of the following as trafficking activities: street prostitution, organized prostitution, survival sex, and sexual “favors.” The activity least listed as sex trafficking among this group was sexual texting—

even so, it was still a potential trafficking activity according to more than 1 out of 3 respondents (Figure 17). Of those who responded, 17% added comment indicating the opinion that “[all] of the items qualify as sex trafficking if the trafficked person is unwilling or prevented from avoiding participation. If any of those things are done through the coercion or force [by] the trafficker, it is trafficking.” Additions to the list included: clarification that survival sex could be used against children when parents and/or guardians indicate “we will feed and provide for you, but you must do this...”; sex at the request of an intimate partner (rather than with someone else and requested by an intimate partner); and sexual activities in exchange for drugs when there is an active substance abuse issue involved. Others clarified the conditions required: specifically visible coercion of the body and/or mind and/or force; and travel across state lines or international borders.

Figure 18: To your knowledge, does sex trafficking, as you described it above, exist in your area? (Survey)

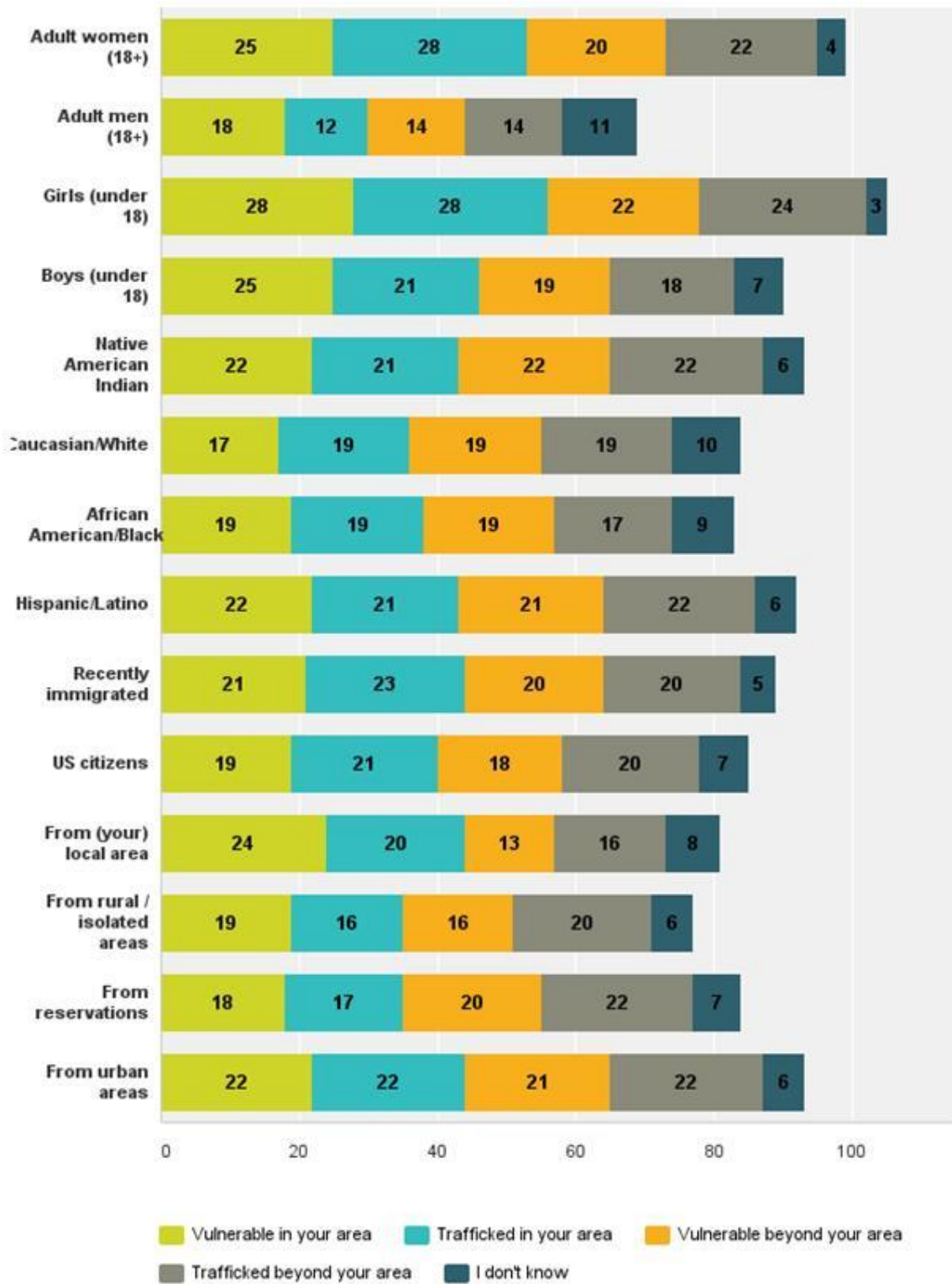


Keeping in mind the activities they described, nearly 3 out of 4 survey respondents indicated that sex trafficking exists in their area (Figure 18). For the purposes of this study, it is helpful to remember that for the vast majority of respondents “in my area” included Indian Country as defined previously in this chapter.

When asked about the people that might be at a greater risk of being sexually trafficked both in their areas and beyond, nearly 3 out of 4 respondents saw girls as both the most vulnerable in their area (72%) and the most trafficked (72%) (Figure 19). Additionally, 68% saw boys as being at risk for being trafficked in their area and 57% saw boys trafficked in their area. While adult women were considered less at risk (66%) by respondents, they were the most trafficked of all three of these categories (74%). In terms of perceived vulnerability beyond their areas, respondents indicated girls, women and boys were at risk (56%, 53% and 51%, respectively) and, of the three, respondents indicated seeing more girls trafficked (62%, compared to 58% and 49% for women and boys).

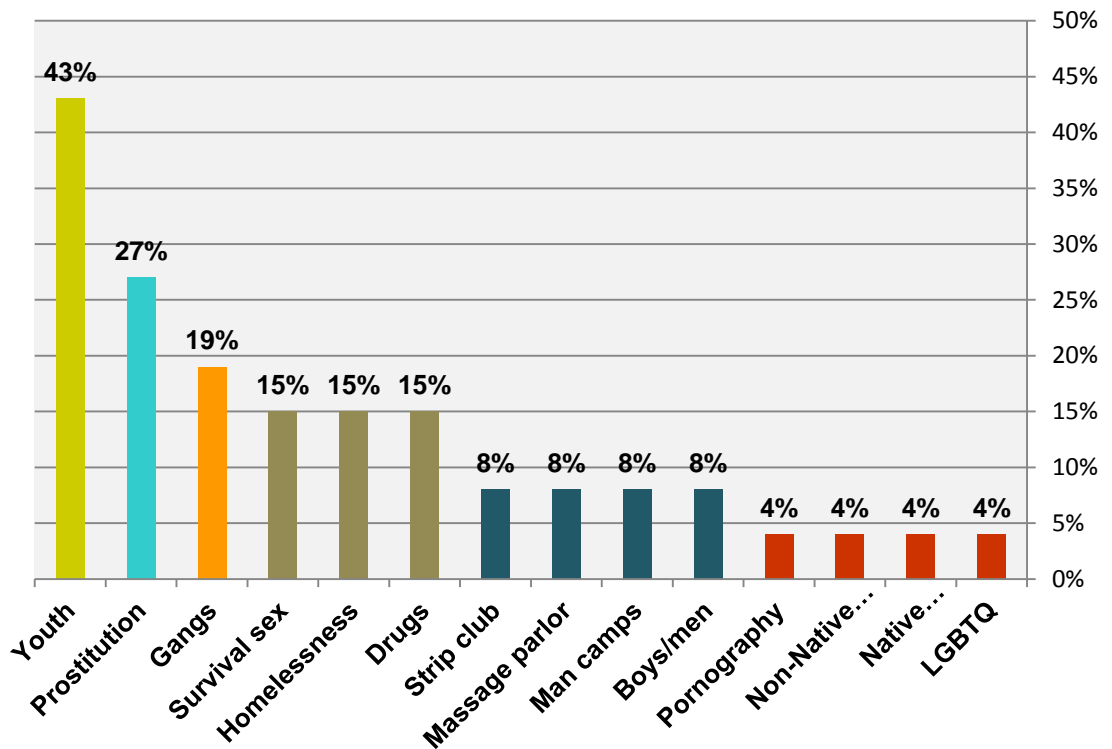
In terms of ethnicity, more than half of respondents indicated a diversity of those vulnerable to trafficking and being trafficked in their areas and beyond. That said, respondents indicated a perception that slightly more Native American and Hispanic/Latino peoples were both vulnerable to and being trafficked (on average, 56.5% in both categories). The same was true for locations beyond their areas (on average, 58% and 56.5%, respectively). Across location, respondents perceived recently immigrated people as both more vulnerable to and being trafficked (a 2.5 average difference).

Figure 19: Type of people that might be at a greater risk for being sexually trafficked, both "in your area" and "beyond your area." (Survey)



When asked about common scenarios involving sex trafficking and Native Americans locally, just over half of participants (58%) responded. Of those who did respond, some provided specific and regionally connected details different than the often repeated scenarios from publicly available reports. Text analysis of these responses indicates that the common scenarios reference the 14 main ideas. A sampling of the scenarios provided follows (Figure 20).

Figure 20: Ideas in "Common Scenarios" (Survey)



Survival Sex Minors Gang Trafficking Human
 Native Strip Clubs Girls Gang Members
 Women Drugs Prostitution Children
 Female Rural Areas

**Survey Respondent:
Local Scenarios**

Table 3: Common Local Sex Trafficking Scenarios of Which You Have Seen or Been Aware (Survey)

Girls and boys from rural areas in city for sports events enticed by "peers" to go with strangers end up being drugged & raped, then manipulated into not going home. Homeless teens & young adults coerced into sex trafficking, especially those on the run from foster homes.

Family members in the community selling children into trafficking for money or drugs. Trap houses³⁰¹ in South Minneapolis. Transporting women and young American Indian girls and boys to ND to work in the Man Camps.

I come from Winnipeg, MB Canada where there is local gang trafficking of NA [Native American] people. I haven't been as aware of this issue in SF CA [San Francisco, CA], where I currently live.

Native and non-Native men taking young girls off the reservation to party in the city, but not allowing them to return until they have "earned" their way home. [Alaska] Native women being taken/promised better lives out of their villages and they are taken to Anchorage, then Seattle, where they are forced to work as prostitutes. They are threatened by pimps who tell them they will tell their families what they have done if they go home.

Have heard about caretaker's transporting minor females to lower Michigan for sex trade activities. Highly suspect the shipping traffic through the Soo Locks [Sault Locks, at Sault Ste Marie in Michigan], but have not heard any specifics.

³⁰¹ Trap House is slang for a house, usually abandoned, where illegal drugs are packaged or sold—most commonly crack cocaine. This includes the surrounding area, to a certain degree.

Table 3: Common Local Sex Trafficking Scenarios of Which You Have Seen or Been Aware (Survey)

Young ladies [involved in relationships that become] volatile...forced to have sex with men for money and their supposed boyfriends take the money. Local gang members recruiting young people, getting them hooked on drugs, and in exchange for more drugs, [the young people] use sex or favors to gain access to more drugs. Groups...providing alcohol to young people, once consumed and not in their right mind these youngsters are persuaded to do things for those who provided the alcohol or drugs.

My area has had several newspaper articles regarding the discovery (and sometimes capture) of human trafficking in our area.

Sixty percent of participants indicated general modes of recruitment and/or targeting that they believe are specifically used to target Native peoples. Text analysis highlights seven themes (Figure 21).

Survey participants were also asked to indicate the particular areas or events where targeted recruitment of Native peoples might happen (Figure 22). Again, fewer than half of participants responded. Text analysis highlighted seven themes in the responses of those who indicated knowing where Native specific sex trafficking recruitment happens (Figure 23). Interestingly, in both this question and the question concerning specific Native communities or tribes that might be targeted in the participants' areas, more than half of those who responded indicated knowing that the trafficking is going on, but not much in the way of details about recruitment locations or targeted communities.

Figure 21: Recruitment Used to Target Native Peoples, Specifically (Survey)

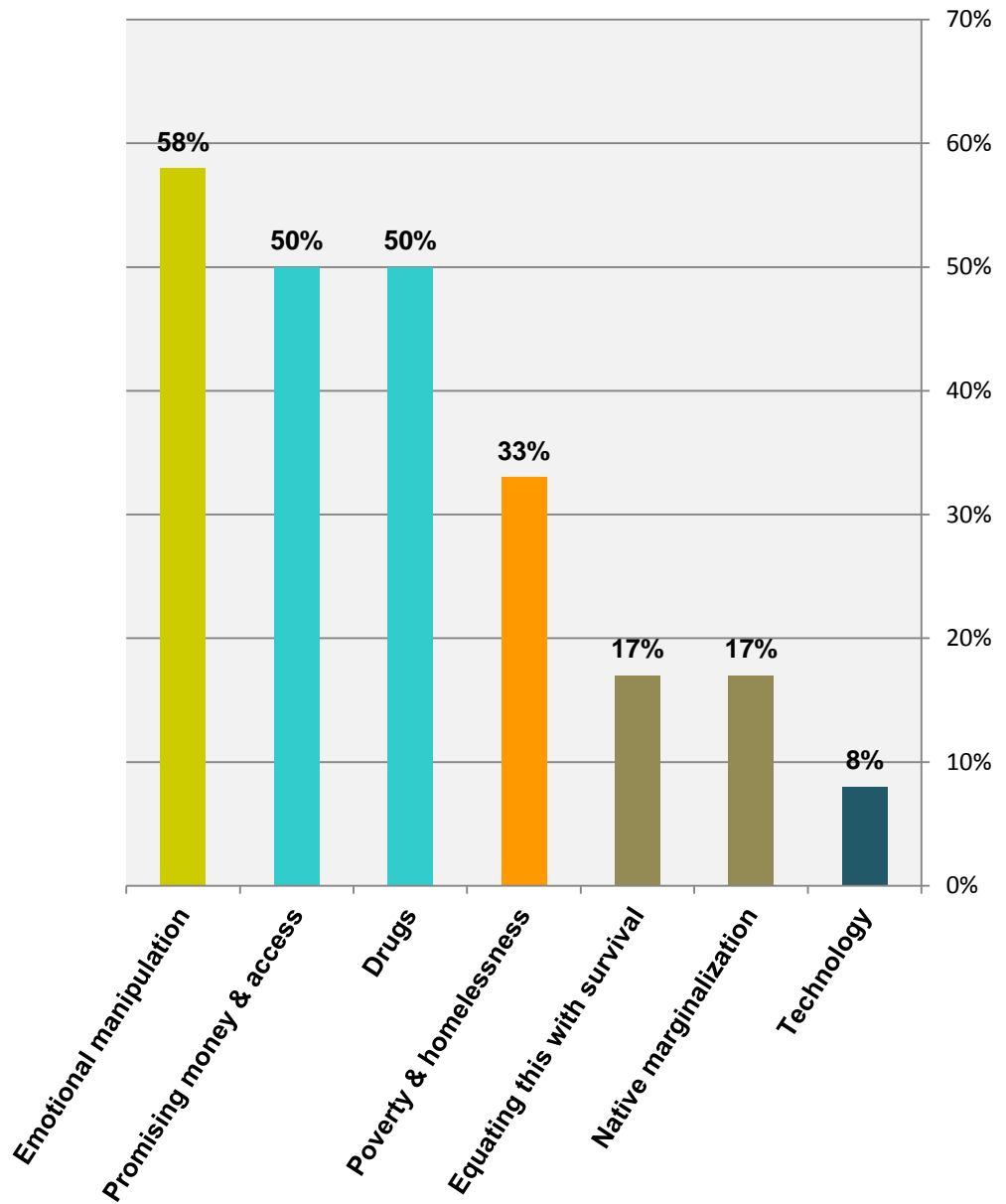
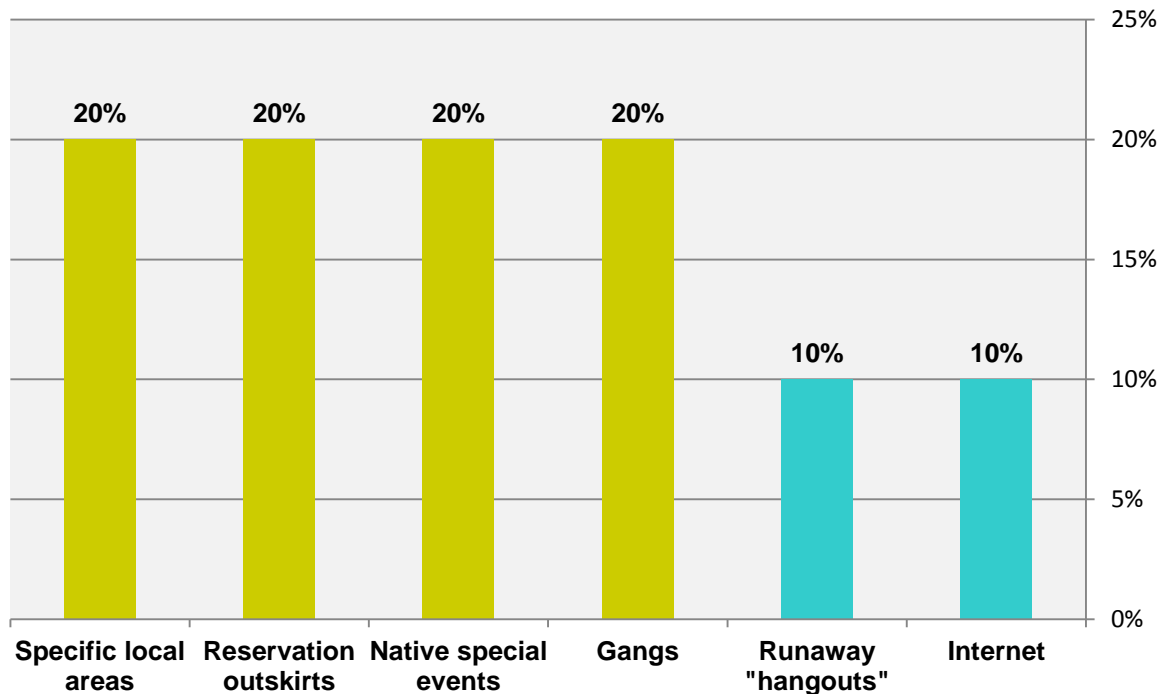


Figure 22: Are there particular areas or events where you think this recruitment happens? (Survey)

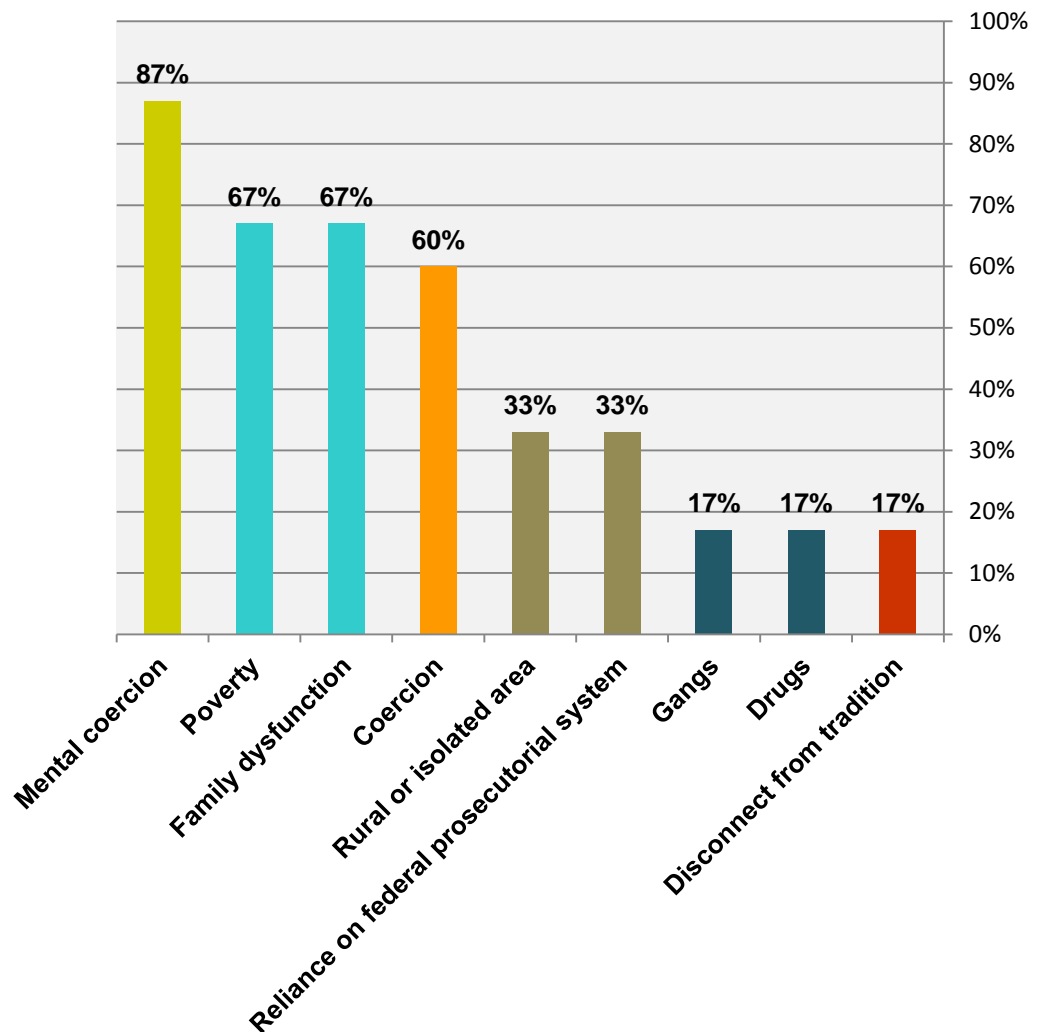


Figure 23: Areas or Events Where Recruitment Happens (Survey)



Comments about specific targeted communities mostly indicated a sense that all Native peoples in their local communities were targets. The exceptions were respondents who were specific that both “all local tribes in WA have been targeted” and “remote [Alaska] villages with regional centers such as Nome and Bethel” are at risk as well because “[g]irls go to these areas 2-4 times a year and it is there [where] they hear about trying to find a ‘better life.’” Another respondent indicated that tribes with casinos were at a greater risk. When asked to further elaborate on why these communities might be targets, the same respondent indicated “I have heard that perpetrators are attracted to the casino tribes because they know the victims get a per cap[ita payment]. It is more beneficial to [the potential trafficker to recruit this kind of victim] since [the trafficker] will get not only money from selling her but her per cap as well.” Some of the other respondents who answered this question indicated answers along the lines of poverty, homelessness and drug use. One respondent also pointed to the proximity of the “oil [industry] man camps in the Dakotas” as a potential reason for targeting. The characteristics that might make a community appear vulnerable to a trafficker were listed in the chart below (Figure 24).

Figure 24: Characteristics Which Increase the Appearance of Community Vulnerability (Survey)

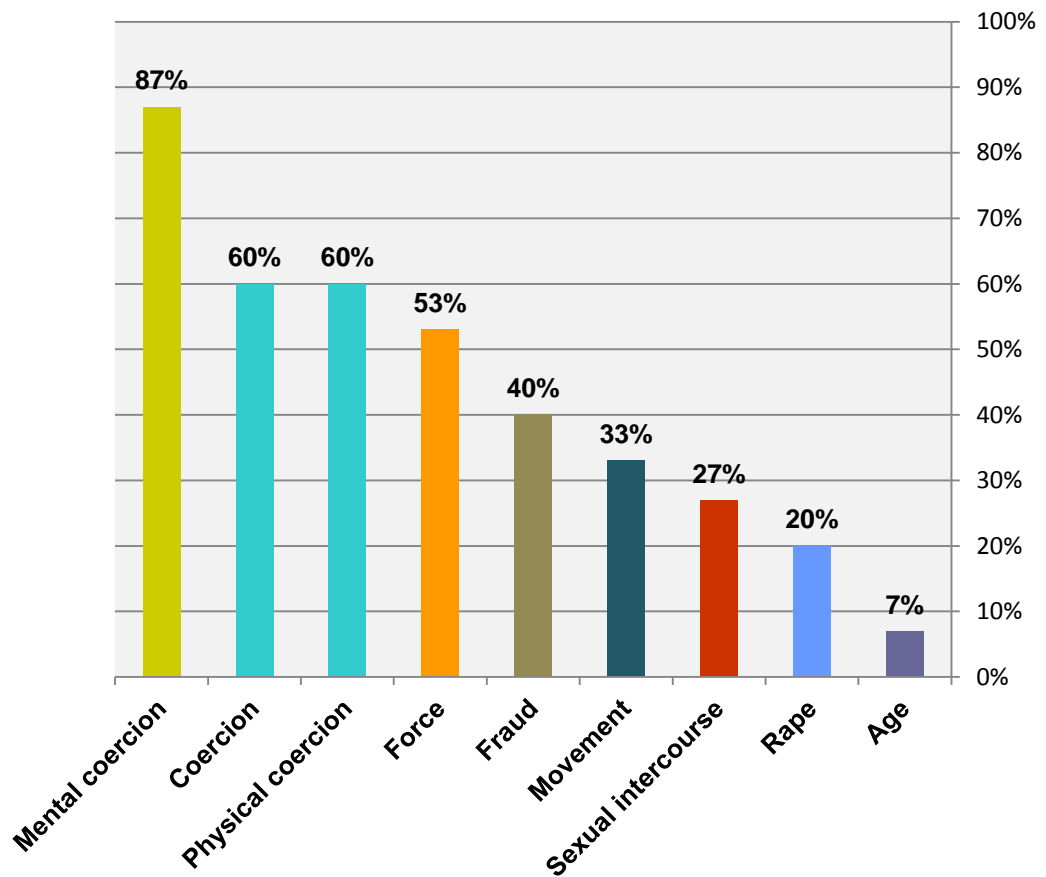


The legal definition of sex trafficking is of little use if people in circles of influence are not able to identify the necessary elements for the law’s use. As mentioned throughout this text, TVPA and its reauthorizations (2003, 2005, and 2008) are the bulk of contemporary United States anti-trafficking law. TVPA defines sex trafficking through a focus on the 1) movement of person/persons for 2) commercial sexual exploitation through 3) force, fraud

or coercion. The survey asked participants if they knew what kind(s) of force, fraud or coercion might be involved in recruiting those to be sexually trafficked. Fifty-seven percent of participants responded to this question and of them, just under half (46%) indicated not knowing what kinds of force, fraud or coercion might be involved, while 56% indicated “having a sense” of what might be involved.

Those responses highlighted nine areas (Figure 25). It is also telling that 44% of respondents—all of whom were likely to need to understand how the law might be applied should trafficking present itself in their communities—chose not to respond to this question.

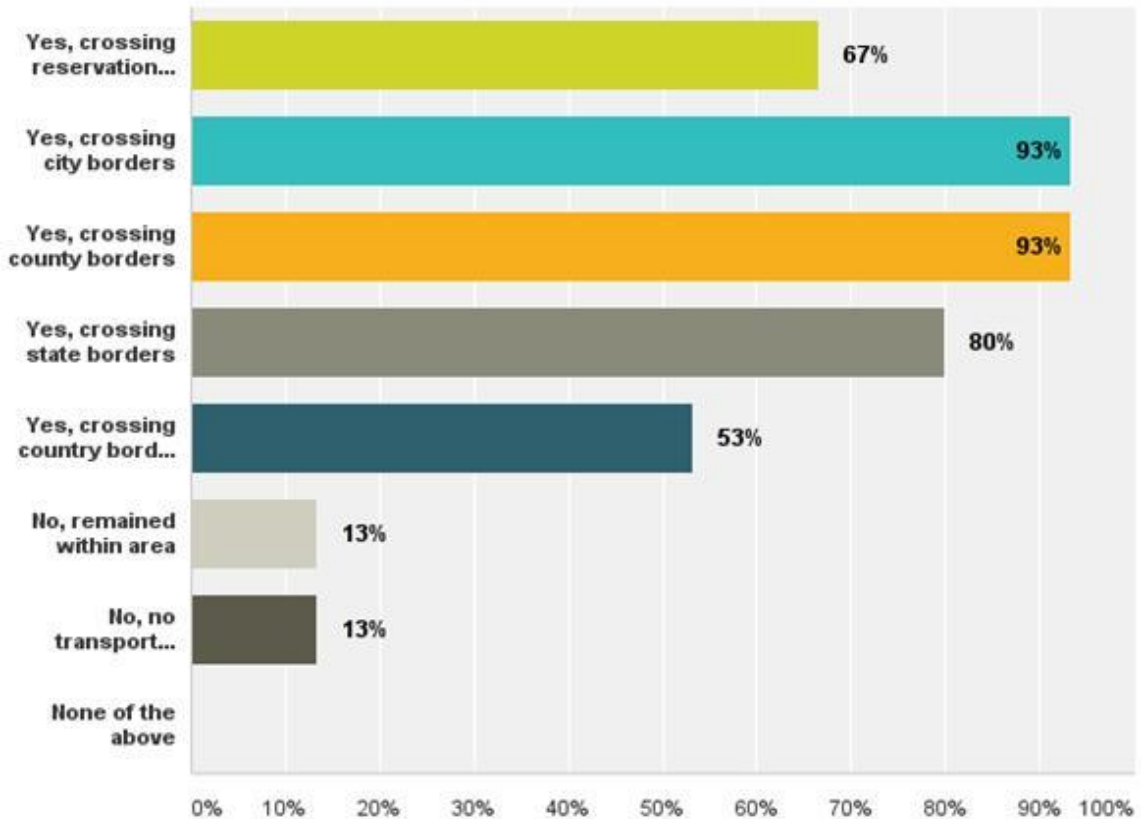
Figure 25: Force, Fraud or Coercion Used in Sex Trafficking (Survey)



Additionally, 60% of those participating answered the question concerning the necessity of transport of a person or body in their understanding of the law. Of those that responded, 72% indicated that transport is not required in sex trafficking and another 10% indicated that they did not know if transport was required.

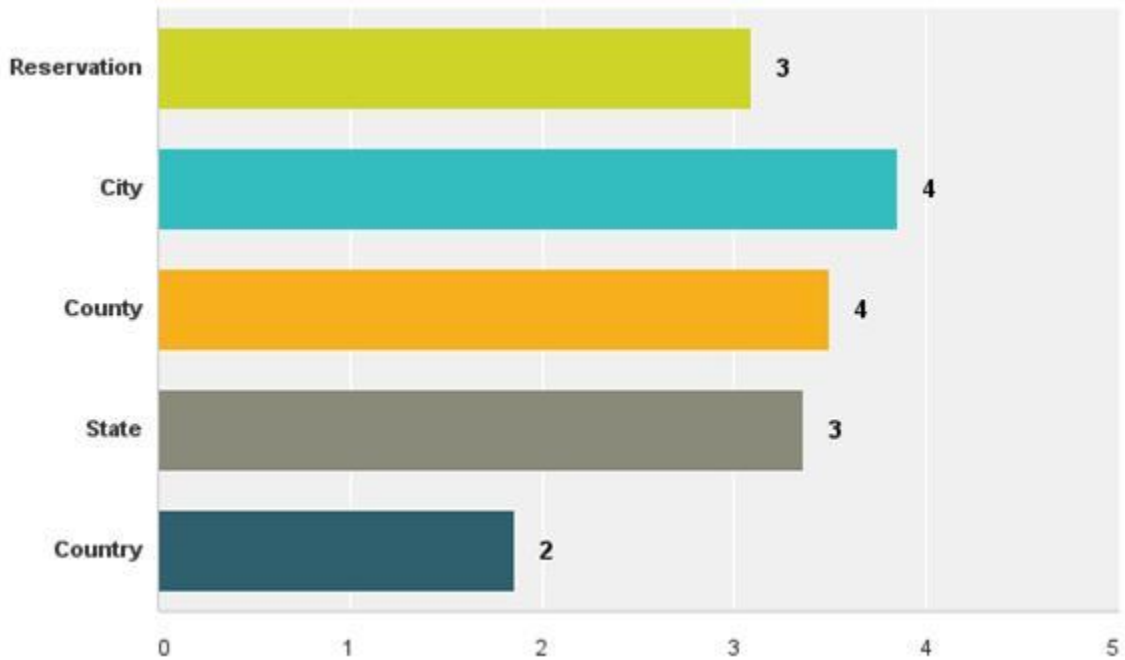
When asked to comment about the use of transport in the sex trafficking that happens locally (Figure 26), 61% indicated that this transport is an element with which they contend and that it involves reservation border crossing (67%) nearly as much as or more than state border crossing (80%).

Figure 26: Has that transport likely involved any border crossing? (Survey)



International border crossing was not as prevalent, as many of the survey respondents did not reside near any borders (see Figure 11). While less than half of the participants responded to these questions (30%, on average), it is worth noting that people cognizant of the boundaries within Indian Country see reservation border crossing in sex trafficking in their communities.

Figure 27: Rank the borders most regularly crossed in local sex trafficking in order of frequency. (Survey)



Respondents were also asked to rank the borders most frequently crossed on a scale where 1=the borders crossed most regularly in local sex trafficking while 5 = the borders crossed the least. Figure 27 shows the weighted averages in response.

Section Summary

According to the survey data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- Trafficking is activity directly linked to prostitution or prostitution-related activities/gateways, although other activities are mentioned.
- Movement is not as important as the coercive control of bodies to induce movement, if important at all.
 - Many of the survey participants do not perceive trafficking as necessarily involving movement and many did not know what kinds of force, fraud or coercion might be included in trafficking. However, where there was movement, participants saw coercive reservation border crossing as relevant.
- Exchange is not exclusive to money or exchange of goods—survival needs (shelter, protection etc.), drugs and other needs might be traded.
- Girls and women are the most vulnerable, with the perceived most common scenarios involving youth, prostitution and gangs.
- Recruitment is most commonly perceived as involving emotional manipulations, drugs, promises of money and access, as well as poverty and homelessness. The areas perceived to be the location of recruitment commonly involves specific local areas, Native special events, the outskirts of reservations and gangs. The characteristics

perceived to increase the appearance of community vulnerability are poverty, family dysfunction, location in a rural or isolated area and reliance on the federal prosecutorial system.

Interviews

Interviewees were asked to describe sex trafficking by the activities that they understand to constitute it. As a part of an open ended conversation—without a question prompt of previously prepared list of possibilities—interviewees provided fewer specific activities. That said, they generally reflected the survey responses in the concentrated focus on prostitution—both street and hotel based, depending on the geographical climate—as the base of activity involved in trafficking; 50% of conversations made specific mention of some form of prostitution, with many conversations solely focused on this activity. As one interviewee, a local legislator, said when asked about activities other than prostitution,

...pornography or nude dancing? I don't know, I guess in my own mind I don't think of that as prostitution. It's still sex work, right?

Potentially anything that falls under the category of sex work might be considered trafficking if you move people from one place to another.

Additionally, just over 1 in 3 conversations (36%) included nude dancing/stripping and survival sex as activities involved in sex trafficking. Just under 1 in 4 conversations (21%) also included pornography and online sex venues/advertising or technology based exploitation as well. Similar to survey respondents, half (50%) of the interviewees made specific mention of the components of anti-trafficking law—if not deferring to it completely. This

is not entirely surprising considering the population interviewed. Compare the following two comments, the first from a lawyer and the second from a service provider.

I don't see trafficking in the areas I work in. I'm looking at [this] through a federal statute [perspective]... I'm also thinking specifically about reservation based cases, not urban Indian. ...You may actually have more cases with true... commercial [sexual] exploitation with people living in an urban area...I think much more than [in] a reservation area.

I define [commercial sexual exploitation] as violence against women using kind of the federal definition of force, fraud, or coercion—the definition of someone who is trafficked. But I guess simply, it would be the sale of another human being for sex.

When asked to define the activities involved in trafficking, interviewees highlighted a number of areas of confusion within the current laws as well as their application. From a lawyer's perspective,

[S]ome of those things that make for good lawyering, which includes knowing enough about the law and the legal climate to use the right law to create a prosecution case,...can go against ...trying to determine or understand just what this problem looks like... Maybe a case doesn't get charged [with trafficking], but that doesn't make it any less of a trafficking case....Do all fifty states use the same definition? No, so you have a definitional issue. And thinking about how often human trafficking victims or traffickers are identified, it's a large complex

issue From a legal framework ...there [are] definitely times that a person can be both a victim and a trafficker... You have a pimp that has a number of girls and he usually picks one, and I believe the term is like a bottom bitch, as kind of his field general. .. technically by the letter of the law, she is both a victim and a trafficker. So do you count her twice in the statistical pool? ...From a social science ... aspect [a] person [in this situation] is a victim and a victim only. Where from a legal standpoint, the person can be either...

The confusion often had to do with debates about “choice or force” which often occur in discussion of arenas where sex is sold. As a service provider and legal scholar explained, respectively,

...the shift that we were trying to get [law enforcement and policy makers] to take...is that a trafficking victim is a victim. Maybe they're acting as a prostitute, but they're a victim, and the real criminal here is the person who's exploiting them...because for years and years and years [law enforcement and policy makers] were trained, in all of their training, that the prostitute is a criminal.

[As early as the early 20th century discussions around the Mann Act,] there was and there's still some kind of the tension between the idea of prostitution—the idea of consensual prostitution—compared to situations of force or coercion, even today when we discuss trafficking. ...This has always been part of the discourse...Over hundreds of years, we haven't come to a nuanced understanding that we can all agree on.

There was also the issue of different definitions of how an entity should respond in promoting justice. For a member of tribal law enforcement,

...quite frankly, we were talking about the differences between the formal governmental responses to situations of abuse and the traditional responses...

This also related to communal understanding of the impact of location on level of risk for being sexually trafficked. A policy analyst summed it up by saying,

I think that there's, first of all, a lack of understanding of what trafficking even is. And second of all, an unwillingness to admit that it could be happening in your own backyard, because nobody wants to admit it. But I believe it is happening, and I don't think there are too many communities that have [the misguided belief] that if you are closer to big cities it might be more likely to happen. But then, as we see, it can also happen in very rural areas because you're not as easily tracked and you're not as easily found, and so I feel like it – I think it's widespread...

Age limits associated with “victimhood” posed issues using anti-trafficking law as well. In the words of a service provider,

...[Y]ou know as long as she's a child, then she's a victim. But she turns eighteen and then she's somehow consenting to whatever has happened to her. I think it presents female autonomy and agency problems when you're talking about an adult and whether or not she sees herself as a victim of this kind of crime. It's hard to...if she doesn't

see it that way, it's troubling to suggest, "Well, let me tell you what you're experiencing." But there's so many vulnerabilities that extend into adulthood, right? Drug and alcohol addiction is one that always comes to mind, but mental illness and fetal alcohol syndrome and fear and a history of child abuse...all of these things could create a climate for an adult to be susceptible and vulnerable to this, just like a fourteen year old...

And, perhaps most importantly, the language used to discuss the practice of targeted sex trafficking of Native people was vague and not easily connected to the legal language which determined applicability. At different points in the conversations, interviewees explained how their local home and work communities discussed sex trafficking as the following: trading, missing, disappearance, "violence", "needing more safety" and "business." As mentioned previously, the federal definition of sex trafficking is very specific, likely as a means to make determining where it applies easier. But that specificity does not seem to consider the ways the term is used in Indian Country and in areas where Native sex trafficking survivors may seek services. Comparing the comments of legal scholars/researchers and service providers highlights some of the complications on this point.

So we [within scholarly pursuit] have had a lot of conversations about the safety and making sure that we have community policing and other kinds of things that way. But we haven't had that 'trafficking' conversation, per se. So I think it's really interesting to think about terms that are used. Which ones may be more familiar and seem like,

'No, that's not really something that happens in our community.' Even with a dynamic may be there, people name it in different ways and really I haven't seen it picked up...It feels like this is a conversation that is really just beginning. It's not beginning about the dynamic, but in using that term

.... Most of the service providers that we encountered and that we spoke with [in our research]...a lot of people whenever we told them our definition of trafficking and then asked them if they've encountered things like that, a lot of people were like thanking us, or like happy that we had come up with a more broad or encompassing definition of trafficking because...a lot of service providers felt like they had encountered situations which should have been deemed trafficking, but either law enforcement didn't see it that way or it was just ... a situation that was never formally addressed as trafficking. I think that law enforcement and people in the justice system ...have that narrower, tunnel vision of what human trafficking is.

So, we talk in terms about commercially sexually exploitation and sex trafficking sort of interchangeably a lot [in our work as service providers]. So people begin to understand that...it's somewhat problematic, the terminology is problematic. I'll give you that. But we don't have...we haven't found a good alternative that resonates with a critical mass of people so that we can really begin to say what this is.

[As a legal and scholarly pursuit,] I think if we start asking those questions [about where Native runaways go and why], we're going to

see some patterns and stories emerge that will help the conversation move forward. ...identifying our missing girls and women and where do they go and why do we not know, and how many of the women have been trafficked. That conversation has not happened here on a very large scale. ...I think those are the conversations that will start the topic. Because ...when we start talking about the issue, everybody kind of knows somebody, who knew somebody whose daughter sort of disappeared from the reservation, and, 'Oh, she went to Chicago but she never came back.'...

It is also interesting that, even with a shorter list, all the activities listed by interviewees as sex trafficking activity were not specific to prostitution, but interviewee conversations around the application of anti-trafficking law were very specific to prostitution. This could negatively impact how often people who are identified as victims of sex trafficking are being identified as victims of sexual exploitation. One of the things that was striking across the conversations, was the acknowledgement of a sense of trafficking activities being "hidden in plain sight."

In my area, as well as other areas, from a national resource perspective, I hear of a few things that are occurring in other parts of Indian Country and in Alaska Native communities. It looks like...I guess it's quite visible, but people just don't know how to recognize it when people are being exploited. People are being traded for alcohol or other such goods.

I don't know the statistics on trafficking, or how many people have vanished off reservations. What I do know is I'm always hearing stories about it. I hear stories about it more on...more for reservations than I do the non-reservation based communities...

And conversely, there were those who worked across Indian Country broadly who simply had not found trafficking mentioned in their areas of work. Twenty-one percent of interviewees said as much, indicating that they ran across exploitation in the form of “pimping” or predators taking advantage of unsafe settings (such as at a party or when someone hitchhikes). That said, for this segment of the interviewee group and according to their understandings of the activities that would be trafficking—they did not see it.

Interviewees spoke about all Native peoples having some form of risk for being sexually trafficked when trying to manage issues such as poverty (88%), past sexual trauma/abuse (76%), drug abuse/addiction (53%) and pending homelessness/reduced survival resources (53%). Based on their connection to particular geographies, over half (53%) added that isolated and rural areas (and people from them) and the influx of industry both likely increased the risk already present. A legislator and a lawyer discussed this point.

I mean some of [our towns and villages] are so tiny ...I wouldn't say they have trafficking there. I mean, people may flee them and end up in the cities and be trafficked. But [some of our towns and villages] are just too small for anybody to be unknown. There aren't any secrets in

these tiny communities. Everybody knows who the abusers are and who's violent at home and where kids are safe and unsafe, including law enforcement. So it might be a situation that if there's something going on in a rural community, it wouldn't technically be trafficking, it would probably fall along the lines of prostitution or abuse [because of the minimal degree of movement]. In that instance, those officers may not need to know. Well, there aren't even officers in all our communities. You know, people call for help and it can take a couple of days to get what we call state troopers out there, or village public safety officers. But they're not in every village. I mean, we have villages that are really tiny.

[T]hey find girls in these villages who maybe don't have a lot and who could come from a background where they don't – they don't get outside of their village very often, and [being in a city is] very exciting and it's, you know, they're small but there's a lot of conveniences that they don't have where they're from, and [traffickers] look for that. They look for girls who might be dissatisfied, or ... looking for something new or different and prey upon that. My concern is not just for girls from the villages, but groups of minors who are [vulnerable from outsiders] coming into [their] area as more of Northern Alaska [is opening up from issues with environmental melting]...more [outsiders are] coming in, or tourists, or people [working with the] natural resources. There's always been a link between bringing in outsiders who, have no responsibility to that community and rising rates of violence against women. For instance the man camps forming around

mining in North Dakota... What scares me is in one of the newspaper articles I was reading, they were talking about the statistics. They said prostitution is this and domestic violence is this and we're not actually collecting data on trafficking but, according to what people are saying, it's happening. So we don't have exact rates of how much trafficking is occurring when these outsiders[come] because they're not actual traffickers in those local areas, but you know it's going to happen. You know that when you have a group of individuals who have been working, and who are all going to be in that area for a while, there's going to be a demand for sex, and for sex however they [can] get it, and that's a perfect opening for trafficking to start occurring.

Others mentioned the barriers to engaging prevention strategies when the topic is one that people do not readily talk about (47%). Several spoke of the need to understand the potential that masculine identity—hetero- or homosexual, and regardless of gender identity—can increase risk due to social expectations that men would not or could not be victimized in this way (35%). This is especially true when we consider the impact of this discomfort on the data that we rely on to help us understand sex trafficking, in general. As a service provider indicated in conversation,

We know that most likely there's more women and girls impacted by the problem, but again some of that is impacted by the fact that we're not necessarily looking for boys. We have the law enforcement part... They are often times really uncomfortable to go do...like to do sting

operations or to try to find men or transgender individuals [who might be trafficked]. And they are not necessarily looking in those places.

While one tribal law enforcement interviewee shared that “within Native community there's an observation that people are disappear[ing] all the time, whether it be for one thing or another, and that it's been historically condoned by the federal government,” most interviewees concentrated their focus on the vulnerability of Native women and youth, especially girls. A service provider commented that

We have Native women that disappear all the time. [There] are reports...it is something that we do see [that] Native women and children are taken. They disappear and the national news doesn't report it. National news does not seem interested; they don't really seem to care. There are instances of Native children, Native women just vanishing. For a long time, that was actually even a part of the policy within the United States that tribal children were taken from families....

This group, focused on service to community as evidenced by their work responsibilities, also commented on the environment in which they try to address these types of behaviors or activities when they see them.

[B]eing an urban area with a large population of tribal people, the community of our people at large—until very, very recently, maybe in the last 3 to 5 years maybe—looked at women who were being exploited as “dirty” women. You know? [They were considered] bad women, women who just liked a lot of sex... And for Indian women,

that whole mythology of the savage maiden [impacts community perception]...you know that kind of stereotype of women who were basically looked at as garbage people [with uncontrollable/uncivilized sexuality, encourages the community to think of them as] people not worthy of help and services.

[People in the community] may have seen [sex trafficking], but just [may not have] been able to support anything to address it. It's not...I mean if they've seen it, they've been able to probably...they would have called our office, they might have called the FBI. It's more that there hasn't been this coordinated effort to outreach to really create a better [option]...you know the system that exists or the resources available for domestic violence and sexual assault victims and you know shelter programs and crisis lines, those sort of things do not exist in our state. So it makes it very difficult to provide services and resources around those [issues].

Section Summary

This section highlighted several voices—a) scholars and researchers, b) politicians, legislators and lawyers, c) social and law enforcement service provision and advocates. Generally, scholars and researchers indicated that the language around activity was nebulous with a few strictly adhering to the federal definition. Those that did, recognized that something akin to sex trafficking might be going on in terms of incidents and behavior, but that the

federal definition simply did not cover it. Politicians, legislators and lawyers expressed a little confusion about the degree to which sexual behaviors could be classified as sex trafficking, but indicated that a sense of forceful or coercive actions was really the determining factor. In particular, lawyers recognized that it was going on while simultaneously acknowledging that “knowing enough about the law and the legal climate to use the right law to create a prosecution case,...can go against ...trying to determine or understand just what this problem looks like” in Indian Country. And social service providers often used sex trafficking interchangeably with prostitution and similar gateway activities—discussed as problematic earlier in this chapter.

According to the interview data and overall, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- Trafficking is activity directly linked to prostitution as well as unwanted sexual activity that an individual might be forced into. Other activity is mentioned, as well, but is not indicated as the focus of concern across the group interviewed.
- Movement is as important as the coercive control of bodies to induce movement, if important at all.
 - Where there is movement, participants saw coercive reservation and village border crossing as relevant.

- Exchange is not exclusive to money or exchange of goods—survival needs (shelter, protection etc.), drugs and other needs might be traded.
- Girls and women are the most vulnerable, with the perceived most common scenarios involving youth.
- Recruitment is most commonly perceived as involving emotional manipulations, drugs, promises of access, poverty and homelessness, isolation and forced disappearance. There were no areas perceived to be the primary location of common recruitment.
- The characteristics perceived to increase the appearance of community vulnerability were generally varied and specific to region but the legacy of colonialism was a common theme throughout.

Findings Summary—Area I: Definitions

The geographic spread and number of study participants indicating a perception of sex trafficking of Native peoples, specifically, in communities where they live and work as well as across Native America strongly suggests that the understanding is that this phenomenon is occurring throughout Indian Country broadly. Overall, the public data highlighted what the survey and interviews indicated—that the federal definition provides some flexibility in the definition of what, specifically constitutes sex trafficking. That flexibility in definition is helpful only to a certain degree. The reality in Indian Country is that trading in sex might look different when one considers what activities are considered trafficking, what is being exchanged for sex and the degree of movement required. While one interviewee acknowledged that the movement required might only be a foot, another was specific that

movement measurable by at least village would have to be present to satisfy the law. Further, conflating the concept of sex trafficking into prostitution can reduce the scope of the law applicability in ways which may not serve Indian Country well. In an atmosphere of under-policing and lack of interest in the data from Indian Country, reducing the complexity of the activities that are considered trafficking may only serve to drive survivors underground and keep them silenced. Perhaps more challenging is that the few tribal codes on the books simply follow the federal mandate in terms of definition, rather than establishing the conversation by defining the language specific to those communities. While it is admirable that Native communities have begun placing code within their laws, it is also worth noting that this new language of “trafficking” is not what communities use to describe this practice, nor does it require new thinking about which borders are important. The language that communities are using is much more subtle. It is the language of “disappearing,” “leaving and not returning,” etc.—a general language indicating loss of a community member with the implied shared understanding of what that may mean.

XV. Findings—Area II: Attitudes and Responses

What are the responses from federal, local and tribal entities? What influences them?

Public Data

While the reports used for this study found that there were laws—both federal and state—in place to help address sex trafficking in general, those

laws failed to provide adequate safety from trafficking to those in Indian Country specifically. As mentioned elsewhere in this text, the complicated nature of United States Indian Country criminal jurisdiction provides a substantial barrier to safety, protection or justice—much less prevention. The Oregon report provided an excellent legal assessment of the laws as well as the issues presented around human trafficking when the state has been given legal obligations to tribal communities via PL-280. The portion of the Oregon report addressing international and federal law as well as their applicability in Indian Country is provided in an appendix to this study with the Oregon report authors' permission.

Additionally, it is worth noting that, while the federal legal response and at least some state responses have been on record since 2000, the reports—written in 2009, 2011 and 2014—all indicated that there was minimal information about sex trafficking in Indian Country beyond anecdotal stories that often came from the community and/or the service providers who worked in community. And even though that was the case, the system was still maintained in such a manner that first contact with survivors was often likely through service providers. Even this study was challenged by the quest for additional data and datasets that were specific to trafficking, rather than sexual violence generally. Further, all reports indicated that the lack of data was a huge issue. It seems to be that this is the case simply because of a lack of will to investigate the anecdotal stories beyond a few low level inquiries. Additionally, the legislative focus has been on researching sexual violence in Native communities more generally and, as it was frankly noted elsewhere in this text, there is a more urgent call to

intervene when the potential victims/survivor looks and acts a certain way. Native victim/survivors of contemporary sex trafficking are not likely to fit that stereotype as easily.

Survey

Before assessing the responsiveness of authorities to the issue of sex trafficking within the participants' domains, it is helpful to get a sense of their ideas about working with Native community and Native women in general. Sixty-nine percent of survey participants answered this question, indicating that local, tribal law enforcement and policy makers were perceived as the most responsive to the needs of Native peoples (13% each for "Yes, very responsive"). Local, non-tribal policy makers were perceived as the least responsive (21%, "No, not at all responsive") and United States policy makers as well as federal law enforcement were generally perceived as only "occasionally responsive" (30% and 26%, respectively). Additional comments further highlighted some of the challenges of creating safety and ensuring protection in Indian Country. A few comments also mentioned the important impact of "high profile, federal court cases" on community knowledge by alerting the local Native community about their risk.

Figure 28: Are these entities cooperative with and responsive to the needs of Native peoples? (Survey)

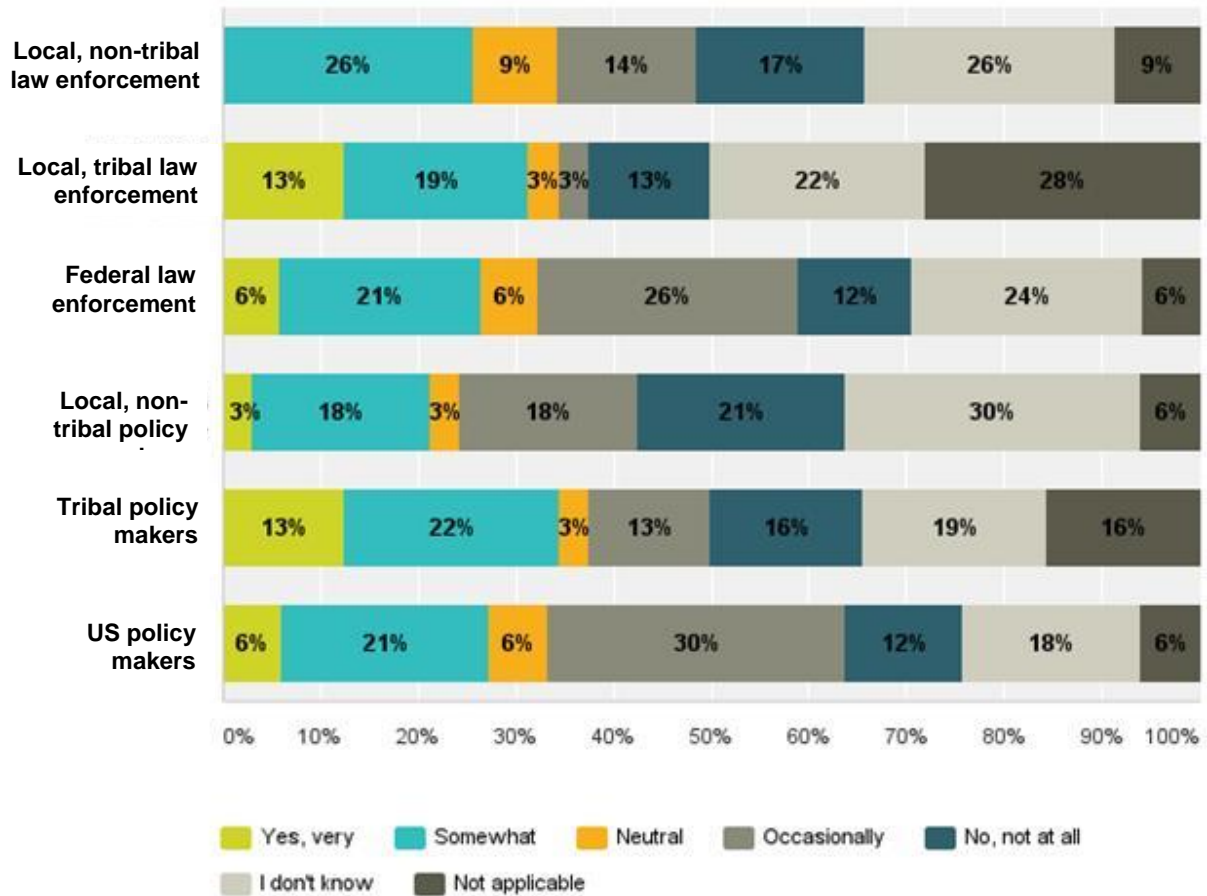


Table 4: Entities Cooperative With and Responsive to the Needs of Native Peoples: A Sample of Survey Comments

The tribes in my area do not have law enforcement and rely on BIA [Bureau of Indian Affairs] law enforcement which is very minimal (few officers for half of western Oklahoma). Local law enforcement are confused by tribal jurisdiction areas so Indian issues are not addressed. [There are n]o tribal courts so the only issues addressed are those that go to the federal courts (which have to meet [federal court defined] standards), and most of the tribes do not have law and order codes that address this issue.

I believe that local, non-tribal law enforcement has become less empowered to take action on the needs of Native peoples, depending on the need. There has been organizations that have been making positive differences for the community that I believe are grant funded addressing healthy living,

Table 4: Entities Cooperative With and Responsive to the Needs of Native Peoples: A Sample of Survey Comments

<p>domestic violence, and cancer prevention. I've heard stories that include short staff[ing] of tribal police officers, [a] lack of response to community needs, and no enforcement of laws...I believe this is slowly shifting...[I am] seeing that they have more of a presence in the community.</p>
<p>I believe that local, non-tribal law enforcement [entities] are becoming more aware of the sovereignty aspects of tribal nations, so their attitudes are begrudgingly changing.</p>
<p>Relationships have improved with the local city police due to more training and trauma informed practices. There's still a long ways to go though.</p>
<p>[There is] always room for enhancement and increased cooperation with all agencies. Congress not authorizing [the] full amount for victim services is negatively impacting tribal victim program sustainability. Federal specialization with competitive grant awards greatly reduces eligibility of applicants. Competitive OVW [Office of Violence Against Women, Department of Justice] grants are placing tribes in serious situations of not knowing whether they will continue to exist come October 1st; whereas, formulary annual awards would, at a minimum, permit tribal victim service programs to know what financial base they would have to work with. Telling victims they may no longer have advocacy and shelter services in three months due to a pending federal grant award application is re-victimizing to the population that is served.</p>
<p>There has been a generally positive shift in the relationship between tribes and state/local law enforcement over the last few years—this may be partly attributable to increasing levels of civility and cooperation between local and tribal law enforcement due to progressive state law—but there is a lot of work still to be done (some counties certainly more than others). Passage of the Tribal Law and Order Act [TLOA] and VAWA [Violence Against Women Act 2013 reauthorization] show that the US government policy-makers have been making efforts to improve the relationship with the tribes—but again, [there's] still a lot of work to do.</p>
<p>[There has been] little to no shift, VAWA brought some attention to DV [domestic violence] but little around trafficking was discussed or changed.</p>

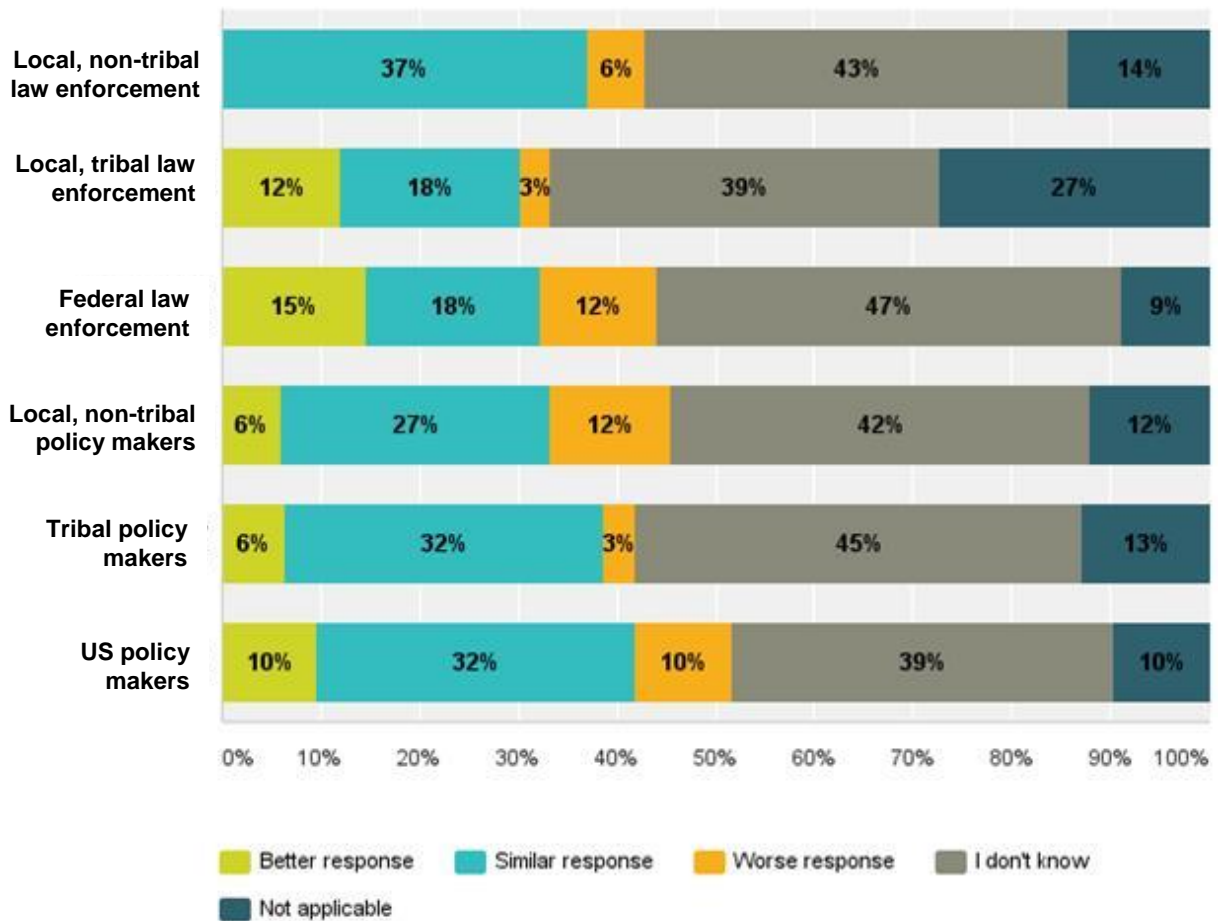
Table 4: Entities Cooperative With and Responsive to the Needs of Native Peoples: A Sample of Survey Comments

There was the passage of Safe Harbor legislation [locally] which is progress, but local authorities still do not understand the needs of our community. I have also witnessed corruption in American Indian leadership that holds us back.

The same amount of survey participations (69%) considered the response to Native women in particular, compared to Native peoples as a whole. In some instances, federal law enforcement was believed to respond better to Native women (15%, “Better response”) while the majority of types of entities (local, non-tribal law enforcement; local, non-tribal policy makers; tribal policy makers and United States policy makers) were believed to have a similar response. And of those considered to provide a worse response to Native women, federal law enforcement, local non-tribal policy makers and United States policy makers had the highest numbers (12%, 12% and 10% respectively). Additional comments on this question were few, but all referred back to previous commentary on VAWA and the impact of short funding periods with unclear projected future funding support.

Law enforcement officers' and policy makers' attitudes about sex trafficking may be influenced by several factors, including legislation. There has been considerable thought given to how to best include Native women's experiences of sexual violence in general, and sex trafficking in particular, into legislation to affect change in Native communities. Sixty-seven percent of survey respondents considered what influence they thought recent anti-trafficking or anti-trafficking friendly laws had on the attitudes of those who maintain safety and ensure protection.

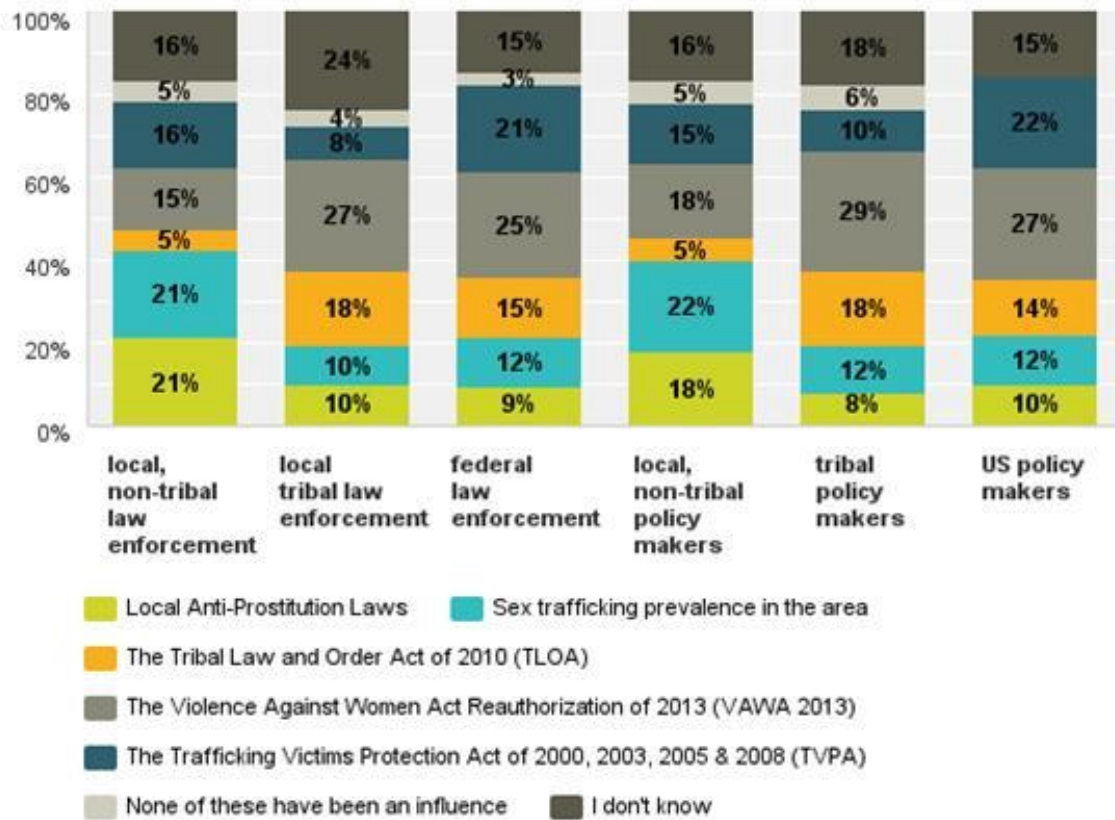
Figure 29: Have the following entities responded to Native women differently than they have towards the local tribes in general? (Survey)



Nearly 1 in 4 respondents (21%) thought that local anti-trafficking law and prevalence of sex trafficking in their area influenced the attitudes of local, non-tribal law enforcement. Only a few more (27%) indicated that they thought that VAWA influenced the attitudes of local tribal law enforcement. Around a quarter of respondents indicated that they felt that VAWA (25%) and TVPA (21%) influenced the attitudes of federal law enforcement. In terms of policy makers, respondents indicated the belief that the prevalence of sex trafficking in their local areas influenced local, non-tribal policy makers (22%), that VAWA influenced the attitudes of tribal policy makers

(29%) and that VAWA and TVPA influenced United States policy makers (27% and 22%, respectively).

Figure 30: Which of these pieces of legislation do you believe has had influence on law enforcement officers' and policy makers' attitudes about sex trafficking? (Survey)

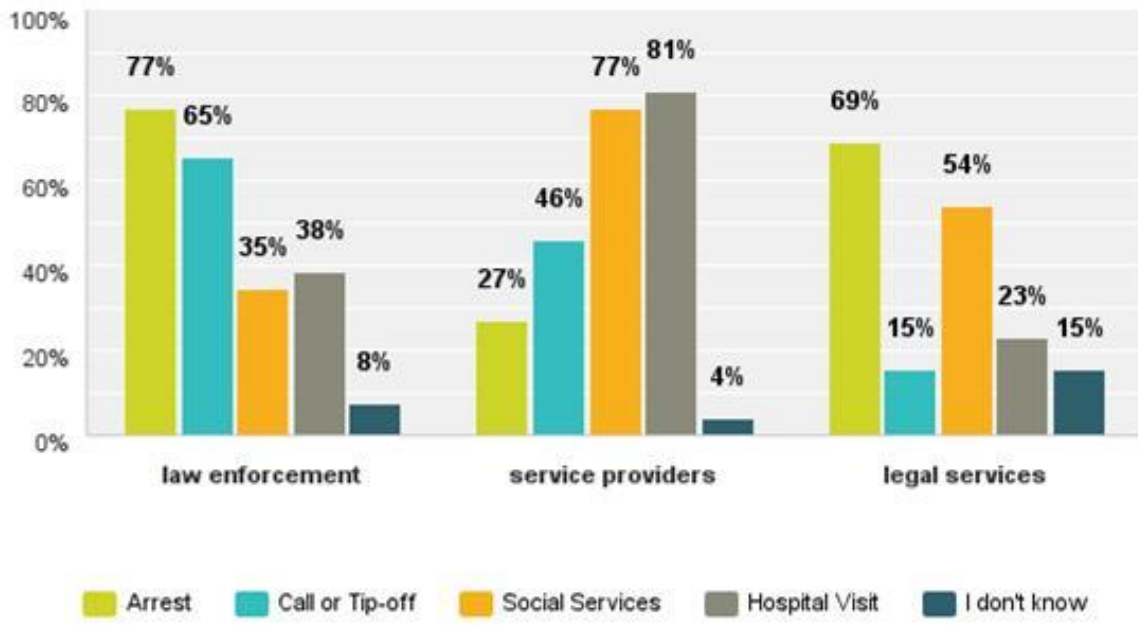


Beyond the details of responsiveness to both Native community needs and official anti-trafficking law, participants were asked to consider who is in the best position to identify trafficking victims/survivors and perpetrators, for tracking the data which informs the anti-trafficking laws in the first place. On average, 53% percent responded to these questions.

Generally, there seemed to be an expectation of heavy reliance on other sectors to channel victim/survivors to the safety and care that they might need. Respondents indicated that they would expect law enforcement

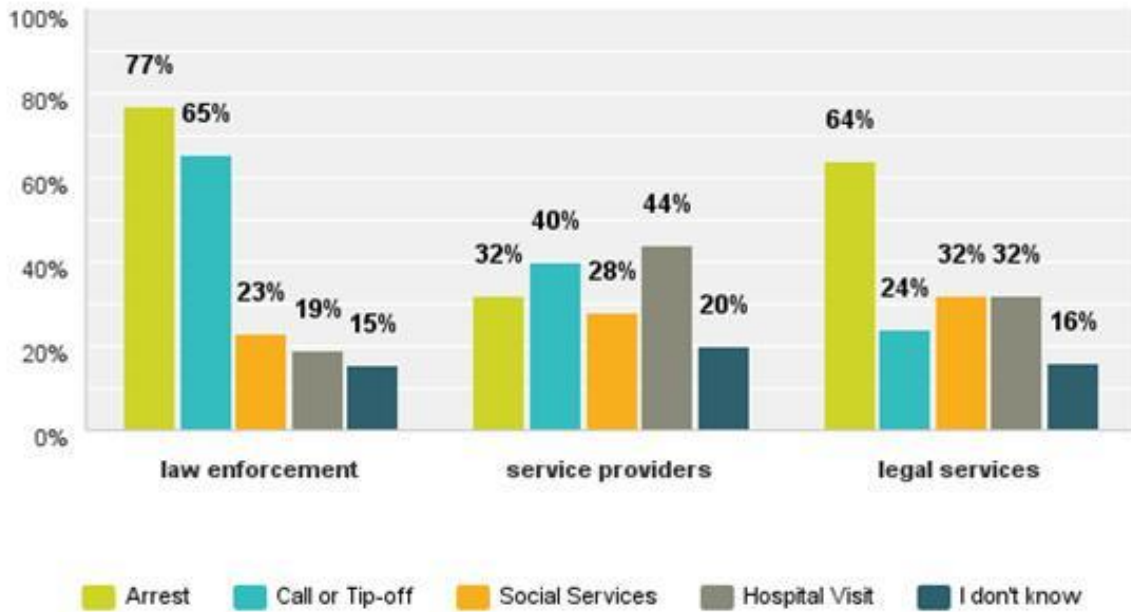
to make contact with a human trafficking victim or survivor through arrest, service providers to make contact through the victim’s or survivor’s hospital visit or social services, and legal services personnel to make contact through arrest or social services (Figure 31).

Figure 31: How would these professions usually come into contact with human trafficking victims or survivors in your area? (Survey)



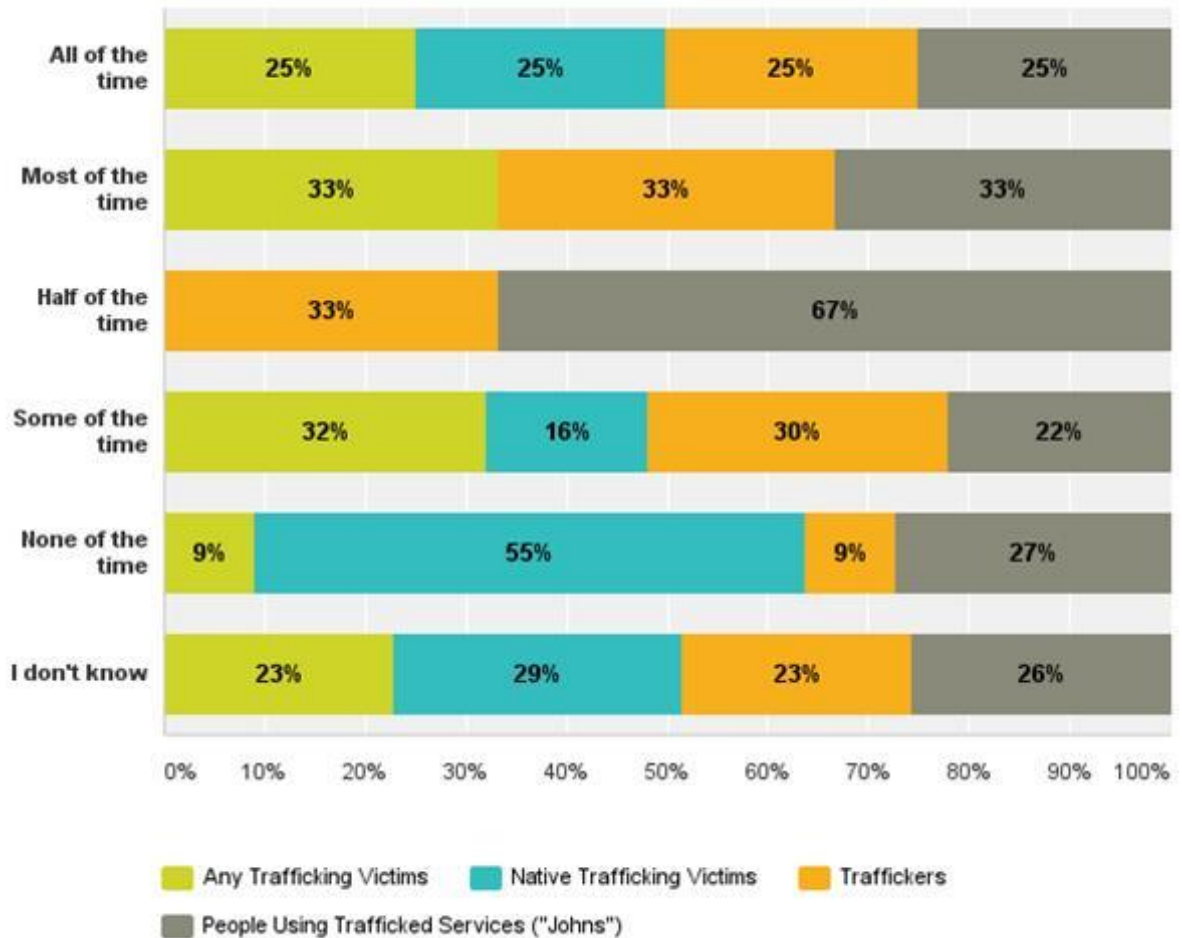
Respondents indicated a similar pathway for traffickers, though with lower numbers as well as a lack of expectation that traffickers might seek social services in the same way (Figure 32). For both contact with victim /survivors and traffickers, there was also a pronounced lack of expectation that legal services would be involved with these types of individuals as much.

Figure 32: How would these professions usually come into contact with a human trafficker operating in your area? (Survey)



On average, 54% of survey participants answered a series of six questions about how survivors and traffickers were identified generally and types of trafficking involvement disaggregated. Generally, respondents indicated that they thought any type of trafficking victim/survivor was likely to be identified some to most of the time (32% and 33%, respectively). More than half (55%) indicated less optimism that Native sex trafficking victim/survivors were identified at all (Figure 33). About two thirds indicated that people using trafficked services were identified half of the time in their area.

Figure 33: How often do you think the following types of people are identified in your area? (Survey)

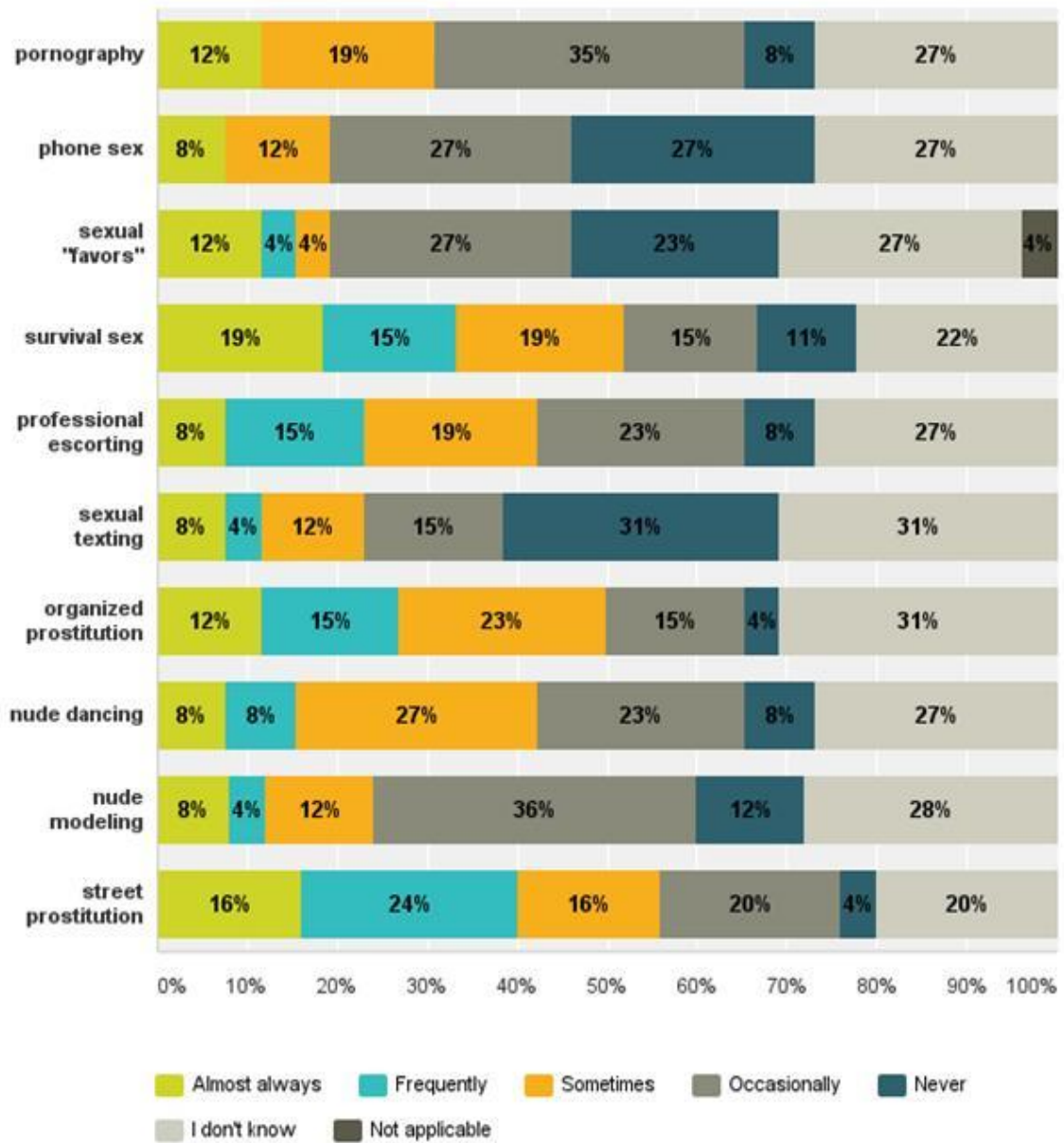


Returning to their descriptions of sex trafficking broadly,³⁰² respondents considered how often those identified as engaging in the activities and behaviors previously defined as involved in sex trafficking were also identified as sex trafficking victim/survivors (Figure 34). Respondents indicated that, in their area, survivors engaged in survival sex (19%) and street prostitution (16%) were almost always to frequently understood as sex trafficking survivors (compared to survivors of other forms of trafficking). In fact, it appears that across the list of behaviors that respondents identified as

³⁰² See Findings Summary—Area I: Definitions on page 199 of this text for more detail.

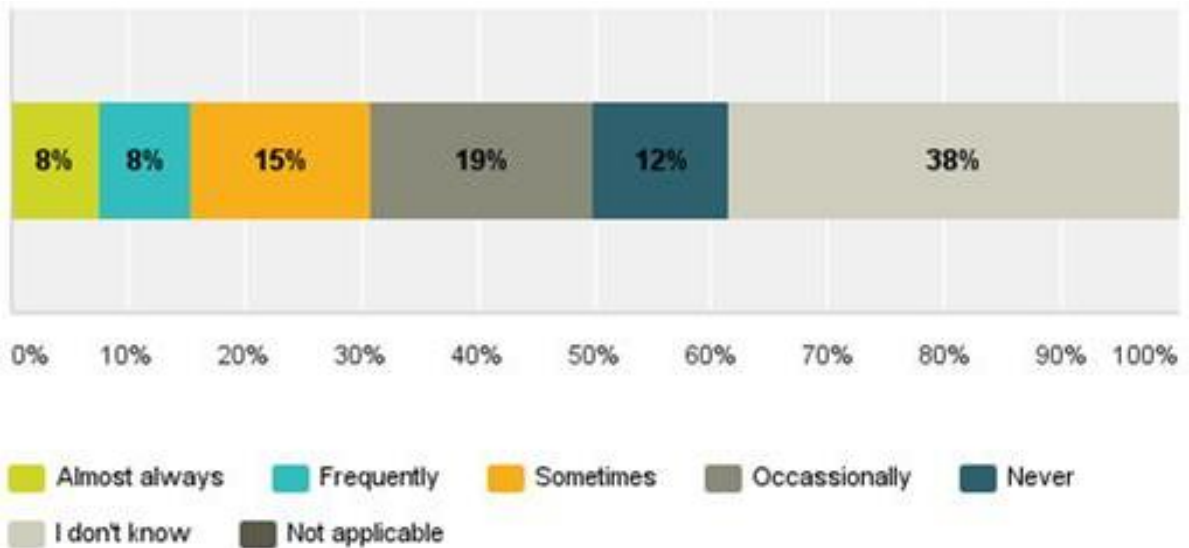
potentially involved in sex trafficking, those most closely related to prostitution were those that they believed helped others distinguish survivors of sex trafficking from those who had been trafficked in other ways.

Figure 34: How often are people identified as engaging in these activities likely to also be identified as potential victims or survivors of sex trafficking? (Survey)



Thinking about the ability to disaggregate traffickers from those who profit from commercial sexual exploitation generally, less than 1 in 4 thought that traffickers were “almost always” to “frequently” identified as such, while half indicated that traffickers were more likely never to be identified or that they simply did not know (Figure 35). This raises concern since the pool of survey respondents were some of the very people who laypeople would turn to for information about this process.

Figure 35: How often are people identified as organizers of commercial sexual exploitation likely to also be identified as potential sex traffickers? (Survey)



Perhaps most important to the discussion of available data in this study is the (lack of) information that is kept on Native peoples identified as victims, survivors or perpetrators of any trafficking. Aware of both the dearth of large scale publically available information and the efforts of people working and living in Indian Country, the survey asked about respondents’ knowledge of who might be tracking any of these numbers in their communities.

Figure 36: Do you know how information on any Native people identified in any of the categories below is maintained? (Survey)



Respondents were overwhelmingly unaware of who is managing this type of information on Native human trafficking victims/survivors (84%, “I don’t know” and “no” combined) or Native traffickers (83%, “I don’t know” and “no” combined), should it exist (Figure 36). This was also true of information on Native sex trafficking survivors/victims as well as Native traffickers (84%, “I don’t know” and “no” combined for both). That said, there were a few respondents (8% of those who responded to this question) who were well aware of who and how this information was kept in their community specifically. One of those respondents identified as the director of her Tribal Sex Offender Registry Notification Act (SORNA) and another identified as the associate director of a local research center. It is worth noting that neither respondents identified as law enforcement or direct service providers—some of the professional sectors that this group indicated would likely be the first contact for a Native survivor of sex trafficking.

Section Summary

According to the survey data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- Local, tribal law enforcement and policy makers are perceived as most responsive to Native needs while local, non-tribal policy makers are

perceived as the least responsive. Federal law enforcement was perceived to respond to Native women a little better than others.

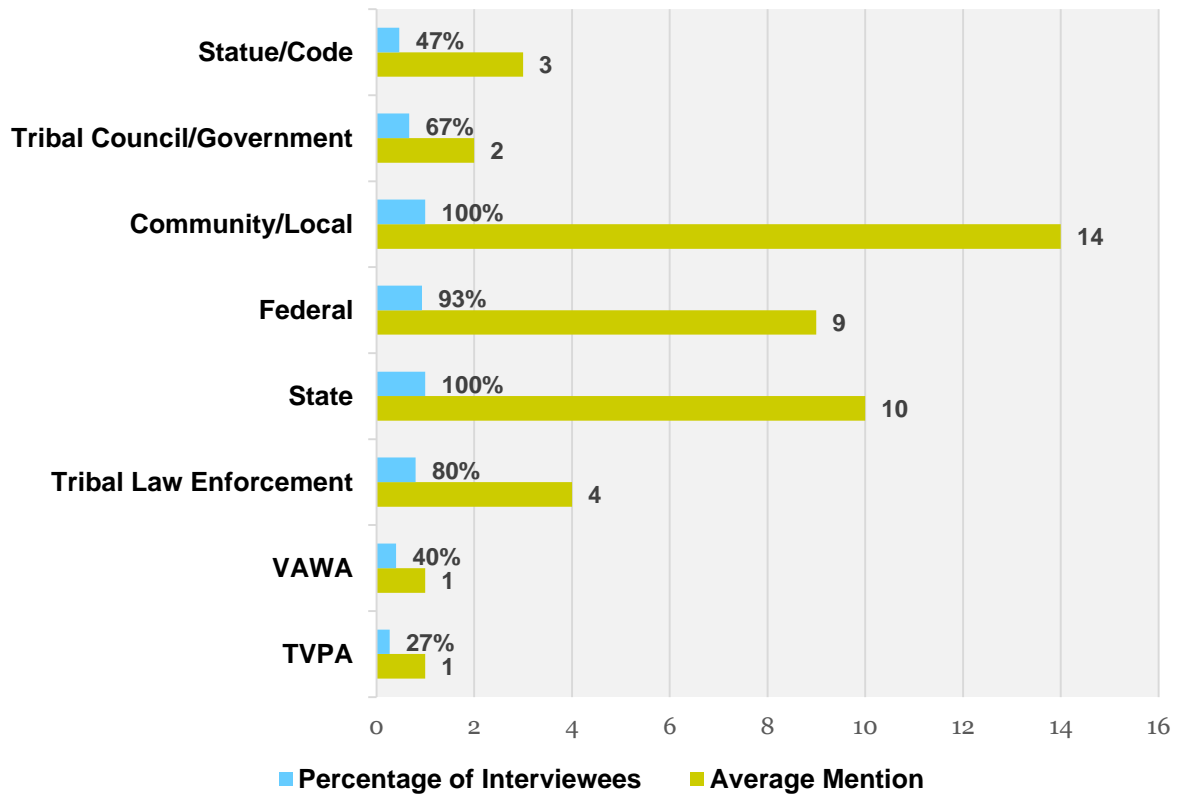
- Local anti-trafficking law and prevalence of sex trafficking in their area was generally perceived to be about as influential as VAWA or TVPA on the attitudes of local, non-tribal and tribal law enforcement and policy makers.
- Service providers and law enforcement are the areas where those in the policy environment expect to find people able to properly identify both victim/survivors and traffickers. That said, more than half do not expect Native sex trafficking victim/survivors to be identified. When they are, respondents indicated a perception that the activities the victim/survivors were engaged in were prostitution related.
- Less than 1 in 4 thought that traffickers were regularly identified as such with half indicating a perception that traffickers were more likely never to be identified or that they simply did not know.
- There is a lack of knowledge about who would be managing data on the contemporary, targeted sex trafficking if Native peoples in Indian Country, if it were collected.

Interviews

As interviewees represented some of the local, state and national tribal and non-tribal law enforcement and policy makers who influence public policy around sex trafficking and its connection to Indian Country broadly, it is helpful to consider the frequency with which specific legislation and entities came up in their conversations about sex trafficking of Native

peoples. On average, the majority of interviewees mentioned “state,” “federal,” and “community” entities more than any of the pieces of legislation which might address the issue of trafficking directly. While not as frequently, on average, tribal entities such as law enforcement and councils/government were also mentioned in interviewee conversation.

Figure 37: Entities Mentioned in Interviewee Conversations



Further, more than 2 out of 3 interviewees (65%) expressed feeling supported by their local law enforcement—both in programming and in legislation. But of those indicating this feeling, the group seemed split between perceptions that this support was incumbent on a few law

enforcement individuals versus a perception that the support was system-wide (53% for each). A service provider explained,

It's not necessarily true [that local law enforcement wouldn't necessarily be a good place to get any data on the connection between gangs and trafficking]. There's a couple of cops up here that are doing great, heroic work. [A specific officer is] a huge friend and ally. He does this for the right reasons and he's very successful at prosecuting cases without requiring girls to testify. [There are other officers in surrounding jurisdictions], some systems people who are doing great work in this area. It has been more individual people than the larger systems focused on this issue. It has been. That's beginning to change...

One interviewee, a lawyer, explained that this may be about the need for law enforcement and the rest of any prosecutorial team to work within specific rules while trying to create concrete justice. Sometimes, if one is just looking at the numbers of use of sex trafficking law,

..There [are] a whole host of reasons why a prosecutor may or may not use the human trafficking statute for a human trafficking case [that have to do with the likelihood of there being enough evidence/proof for a conviction]. And so there were a whole bunch of statutes that prosecutors were using because they were mandatory prison time, encountered a strike, they were eligible for other enhancement to increase the penal time. And that doesn't make that case any less of a human trafficking case. It just means it's not a [trafficking case that

fits under the trafficking statute and, therefore, not a trafficking] statistic.

In these instances, stacking charges for increased, more likely penalties in prosecution is looked upon favorably. If nothing else, this increases the likelihood of longer penalties that are, perhaps, closer in severity to the crime. And it can be easier to do this than to get legislation passed, even on a more local level, according to a local legislator.

We introduced legislation last year that said that you would have a defense against prostitution if you could demonstrate that you had been coerced or trafficked. That didn't go through. It didn't go through for political reasons. But we had a huge support from the district attorneys, from prosecutors, from defense attorneys, and my understanding from conversations with them is that they, and even from police and from the FBI, that they don't always want to pursue charges and sometimes they feel that they have to. So they see sometimes it clearly is not the right thing, but they don't always have the discretion with it. So I don't understand why that would be the case. That's what we heard and it was...our proposal had broad support. They felt that [if] somebody was clearly a victim, was not voluntarily involved in prostitution and that it wasn't morally correct to imprison or punish somebody who had not really chosen, who had been coerced or forced or whatever...

A service provider and advocate who works closely with her local law enforcement, spoke about the need for appropriate training that 59% of the interviewees mentioned.

You have [tribal] law enforcement that is so grossly underfunded it's ridiculous. You have maybe two officers patrolling tribal territory the size of Rhode Island. So I think that they are at one third of what we need. They don't have a lot of dollars to build new offices and go through training, the education and whatnot, which they need [on this subject.] They are just underfunded and understaffed. [It works best when it can be brought to them.] For example, this domestic violence-training program was brought to them...at minimal cost. They would come and be trained so they could go back and train their departments. That ability within the infrastructure [to have officers train each other within the system] and that's important because we go through a lot of different officers and you get one trained and then they leave...I had to make a request [for]...training of tribal law enforcement of sex trafficking in tribal communities. These officers don't know. When I was giving the training at our institute in January...[I had one attendees who] is a criminal sex investigator [who said], "In hindsight, now I'm looking back. It was sex trafficking." He didn't know. It's not that these professionals are dumb, cause they're not. They just haven't had that type of training on trafficking domestically. Have officers take a course... At these trainings I see [that] we have tribal and non-tribal [officers attending]. I've watched bridges being built between them. They are coming to a truth and understanding of what is truly

happening. Just the other day I received a call from an officer for Missouri about a victim of being trafficked. She wants to have an understanding about crimes, specifically sex trafficking, [and] about Native Americans so that she can do her job better. That is important for these key agencies to step up...

Without such training, there can't be an expectation that we will get a better statistical idea of what is going on in Native communities around this. A lawyer and advocate illustrated this problem in her conversation.

I was speaking to a police officer on my reservation about trafficking and his comment was, 'Oh, yeah, we get the paperwork on that all the time but it's not really happening here.' Well, that's not true. I know that community. I know it's happening in my community. I think that people don't want to know that it's happening in their communities... [T]here may be more of an understanding that [sex trafficking is] going on among, for instance, social service people or maybe even people locally in the community but law enforcement and policy makers may not have caught up to what's going on on the ground. Definitely. Yeah. I mean, when he told me it was not happening, completely dismissed it out of hand, and he's [a criminal investigation] specialist for sexual assault, [a tribal police officer] and handles other types of [sex] crimes for that [reservation] – and he's looking me in the eyes and saying, "Oh, no, it's not a problem here, that's [an issue]. That really surprised me.

This is important for a number of reasons. While interviewees also discussed the collaborative work with federal entities favorably, a lack of training impacts what they can do. Consider the previous comment about tribal police on the ground who are unaware of the problem in connection with the following comments from other interviewees (lawyers, trainers and advocates) about how vital each part of the system is in developing a team that is well positioned to create protection for vulnerable communities.

..from my perspective now almost ten years ago doing rape cases out on the reservation, the federal government, at least in Michigan, was never going to be the first responder to a crime. It was always going to be the tribe, the tribal police or a victim going to a healthcare professional and asking for a forensic medical exam. But it was never going to be the FBI that rolled up on a hot crime scene. So it was important that we trained together, so if a case was going to go federal that tribal law enforcement knew what we needed to make a successful case, that they called us right away. The FBI would respond immediately if they could out to the crime scene and help process it jointly with the tribal law enforcement. Then, I would work hand in hand with the prosecutor's office, victim's advocate from the US Attorney's office. FBI would work collaboratively with the advocate from the tribe. We would prepare cases as a team. We had a trial team that we were all...we all served on it together. I think that that made for a successful case.

I think it's about wanting to help the victim. Because generally speaking, the [multiple] levels [within the justice system] are the ones that provide material support to the victims once identified, you know, be it the shelters, be it ..all of the programs that help the victim try to reassemble their lives after they've been victimized. California created a state fund to allow victims of trafficking to have tattoos removed that were put on them by their traffickers...all of those types of things. And I'm not saying you can't do step two or three until one is complete. I understand you kind of have to progress on all fronts at the same time. But that doesn't mean that your efforts have to be equal on all fronts at the same time.

Ultimately, this kind of collaborative effort among their circles of influence is what interviewees, as a group, indicated was most promising about the responses to sex trafficking—especially in Indian Country—on all levels. The sense was that, once the training, resources and legislation was in place, the drive to succeed in providing protection would help push progress in a different way. And, despite the setbacks created by not having all those things in place already, the interviewees could still see progress. A fair amount of that had to do with cooperation between social services and law enforcement as well as policy makers. Two of the interviewees had connections to social service programs engaged with law enforcement to address sex trafficking. Despite the potential problems of conflating trafficking specifically with prostitution, they indicated these programs were helpful overall—even as they were working out the challenges. One,

speaking about a program specific to Native experience, highlighted the type of service the program offers.

The organization that I work with the most right now, and I'm not going to disclose it because they're still working on this, is...they just hired a mental health case manager, they already work with very high risk targeted adolescent girls, Native girls...The [city] police are now immediately bringing the girls [that might have otherwise been arrested] to this organization so [the girls can] get culturally centered, trauma centered advocacy. I'm [developing an interest in] the interaction between social services and law enforcement to identify people who have been trafficked...

And another service provider interviewee summed up what kinds of progress can happen when there is a cooperative response—for the whole community and with Native community, specifically.

The snowball is rolling in terms of raising awareness, broad awareness. We've got a lot of initiative going on here in Minnesota. We've got funders at the table, we've got county attorneys, we've got cops, we've got academics, we've got NGOs, we've got the faith communities, medical providers, systems people, child protection,. We meet regularly and we talk about this problem. And that [impacts] policy. Finding those champions within the legislative bodies that understand this issue and really want to do something about it has been somewhat successful. I mean we still have a lot of work to do. But I think we have made tremendous progress in a relatively short

amount of time when you look at the long arc of history. About consultation with Native communities and Native officials in your area on how to address the issue, we've been very intentional about seeking input from our community and from our elders as we do this work. And that has proven to be a very good way of going about the business. We sought community input on the final draft of our research report before finalizing it, because we knew it was important for our community to look at what we found and tell us what they thought. So we periodically go back to the community, we go to our elders and we ask them, "What do you think? Are we on track? What should we be doing differently?" And in the last two years I would say, we're getting an increasing number of requests from tribal leaders, tribal human service staff, domestic violence advocates on reservations to come in and do training, or to send them our research, or they refer people to us. There's a lot more interest in tribal communities now because of the work we've done, the work that the Indian Women's Sexual Assault Coalition has done to really raise the awareness about how this is playing out in Indian country. I think most tribal officials have their hands so full with other problems that they've been a little perplexed about, "What the heck are we supposed to do about that, in addition to all the other issues we have to deal with?" But they're beginning to look at how they can look at this problem within their own communities and how they can best address it internally. Any time I do a training, I don't ever come in and say, "I've got the answer for you." I say, "Here's some information. Once you have this

information, you will begin to hear how you need to respond to it." We have some what I would call promising practices that were developed here. We've got good screening forms that people can use. We've got a lot of good information that we want to share. But we don't pretend to know that it is what people need. We just want to make it available. Are policy makers doing this kind of community consultation and seeking this community input? No. I think they...policy makers is a big group. I don't know exactly who all they are, but I think some of them do better than others. I think as a rule it's not a standard practice for a lot of large organizations or elected officials or governing bodies to take the time to solicit input from those most affected by the problem. I think that should change. I think it's beginning to change. But I don't know that it's the protocols that are observed in too many cases.

Section Summary

Of the voices highlighted in this study—generally, scholars and researchers indicated that the responses across the board were limited at best, while service providers generally praised the efforts of some individual actors to make a difference with the meager responses that currently exist. Politicians, legislators and lawyers indicated a need for a better understanding of the categories to fully see the benefit of any existing governance responses.

Generally, according to the interview data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- Partnerships that involve collaborative cooperation were perceived as more influential than legislation at addressing the local Native needs around contemporary targeted sex trafficking of Native peoples. Research conversations indicated that multi-level and multi-entity involvement from federal to local were perceived as especially important.
- Interviewees indicated a perception that they were supported by local law enforcement (tribal and non-tribal) in getting Native community needs met around trafficking but that this support seemed more individually fuelled than system created.
 - Stacking charges, collaborative training, and understanding the challenge of relying on statistics are perceived as the most promising aspects of the interventions happening in Indian Country right now.

Findings Summary—Area II: Attitudes and Responses

Overall, the public data, survey and interviews indicated a perception of local sex trafficking which had existed for some time. And, as noted earlier, the geographic spread of the participants (the majority of whom acknowledged an awareness of trafficking) strongly suggests that this is a problem occurring throughout Indian Country as defined here. Further, the more local and more tribal the response was, the more people indicated a sense that the issue would be addressed. This alone is encouragement for

more localized responses and more inclusion of those responses in the larger federal response.

It is also worth noting the conversation around data collection on sex trafficking that is specific to Indian Country. As highlighted in the section on public data, there is little to no available data on sex trafficking beyond anecdotes. The very nature of the crimes means that seeking out data is challenging. When looking at the phenomenon within a specific population, the amount of publicly available data shrinks considerably. In terms of research on sex trafficking specific to Indian Country there are currently three very geographically specific small focused studies. While this study is specific to particular communities of practice—those that have influence over policy and enforcement of the law—it is also the first study to attempt to look broadly across geography at targeted sex trafficking in Native America. Additionally, during this study, the Department of Justice’s National Institute of Justice initiated a nationwide study to begin late in 2014. This speaks to the need for more data and information on what is going on “on the ground.” That need cannot be met if survivors and traffickers are not identified as such whenever and however they make contact with professions in a position to collect information about this phenomenon.

XVI. Findings –Area III: Interventions & Solution Creation

What interventions are already in place in Indian Country? What’s working, and not, in addressing this issue in Indian Country?

Public Data

The federal laws and codes in place—especially TVPA and VAWA—all indicated an interest in making this lack of information and services far less of an issue through legislative provisions for research, services, prosecution and cooperation. However, other study tools indicated that there were many issues that get in the way and, perhaps more importantly, that there were Native focused interventions that had seen some success.

In terms of interventions, the Garden of Truth found that the legacy of colonial treatment of Native peoples and continued racism had direct impact on the lives of the women interviewed and that there were few or no services available designed to meet the needs of Native women who had been traumatized around trafficking and prostitution, and specifically made recommendations supportive of such services. These included increased state and federal funding for transitional and long term housing for Native women and Native women's programs. The authors of this report also urged the review and reconsideration of policies toward victims of prostitution and trafficking which relied on arrest and prosecution of victims rather than arrest of sex buyers.³⁰³ Shattered Hearts developed the Social Ecology of Vulnerability to encourage those working with survivors to consider all of the factors involved in putting Native girls and women at risk.³⁰⁴ Especially relevant to this study is understanding the impact of the majority society through the historically legalized injustices towards Native communities.

³⁰³ Garden of Truth, pgs. 49-56.

³⁰⁴ Shattered Hearts, pg. 99.

Additionally, the current federal and state responses can be read as a continuation of those injustices—especially around trafficking.

One of the co-authors of the Shattered Hearts report, Sandy Pierce, also wrote an article about MIWAC interventions that seemed to have important lessons for service provision to Native sex trafficking survivors.³⁰⁵ Some of what she highlighted included

1. The insight that asking about “trading sex” or ‘being [sexually] traded’ as part of an intake process for people entering harm reduction programs opened the door to disclosure and healing as well as began encouraging a domino effect of healing for others.
2. The importance of school outreach to link at risk youth with “culturally grounded, trauma-centered, long term support.
3. This should come with highly coordinated services to manage any disclosure that happens unexpectedly. Services needed are likely to span outreach, 24-hour safe houses, a continuum of housing options and long term harm-reduction and intensive case management.
4. Long-term, programmatic patience to build trust, educate and manage the aftermath of disclosure.
5. And provider self-care to manage the secondary trauma associated with this work.

³⁰⁵ Pierce, Alexandra Sandi. 2012. "American Indian Adolescent Girls: Vulnerability to Sex Trafficking, Intervention Strategies." *American Indian and Alaska Native Mental Health Research*. 19, (1): 37-56. Accessed June 3, 2013. http://www.ucdenver.edu/academics/colleges/PublicHealth/research/centers/CAIANH/journal/Documents/Volume%2019/19%281%29_Pierce_American_Indian_Adolescent_Girls_37-56.pdf.

In terms of solutions, the Oregon report indicated that the issues were far deeper than the causes of under reporting, which were included in their findings. The report authors cited an environment of lack—a lack of statistical data on Natives in human trafficking, a lack of focus on specific knowledge about trafficking involving Native peoples and a lack of resources for culturally specific programs—mixed with inattention to foster care as a “correlating factor,” the cyclical nature of generational trauma and lateral oppression (discussed here as lateral violence) and under-enforcement as major contributors which compounded the jurisdictional complications. Those compounded complications are foundational to the continued failure to meet the mandate of federal anti-trafficking law to “prosecute traffickers, protect survivors, and prevent trafficking.”³⁰⁶

Section Summary

According to the publically available data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- There are several types of interventions actively in use in Indian Country to address the needs around the contemporary targeted sex trafficking of Native peoples. These include models for thinking about

³⁰⁶ Oregon report, pgs. 41-58.

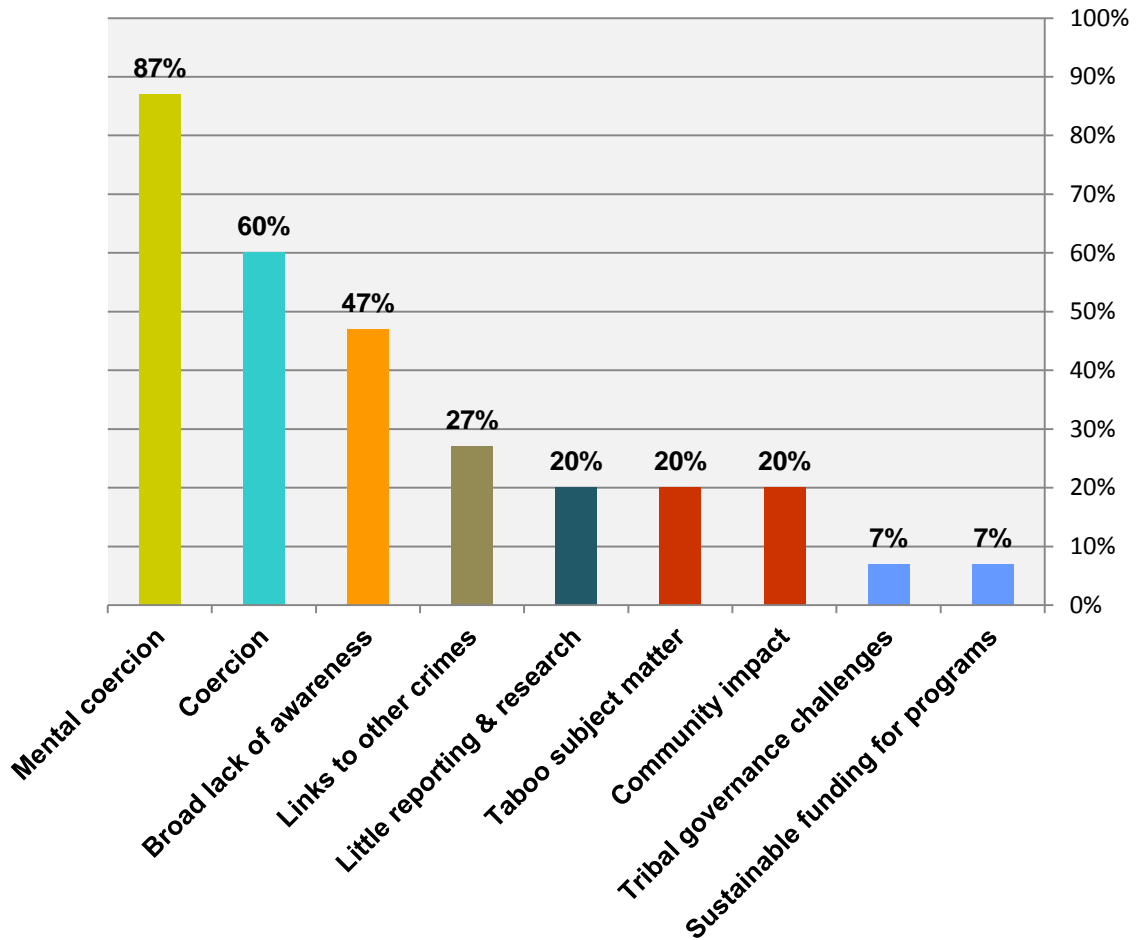
causes and prevention, agency collaboration –from service provision, community wellbeing research, law enforcement partnerships and trainings to local level political and educational actions to address Native needs quickly and with those communities’ input.

Survey

In terms of sex trafficking, there are a number of concerns in Indian Country, nine of which 31% of survey participants highlighted in their responses (Figure 38). Additionally, when asked about what kind of consultation happens with several types of Native representatives, only one survey participant responded. Considering that a number of participants responded to later survey questions and that the one respondent did not have any awareness of any local consultation, it may be safe to assume that at the moment in time of this survey, there was not very visible, broad conversation about how to meet the needs of Native communities concerned with these issues. Further, of those who answered this question (20% of survey participants), 60% indicated that tribal or Native peoples’ needs were not being met in the prominent interventions available in their areas. While, like some respondents, some communities may be close to services from places like the Native American Health Center, others are left to figure out why this topic does not have the prominence of “...many Public Health prevention [initiatives] addressing diabetes, cancer, and healthy living [among Native Americans]. There is also a strong program that is forging ahead [in] addressing domestic violence against women. I don't see these education

programs being conducted in partnership with specific villages or tribal law enforcement. Doing this may have more of an impact.”

Figure 38: Specific Local Concerns About Trafficking Generally (Survey)



Only 22% of survey respondents answered the question about how their law enforcement agencies address potential trafficking in Native peoples. The majority did not indicate a strong tribal role or strong Native influence in the approaches that they saw; only 18% of those responding spoke about cooperative work between local, tribal law enforcement and other external sources of law enforcement or a specific response from their local

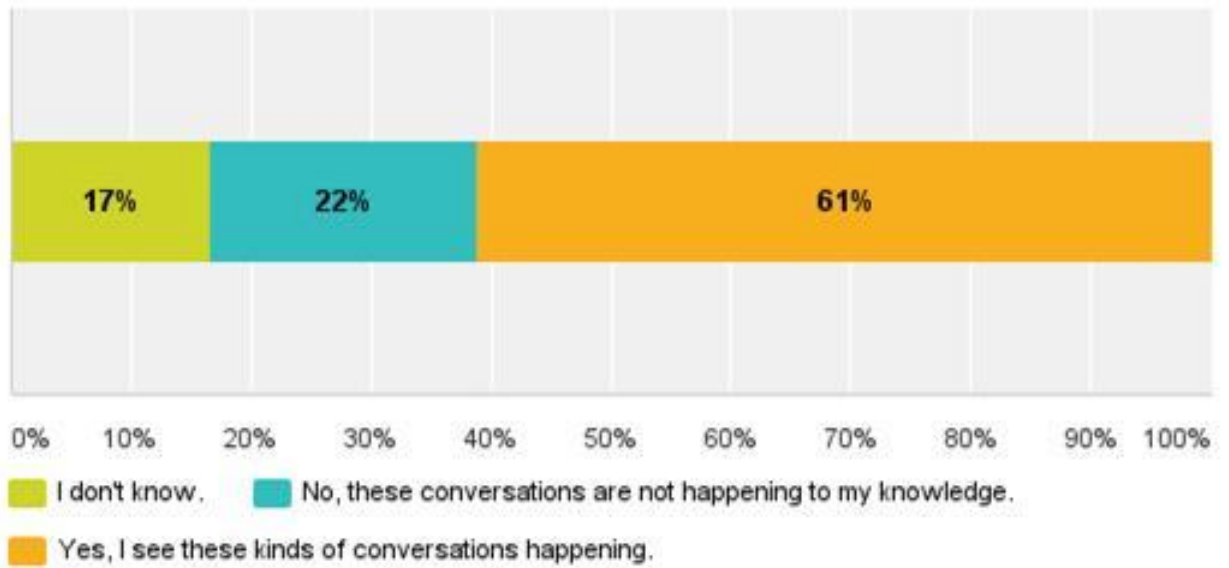
tribal policing community. More spoke about an approach to trafficking that was the same across the board—a sense that “all trafficking is handled in the same way by all law enforcement entities” (36%) and that the law enforcement entities upon which they rely do not actually address trafficking at all (also 36%).

This seems to correspond with respondents’ discussion about the use of federal interventions in Indian Country. While the majority indicated that these conversations were happening (61% of question respondents), it did not necessarily sound as though those conversations were producing the desired results for the purposes of this study—a positive impact on sex trafficking on the ground. Essentially, some indicated that the specific inclusion of Native women as well as the sexual and gendered violence perpetrated against them had been helpful in raising awareness about the experiences of Native women around sex trafficking by proxy.

Our Tribe has discussed sex crimes within the review of our Tribal Code as to the move towards incorporation of VAWA and TLOA.

Conversations within court systems (tribal and state) throughout California, as well as the nation, along with policy makers are occurring from TLOA and VAWA prompting such discussions.

Figure 39: What have been the conversations about using anti-trafficking laws (TVPA, VAWA provisions) to address this issue? (Survey)



Others were vocal in their disappointment around the impact of legislation like VAWA and TLOA on the sex trafficking of Native women, and representative excerpts of those comments follow.

When VAWA was being discussed at the federal level, there was almost no local discussion, even though the law had tremendous implications for the Native people in my state...

[These conversations] are happening but [don't] include targeting trafficking of Native people...

I've proposed use of VAWA provisions where applicable, but (unfortunately) there isn't much conversation happening in that regard to my knowledge.... Conversations happen [around] using TVPA provisions, but it seems like it's always the same voices and little change. Normally state anti-trafficking statutes are used (and even

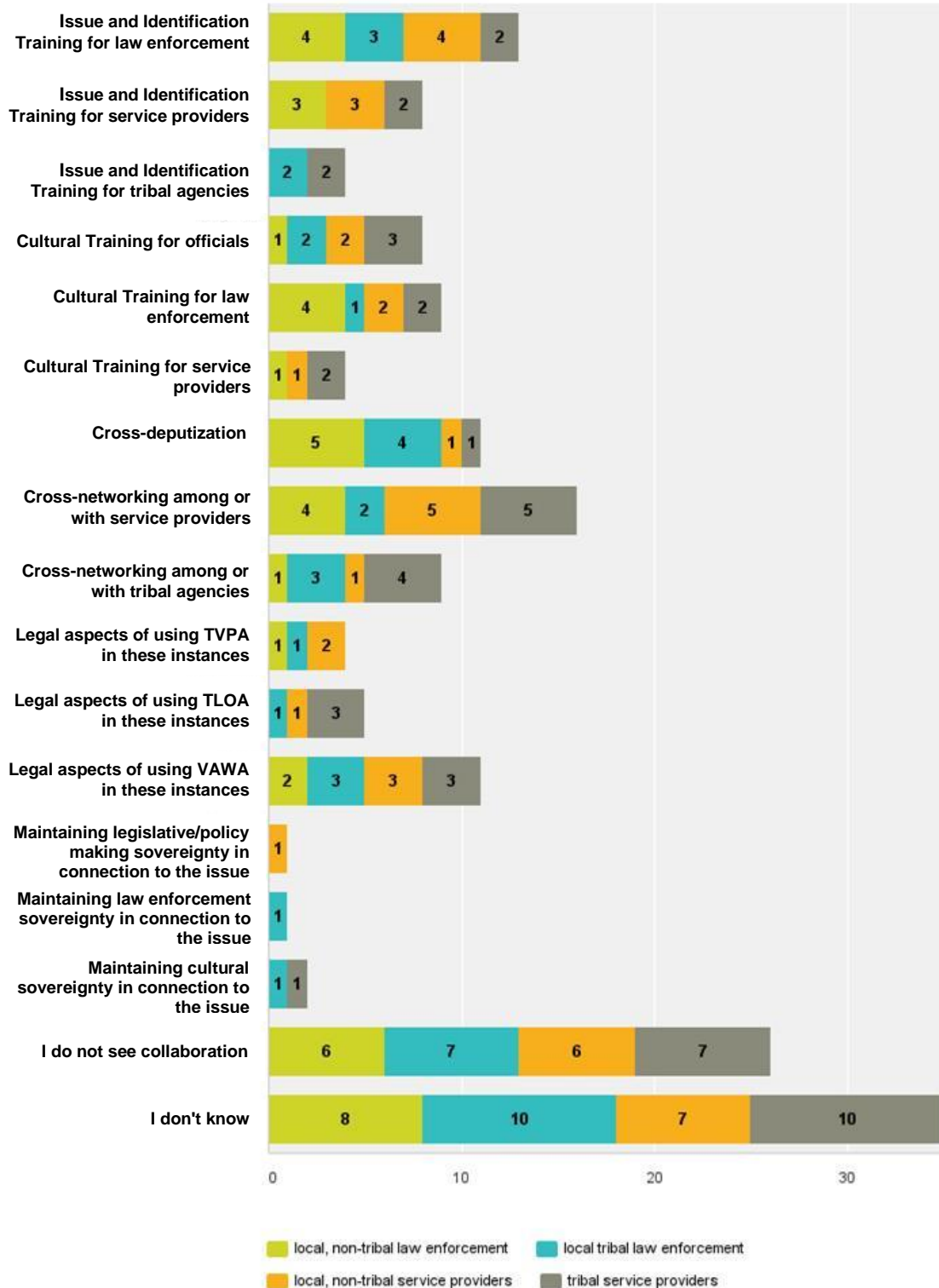
then, rarely), which are (unfortunately) less rigid in terms of punishment.

Survey participants had less to say about interventions that originate with service providers, but they did indicate that some existed. The few comments (4% of survey participants), indicated knowledge of programs focused on Native healing methods, shelter, counseling and independent living. And, although funding was limited, respondents indicated knowledge of Native focused prevention efforts focused on community education, survivor education and outreach.

Understanding that service providers and law enforcement may choose to collaborate with others, such as tribes, in a number of ways to address community needs, the survey asked participants to share the collaborations that they saw happening with specific types of professionals around the issue of sex trafficking (Figure 40). The majority of collaborations that respondents were aware of were:

1. issue and identification training for law enforcement with local, non-tribal law enforcement and local, non-tribal service providers;
2. cultural training for law enforcement with local, non-tribal law enforcement;
3. cross deputization with local, non-tribal law enforcement and local tribal law enforcement;
4. cross networking among or with service providers and local, non-tribal law enforcement, local, no-tribal service providers and/or local tribal law enforcement.

Figure 40: Service providers and law enforcement may collaborate with others, such as tribes, in a number of ways. Are local service providers and law enforcement engaged in collaborations with others in any of the following ways? (Survey)



These numbers represent instances, rather than percentages.

That said, more respondents indicated not seeing such collaboration locally or not knowing if any such collaborations were taking place.

Section Summary

According to the survey data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- At the time of this research, there was not very visible, broad conversation about how to meet the needs of Native communities concerned with these issues. The indicated perception is that Native peoples' needs are not being met in the prominent interventions available in their areas.
- The top two indicated major concerns are broad lack of awareness and the links between localized sex trafficking and other crimes.
- The perception is that there is not a strong tribal role or strong Native influence or cooperative work in the approaches seen locally. Instead, there is the perception that "all trafficking is handled in the same way by all law enforcement entities."
- Some acknowledged that conversations were happening as a result of the Native related changes resulting from the Violence Against Women Act Reauthorization of 2013 and the Trafficking Victims Protection Act reauthorization embedded in it.

- The collaborations that respondents were aware of were:
 - a. issue and identification training for law enforcement with local, non-tribal law enforcement and local, non-tribal service providers;
 - b. cultural training for law enforcement with local, non-tribal law enforcement;
 - c. cross deputization with local, non-tribal law enforcement and local tribal law enforcement;
 - d. cross networking among or with service providers and local, non-tribal law enforcement, local, no-tribal service providers and/or local tribal law enforcement.
- There was also acknowledgement of disappointment around the immediate impact.

Interviews

As people familiar with providing much needed services within cash poor economies, interviewees were unanimous in the concern about a lack of data on sex trafficking generally and its presence in Indian Country specifically. Every single interviewee made some mention of the need to know more and commit more effort to getting to know the situation specifically as it operates in Indian Country.

Interviewees were also consistent in their concerns about securing financial support for programs and data gathering for Indian Country that

did not come with colonial attachments in law and land. As one Native lawyer indicated,

I know resources are always at a premium. However, I do think that an attempt to develop some type of training module, you know one that can be customized to region [or tribal community], I think would be very valuable...I think that would be a very good start. Also, empowering the local tribes through their own legal system, should that be an advantageous avenue. You know, to what extent that the TLOA plays in there, I haven't researched enough. But giving [tribes] some type of [increased] control over how their lands are governed I think is extremely important.

And, overall, interviewees saw that sole reliance on Western approaches to this issue, and any issue in Indian Country, created additional divisions and levels which further removed tribal peoples from their socially legitimate forms and understandings of social control. Several interviewees engaged in law enforcement and legal counsel illustrated this point well.

Because my tribe is not a federal tribe, a lot of the issues...are addressed [differently than] some of the [federally] recognized tribal [communities]. For example, VAWA didn't affect us at all. We supported it...but of the 700 plus tribes in the United States, over 200 were not [federally recognized and thus, not] touched by VAWA at all. [You] have these traditional communities that are historic, that have existed and aren't ...supported at all by any form of government service. So VAWA didn't help us. Didn't hurt us, but it sure didn't help

us. We've [had] to deal with our own issues in our own way for generations.

It's an indictment of our system [that] they're totally insensitive to the historical reality that continues to subjugate the indigenous people here in the United States... When...a government...denies tribal rights and [perpetuates] colonization and...violence against tribes by defining who is and who is not a legitimate tribal government instead of honoring treaties,... you're going to have the dehumanization of entire groups of people. If society [is] saying, "These folks are a little less than human, they're a little less than the rest of us..." [or] "We are a country of immigrants and therefore the people who are indigenous to it aren't really a part of it."...subconsciously you are aiding and abetting those who see Native Americans as not having the [humanity] that would require [a] respectful response.

[M]any tribal people...don't trust the [United States] government. They don't trust anything that looks like it's a non-tribal presence, even [in] their own tribal government. They are much more comfortable [with] the traditional system...retained within their tribe. ...for generations [Native nations have] been negatively impacted by society's effort to de-tribalize Indigenous people. When your tribal ways are demonized, it becomes very difficult to have systems of support people can rely on. When they are better understood and they are supported and respected, I think that they work much better than how other systems that are imposed upon tribal people may work.

...the federal tribes still are in a better position than the non-federal tribes who's ability to do any prosecution is based upon the cooperation and the individual voluntarily if they're a citizen of the tribe submitting to the trial.

Finally, interviewees largely indicated a need for collaborative, cooperative and creative interventions that relied heavily on the insights of service providers and actively involved Native communities. A few service providers, therapists, religious leaders and social researchers, provided a litany of things that law enforcement could consider when thinking about approaching interactions with potential sex trafficking survivors and things that policy makers might consider when developing policy that impacts services for this population. Here are a few representative comments.

[H]ow many tribes have at their disposal women centers or center for people who have been abused to run to? I mean, places of safe refuge, safe havens? Now I know for the smaller, non-federal tribes that [place] tends to be a family member's home. ...that's one of the traditional responses...you're going to someone you know who will stand at the door and prevent your abuser from getting in. But how many of the tribes with large federal reservations with their police forces also have federally funded women's centers?...traditionally based support – [able to provide] traditional healing practices for them? ... I really don't know how often such resources are in place on a federal reservation. The equivalent to that in a small tribal community that's non-federal...is a family member takes them in and the men of

the community stop the abuser at the door and sometimes take the abuser behind the house and deal with it. So it's a little different.

Close working partnerships between social services, child protection, runaway and homeless youth programs and the police are critical. We have ... partnerships with local non-profit agencies and they ...are ...the bridge for the youth that are in the life, [whether the youth] think of themselves as independent operators or freelancers, or they're with a pimp but they love him and they're not ready to leave.

...of course they need, victims need safety and stability first, which is a primary trauma treatment need ... [S]afety is both external and internal. So ...if you've had someone constantly threatening you...there's always fear. I work [with] adults and adolescent girls who...will say, 'I have no way of understanding what safety is because I've never felt it.' And they're in a locked residential treatment facility [with] guards...You should feel safe, but you don't ...because it's an internal thing...[and a sex trafficking survivor's response might look differently than another type of survivor's]. It is very helpful if a part of that support system could be survivors... [You also need to consider a survivor's] beliefs about the world. If you've seen 300 men in the last year, then that means every man you see looks like one of your johns, right? ... As a survivor, if you weren't ready for [interactions with men outside of being exploited] it [is confusing] because [now] I figure that I know what to expect from [men], if not now then eventually.....Now, how trauma is treated has to be culturally relevant. [Y]ou need to

[honor individual cultural understandings of healing ways]... If they're able to participate ...things like the White Buffalo Calf Woman ceremony or ... a cleansing ceremony, things that are very [culturally] specific what healing feels like or looks like are vital. ...Especially if you've been in lots of situations where... people break trust and teach you that no one really can be trusted. The third thing is just the reduction of stigma and shame—addressing shame, reducing stigma, —which is unique to this issue. ..[T]he [difference] between domestic violence and sex trafficking and how [the public responds]... think of all the things inherent to a [violent domestic] relationship and how victimization is experienced. All of those things are part of sex trafficking as well. What's unique is that sex trafficking victims experience an extra level of stigma. [Those in violent domestic relationships are] "domestic violence victims" and ...sex trafficking victims are [something else]. [There's an] extra layer of victimization [because] you're constantly interacting with people who could rescue you, but choose not to. [Some, not everyone ...see how old you are or some [restriction on your behavior]...they see all [that]. ...Victims of trafficking often have suicidal ideations or attempts. They have very high PTSD. [Some are resistant to being grouped together. When I've [had] Native American girls in my groups,...one of the [difficult] cultural pieces [is] if those girls are coming from [a home that is a distance away]...we've got a group home that's two streets down from the hood another girl lives in, so she doesn't feel so out of place or disconnected because she can see mom each week if she wants. But if

we're constantly bringing kids from a reservation into the city, or bringing kids from really far away, it can be good, but it can also be a little [challenging]...but that tends to happen with trafficking. There are girls ...from other states in group homes here. So [Native clients] wouldn't be the only ones in that situation. ...It feels very ridiculous to make this distinction [around age. A year does not make that big of a difference] Working with adults [who were first trafficked as youth] and realizing, "What else are you supposed to do [if you've been trafficked for 15 years and now you are 30?" You have no resources, no connection to any positive social support and a record. How is that different for you [than when you were 15]? You feel just as coerced. You're in this situation that's just as bad, but now you're 'more responsible.'" We see with girls working for a pimp—when they turn 18 they become the bottom. So they're now victimizing other girls. We have law enforcement friends and this our ongoing argument—they are law guys "They're victimizing. They're responsible. They've jumped to offender." Like that all of sudden they could be these two separate categories. And it's like, "No, they're not." It's a continuum. They ended up there, and they are doing those things, but they are not as culpable as that pimp. I think that it's more helpful to [discuss] what puts someone in a trafficking situation— childhood ...family disorientation, childhood abuse, economic need, running away from home. That those are things that adults likely have experienced...So connecting them and saying that there have to be services, that the needs are similar across [categories], are really important. We can do damage when we

paint this picture of a trafficking victim as this... “lovely White girl” [that you can find an image of on the Internet] and aren’t really interested in what the actual face of trafficking looks like. Some of those faces are White—but the reality is that most of them probably aren’t. They don’t necessarily look as innocent and sad because you don’t survive if you feel innocent and sad. You survive if you’re tough, angry, resistant and resilient. Or you are connected or feel protected by a gang—so you look like a gang member. Or you use a ton of drugs so you look like a drug user. You just look like these other things, not like what we would expect a trafficking victim to look like. It’s important to [know] that there’s a continuum. While there are some development needs that adolescents have relative to adults but, their treatment needs, by and large, are the same. Looking at [adult survivors and child survivors] as two very distinct groups isn’t very... helpful at all.

Putting trafficked youth in with a population of runaway and homeless youth isn’t a good idea. If you’ve got a trafficked woman, putting her in a domestic violence shelter is not good for her, because she can’t really talk. In shelters you are required to attend a group discussion. [Sex trafficking survivors] can’t talk about their issues with women who are being battered by husbands and not being trafficked. It’s not safe for them and they don’t stay. They leave. We don’t yet have a [national] system where the victim is provided a safe space [and] a healing space into [which] law enforcement, everybody else comes. It is always [the responsibility of the service provider to go] into... juvenile detention...and interview ...to see if that kid wants help...It’s always

helping agencies that have to go into the law enforcement setting. If [the trafficking survivor is] sixteen or seventeen child protection is not going to open a case. So the younger ones, the [traffickers] keep in school. The older ones, they pull them out. This interaction is really not well known. Those of us who work on the ground know this stuff, but it doesn't make it up to the level of the decision makers. I know the federal government just put out a request for survivors to submit an application to testify. I looked at that and said, 'Screw you. You want me to tell you that I'm what... qualified?' I was really angry. There are people who rise to the top [giving] testimony [to surviving, those] are the people who have organizations, which is good. [It's a good thing that there are] survivors leading organizations...good. But, anybody else, they are the ones that tell the dramatic story and that's not what we need...I do not see steps that specifically address the needs of adult survivors without criminalizing them. If [a case] is identified as a trafficking case...and usually, at least here the police are trained to recognize adult victims in [the areas that are local to me, but that] doesn't mean that all of them [do it]. If it's not the designated [police] people responding, it's still not [assured] that an adult victim will be recognized as a victim. My sense is if she's beaten up or if she's with a trafficked minor and they're both being prostituted there will be more investigation into whether or not she was trafficked. And I'm seeing more cases of adult women being recognized as domestic trafficking victims. One of the problems is what [the legal system does] with bottoms...law enforcement is not always sensitive. There have been

some cases where some bottoms who were absolutely terrorized - had scars, broken bones, terrible damage were sent to prison. It was obvious they had been so physically destroyed and they still went to prison for their role. It's going to take some time. It's like rape victims. Was it important that she was wearing short shorts? It takes time for our courts to catch up, and they're still not caught up. We have judges on the bench everywhere in the United States who still blame the victim. That means you have to have a prosecutor who really knows what they're doing and points out the facts and cites case law to support it. Then the judges can say, 'Oh, yeah.' But...we need precedence. We need so much training for the bench, but we also need the bench to take it seriously.I have a friend, a long, long time friend who is a judge in California. At our [social meeting], people asked why I was still working on sex trafficking... the ... judge came in and said, ..."What do we do with these 14 or 15 year olds who come in? I have to either lock them up, or they're going to run [back] out. They're hooked up with gangs and they're going to do all this..." He was very derogatory. And he's a good guy. I said, "Do you realize where these kids come from?...So you're going to punish them a little more?" [He asked], "Well, what can we do?" I said, "You can work on building systems where they can be safe and heal. Locking them up only postpones the damage. There's no more likelihood that they'll finish school and get some job skills." But this is a very good man, who's been on the bench more than 30 years. Talking to a survivor, he still had that bias....[California does] not have Safe Harbor [law]s. I told him

about ours and he just shook his head. He couldn't visualize it. He saw these kids as so enmeshed in criminal behavior that they were unsalvageable. The thing is if we had the do-gooder savior mentality against that, one sounds like common sense and rationality and the other sounds like too much emotion. But when do we put in the middle, that we actually do some pilot programs and see what happens?

Those involved directly in the legal system—legal scholars, policy analysts, lawyers and law enforcement—shared the concern of the service providers and also commented on the need for cooperation within their own ranks.

There needs to be a lot more groundwork done [around different law enforcement levels' general misconceptions of jurisdictional boundaries] to get those cases [of Native specific sex trafficking] kind of fed into the legal system and then to figure out which legal system is the best or correct one. [This] might [best be thought of as] joint efforts...to find the most effective place for solutions...a lot of times [the most effective place for solutions is] local law enforcement and in Indian country ... tribal law enforcement,...they're much more aware of the areas in which they patrol...[and] know when something's up in the neighborhood..[as well as] the usual suspects. [They know] the cues within their own community when something's afoot. If trained properly, they can help facilitate the identification of some of these cases. If it goes through the federal track or the state track so be it. But [the case has to be properly identified] before they can enter the

legal system. I've not noticed that [inter- and intrastate]. [There is an] information silo...where information gets contained in one area. A lot of times [NGOs and law enforcement] may or may not play well together, but if you have a common goal, you should at least try to find the common ground [and] ways to communicate that work.

...Obviously a open and effective line of communication, to whatever extent possible, needs to continue to be [the goal]. Be it agency to agency or NGOs to law enforcement agency or even the law enforcement to the academic world. [Academics can] help [through] research to find trends or whatever law enforcement needs to focus on. All those lines [need to sync].

As previously mentioned, interviewees generally had mixed views about governmental responses to sex trafficking at all levels, even though they remained hopeful about what the trends in those responses meant. And specifically around interventions, there were concerns, as expressed above, which reflected that as well. In the end, interviewees also saw the desire to work in a collaborative and cooperative way as part of the traditions of social control and diplomacy of Native nations historically. One researcher and policy analyst explained this well.

We need many hands and many leaders involved in this...[O]ur elders teach us that what happens to one affects all of us. Solidarity is a really important part of this work... Although ... tribal nations are unique and have unique political status, we do link arms with other communities, and we...learn from the experiences of our Native

communities and the strength that we celebrate can and should have value for other communities...What we can learn from Native community can be leveraged for other rural populations and [ethnic] populations globally. What we learn about how to protect and take care of our community and ensure that the trafficking is not something that we have to deal with as regularly as we do...has benefit. You know, we have responsibility to do the right thing for other women and children and families...

Just over 53% of interviewees spoke about Native specific interventions that already existed directly. A researcher and lawyer explained this from a federal perspective.

Well, from where I sit, it's hard to point to one particular program. [There's] work between different US Attorney offices throughout the country that investigate and respond to all violent crime. [There's federally sponsored training including] FBI, the BIA officers, tribal pact leaders, and tribal law enforcement, [as well as] do training with different groups... interested in working with this issue, like the tribal coalition under the Office of Violence Against Women [OVW]. [There's trainings from] the National Indigenous Women's Resource Center hosted [and other similar places for people working on the issue of sex trafficking] to "plug in" in a lot of different places, and even within the different components within the Department of Justice [DOJ]. The DOJ has an annual grant called Coordinated Tribal Assistance Solicitation. And there's money, some of the OBW the tribal specific

programs are funded through there. The COPS [Community Oriented Policing Services] office... Some of those "purpose areas" as they're called by the different funding sources, they would certainly have the ability to work on some discreet aspects of this problem. [The Native American Issues Coordinator for the Executive Office for United States Attorneys works] directly with tribal governments on various projects. The department is involved in implementation of Violence Against Women Act 2013. There's a section 904 of that, a lot of tribes that have certain due process procedures in place to charge non-Indians for, you know, if they have significant contact with the tribe for dating violence, domestic assault, and personal protection order violations. I mean there really are a lot of different ways [to] plug into not only the federal government, but tribal programs and tribal government. So it's really hard to articulate one response that would be better than another.

And a local politician as well as several interviewees representing a legal perspective explained it in these ways:

...the primary ways of sort of reaching people who are victims is probably through a run-in with the law or a need for being in touch with a service provider. The Native [Alaskan] corporations offer services that are not exclusive to Natives necessarily, but for example, some of the homeless shelters which would be for women who are trafficked, they disproportionately have Native women...they do a lot of work in healthcare and Native justice and sort of substance abuse

treatment and so often those things dovetail. We do have those kinds of facilities and Native corporations are looked to for funding as well as the state. There's very much so a number of things, at least attempts at a number of things within Anchorage that are trying to do things a little differently and not just rely on the federal definition of trafficking. [Native Alaskans] are really leaders, in many ways, of attempting to address the problems. I don't know that they see sex trafficking and the sex trade as specific leading issues for their communities, [though] there's a focused effort on trying to heal generations [of sexual abuse of women and children, substance abuse, and recognizing that often times the perpetrators have also been victims—all of which are thought to contribute to risk of being sexually trafficked.]

But, among eastern tribes, at least it's been my personal experience...like I'm saying that it has not been...it probably should be more but it's not easy to determine exactly what the issue is among [these tribes that are mostly not federally recognized]. But it's been my personal experience that if there is violence [against women of this sort] perpetuated within a tribal community, that tribe itself responds to it. That it is something that has not been tolerated. And that's been my experience within my own tribal community. It appears to be a common refrain in discussions that are not formal policy discussions, just in talking about tribal life in general, there's the sense that the community has to respond to injustices and situations of abuse within the community. And the community also has become hyper aware of

issues of addiction and criminal activity, where people are taken to task and/or are kind of banished from the community' activities because of that. This sort of community level response that doesn't rely on the formal state or federal response, in some ways might be more effective because it comes from community...

...we've recently had a few scholars here in town, First Nations scholars from Canada, who again are interested in linking arms, looking at the data and doing some mapping so we can try to understand where, for lack of a better term, the cartels or the folks who make a profit and are targeting our women and our children and our people [are located. Our goal is to] understand [where these] trafficking pathways are ...and link arms across borders. We have many trans-border communities...north and south, but we tend to hear more on the US/Canada front than we have recently on the US/Mexico front... But the other point I think, too, is it falls alongside our other work related to health, that we do a lot of cross-border comparisons with US and Canada. Many of our communities have, you know more similar economic parallels and geographic policy kinds of pieces. For the mapping piece, it falls along with other work that we're doing to look at some of our folks who move back and forth and who live on the border, US/Canada. What we can learn and how we can develop more comparative data to understand. Because, you know, the border...that's something we all created. Data and some of these other kinds of trends don't necessarily honor that border. So how can we do better to develop information and then share information in those ways.

So,...my next sort of 'project' is to help tribes write better prostitution laws and trafficking laws. I'm working with [a Native nation] right now to draft an entire criminal code for them because they currently don't have one and we want to make sure that we don't just replicate state and federal definitions of these crimes. So that's one thing to start, is that tribes when they're revamping or revising their criminal codes – take a close look at how we define those crimes and make sure we're not re-victimizing people through our laws. One of the initiatives that I worked on VAWA was to get sex trafficking added to the program areas for the funding that tribes get. The first round of funding hasn't kicked in yet... We don't know and I don't have a good sense of how many tribes applied for VAWA funding and mentioned sex trafficking in their applications because it is so new. It may be that even advocacy programs for women on reservations have been like, 'I don't even know what that is.' So it will be interesting to see if using that money, that Native women's programs develop those initiatives and on their own terms. I'm pretty excited about the potential there, but again it's pretty premature to be able to assess exactly what's going to work and what isn't. [There's a real lack of standard data on what tribal policies exist and that creates a huge problem.] I'm sort of starting from scratch... I had a student, maybe last summer or the summer before, basically go through about fifty tribal codes and analyze them for prostitution and trafficking. We found very little to be happy about, if I remember right.

As far as services and programs are concerned, I'm really not aware of anything in the state of Oregon that's just specifically directed to victims of trafficking, like particularly Native victims of trafficking. A lot of service providers, I think a lot of Native service providers will share their services and basically take anyone [if they are helping] a victim of human trafficking. But I think that was probably one thing that was lacking, or probably one thing that is needed, I guess, is more services specifically for survivors of trafficking regardless of whether they're Native or non-Native, especially in the state of Oregon. I guess another problem that we encountered is that Native service providers really have a desire, and I think feeling that more culturally... appropriate... services. So maybe doing a sweat or a smudge or other kinds of Native healing methods really often aren't covered. They really can't cover them under their state and federal grant funding. So those are things...people who work there end up paying for a lot of things out of their own pocket. And it's something that they can't afford...to provide the services on as specific a scale as needed. But I do think that in terms of Native American survivors, [that] more of that is needed. I think foster care is major. I think the child welfare system and foster care is a major issue and contributing factor in kids getting sucked into human trafficking or getting sucked into prostitution. There are a couple of tribes in the state,...that are revamping their own child and family services programs. They're trying to be more holistic and keep kids from going into state care, to keep them closer and hopefully prevent some of those problems. I think if more tribes

would implement those methods maybe that would help the underlying problem.

[W]e have an initiative funded by the Robert Wood Johnson Foundation called the Tribal Public Health Law effort. It's essentially a database...to collect information around [Indian Country] on different public health initiatives... What we're trying to do is really develop a model of tribes sharing effective policy and codes and approaches in public health with each other through this database. And then our work is to try to pull out and feature some of those successful efforts... We have a few related to public safety, none that we've really looked around [sex trafficking] just yet. ... I'm hoping [we will see] codes and policies related to trafficking [and] can share some of that information. But a big part of what we're finding is that a lot of the public health law is about vetting out exactly those issues of jurisdiction and thinking about [coordination] across areas, when there's not really a tradition of doing that with state or federal agencies, or the infrastructure to do so. So that's one example. And another...is looking at data quality and data infrastructure. One of the challenges has been about building effective data infrastructure at the tribal level. This came up most recently in a conversation about NCIC, National Criminal Information Center. It's a large database maintained primarily here in D.C., and there's essentially, and this is ...tribes... asked to report into databases like NCIC (and this relates to VAWA, Tribal Law and Order Act, these different pieces) criminal activity. However, when we pushed and said, "Well, that's a little bit

like surveillance..." unless there is a reciprocal set of access points that are provided to tribes to be able to access data in the NCIC that are contributing and that they have to contribute to, to find out about criminal activity that may be moving into their region. Tribes a lot of times are off the grid, are seen as hideouts for criminals because of these jurisdictional and infrastructure issues. That's a big conversation we've been trying to push in different ways and in different arenas, whether it be labor force data, whether it be TANF data, whether it be some of this criminal information. And, you know, the feds will say, "Well, tribes don't have the data infrastructure to maintain the security and confidentiality of that data. So that's why we don't provide it to them." Well, we don't think that's good enough. We really are trying to figure out how to support tribes in engaging with data that they need to protect their communities, for planning in communities. But to also foster this community to community collaboration, coordination because I think this is a different way that we can look at the movement of bodies, right? I mean, it's movement of predators[\'s data], and how information on them, using in the mapping I talked about, [can be used]. And some of the community to community work can be developed and to prevent against [predator or data] movement that is very damaging and dangerous.

The following comments are representative of what service provider interviewees saw happening.

I'm working on a curriculum right now [with] Sex Trafficking Survivors United. I don't mind being outed. There are more than a hundred and twenty of us in the US and Canada who were trafficked and who are out and healing and have been for many years. That's my primary support group. Some have their own organizations, some are writers, some are PhDs like me, and some are social workers, counselors. But they're people who have put their lives into making a difference. And they're not always visible, they're not always public... The Minneapolis American Indian Center, which is really the core organization in the Twin Cities, hosted a youth speaking event and Minnesota Indian Women's Resource Center, Migizi Communications, Division of Indian Work, and Minnesota Indian Women's Sexual Assault Coalition all collaborated to invite vulnerable girls to speak to the community [in June 2013] about their need that the community protect their safety. It wasn't trafficking specific, but it was [about the girls getting to say], "We need you to protect us." [This first group step in that direction [was well attended]. ...That is the beginning of community mobilization. This is the reason that I'm working on the curriculum...to offer training to the tribes. They're getting law enforcement training, they're getting FBI training, but they're not getting training on, "How do we support our kids? What is a trauma-centered, culturally based approach to working with victims?"

[I have seen some people in Native policy, like Native policymakers or tribal councils, acknowledging the need to help more than Native girls, but moms and aunties and elder women who have been subjected to

this kind of violence as well.] It really depends on reservation community to reservation community. Some of them are very progressive. The Minnesota Chipewa tribe, which is a collaboration of most of the Anishinaabe tribes in Minnesota, made a support statement for the Garden of Truth report to be done. So there are some progress because of people speaking up and talking about trafficking happening in casinos. [Other] are like, "You need to prove it before you say anything." And there are some that are like, "Nope. That doesn't happen here. That doesn't happen to our own women." So there's a huge gamut of [the level and type of] support from tribal leaders. It just really depends on the community. We're working on education, but it has to be done tenderly in each community based on where they are right now.

Considering a previous interviewees' comments about the difference in language about sex trafficking survivors compared to domestic violence (or other violence) victims, the following intervention, described by a service provider and advocate, is particularly poignant.

[Here we're really leaning on] each other for support and education, and then supporting each other for events where we talk about trafficking. Here in Duluth, we had a vigil. And there's this project called the Solidarity Shawl Project, for survivors of domestic and sexual violence. They're shawls that have the red blank, and then the fringe is purple and teal, for the mainstream colors for sexual violence and domestic violence. And we first started with the shawls, it was for

domestic violence survivors and sexual violence survivors. And we'd go to pow wows and we'd do the shawls dance and honoring. But now, through conversation we also need to say this is for survivors of being trafficked. So then we have the pow wow and we say that during the pow wow, because we're big pow wow people out here, and have those people be acknowledged. What's happening, because the criminal justice response is so poor and so behind of what's needed, Indian women are taking the reins and being visible about it. So that women in our community statistically we know there's at least a handful at every event that have engaged in some form of sexual exploitation, that if we can be visible about it and let them know, 'We're here and we don't think you're bad, we don't think you're dirty, we're here to support you.' To start making that grassroots difference and how we can become a safe enough...have a safe enough option for those survivors to be able to come forward and to talk about their experience on the policy and statewide level.

The seemingly small gesture of including sex trafficking survivors in the Shawl Dance honoring had many potential ripple effects. This action communicated to trafficking survivors that the dancers stood in solidarity with them. It communicated to the community that sex trafficking survivors were included, and welcomed. It was an opportunity to educate thousands of Native peoples, including law enforcement and policy makers, as well as others likely attending from throughout the region of the pow wow location. As many pow wows often have recorded segments posted on YouTube, there was an added opportunity to speak the same information across time and

space after the fact. It was also a subtle warning to any potential traffickers in the crowd that the community was on the lookout for them and that this community was in a better position to respond to any threats. All of that was possible and immediate without federal legislation, debate or vote. Why was that important? Consider the previous discussion with some of the policy making interviewees about the long timeline involved in legal change.

Eighty-eight percent of interviewees linked Native self-determination to the targeted sex trafficking of Native peoples—from the impacts of past US policy, to responses of various governing entities, to the lack of knowledge about trafficking in community. It seems only reasonable that they might also have opinions about how tribes might engage their sovereignty—in this case code building—in support of creating safety and ensuring protection for their citizenry. One legal scholar spoke for a number of interviewees:

I think it's a little premature to know (if efforts like VAWA have worked) for sure. I try to think of, like, my perfect world, where this discussion would happen and I definitely would like to see more discussion about missing and runaway girls. If we start that conversation and start identifying who's missing from this community, who has left here and hasn't come back and we don't have contact information for her. And who are our runaways, and where do they go?

At the same time, interviewees offered suggestions for what they would like to see from or produce with non-tribal entities as well. The idea here seems to be a continuation of the push for cooperative solutions. Those detailed below are described by law enforcement, legal scholar and lawyer.

Another issue for tribes that are not on federal reservations would be to have a greater cooperation with local police with the tribal government, so the police understand the culture that they're dealing with, that they take the admonition from the tribal leadership seriously. That they understand how tribes may sometimes intervene in the process so that the non-tribal authorities can view that as a great assistance, can see that as a great benefit. Personally, I think when tribes address [it] often times they address it much better than non-tribal authority.

[During the time of the Mann Act, which was in many ways the precursor of current anti-trafficking laws,] when there were reservation borders crossed, it was more likely that the tribal community got the federal people involved and then the trafficker handed back over to them (tribal authority).

...the Inter-Tribal Council of California obviously [has] concern the director of the Office of Native American Affairs within the California DOJ was also very concerned about the issues. Not only about trafficking itself, but also ...around the level of jurisdictional confusion [that exists] for California patrol officers and sheriffs... I would like very much to work with not only the California tribal law enforcement agencies, but to get tribal agencies all over the country to, 1) do an assessment—which is part of what you're doing and is great, to get a baseline assessment of their knowledge of an issue. Hopefully that would lead the groundwork to how to design effective training,

which...would have to be kind of regionalized because different parts of the country are so different from others [in terms of what sex trafficking might look like], especially when you're teaching or training patrol officers what to look for. You know, I'm not going to train a patrol officer in Phoenix, AZ to wait for the fishing boats to come in. But first you have to do that baseline assessment of their substantive knowledge of not only the jurisdictional issues, but also the substantive matter of the crime itself of trafficking, what it is, what it's not, and what is needed to apply kind of a victim-centered approach to the crime and what is needed on that end as well.

A number of interviewees raised the question of tribal code and its use to address sex trafficking of Native peoples. One legal scholar discussed it succinctly.

[Because of the way Indian federal law and] federal, state and tribal jurisdiction works, if both the victim and the perpetrator were both Native and all the criminal acts occurred only on Native grounds, only tribal law would apply. Federal law would not apply at all. And so if that tribe did not have a localized statute, there's no crime committed... So one of the things, and this isn't even attached to TLOA, one of the things would be for tribes to have code to address that. That gets complicated because with a fair number of advocates saying that the crime of trafficking is usually perpetrated by non-Natives and sometimes specifically saying African Americans, that complicates it so that it can give the message to tribal authorities that

there's no need to create a code because it wouldn't apply anyway... federal or state law would apply depending on the state you're in [due to Public Law 280].

As a group, interviewees also had ideas about what they would like to see tribes consider when they think about creating their own codes specific to sex trafficking. The following excerpts are from conversations with lawyers, law enforcement, legal scholars and service providers interviewed.

I think it's always good to have codes to address a situation. But I would argue for codes to revisit ... basic sexual assault statutes because I think the sex trafficking is a smaller piece of the pie than what we typically think of hands-on contact penetration offenses. And this is...you know, I think if it's a state law, a federal law, or a tribal code, it means bumpkis unless there's training put in place so officers know about. And if you're going to something that's a very discreet area like sex trafficking, those first responders need to know the questions to ask. We've had, obviously, a lot of women arrested as prostitutes because law enforcement didn't look any farther than just [one observed instance]...I can think of one case that I worked on. I had a hard time getting the law enforcement person... to recognize that there may be more to the case, and you can't just look at someone as prostituted individually, you have to look at the reason, the economics, who's the john, who's the pimp, that there could be much more to the story. So, I think if there are codes, that may be a very good thing, but without the training, the follow through, changing the

paradigm so that people look beyond just the woman as prostitute issue, those may be both ineffective and meaningless.

...[P]art of addressing the [survivor] needs ... is addressing the needs of the [perpetrator] who's also been wounded and have a reconciliation between them, which is I think very difficult for many people to understand. [I]t's more healing to do it, it's more holistic, but it takes more work. There are...there's a big effort to do that because it...just punishing the [perpetrator] doesn't prevent future problems.

[T]his is going to take an entire mind shift from your police officers who are out there to enforce the laws, to the policy makers who are impacting how laws are written to understand what trafficking actually is, how it shows itself, and also how you go about enforcing these laws and not continually re-victimizing victims, and trying to find out who the real perpetrators are that should be punished...How do we define what trafficking is? There's the legal definition, yeah, but what does that mean for a police officer who's out there trying to do it... People have talked about people crossing the states. I am actually waiting to have someone talk about the crossing of tribal borders. I think that there are some potential legal ramifications, if tribes want to put – to work on that, where if someone does traffic someone off of the reservation, they are taking – especially a minor, I would like to see some kind of penalty for that. I have not – I've had a lot of casual conversations with people, but I have never ever actually seen a policy maker talk about it or seen anyone discuss it. So I think it's something

I have thought about several times, but I've never seen it go anywhere [from a casual] conversation.

The tribal courts here are not exercising criminal [authority], the criminal jurisdiction aspect of sexual assault. Most states do not have tribal codes for sex trafficking. A few years ago, about five to seven years ago, this woman called doing a telephone survey. She was asking questions about um; sex trafficking, and she said “Is sex trafficking an issue on your reservation?” And I said “Yes it is”. “What do you think about the fact that your tribal domestic violence and sexual assault programs there have no [impact on] sex trafficking on your reservation?” There is an issue of sex trafficking on this reservation. The problem is to identify it. So, I think the biggest issue is raising consciousness and education about sex trafficking—in the community. Health services, community services, country hospitals are [all] saying they don't fit that sex trafficking category in cities and international [areas], that it doesn't happen here. I can go and do [prove] that [it] absolutely [does]. A level of dedication [to seeing it] is desperately needed.

[Focus attention on] really looking at what makes these men think it's okay to buy and sell a human being for the purpose of sex. That kind of shifting consciousness is what I think really needs to happen instead of looking at what's wrong with these women, because largely, too people think...they get this [stereotypical] idea of mainstream sexual exploitation, so they think of like this woman from Bulgaria being

shipped over here, chained to a bed. They find her, she's scared and crying, and they save her. When...and that does happen, and that is horrific. But to really look at the reality especially of Native women being trafficked, these women have survived, so they are women with a lot of bravado that use dissociation, saying things like, "Well, you know at least I get paid for it. I don't give it away for free." So it can be hard for people to look at her as a survivor, someone that needs programs and assistance because she is not the scared woman crying in a corner. These are some of the strongest women I have ever met in my life, to live through this kind of stuff. So if we refocus and put the onus on the person who is purchasing women and the people who are selling women, instead of putting the onus on her and what has damaged and happened to her, I think is really important. I think it would be to provide monetary to programs that are on the ground working with the women surviving, because that's they're first line of defense right there... This is such a hot topic right now, that research it's everywhere, but let's have Native people research Native people because the authenticity of that research is always better when it comes to really looking at what is happening in Native communities. We need more of that data. We need to know what the best practices in Indian Country are. Right now everyone is just kind of blaming and trying to figure it out the best they can with some kind of coordinated way that's working for Native survivors.

There's a huge difference between the tribal governments that are on the BIA's list of federally acknowledged tribes...can conduct affairs on

their reservations [and how it's done by tribes] that are not [federally recognized] and may not have state reservations where the boundaries are respected by non-tribal government officials. Most of the tribes that make up our organization are not, non- Federal tribes, they are tribes that are not on the BIA list. Several of them have received federal services. Some have reservations that go back to the colonial era. Some have had reservations that were subsequently disbanded. So their ability to exert police authority tends to not be anything that would be backed by the federal or state governments but it tends to be very traditional. The community polices itself in the way it always had. There's a sense of interconnectedness of the families and if someone is acting out and it becomes known, often the response or the action of the people of a community addresses that situation. I have been privy to some issues where there was domestic violence and tribal councils got involved, either officially or in a non-official ways speaking to certain family groups questioning what was going to be done. So if something becomes known, there has to be, in my experience in discussing not only my own people but with tribal leaders up and down the coast, some sort of a traditional response to that. Some things just aren't tolerated. Well I now that one of the things is increasing an awareness of what it means to be responsible to one another and increase a sense of respect for traditional gender roles. To not be afraid to act in traditional ways when someone's rights have been violated. Which sometimes could put you at odds with local authority, but I think there's a much better job within a tribal community to be able to

do that. Also, to educate the general public to increase the sensitivity for the humanity and dignity of American Indians. [There is also] the need for people within tribal authority to shake off, so the speak, the fear of enacting traditionally based responses. It may not be exactly the same, but steeped in traditional response. So part of what might be helpful is sort of that willingness for outside communities to shake off this fear of what that traditionally based response might be.

I would suggest [that] tribes to look for... statutes that are already out there and available, especially in other tribal communities. If there are [appropriate] statutes already existing with other tribal communities that are working out well, then maybe other tribes can [borrow] it as a template. As far as sex or human trafficking, it really is a hard question to answer with regards to the tribes. I don't think that they (tribes) would want to include asportation [the felonious removal/movement of goods from the place where they were left] or kidnapping [forms of movement] ... in terms of defining trafficking, because tribes are obviously completely... [to their own Indian reservations] restricted jurisdictionally in terms of prosecution. Tribes and Indian reservations have more specific or unique concerns because...there's no jurisdiction to prosecute non-Indian traffickers and non-Indians seem to be doing the most trafficking in the cases that I've encountered and [according to the] people that I've talked to. [Further,] each tribal community is slightly different—in terms of what kind of jurisdictional authority they have; whether they even have tribal police or a criminal justice system; the problem {trafficking} itself and how

each community views it even vary slightly—so there is no clear cut cookie-cutter way of answering the question. There’s no short answer. That being said, the best suggestion I can come up with in terms of speaking to individual communities is that each should be encouraged to look for a solution that speaks to them specifically. Communities probably have to look for and assess the problem internally, i.e., how and to what extent it exists, and determine what might need to be changed policy-wise and allocated in terms of resources, not just within the justice system but in social and family services as well. There are a few statutory examples out there for human trafficking statutes, but ... very few, so unfortunately what’s available may not work for everyone. Tribes should even be careful if considering modeling their own tribal codes directly from state or federal laws, depending on what their individual needs and interests are.

I tend to look at the United Nations' Palermo Protocol as the gold standard in terms of what [sex trafficking] means because I think [their definition] includes abusing a position of power or authority or implication favors or favoritism. It's a bit broader than our federal law gives us in terms of what the ‘something of value’ needs to be.

All that said, the interviewees indicated the following challenges implementing both Native specific services and the changes they would like to see should there be additional tribal code developed.

- Limited program resources across categories—tribal, state, local and federal—from law enforcement to services.

- The tension between constant portrayals of Native communities as weak, vulnerable and dependent versus the “veil of invisibility” which can, in multiple ways, support crimes such as sex trafficking.
- The challenges of having to build code and related legislation from nothing on limited time and with limited resources.
- Limited knowledge on the subject/old assumptions about sex trafficking from members of tribal policy making community as well as the broader tribal community itself.
- Racism and sexism from outside tribal communities as well as internalized racism and sexism
 - This includes lack of inclusion of boys and men in consideration of victimization via sex trafficking.
- Misconceptions about the vulnerability of rural versus urban settings.
- Federal and, in some cases like Alaska, state challenges to the practical exercise of Native sovereignty and Native self-determination.
- The legacies of historical treatment of Native communities, including the impact on non-Native perception of Native peoples’ human rights.
- Focus on a western, individualistic, neoliberal set of solutions rather than a more Native, communal, interdependent set of approaches flexible enough to be altered to apply in numerous types of Native communities and not reliant on strict standardization.
 - Consider what happens at a “community and kind of regional, systemic level”

- Inability to find the fit between the idea that all sex trafficking survivors are alike since they share similar experiences of surviving and the idea that their many specific experiences (as Native survivors as opposed to African American or Latina survivors, as prostituted to johns as opposed to coerced to dance or participate in pornography, etc.)
- Lack of sustainable funding for programs and shelters near communities of origin so that survivors need not feel so alone or disconnected from home.
- Disconnect, on a wide system scale, between law enforcement, activists/advocates, service providers and survivors such that there is little education about what we know already.
- Streamlined criminal jurisdiction which respects Native self-determination and sovereignty.

Section Summary

In terms of voice, again, every interviewee made mention of the need to know more and commit more effort to getting to know the situation specifically as it operates in Indian Country. Interviewees were consistent in concerns about securing financial support for programs and data gathering for Indian Country that did not come with colonial attachments in law and land. All were also generally supportive of building more tribal code in some

capacity to address the issues specifically from an Indian Country perspective.

According to the interview data, the policy environment that influences Indian Country perceives the issues around the contemporary targeted sex trafficking of Native peoples relative to this area of discussion in the following ways. The reality in Indian Country is that

- The lack of data on sex trafficking generally and its presence in Indian Country specifically is both problematic and revealing.
- Sole reliance on Western approaches to this issue create additional divisions which further remove tribal peoples from ready solutions.
- There is a sense that what will work to address this in Indian Country is collaborative, cooperative and creative interventions that rely heavily on the insights of service providers and actively involved Native communities.
- This cooperation needs to happen externally (across agencies, professions, geography) as well as internally (on multiple levels and across specialties or ranks within). This is perceived as a part of Native nations' historical traditional social controls and diplomacy.
- Some are still unimpressed with governmental responses, at all levels, to sex trafficking of Native peoples even though these people remain hopeful about what the trends mean. This is especially true around interventions.

Findings Summary—Area III: Interventions & Solution Creation

There are several thriving interventions already in place in Indian Country. These include attempts to use the existing law creatively, create new ordinances and trainings specific to Indian Country experiences of the problem and service programs that are innovative as well as culturally specific. The sense is that there needs to be a holistic, integrated approach to work with trafficking survivors regardless of cultural identity for effective treatment and support. Additionally, it seems that interventions that are culturally appropriate for Native survivors speak to an integration for the entire community as well. Some of these interventions are as complicated as a multi-jurisdictional team to address issues and some are as straightforward as adding in “sex trafficking survivor” to the list of type of women honored in a pow wow dance. Either way, the interventions need to be multi-prong, widely supported (financially as well as conceptually) and long-term/patient to see response. Additionally, this is not the kind of issue where “one size fits all.” Intervention architects need to allow room for each tribal entity that might engage a process to put their own, unique perspectives into the foundation of the intervention for widespread success.

XVII. Findings—Conclusion

This study used a mixed method design of publically available secondary data, interviews and surveys to access the policy environment perception of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country—the research question and focus. The data findings presented here indicate the following:

- There is a general sense within the policy environment impacting Indian Country, defined broadly, that contemporary targeted sex trafficking of Native peoples exists.
- The problem of targeted contemporary sex trafficking of Native peoples in Indian Country is widespread enough that it should be addressed with some expediency—but there are also some who indicate that the phenomenon is not widespread enough to create general urgency about solution-making.
- The definition of sex trafficking found in the law does not coincide with the policy environment’s way of talking about sex trafficking of Native peoples in Indian Country nor does it coincide with the perceptions of Indian Country realities around the sex trafficking of Native peoples.
- Federal, local and tribal attitudes and responses are not perceived as adequate to address the Indian Country needs around the targeted sex trafficking of native peoples. The perception is that the local and tribal experiences of sex trafficking of Native peoples carry more influence than these responses.
- Those operating in the policy environment influencing Indian Country indicate a perception that there are limited (too few) interventions in place in Indian Country which respond to the contemporary targeted sex trafficking of Native peoples. Those interventions that are perceived as helpful involve collaborative cooperation through multiple levels and across broad areas of service.

What do all of these findings mean for Native communities subject to this targeting and what does it mean about the system within which they are working? The next chapter synthesizes all of the findings presented in this chapter and looks at them through three analytic lenses— Community Vulnerability, Legal and Community Building/Support. Background information on these analytics and the theoretical framework are presented in Chapter Two, “Piecing Together What the Literature Tells Us.” Conclusions and suggested ideas to consider next are found in Chapter Six.

Chapter Five

Perceiving What Could Be: A Multi-Tiered Analytical View of Sex Trafficking in Indian Country

The previous chapter outlined important discoveries of the study. This chapter uses the same general topic areas to discuss what those findings mean in a broader way while providing three types of analysis. Unlike the summary discussion of the chapter on study findings, this chapter moves from the perceived realities around the contemporary targeted sex trafficking of Native peoples in Indian Country to discuss what those perceptions indicate about what could be. Those topic areas create the framework for this discussion, and are:

Area I: Definitions

What is sex trafficking? How is it understood and what does it look like in Indian Country?

Area II: Attitudes & Responses

What are the responses from federal, local and tribal entities?
What influences them?

Area III: Interventions & Creating Solutions

What interventions are already in place in Indian Country?
What's working, and not, in addressing this issue in Indian Country?

Within each of these areas, the study findings are considered through one of the lenses of analysis. As an overview, those lenses³⁰⁷ are

Community Vulnerability

The purpose of this analysis is to examine the socio-cultural and structural elements which might create certain conditions, if any, such that a particular type of community—in this case, Native American—might find itself vulnerable to threats such as sex trafficking. In the course of this discussion, this study relies on a blended tribal feminist socio-political analysis based on a modified Integrated, Ecological Model, an Indigenized view of Settler Colonial Biopolitics, Historical Grief/Trauma & Lateral Violence Theory, and a modified Safety/Danger Zone Theory.

Legal Analysis

The purpose of this analysis framework is to review the potential application of United States anti-sex trafficking laws in Indian Country, considering the legal and social conditions dictated by the country's criminal jurisdiction scheme as well as the experiences uncovered in this study. This discussion of anti-sex trafficking legislation's effectiveness in Indian Country relies on Tribal Critical Race and Feminist Critical Race theories blended into a Tribal Feminist Critical Race legal analysis. This is a theoretical review of relevant, broad issues within Federal Indian Law, which places anti-sex trafficking laws' effectiveness in Indian Country into context.

³⁰⁷ Please see Chapter Two, "Piecing Together What the Literature Tells Us: A Review," for a fuller discussion of each of these analysis frameworks and their application in this study.

Community Building/Support

The purpose of this analysis framework is to consider the role, if any, of the systems which support, contemporary Native continuity in solution making. Overall, this discussion considers elements which create opportunities for strengthening and community building in Indian Country and Native communities—including consideration of the cultural elements which support Native oriented solutions and approaches to address Native community vulnerabilities. For this, the study applies Native Nation (re)Building modified for a social service context and the construct of Community Cultural Wealth to a sociological understanding of the law around trafficking of Native peoples.

XVIII. Discussion—Area I: Definitions

This area concerns questions about the ways in which sex trafficking is understood in Indian Country and by those who influence Indian Country policy (and, to an extent, community understanding) around sex trafficking. In strict policy terms, this includes what anti-trafficking laws might entail as well as the activities wherein trafficking law might apply. In broader law enforcement and community terms, this includes common scenarios, perceptions about what type of community member is more likely vulnerable and “Danger Zones”—sites where and means by which recruitment happens.

Overall, the triangulated data indicated that the federal definition is both flexible and confusing in its three main areas:

- **Movement** (the “recruitment, harboring, transportation, provision, or obtaining of a person...”)
- For the purpose of **sexual exploitation (or trafficking activities)** involving the exchange of goods (“a commercial sex act [or subsection to involuntary sexual servitude, peonage, debt bondage, or slavery]³⁰⁸”)
- Which happens **against the person’s will** (“induced by force, fraud, or coercion, or in which the person forced to perform such an act is younger than age 18”).

While there is much more specificity and clarity in the law’s exception for minors, the advent of different state laws with various age limits offering minors stopped for prostitution “safe harbor” complicates even that modicum of clarity. And, in Native communities where there is no code addressing the issue, the cloudy definition stands when tribal code is relied upon for prosecution.³⁰⁹ These issues are underscored by two very important factors. The first important factor being a lack of understanding about what qualifies as trafficking across governance and law enforcement entities, communities and professions which may have reason to come into contact with a trafficking survivor, victim or perpetrator. This lack of understanding

³⁰⁸ “A commercial sex act is any sex act on account of which anything of value is given to or received by any person...Types of sex trafficking include prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism” (8 U.S.C. § 1101).

³⁰⁹ As discussed earlier in this text, the Assimilative Crimes Act (ACA) is a United States statute allowing federal adoption of state criminal laws for prosecutorial purposes in areas of exclusive or concurrent federal jurisdiction if the crime is not currently punishable under federal law. In these instances, state law acts as a sort of proxy for federal law through its incorporation of state law applied to the offense. This use of local laws as a “gap-fillers” for federal criminal law also applied to tribal code where applicable and in instances where there is not sufficient state law as well as federal law.

inevitably feeds into the second important factor—misinformation to no information on who is being trafficked in, through or from Indian Country.

As mentioned in the findings, this lack of information has been noticed among providers of service to Native survivors, legal scholars and community—but some law enforcement, policy makers and Native service agency representatives are still unsure. This is likely attributed to language, in a multitude of ways. There is the lack of legal clarity about movement, trafficking activities and force/coercion. Then there is the language of the community concerned; cultural/community language vagueness can be the result of any number of factors. A community may be struggling with a particular, traditional and cultural impetus to avoid conversation about incidents that represent evil, such as one survey respondent's suggestion that socially, "It is shameful to bring up bad events...we don't talk about them. Talking about them brings it back." A community may have internalized shame/trauma about past, federally encouraged sexual violence, such as sexual violence experienced in forced relocations, as a part of massacres, during boarding schools, in altercations in neighboring border towns, etc. A community may also be reluctant to give voice to discussing sex in this way as resistance to the hypersexualized, misogynistic equating of Native women with the "Wild Sexy Savage" in existence to "be conquered." Thus, sex trafficking in Indian Country is generally understood by other, sometimes nebulous names. The most commonly used names are prostitution, "trading sex" or some other euphemism for "gone, taken advantage of and not likely to return." In the end, a community (or collection of communities) without adequate language to talk about an injustice they experience with the

systems that are tasked to ensure their safety and protection has considerably fewer tools to use in addressing that injustice.

Additionally, the reality of sex trafficking in Indian Country, as described by participants and in the analyzed data, is that Native women and girls are seen as the primary victims while Native boys and lesbian, gay, bisexual, transsexual, Two Spirit and genderqueer people have particular vulnerabilities as well. While some study participants indicate that this violence claims more than women and girls, their discussion appears more theoretical than not—there is little in their regular conversation on the subject to attest to the survivorship of other genders or sexual identities beyond recognition that they might be victimized, too. Based on the amount of hesitancy in interview conversations, it might be that sexual victimization is thought of as particularly gendered.

Conceptually, the activities associated with sex trafficking are described broadly, based on the idea that “all [sexual activity] is trafficking if any of it is forced or against someone’s will.” That said, when discussed in concrete terms, the primary sex trafficking activities are often fused into prostitution, i.e. trafficking is thought of as prostitution and/or other activities described as a means to prostitution. Other activities are not regularly or concretely discussed as trafficking activity in and of itself. It would be easy to interpret this as proof that the sex trafficking of Native people only manifests as prostitution, but both the surveys and interviews include descriptions of other scenarios involving nude dancing/stripping and other similar activities to a certain degree. This is also true of a number of

accounts published in non-academic press, such as Indian Country Today News Media.³¹⁰ These other activities are discussed with at least the caveat that they lead to or provide a means for prostitution without acknowledgement that this may be the extent of the coercive sexual activity in question.

Based on this study's findings discussed in the previous chapter, some of the scenarios expressed often include trade for drugs, favors and/or basic survival (such as for rent, medicine, food or shelter) more than exchange of money and that these scenarios happen in both rural and urban settings. There is a sense that there is voluntary as well as involuntary migration involved, i.e. respectively, rural youth come to the city setting on their own and then get ensnared, while some are transported to the location for trafficking or refused transportation away from the location.

Despite the prominent role of non-Native gangs operating as traffickers in the scenarios described in the two foremost prevalent reports, this study found that gang involvement—specifically African American and/or Latino gang involvement—may be a regional experience and otherwise slightly over-represented in the discussion. In the previously published studies completed outside of Minnesota, survey respondents and interviewees all indicated several different types of prevalent traffickers, including

³¹⁰ For two examples, see Mary Annette Pember. "Native Girls Are Being Exploited and Destroyed at an Alarming Rate," *Indian Country Today*, May 16, 2012. <http://indiancountrytodaymedianetwork.com/2012/05/16/native-girls-are-being-exploited-and-destroyed-alarming-rate-113249>. Accessed Sep. 4th, 2013 and Mary Annette Pember. "That Beautiful Oglala Lakota Girl in the LIVE GIRLS! Booth," *Indian Country Today*, May 17. <http://indiancountrytodaymedianetwork.com/2012/05/17/beautiful-ogla-la-lakota-girl-live-girls-booth-113246>. Accessed Sep. 4th, 2013.

survivor family members and friends as well as Native gangs and nefarious individuals who are not gang affiliated but part of a loosely organized smaller network of traffickers. Further, there is some indication that the type of trafficker is likely highly influenced by the region in which the trafficking occurs. While diffusing the profile of the type of person law enforcement should look for complicates intervention, diffusion also supports service providers and community educators in providing more accurate information for the communities they serve.

All of this indicates that the perception of the prevalence of targeted contemporary sex trafficking of Native peoples is dependent on one's role in the environment that influences policy. This is likely because those working in diverse regions of Indian Country "see" sex trafficking in a myriad of forms. Those who work directly in survivor and service communities indicate—through their detailed responses about the definition of trafficking, scenarios, those likely at risk and those who are likely perpetrators—that this type of sex trafficking exists and is flourishing in Indian Country. This is complicated by the fact that there is little standardized data collected on the phenomenon in this community. It is also complicated by the lack of a standardized understanding of the elements of the federal law and its applicability. And this is likely even more complicated by the advent of individual state laws which are only somewhat similar in accordance with cloudy federal law. That is evidenced by the little-to-no recognition of sex trafficking in Indian Country indicated by those in law enforcement, tribal service provision and federal policy making. In every case, the reasoning behind such an indication was shrouded in discussion about the lack of

ability to link witnessed situations to each part of the federal or state law consistently “enough to convince the prosecutor...” Another interviewee (a lawyer) also noted that, in order to get the conviction to “put the bad guy away,” some lawyers might need to “use the law that they know works [in the court they are operating within] on the [trafficking] case...which makes the case no less [about] trafficking even though it is not labeled that way.” And even though law enforcement, tribal service provision and federal policy making study participants were hesitant to indicate that sex trafficking might exist in their communities, there were even more reluctant to say that it does not exist at all in their communities.

So, there is no one way that sex trafficking “looks” in Indian Country—by definition, victim/survivor or trafficker. Further, the perception of how widespread sex trafficking is depends on how narrowly the (federal) definition is understood and/or used. That said, even those using a narrow definition hesitantly indicate a sense that the conditions for such activity are likely present in their communities and acknowledge that there are some likely instances of which they are aware.

Community Vulnerability Created By Definitions

There is considerable discussion about the impact of poverty, homelessness and family disruption in the three reports that serve as the foundation of this study’s secondary data. Shattered Hearts, Garden of Truth and the Oregon report all provide excellent assessments of the presence of colonialist notions that encourage the social conditions which create the indicators of vulnerabilities mentioned above. The work of Farley and Smith

are excellent resources for understanding those connections generally. Heise and BraveHeart as well as Duran and Duran also give us ways of understanding the psychological impacts of systematic efforts to eradicate Native difference. Where this study adds to the literature and understanding is in a fuller analysis of the structural systems that influence all of those elements, according to a modified and adapted version of Heise's Nested Ecological Model. The analysis of this area of findings looks closely there.

Just as the root of sexual violence lies in an interactive, multilayered disjuncture between structural systems ranging from the personal to systematic Settler Colonialism, so seems the root of targeted sex trafficking of Native peoples. If the outermost layer, that of Macro-Level Violent Influence, can be thought of as the layer in which we see the impact of nation-states and the work of "statecrafting;" there is a notion that some people are systematically treated as people not worthy of rights or protection—i.e., the privileges of citizenship and, from an international legal perspective, the primary role of nation-states.³¹¹ Socially defining or marking certain peoples as consumable (through excruciating work and dehumanizing treatment), expendable (through reduction of rights and personal safety), and visibly treating them as such imprints the social psyche. This social marking has been a part of Native/European/United States relations for centuries, beginning with massacres initiated after the reading of papal bulls during the early stages of initial contact between peoples native to the Americas and

³¹¹ Professor Leslye Obiora, personal communication, November 18, 2011. Professor Obiora is a leading international law scholar whose work engages feminist jurisprudence.

explorer/conquerors sent on behalf of the crown and church, continuing beyond.³¹²

Deeply imbedded in the colonial mindset, the nonconsensual invasion of another's body is more than symbolic territorial control; it can be a specific systematic tool of colonization. Violent, often sadistic miscegenation was used as a war weapon and conquest strategy within many Native communities.³¹³ The colonialist mindset specific to the United States, determined to eradicate or assimilate Native peoples, is partially evidenced by the Calvary's and settlers' use of war rape, sexually violent forced migration experiences, and sexual abuse in early Indian boarding schools. Steeped in the classical imagery of the dark Savage Other (naked, hairy, dirty and thriving on Nature's wild abundance) used to define, establish, and maintain Western civilization, the "Sexy Savage" woman was portrayed as sexually free and inescapably seductive.³¹⁴ This image, imposed on Native American understandings of womanhood in a gender balanced world, replaced what was a "peculiar" embodiment to those accustomed to a Western hierarchically gendered society. The settler colonialist imposition distinguished proper embodiment from the peculiar gendered, racialized, sexualized embodiment read onto Native bodies. Simultaneously, the settler-state regulated "legitimate" modes of collectivity and occupancy—decidedly anti-tribal and thus, anti-Native—and defined colonial notions of Native sovereignty, built on the same ideas of exception and peculiarity and requiring Native

³¹² See Getches, et al, 2011, pg 44-54.

³¹³ Smith 2005

³¹⁴ Williams 2012 and Deer 2010, 626

dependency.³¹⁵ Both the hypersexualized image and “peculiar sovereign” dependency are an ever present colonialist mirage that has yet to disappear.

Thus, Native American peoples’ commodified and consumed bodies have been regular markers of land conquest and socioeconomic power. Native peoples are frequently caricatured, establishing specific derogatory stereotypes which remain consistent across geography, time and cultures—a sign that this commodification continues. The continuity of these imposed distortions suggests that imperialist beliefs are systemic rather than a deviation. Native American womanhood, an ethnic gender experience defined by westward land “conquest,” is equally precarious, outdated and much more than historical. Native womanhood is also a political category of experience that signifies the friction between Native cultural independence and an implied State limitlessness. These structural endeavors are created to separate United States’ citizens from non-human “savages.” And those endeavors define our sense of which bodies are available “for purchase” by “rightful” citizens while reifying the contours of citizenship, status, and belonging within a particular national ideal—or our national character and identity—which impacts laws *and* public perception.

In a historical and legal background such as this, the seeming lack of interest in collecting more data more quickly on this phenomenon makes sense. Interest in collecting data about crime and prevalence is generally necessary when the lives and well-being of “rightful” citizens exemplifying the national ideal are in danger. It is also, frequently, thought of as a charge

³¹⁵ Rifkin 2009

of the nation-state if one of its main purposes is to ensure safety. As one service provider and advocate pointed out, it is hard to ignore the stereotype of the sad, weak, helpless international victim or the blonde, blue-eyed girl ensnared in a sexual trap. And while those populations are vulnerable to this particular type of crime in their own ways, it is equally challenging to ignore that this is a role that the United States has imposed on Native peoples historically, sometimes intentionally. Looking at this study's findings through that lens suggests that this imposition considerably contributes to the lack of attention paid to the phenomenon of targeting Indian Country trafficking and, thus, its continued existence.

Colonialist Legal Circumstance has its impacts as well. Native governance structures are no longer understood as the determiners of what constitutes safety or protection. As outlined in the discussion about criminal justice in Indian Country³¹⁶ the United States political system has been engaged in creating Native psychological dependence for safety and protection since contact—from language, to religion, to law. Additionally, this layer amplifies the violence done unto a community by creating a need to always refer back to the understandings and guidelines of another, outside source without providing opportunities for real input in establishing those guidelines. So, in this instance, and as we see in tribal reliance on other non-tribal laws, the tribal code on sex trafficking—written by what equates to a microcosm of Native America—exactly mimics federal language to define what feels unsafe (sex trafficking) for their communities. Thus, for federally

³¹⁶ Please see the discussion “Criminal Jurisdiction in Indian Country” which begins on page 56 of this text.

recognized, state recognized and unrecognized Native America, there is considerable attention given to the United States' federal and state responses (or lack thereof). This essentially squanders one of the areas in which tribal code, through the potential use of the ACA, could encode and elevate tribal understandings of safety as well as broader understandings of the impacts of Settler Colonialism on Native America into United States federal law—and thereby set precedent. The argument here is that Native America might better benefit by focusing some legal attention on what safety and protection looks, feels and acts like within specific Native social constructs and how that has or has not shifted over time. One could argue that tribal code written in this way is a cooperative effort. It does, after all, better align legal realities for the stacking of offenses to defend the Native community that would use it. While that may be true, the small amount of Native code, minimal use of the federal law in Indian Country and generally nebulous understanding of how it applies tell a different story of continued, subtle colonization and a lack of assertion of Native self-determination or sovereignty. That is simply an insecure position from which to address an issue such as targeted trafficking. A more secure position might strive for both legal and cultural alignment.

As explained previously, this initial break labeled colonialism is experienced as a negative influence which ultimately impacts definitions of what is safe and what is Native identity,³¹⁷ and continually supports the

³¹⁷ For discussion of the white myth of “the Indian” as well as its impact on both perception and law, see Berkhofer, *White Man's Indian* (1978). For discussion on the origins of the classical Savage as a means to develop western civilization generally see Williams, *Savage Anxieties* (2012) as discussed previously.

systematic fissures found within the rest of the layers. For much of United States' history, Native American women have existed within the political economics of sex³¹⁸ including the legal reality of being little more than a commodified means to greater production or land conquest and a measure of relationship between men—specifically capitalists, land surveyors and consumers. This commodification of “peculiar” women’s sexuality emerged from social fear of sex and difference displaced onto Nativeness which has created a particular vulnerability to specific social circumstances that put Native peoples at risk. More importantly, this has created colonialist desires which have also made Native peoples acceptable targets.

This all connects to the challenge of the flexibility in the definition of what, specifically, constitutes sex trafficking. While in some regards this is helpful in allowing for various local understandings, it also allows those local understandings to dictate the larger meaning that is understood throughout the levels of law enforcement which, in turn, dictates how the law is used, thus increasing Community Vulnerability. In these regards, the elements that determine the look of targeted sex trafficking in Indian Country do maintain and, to a certain extent, increase the communal level of vulnerability.

Legal Analysis of Definitions

There are a number of ways in which the United States, and the governance entities within its borders, are legally obligated to address

³¹⁸ Rubin 2011.

human trafficking in general as a part of the international community. What follows is a brief explanation of the major understandings which outline those obligations. For more detail, please see the excerpted analysis of the Oregon report in Appendix D. The obligations regarding human trafficking that the United States holds in the international community are often discussed as the “three Ps”—protection, prevention and prosecution—and stem from the international treaty “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children” (“the Protocol”).³¹⁹ Signed by the United States, the legislative consideration of these treaty obligations is supported by the U.S. Constitution via the Supremacy Clause. This protocol defines trafficking as

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.³²⁰

³¹⁹ This is one of two main international documents/covenants. The second is the International Covenant on Civil and Political Rights (ICCPR), ratified in 1992. It does not address trafficking specifically, but is understood to prohibit activities such as trafficking thus addressing it indirectly. As with other sources, this study endeavored to look at documents that addressed sex trafficking specifically and directly—thus the ICCPR was not included in this analysis directly. For more detail on the ICCPR, see the Oregon report, pg.24.

³²⁰ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Dec. 13, 2000, 2237 U.N.T.S. 319. http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-trafficking_protocol.html (showing that the U.S. signed the Protocol on Dec. 13, 2000, and ratified it on Nov. 3, 2005). Accessed January 15, 2015. See article 3(a).

Exploitation is defined as “prostitution... or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”³²¹ Perhaps most importantly for adult survivors in the United States, consent is not taken into consideration.³²²

The protocol also outlines the legal obligations as charges to

- Prevent Trafficking by
 - educating the community and stakeholders,
 - strengthening cooperation among parties to the treaty, and
 - strengthening national borders³²³
- Punish Traffickers by
 - criminalizing
 - human trafficking,
 - attempts at trafficking,
 - being an accomplice, and
 - conspiring to traffic persons³²⁴
- Protect and Assist Trafficking Survivors by
 - protecting their privacy and identities,

³²¹ Ibid.

³²² Ibid, at article 3(b).

³²³ Ibid, at articles 9, 10 and 11, respectively.

³²⁴ Ibid, at articles 5(1) though 5(2)(c) respectively.

- providing them with information about relevant court proceedings,
- assisting with their welfare,
- assisting with their security, and
- creating legal mechanisms for compensation³²⁵

Another source of international obligation comes from the general, consistent practice accepted as law among countries³²⁶ (customary international law). Slavery prohibition is embedded in customary international law such that it is an unavoidable preemptory norm.³²⁷ As noted in the Oregon report,

[E]very [sovereign] state has illegalized institutionalized slavery and the slave trade and no [sovereign] state dares assert that it does not have an international legal obligation to outlaw slavery and the slave trade.³²⁸

And as activity often referred to as “contemporary slavery,” sex trafficking is a violation of customary international law.

I would agree with the analysis of the Oregon report—in many ways there are arguments that can be made that the obligation to meet the three Ps of anti-trafficking does not lie with Native nations. As originally extra-

³²⁵ Ibid, at articles 6(1), 6(2)(a), 6(3), 6(5) and 6(6) respectively.

³²⁶ Restatement (third) of the Foreign Relations Law of the US. 97 Id. at § 102 (2).

³²⁷ Ibid, at § 102, reporter note 6.

³²⁸ The Oregon report, 25 citing A. Jasmine Rassam, Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law, 39 VA. J. INT'L L. 303, 311 (1999).

constitutional governance entities, Native nations are not considered obligated to United States treaty agreements with other entities. And with the United States' history of abrogating their treaties with Native nations,³²⁹ it is easy to see how some Native nations may not have much faith in any United States treaty agreement regardless of the content. There is also the consideration that legal clamor for inclusion under the Constitution may weaken Native sovereignty claims—as Native nations' extra-constitutional status is often a primary argument for Native sovereignty.

The TVPA and VAWA aim to do similar work with these international protocols, just within United States federal guidelines—and primarily with a concern for interstate commerce. This focus on boundaries may work in theory and within Western constructs, but it is challenged in the reality of the legal situation. Both of the United States' international borders crisscross numerous tribal borders which are ignored by these laws. With approximately 1,160 (federally-, state-, and unrecognized)³³⁰ tribal entities in the United States, there are literally hundreds of sovereign borders crossed domestically with scant attention paid to the crossing. And, if a trafficker is smart enough to cross reservation borders without crossing state borders, in many instances, this is not technically illegal trafficking.³³¹ For the Native sex trafficking survivor, these situations could signify coerced servitude without any option for redress. For those trafficked from home, with such

³²⁹ *Lone Wolf v. Hitchcock* (1903) 187 U.S. 553 holding that Congress has plenary power to unilaterally abrogate treaty obligations between the U. S. and Native American tribes.

³³⁰ See footnote 290 for the origin of this calculation.

³³¹ At the very least, even with a prosecutorial structure allowing for eventual use of tribal code, there is not existing tribal code which would effectively and consistently prosecute sex trafficking in Indian Country according to the realities evidenced in these findings.

intense legal focus on movement of their bodies instead of the coercive control over their bodies, there is little redress within anti-trafficking law as well.

While in some ways the laws follow a definition lineage, there are notable differences. The international treaty language manages to be more specific in some ways (about force, fraud or coercion) while subtly supporting the idea of required movement and the prioritization of prostitution as the activity of primary concern. These differences between international Protocol and United States legal language indicates that there is some room for creating clarity if and as need be. Native code, meant to address sex trafficking in a particular area of Indian Country specifically, merely mimics the federal laws without even removing or replacing the detail that essentially either excludes or limits applicability to Indian Country realities. Native code does not create clarity on the Indian Country reality within the law. While federal law also mostly mimics the international law, it does manage to make the law benefit its own structure. Further, due to the focus of federal law on interstate boundaries, legally speaking all of the anti-trafficking laws to some extent still manage to look at the survivors as commoditized bodies—even after their removal from the trafficking situation.

This study's findings strongly indicate that the reality of sex trafficking in Indian Country looks very different than the understandings of the laws that are in place. Again, while the language allows for broad application, it may also allow for interpretation which ultimately excludes the types of exchange and/or activity at the heart of the law. Therefore, the scope of what the law can address becomes too specific and exclusionary in

practice. As the findings show, those specific applications simply do not match Indian Country reality of activities involved, the type of activity engaged, the type of force or coercion applied nor the movement involved.

Further, flattening sex trafficking into prostitution can reduce the law's applicability in other ways which may not serve Indian Country well. In an atmosphere of under-policing and lack of interest in the data from Indian Country, reducing the complexity of the activities that are considered trafficking may only serve to drive survivors underground, keep them silenced and further reduce potential data gathering on the phenomenon. Perhaps more challenging is that the few tribal codes that specifically address sex trafficking do not function to create their own consistent definition nor define the language of trafficking specific to those communities, remaining reliant on external definitions and realities. This leaves Native communities in a perpetual state of "catching up." Perhaps more importantly, this squanders a unique opportunity of defining the conversation beyond tribal borders and impacting international understanding by adding to a small pool of literature, as well as potentially encoding use of tribal understandings for federal prosecution. While it is admirable that some Native communities have begun building anti-trafficking code, it is worth noting that the current language of "trafficking" is not what communities in Indian Country use to describe it, nor does it require new thinking about which borders are important.

Based on Indian Country trafficking realities and perception about it, none of the current laws appear to work effectively in Indian Country—even

in the area of clarifying the crime. This is a particularly notable failure in effectiveness for United States federal, state and tribal law as this is often one of the basic benefits one expects from the legislative process. Some might say that tribal governance entities are conscripted by United States law and thus excuse this oversight. But, as the Oregon report notes

...the International Court of Justice (‘ICJ’)³³² acknowledges ‘that [sovereign] states³³³ are not the only subjects of international law,’ and defines international legal personality ‘as the capacity to possess rights and duties under international law and the capacity to bring international claims.’³³⁴ ...[T]ribes are bound by [common international law] under the ICJ’s criteria because they have rights and duties under the United Nations Declaration on the Rights of Indigenous People (‘UNDRIP’), such as the right to self-determination and the duty implicit in that right to respect human rights.³³⁵

³³² This court is the primary judicial branch of the United Nations, with the primary functions of settling submitted legal disputes sovereign states and providing advisory opinions on legal questions submitted by authorized international branches, agencies, and the UN General Assembly.

³³³ A sovereign state is a nonphysical juridical entity represented by one centralized government with sovereignty over a geographic area. International law recognizes sovereign states as having a permanent population, defined territory, one government, and the capacity to enter into relations with other sovereign states. See Malcom Nathan Shaw. 2003. *International Law*. New York; Cambridge, UK: Cambridge University Press, p. 178. While some may argue that the understanding that a state is neither dependent on nor subject to any other power nor state indicates that Native nations, defined as domestic dependent nations (*Cherokee Nation v. the State of Georgia*) may not qualify. In those instances, it is helpful to remember that 1) while it is challenging to engage in the full rights of sovereign states (treaty-making and diplomatic relations) without recognition from other sovereign states, said recognition is not required and 2) numerous Native nations have engaged treaty making with numerous other sovereign states, including the United States.

³³⁴ The Oregon report, 25 citing Clare Boronow, Note, Closing the Accountability Gap for Indian Tribes: Balancing the Right to Self Determination With the Right to a Remedy, 98 VA. L. REV. 1372, 1412 (2012), 1412-1413.

³³⁵ Ibid at 1413.

[Further,] UNDRIP ‘suggests that indigenous people may have a right to bring claims before international bodies when suitable domestic mechanisms are unavailable.’³³⁶ Thus, even though tribes are not ‘states,’³³⁷ they nonetheless are likely bound by [common international law’s peremptory] norm prohibiting human trafficking. This means that the United States, as well as the tribes, must do all they can to prevent human trafficking under customary international law.³³⁸

Thus it is even more disheartening to realize that there is so little anti-trafficking tribal code in Native America. Such code could not only offer very localized protection but serve Native America broadly by creating more accurate definitions and understandings of the Indian Country reality which would be federally applicable through the ACA. Remembering that the TVPA and most state law is not explicit about Indian Country except in very specific situations involving minors, this lack of code is particularly striking. In essence, while the laws as written are not necessarily responsive to or effective in the sex trafficking scenarios commonly found in and around Indian Country, there are legal options available to all levels/types of governance entities. They just need to be interested in using those options.

³³⁶ Ibid at 1414. The Oregon report notes at 134 that “Article 40 states that indigenous peoples “have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.” Declaration on the Rights of Indigenous People, G.A. Res. 61/295, U.N. GAOR, 61st Sess., Supp. No. 49, U.N. Doc. A/61/49, at 10 (Sept. 13, 2007).”

³³⁷ See note 17.

³³⁸ The Oregon report, 25-26.

Community Building/Support Around Definitions

While a challenging and terrible experience for survivors and communities impacted by it, sex trafficking in Indian Country also presents Native governance entities with a unique opportunity. Native governance entities are not, in a sense, formally or legally obligated to prohibit trafficking by treaty, common international law or any United States law—but that does not mean that they should not do so. Native nations that choose to address the issue directly can use this as an opportunity for relationship building across United States' borders, strengthening tribal infrastructure and creating more legitimate safety for their citizenry.

It is worthwhile to take a moment to provide clarity about the difference between Native sovereignty and Native self-determination. Many discuss Native sovereignty as the right and ability to make and enforce one's own laws.³³⁹ While this right can be honored or ignored and even legally diminished, Native sovereignty can be neither given nor taken away. Many American Indian Studies (AIS) scholars view discussion about Native sovereignty as a distraction. Imposed by European and colonial entities at contact, it is a Western concept with no meaning within many pre-contact/previous Native social governing structures. Additionally, for some Indigenous peoples, within and outside of United States borders, "sovereignty" is problematic because its use and history is so closely linked with Settler Colonialism. Although it has been "rearticulated to mean

³³⁹ For an in depth discussion of the legal aspects of Native sovereignty from contact to present, see Getches, et. al. (2011).

altogether different things by Indigenous peoples," for many the "horrible stench of colonialism"³⁴⁰ stubbornly remains with some noting that the concept is laden with the experience of an inter-sovereign, navigating colonizer rules.³⁴¹ Conversely, Native self-determination can be discussed as Native communities' collective and individual ability to decide the content and character of their communal goals around self-governance, cultural survival and representation as well as economic development. This applies to decision making on any issue which the group determines impacts their people and/or identity as well as Native participation inside and beyond the boundaries of United States federal policy processes.³⁴² Like sovereignty, it is not granted or taken away. Unlike sovereignty, self-determination is not easily diminished with dicta, legislation and legalese as it is specific and originates with individual Native communities.

Ideally, policies impacting Native peoples specifically would be based on Native self-determined, tribally derived goals—meaning that policies involving Native nations would be developed with the nation's input, if not impetus, and by Native policy personnel. Additionally, a primary role for Native enforcement would be a given. While some do not yet see self-determination as a means by which the full potential of Native sovereign power (or Native political, cultural, and economic autonomy) can be realized, it is arguably one of the best ways for Native peoples to address their specific

³⁴⁰ Lyons, 2000, p. 466

³⁴¹ Deloria, Jr. 2001, p. 287; Deloria, Jr., 1998, p. 26-27

³⁴² This definition, developed by the author, is informed by multiple sources, cultivated through lectures and private discussions with the following faculty at the University of Arizona: Dr. Manley A. Begay, Professor Robert A. Williams, Jr., Professor Robert Hershey, Dr. Jennie Joe, Professor Eileen Luna-Firebaugh, Dr. Amy Fatzinger and Dr. Jay Stauss.

needs without full and sole reliance on a system which has proven deadly for them more often than not. This perspective falls in line with much of the perceptions and intentions expressed by the pool of informants and participants—who largely indicated a sense that Native responses to the issue would be the ones most respectful of Native community needs and Native women. This signifies the continued need for governance systems that are a cultural match in Indian Country. As previously discussed in this text,³⁴³ appropriate cultural match is the foundation for economic development but it can also be asserted that it is the foundation for any legitimate policy intervention or successful service provided around something that threatens a community as a whole. As shared goals, norms of conduct and norms of authority are all culturally dependent and the same might be true of ideas about what is an effective intervention which addresses all the needs or concerns about a specific issue. Just as the degree of match between a leadership selection process and a culture's definition of the structure,³⁴⁴ scope,³⁴⁵ location³⁴⁶ and source³⁴⁷ of authority distinguishes

³⁴³ Class discussion, presentation on October 3rd, 2011. (Joseph Kalt, "Walking the Walk: Intergovernmental Relations as True Sovereigns" unpublished presentation and discussion for Native Nation Building I, Dr. Begay) October 3rd, 2011.

³⁴⁴ "The division of powers and responsibilities across such tasks as dispute resolution and enforcement (judicial affairs), law and rule making (legislative affairs), administration and implementation of policies (executive and bureaucratic functions), and external political, economic and military affairs (international relations)." Taylor, *Native Americans in the 21st Century* (2011).

³⁴⁵ "The range of powers and responsibilities wielded by the government over the foregoing areas of authority. E.g., do the society's informal norms support or abhor governmental ownership of businesses?; etc." Ibid.

³⁴⁶ "The level of social organization—family, local community, affinal "band" organization, the tribe or nation—in which political power and responsibility are appropriately vested, according to a society's cultural norms." Ibid.

³⁴⁷ "The mechanisms by which individuals who assume governmental roles and control over means of coercion acquire *legitimate* authority." Ibid.

that leadership's legitimacy within that culture—so does the degree of match between an intervention and policy response.

Culture, in the sense of Native Nation (re)Building, is the place where the decision to act or not is made³⁴⁸ and this is no less the case around sex trafficking interventions. The first reports have been initiated and written by Native service providers and community members. The push to include sex trafficking in more federal and state laws came from Native legal scholars, activists and constituents. Native advocates are by-passing the need to rely solely on laws for protection by engaging in what could be read as traditionally sound, politically charged community education at pow wows and conventions. These actions signify a shift away from both dependency on federal definitions of safety and protection as well as full dependence on non-Native notions of activism and action. As mentioned earlier, this is the foundational change needed to appropriately address any sexual violence. What is needed next is tribal policy support that would, ideally, operate in line with the community's sense of itself. This is a clear call for leadership and strategic, future oriented thinking in the practical exercise of self-determined rule. It is a source of Community Wealth that there are initiatives in place, Native and non-Native allies aligned around the issue and Native specific service providers and legal scholars already poised to assist in forging this level of Native governance response. The role of the

³⁴⁸ Stephen Cornell, Miriam Jorgensen, Joseph P. Kalt and Katherine Spilde Contreras, *Seizing the Future: Why Some Native Nations Do and Others Don't*. (Tucson, AZ: Native Nations Institute for Leadership, Management, and Policy, 2005).

sovereigns in this case is to respond appropriately. The federal and state role is to cooperate.

This indication that Native self-determined intervention would be welcome by the community does come with some caution. Although it was not consistent, some study participants expressed a sense that their tribal law enforcement and/or policy making entities could be part of the problem. Be it corruption or lack of knowledge, there are still Native mechanisms in place to correct those inconsistencies to benefit the community as a whole. The community's use of these is another source of Community Wealth.

Thus, a stronger Native response that is not solely reliant on the work of service providers meets four of the five elements of Native Nation (re)Building Theory—practical self-rule, strategic and future oriented thinking, leadership and cultural match—and, from all indicators in this study, can be done with the benefit of considerable community wealth. Developing Native governance and law enforcement momentum that defines and further enhances Native community understanding of sex trafficking is an act of practical self-rule. Doing so asserts Native concerns in the language of the community and establishes the conversation in Native terms. Building a means to engage with other governance entities—local through to international—builds social, communal and political capital while engaging in future oriented leadership. All of these steps are strategic in that they establish Native communities as leaders in the conversation with a focus on creating a cultural match to Native definitions of safety and protection which are not psychologically dependent on the United States' system alone.

This ability and the Native communal impulse to consider situations according to shared understanding of what best represents what community members know to be representative of their content and character (i.e., Native self-determination in practice) is a source of Community Wealth/Strength that would be well leveraged in this endeavor. This communal impulse is the conceptual site of change and a powerful motivator for addressing issues that do not seem to have other solutions. If we prioritize Native perspective and, as with any form of sexual violence, understand the act committed as violence done unto the community, families, and the perpetrator as well as the individual survivor we also see the strands of solutions in the traditional social control principles of the Native past—another source of Community Wealth. Prior systems of Native social control often included some elements of responding to violence perpetrated on the community quickly without necessarily removing a community member, be they perpetrator or survivor. As one interviewee intimated, traditional principles of Native governance modified for contemporary issues may allow for a return of this strength. Alternative sentencing, transformative and reformative justice all contain elements of traditional Native concepts still operating in some tribal courts today.

In summary, there is a great deal of Native Community Wealth/Support from which to draw upon that can impact what sex trafficking interventions in Indian Country look like, as well as clarify existing cloudy definitions. Native communities have already created some mechanisms which provide information on the definitional needs as well as insights on how to intervene. It would be a worthwhile Native Nation

(re)Building effort for Native nations to respond on a greater level to the call of international, if not federal law, as alluded to in the preceding legal analysis.

XIX. Discussion—Area II: Attitudes & Responses

This area more specifically concerns questions about international, federal, local and tribal responses to the potential for targeted sex trafficking of Native peoples and their individual influences. More than an assessment of whether responses are in place or if they are aligned in definition (as alluded to in the previous discussion in Area I), this area concerns the responses less obvious than those written into legislation. This discussion addresses the attitudes that inform decisions about use of that legislation, the types of people it would be used for, its importance and efforts to ensure Native involvement in solution making. In a sense, this area concerns the prominent perceptions about the experience of targeted sex trafficking in Indian Country as described in Area I. Simply put, this discussion considers if people in the policy environment surrounding this issue believe that it is real and if they are invested in Native nation defined solutions/interventions.

Overall, this study's triangulated data indicates considerable concern, in all roles, about the vast lack of data collected, research conducted and apparent interest in the targeted trafficking of Native peoples. Some attribute this lack to inadequate or unaligned language and understanding about trafficking, while others point to this as something to be expected in terms of how Native people are treated. The sense is that the data collection,

and its standardization scheme, should come from federal entities. The reasoning expressed in this study was that, of all the potentially interested governance and legal levels of interest, the federal government has the most resources. That said, the findings also indicate that, federal legislation is not the main influence for change in law enforcement of and policy work around sex trafficking in Indian Country. Local and tribal prevalence (as seen on the ground) as well as local and tribal laws are nearly equally as, if not more, influential. Local and tribal approaches are also more trusted to address Native community needs. Additionally, change can happen more quickly in local and tribal legislation than federally.

Another impact on the data that might be collected is the inability to appropriately identify a sex trafficking survivor or someone engaged in the coercive control of others through sex trafficking. Study participants generally indicated that they thought that a sex trafficking victim/survivor was likely identified a third of the time—especially if they engaged in the type of sex trafficking activity prominent in their area compared to survivors of other forms of trafficking—and that traffickers were rarely identified at all. Further, study participants seem to indicate that across the list of activities identified as sex trafficking, those most closely related to prostitution helped to distinguish survivors from those who had been trafficked in other ways. Considering the fact that the definition of sex trafficking activity appears skewed to recognizing prostitution and closely related activities above and beyond all other forms despite legal language specifying a broader range, it is easy to believe that the existing data that we have grossly underestimates the degree to which this is an issue. In those

circumstances, federal reluctance to move more quickly to determine the prevalence of domestic sex trafficking in Indian Country is curious at best.

This study also found that service providers are thought to be among the first to be in contact with a sex trafficking victim/survivor. Based on insights from study interviewee informants, those service providers seem to work at being connected with local law enforcement, be they tribal or county. Operating so closely to the local level where sex trafficking might happen, it is also curious that tribal governance entities have not addressed this more comprehensively.

Those places where the prevailing local sense is that, “This doesn’t happen here,” can appear fool hardy since the general consensus is that people—including law enforcement making arrests—are simply not asking any questions about it and that this is a crime predicated on secrecy. Additionally, in an atmosphere where the majority of people who are in a position to know whether any data on sex trafficking is kept in and around Indian Country—such as this study’s informants and participants—can’t offer insight on which agencies/groups maintain said information, how can any community honestly say that they are sure that, “This doesn’t happen here?” Especially disconcerting is that none of the 6% (n=4) of 66 total respondents who could talk about where such information would be kept identified as direct service providers—the professional sector that this group indicated would likely be the first contact for a Native survivor of sex trafficking.

What seems closer to the truth is, “We don’t know.” And, compared to the rest of the findings, the reason the vast majority of respondents did not know was because the federal, local, and tribal response had been largely at the level of “slightly interested” rather than truly responsive. This was likely informed by attitudes which, for the majority, ranged from concern to “waiting for proof.” Service providers and some legal scholars, who appeared to embody a preventionist approach to addressing such public and community health concerns were the most active around this. But few beyond service providers and legal scholars seemed ready to move quickly, in whatever way they could, to address finding solutions to targeted sex trafficking in Indian Country or demand serious legal attention outside of the proscribed system already in place.

Community Vulnerability Created By Attitudes & Responses

Although it is true that federal resources are important and helpful to this effort to gather and know more, it is also helpful to be mindful of the dependency that sole reliance creates. More than just offering funds and requiring agreements between researchers and communities, federal agencies might consider full partnership with Native communities and entities in larger ways around this topic. Keeping the data within federal and/or state control and according to federal and/or state guidelines only serves to reinforce dependence on outside entities for Native safety and protection—or at least information on it. This study found that people in the policy environment were looking for more Native initiated responses to targeted sex trafficking of Native peoples. Keeping the data within federal/state purview

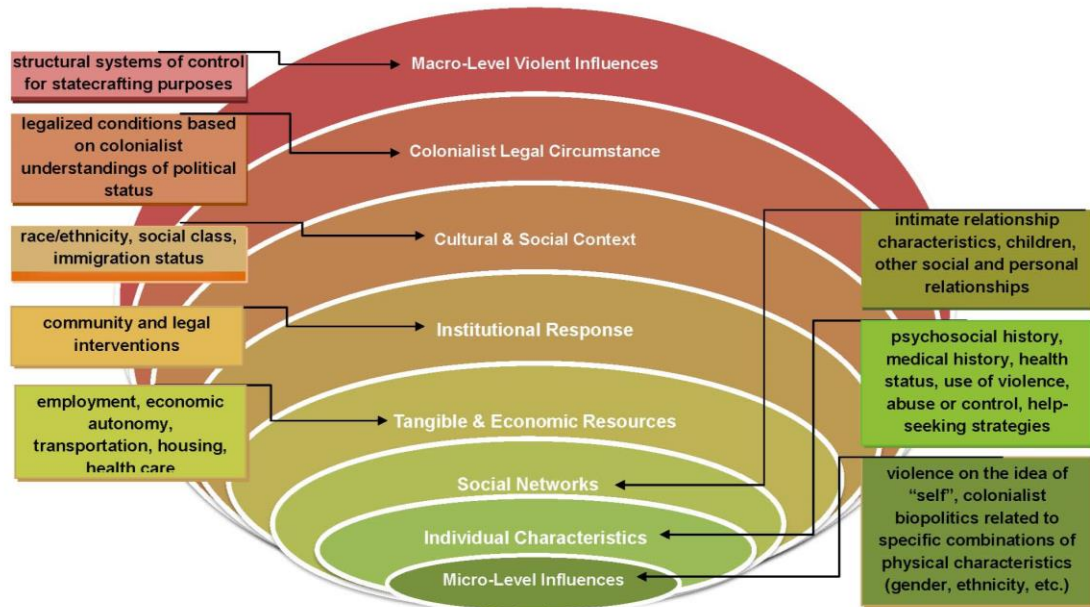
also ignores the importance of the communal expectation of Native specific policy responses and research.

Additionally, the policy environment seems to be waiting on research that is barely funded while everyone else seems to be waiting on some other group to develop code.³⁴⁹ This essentially creates inertia which does not serve Native sex trafficking victims or survivors nor the communities terrorized and violated by this inaction. This also raises the question of why we are not legally responding from a place of at least subtle prevention in response to service provider concerns and evidence. Additionally this lack of a decision to act beyond a certain and specific point makes it more difficult to create Safety Zones within mediated mid-level influences—described in the adapted Nested Ecological Model as Cultural & Social Context, Institutional Response, Tangible & Economic Resources, and Social Networks (Figure 41)—which can bolster the micro level interactions (Individual Characteristics and Micro-Level Influences) enough to fully address the larger macrosystems of influence (Macro-Level Violent Influence and Colonialist Legal Circumstance). All of this is to say that a multi-level approach is often a better way to address the multitude of influences than only working from micro-level out or macro-level in. Waiting on another group to initiate or

³⁴⁹ It is a costly and involved endeavor to develop code, so there is a degree to which the waiting is understandable. However, there are a number of tribally centered and focused legal non-profits who do and have developed model code on a number of topics. One of this study's interviewees has committed herself to creating model code, in fact. That said, the majority of study participants indicate that no tribal governance entity has asked for a model ordinance. To the knowledge of study participants, no large groups, Inter-tribal Councils or other such groups have taken the initiative to ask either. This lack of inquiring about developing tribal code options is what is at issue here.

waiting to continue the work begun by others lengthens the time spent in flux and, in this case, at risk.

Figure 41: Nested Ecological Model of Intimate Partner Violence Specific to Native America



Adaptation which considers the sociopolitical layer of colonialism impacting Native experiences

Thus, with a few bold exceptions, overall responses and attitudes to exploring and getting more information on targeted sex trafficking of Native peoples have thus far kept Native America vulnerable. While there are well coordinated, strategic exceptions, alone they are simply are not enough.

Legal Analysis of Attitudes and Responses

The domestic study of sex trafficking in Indian Country initiated by the National Institutes of Justice (NIJ) in 2014 is a first step in the United States addressing one of the three Ps (i.e., prevent, punish and protect)—

specifically prevention through research and education— required according to international law. Ideally, this research might help bolster some of the TVPA and VAWA provisions as they might apply in Indian Country. That said, this study’s informants and participants indicated that local experiences of sex trafficking and local/tribal policy held just as much influence on both law enforcement and policy makers as did federal laws such as the TVPA and VAWA. This indicates that tribal governance entities might be further squandering their ability to improve conditions for their citizenry by not creating code specific to the targeting and trafficking of Native peoples.³⁵⁰ This might also indicate that the generalized anti-trafficking efforts of federal and state entities may not go far enough in influencing approaches specific to Indian Country. The bright spot is that there are individuals—in all the sectors represented in this study—who are incredibly responsive and embody a spirit of cooperation as well as drive to make this different. But as one interviewee stated while praising the support of two particular members of her local law enforcement, “It seems to be more individual than system wide.”

All of this indicates that federal, state/local and tribal sovereign states have failed, from a legal perspective and thus far, at meeting their obligations to prevent the spread of trafficking as a threat, punish those who coordinate the crime of trafficking and protect their citizens from the harms of trafficking generally in Indian Country. All three have failed, systematically, in response to the threat of targeted sex trafficking of Native

³⁵⁰ See discussion, throughout this text about the potential for federal use of tribally created anti-trafficking law for prosecution in areas where there is no applicable existing federal and/or state law. These discussions throughout the text reference the United States’ Assimilative Crimes Act.

peoples and in legal willingness to address any level beyond the bare minimum (which speaks to the legal attitudes expressed through law and policy). In terms of international obligations, the impetus for Native governance around human trafficking issues is present. The responsibility for action, however, lies with federal, state/local and tribal entities to engage and create movement around sex trafficking and Native peoples' targeted recruitment.

Community Building/Support Around Attitudes and Responses

On the other hand, there are impressive community strengths in attitudes and responses to this phenomenon which are not as directly linked to the law. There are already groups collecting data on their own, even if it is not standardized and potentially skewed to specific definitions. Until the past year (2014), the only groups doing the work of data collection and publishing it were located in Minnesota. Although it clearly touches on sensitive topics which might be challenging for some tribes to engage outsiders around, working with a trusted researcher to design, implement, aggregate and report on the experiences of trafficking in Indian Country is an important opportunity to build effective institutions of knowledge and infrastructure for Native nations individually and Native America as a whole. There are numerous qualified and talented Native researchers. And, if none of them are available, this is important enough of an issue that a trusted researcher sensitive to work in Native America might be a good option. While standardization of these efforts (with a strategic, future oriented plan in mind) would be most beneficial, if the only option is to

address the data drought with good, solid data collection without that standardization, perhaps that is the choice to make. Doing so can still be strategic and future oriented. When the policy environment only responds to data, having none at your disposal will ensure that the issue is never addressed. Meticulous collection and a thorough research design can produce data to be culled for themes at a later time to help create standardized data collection schemes for future use. The fact that groups are talking about it, creating collaborations to support each other, doing the research and sharing across boundaries is a perfect example of Community Wealth.

It is important to note that this is not recreating the work that the NIJ has begun, it is leveraging an element of Community Wealth—and communal will—to better describe and explain the landscape of sex trafficking and its targeted use in Indian Country. NIJ’s work, while much needed and welcome, will likely be reliant on Western approaches to research and engage the research process from a predominately Western understanding. While important in its own regard, such research will not replace Native specific research steeped in Native research methods and perspectives. And in some ways, the NIJ research will not be able to escape the problem of the asterisk—the research issue that comes up when working with data collected and compared broadly to understand Native America.³⁵¹ When compared to ethnic groups larger in number, Native statistics are often considered too small a population to be able to make statistically significant observations.

³⁵¹ This is a reference to Shotton, Lowe and Waterman’s work. See Heather J. Shotton, Shelly C. Lowe and Stephanie J. Waterman. 2013. *Beyond the Asterisk: Understanding Native Students in Higher Education*. Sterling, Virginia: Stylus Publishing.

Groups like the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF) encourage nation-to-nation research and both have initiatives in place to do so focused on policy and law, respectively. As one informant indicated, their policy databases are sorely underutilized, as there is little policy research done which prioritizes a Native nation-to-Native nation comparison.

In terms of Native Nation (re)Building, the practical assertion of authority to examine the prevalence of what happens around sex trafficking in one's own community is foundational. In this area, the general responses of community and service providers meet all five elements of Native Nation (re)Building exceptionally well. The attitudes and responses have been to mobilize and lead by asserting inherent authority to build research and best practices infrastructure which strategically support future projects in a way that speaks to culturally appropriate means to provide services, create safety and protect those who have survived the experience of sex trafficking. As was discussed around Area I: Definitions of this study, there is a tremendous amount of Native Community Wealth/Support already at work to intervene in place of the lackluster response from other areas. Overall, the response and attitudes to the idea of targeted sex trafficking in Indian Country is largely due to the work of service providers, advocates and some legal scholars to ensure that there is a more appropriate option for survivors.

XX. Discussion—Area III: Interventions & Creating Solutions

Study respondents' specific local concerns about targeted sex trafficking generally included, in rank order, the

1. broad lack of awareness about the issues
2. linkage between sex trafficking and other crimes
3. scant reporting and research about this topic
4. degree of “taboo” associated with both discussing this issue in Indian Country and as something that happens in Indian Country
5. impact of this issue on the community
6. challenges this creates and challenges of tribal governance around the issues of sex trafficking and
7. need for sustainable programs.

Just over one third of this study's respondents indicated that the law enforcement entities upon which they rely do not actually address trafficking at all. So what is happening to address the issue from the other two thirds? What are the lessons to learn from their processes? This area considers the interventions to address sex trafficking of Native peoples that are already in place. It also examines what it is about those interventions that works, or not, for Indian Country broadly defined.

Generally, it appears that conversations about collaboration to create culturally sound interventions are happening. Study respondents were aware of conversations about law enforcement interventions which included:

- issue and identification training for law enforcement with local, non-tribal law enforcement and local, non-tribal service providers;
- cultural training for law enforcement with local, non-tribal law enforcement;
- cross deputization with local, non-tribal law enforcement and local tribal law enforcement;
- cross-networking among or with service providers and local, non-tribal law enforcement; local, non-tribal service providers; and/or local tribal law enforcement.

However, those conversations seem to be slow moving; as more study respondents indicated not seeing such collaboration locally or not knowing if any such collaboration was taking place.

Study findings also indicate that, despite the trouble with clarity in the laws informing all other iterations of anti-trafficking, the lack of fit between the laws and the realities of Indian Country and the mixed levels of commitment to addressing targeted sex trafficking of Native peoples, there do exist culturally appropriate interventions that meet the needs of survivors and Native community to some extent. Despite the varying levels of efficiencies and little specific focus on Indian Country, these interventions, in

addition to several laws, provide some level of service to Native peoples and community.

In general, interventions tended to be discussed in terms of

a. Service provisions:

- Expanding the small number of culturally specific services available broadly throughout Indian Country and to Native survivors.
- Engaging the Social Ecology of Vulnerability as a tool for service providers to consider the relevant culturally specific risks for survivors.
- Opening the “door of disclosure” during the intake process by asking about “trading sex” or “being [sexually] traded.”
- Using school outreach as an important link for connecting at risk youth with “culturally grounded, trauma-centered, long term support.”
- Developing densely coordinated services able to manage any unexpected disclosure spanning short and long term goals for safety.
- Cultivating long-term, programmatic patience to build trust, educate and manage the aftermath of disclosure.
- Ensuring provider self-care to manage the secondary trauma associated with this work.

b. General provisions:

These should address the environment of lack beyond the failures of legislation, which include:

- Minimal existing data
- Under-reporting
- Under-enforcement
- Little attention to the needs of Native community around trafficking
- Little attention to the potential negative impact to program meant to help (foster care example from the Oregon report)
- The cyclical nature of generational trauma and lateral violence.

There are several thriving interventions already in place in Indian Country. These include attempts to use the existing laws creatively, create new ordinances and trainings specific to Indian Country, and service programs that are innovative as well as culturally specific. The sense is that there needs to be a holistic, integrated approach to work with trafficking survivors regardless of cultural identity for effective treatment and support. Additionally, it seems that interventions that are culturally appropriate for Native survivors speak to a need for integration of the entire community's efforts as well. Some of these interventions are as complicated as a multi-jurisdictional team to address trafficking on the ground and some are as straightforward as adding "sex trafficking survivor" to the list of type of

women honored in a pow wow dance. Either way, the interventions need to be multi-prong, widely supported (financially as well as conceptually) as well as long-term and patient to see response. Additionally, this is not the kind of issue where “one size fits all.” Intervention architects need to allow room for each tribal entity that might engage a process to put their own, unique perspectives into the foundation for widespread success.

Overall, the list of best practices seem to include what might be a contemporary application of traditional Native principles of social control and governance, and according to one interviewee, collaborative and cooperative work across levels, professions and sectors as well as within. Study findings suggest that these efforts include

- Creative interventions that rely heavily on the insights of service providers and actively involved Native communities,
- Cooperative collaboration throughout the Indian Country legal system ranks
- Cross team training to build legal development and law enforcement that is well synced to address issues quickly
- Process re-positioning such that less occurs in the realm of criminalization and more occurs in social services (i.e., jail is the last stop for someone potentially trafficked, not the first stop.)

Community Vulnerability Created By Existing Interventions and New Solutions

In some ways, every step towards successful intervention in targeted sex trafficking of Native peoples is a step away from community vulnerability. That said, issues around programming fiscal insecurity can create situations of uncertainty for victim/clients as well as the advocates who are in a trafficking program's employment. A sense of this insecurity was prevalent across all of the tools used in this study. Specifically, study respondents were consistent in their concerns about securing financial support for programs and data gathering for Indian Country that did not come with colonial attachments of law or biopolitical government surveillance. If there is any doubt that this should be a concern, one need only consider the issues around the reauthorization of VAWA—delayed by political debate over what type of women were eligible for protection from gendered violence—or consider the legislative oversight which essentially required that the latest TVPA reauthorizations happen as a part of a joint bill with VAWA 2013 reauthorization.³⁵² Both pieces of legislation specifically fund some of the innovative programs operating in Indian Country, as well as provide penalty authorizations which would be sorely missed should they disappear over political disagreements. Thus, the

³⁵² This legislation is written to come due for reauthorization every two years. For more information on the legislative hold up in the recent reauthorization, see Overview of Trafficking Victims Protection Reauthorization Act of 2011, GOVTRACK.US (Oct. 13, 2011), <http://www.govtrack.us/congress/bills/112/s1301>.

vulnerability, in terms of existing interventions, as well as any future solutions, is sole or majority reliance on federal funding.

Additionally, it is worth noting that Native sex trafficking survivors are still effectively silenced in current legislation. Recent VAWA reauthorization includes some mention of sex trafficking, but as minor points under the broader topic of sexual violence. Thus, the experience of sex trafficking as designated in this study is discussed by proxy. The mention of “Native” in recent VAWA and TVPA reauthorizations is frequently around the discussion of grant program allotments and requirements, subtly suggesting that main consideration of Native experience here is in funding. And while funding is a factor, as indicated in the paragraph above, it is a minor piece of both the obligation to protect Native peoples in the United States from “consumability” and only a fraction of the issues involved in addressing the targeted sex trafficking of an often marginalized community. This type of approach effectively creates additional community vulnerability by conflating the issues present and creating a sense that the solution is money. Rather than reshaping the paradigm to foster partnership with Native communities to address Native concerns around sex trafficking in Native appropriate ways, this approach simply creates another paradigm in which Native people’s bodies are associated with money.

Legal Analysis of Interventions and What is Needed in Solutions

As mentioned before and across all of this study’s tools, reliance on Western approaches to this issue, and any issue in Indian Country, was found to create additional divisions and levels which further removed tribal

peoples from their socially legitimate forms and understandings of social control. There is a legitimate legal reason for some of this reliance—the ability to use federal laws like TVPA increases the potential penalties that can be applied. VAWA tribal provisions that allow for some Native prosecution of non-Native perpetrators go a long way in recognizing tribal sovereignty to define protection for its collective citizenry. At the same time, these advances are a pittance compared to the obstacles and restrictions that come with sole reliance.

Eighty-eight percent of interviewees linked Native self-determination to the targeted sex trafficking of Native peoples—from the impacts of past United States policy, to responses of various governing entities, to the lack of knowledge about trafficking in community. More than 3 out of 4 survey respondents made some mention of the need for Native governance on this issue. Yet, there are only two tribal codes that numerous studies, this one included, and researchers were able to locate which address sex trafficking in Indian Country. Those codes mimic the vague federal language which seems somewhat incompatible with the Indian Country reality. In some ways this lack, compiled with the other areas of lack on multiple levels, is a further legal violence to Native America.

While the efforts in place at this writing—namely TVPA and VAWA—have not had enough time to prove themselves useful, there is an opportunity for decisive legal action to build code that addresses the specific needs of Indian Country. The opportunity presents itself for Native governance entities to write the experiences of Native women as well as the specific

experiences of sex trafficking survivors into code in addition to advocating for the reform and adjustment of current, outside defined stopgap legislation. As discussed earlier in this chapter, not to do so is to squander any Native nation's individual ability to improve conditions for their citizenry through code specific to targeting and trafficking Native peoples.

Community Building/Support Found in Interventions and For Creating Solutions

As it has been noted before, Native communities and Native victim/survivors have not been waiting helplessly. While it may not be widespread, some Native scholars, law enforcement, service providers, advocates and similarly situated allies have created models (theoretical models as well as model ordinances and ordinance guides), programs and guides to help Native America deal with the issue directly. In addition to being solid examples of communities leading and building the foundation for their well-being and future success, this refusal to wait on rescue and this display of resilience is a significant piece of Community Wealth. Perhaps more significant is when one Native community learns about itself, it shares with others seeking to begin the process as well. This act of “leveraging my information so that you can benefit” seems to stem from a specific cultural impulse to operate in circles of community. It serves to create allies, foster support networks and, in this case specifically, begin conversation about situations which might have otherwise been over looked to potentially create stronger survival resources for the greater number. Thus, it is clear that the

elements of Community Wealth abound in the area of intervention and creating solutions.

XXI. Discussion—Summary

The research question that began this study was “What is the policy environment perception of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country?” Overall, the study found that there is a general sense within the policy environment impacting Indian Country that contemporary targeted sex trafficking of Native peoples exists and it is becoming more prevalent. Further, the policy perception seems to hold some dualities. While many view the problem of targeted contemporary sex trafficking as widespread enough that it should be addressed with some expediency—some agree that it exists but also do not perceive the phenomenon as widespread enough to create general urgency about solution-making. That said, belief that urgency is required is expressed more strongly among particular sectors—specifically service providers, advocates and legal scholars. Others who are more ambivalent about the prevalence of this phenomenon tend to express a concern that nebulous definitions pose issues with the potential ciphering of funds away from addressing “proven” issues such as rape, assault and other violent crimes.

At the same time, all acknowledge that there exists an “environment of lack” predicated by a lack of data beyond the anecdotal which creates a cycle of ignorance. There is little to no data collection, which means many are less inclined to believe that there is a problem. If people are not inclined to believe

there is an issue, they do not ask the questions nor keep the data which could help the policy environment determine the prevalence.

There are specific elements to the contemporary targeted sex trafficking of Native peoples which are specific to Native experience in terms of vulnerability, common scenarios and recruitment schemes—all of which differ from the legal definition found in federal United States law. The response of federal, local and tribal governance entities is understood as minimal to nonexistent while service providers, advocates and legal scholars seem to lead the process of gathering and disseminating what little data is available in addition to providing services. Legislative interventions, at all three levels, fail to meet the international standards which, in essence, they all stem from. Both TVPA and VAWA, the main sources of contemporary United States anti-trafficking law that might carry the most legal weight in Indian Country do not address the specific trafficking of Native peoples nor do they clearly create considerable legal room for Native interventions in a broad way. At most, they highlight some of Native women’s experiences of violence in a way that keeps Native sex trafficking survivors silenced. Additionally, the vague language of the TVPA does not make clear it’s applicability in Indian Country, leaving room for local interpretation in a manner which is not ultimately supportive of sex trafficking prevention. State laws only apply in those limited areas of Indian Country where PL-280 applies.³⁵³ Far from an endorsement of PL-280 applied broadly, this study

³⁵³ Where a crime of human trafficking involves either a Native offender or victim in Indian Country, a state will only have criminal jurisdiction to prosecute if PL 280 jurisdiction applies. For states with designated PL 280 Indian Country within their borders (mandatory

recognizes that state anti-trafficking laws are little better than the TVPA in their understanding of or effective application in Indian Country. Tribal legislative interventions are lacking in that they are minimal and do not resemble actions defined by or read as legitimate in Native tradition or structure. This is a missed opportunity as local and tribal code and responses are seen as equally as important to the prevention and protection from the harms of sex trafficking as any recent federal response.

That said, there are Native and Indian Country specific interventions in place and in development which both meet the needs of survivors and support Native self-determination. They span the sectors of service provision, research, law enforcement and law practice.

The elements that seem to work toward their success are a

- 1) Native focus which simultaneously speaks to cultural match, Native leadership and Native self-determination,
- 2) Focus on collaborative cooperation within Native America and across ethnic borders as well as within and throughout policy environment sectors,
- 3) Refusal to wait on other entities to initiate the process or focus on only one system to get forward movement, and

or optional), states can apply their human trafficking laws in the same way those laws apply elsewhere in the state. Federal prosecution is possible using existing tribal law, via ACA, considering the still high federal declination rate of sexually violent Indian Country crimes, it is reasonable to assume that this is not often invoked.

- 4) Reliance on Native resilience to redefine, as needed, the process to seek answers, solutions and resources.

The elements that seem to provide challenges are

- 1) Lack of reliable data, preferably that is collected and aggregated in a framework which emphasizes Native nation -to- Native nation comparisons or broad understanding of the particulars of Native America,
- 2) The stereotypes and misconceptions that paint Native Americans as weak or invisible, sex trafficking survivors as the opposite of Native identity, and/or urban locations as more vulnerable to trafficking than rural,
- 3) Misunderstandings of the three main elements of trafficking— movement of bodies, force/fraud/coercion and potential trafficking activities,
- 4) Western, individualistic, neoliberal solutions reliant on reform and precedent rather than Native, communal, interdependent approaches flexible enough to be altered to apply in numerous types of Native communities without strict standardization, and
- 5) Lack of a streamlined criminal jurisdiction which respects Native self-determination and sovereignty.

Chapter Six

Looking Forward: Conclusions and Suggestions for New Goals

This study was an explorative journey. It began with a desire to get a better sense of the understanding of contemporary targeted sex trafficking of Native peoples within the policy environment influencing interventions in and around Indian Country. The research question (“What is the policy environment perception of how widespread the contemporary targeted sex trafficking of Native peoples is in Indian Country?”) encouraged study comparison of the

- ❖ definitions as written in the law with those used in making decisions about which laws are applicable in Indian Country,
- ❖ attitudes and responses on multiple levels (in terms of laws, legislation and their influences) with the needs of Indian Country as described by those working on the issue in Indian Country, and
- ❖ a general sense of what interventions exist and are working in Indian Country with the work still left to do.

This study found that the broad perception of the policy environment which influences Indian Country is that contemporary targeted sex trafficking exists. The geographic spread and number of study participants indicated an understanding of targeted sex trafficking of Native peoples, specifically, in communities where they live and work as well as across Native America. This strongly suggests that the perception is that this phenomenon is occurring throughout Indian Country broadly. Further, the overall perception seems to be both that the problem of targeted contemporary sex trafficking is

widespread enough that it should be addressed with some expediency—but that the phenomenon is not widespread enough to create general urgency about solution-making. It also appears that the perception is that this phenomenon is becoming more prevalent. Based on these findings, the time to act is now.

XXII. Conclusion

As some interviewees noted, sex trafficking is a new law but an old practice. Even so, this work is a contribution to a very small and specific literature with the hope of widening the path laid by the first few reports while following a similar trajectory: to make space for the stories of communities figuring out ways to deal with eminent threats while remaining observant of the opportunities for innovation. This study hopes that use of a different set of perspectives and broader geographic scope makes room for broader and more thorough investigation. The landscape in which this work was completed included minimal legislation that speaks specifically to the experience and needs of Native sex trafficking survivors, painfully few reports with a particular focus on Native voices and a handful of theoretical writings which contemplate the origins of such crimes in Indian Country. The goal throughout has been to prioritize Native perspectives and voices in providing “the truth on the ground.” What might be unexpected for some is that this contribution to the available research can also serve as a story of hope which honors the resilience of peoples marked for another fate through literal consumptive use and which documents, in a broad way, generalized

data about the experience of a targeted people demanding more from themselves and their policy environment.

In some ways, the research question posed for this study is irrelevant. Regardless of prevalence or perception, targeted sex trafficking of any particular group is problematic and cause for concern. The fact that the existing laws may encourage this targeting or create loopholes for it to continue raises the level of concern exponentially. Does something like targeted sex trafficking need to be widespread in a community to garner immediate concern, expedient, thorough investigation and effective intervention? Or is it that the victim or survivor has to look and act a certain way?

Additionally, there is the question of whether, with a non-Native identified researcher at the helm, this study imposes a term (sex trafficking) on activity in Indian Country that is not trafficking at all. The data collected here, reliant on Indian Country input, highlights several effective counter points to that possibility. The consensus among this study's participants is that people—including law enforcement making arrests—are simply not asking about sex trafficking generally and that this is a crime predicated on secrecy. The majority of people in a position to know whether any data on sex trafficking is kept in and around Indian Country—such as this study's informants and participants—can't offer insight on which agencies/groups maintain said information. Only the study participants identified as ultra elites could talk about where such information would be kept by direct service providers—the professional sector that study participants indicated

would likely be the first contact for a Native sex trafficking survivor. This study also found that service providers working in Indian Country were some of the first to talk about these activities in Indian Country in these terms. And while using usual Western based processes reliant on considerable broad data collection creates a general systematic inability to appropriately identify a sex trafficking survivor or sex trafficker in Indian Country, the study asked participants to define trafficking for themselves and then identify if they perceive such activity in their communities, regardless of what “officials” believe. Participants generally indicated perception that a sex trafficking victim/survivor was likely identified only a third of the time—and that across the list of activities, those that they identified as sex trafficking were most closely related to prostitution.³⁵⁴ Thus, rather than imposing a term that is not applicable in Indian Country, it is more likely that existing understandings of sex trafficking effectively exclude Indian Country and, potentially, grossly underestimate the degree to which this is an issue specific to Indian Country.

Further, this work has revealed that there is a fair amount of talk about sex trafficking of Native peoples, all things considered. There are anecdotal stories, data (limited as it is) and intervention strategies in the works. And, at the same time, there is little widespread action to address what may be a widespread problem. Some might blame what can be referred to as “a culture of lack.” This culture of lack permeates the issue and creates

³⁵⁴ Effectively, this is sex trafficking activity as identified by others. This study’s findings suggest that the definition of sex trafficking activity appears skewed to recognizing prostitution and closely related activities above and beyond all other forms despite legal language—and the language of study participants—specifying a broader range of activities.

numerous community vulnerabilities which do not stem from any one source—just as the resilience and opportunities that rise up around this issue are multifold. It is easy to say that there is little action because it is too early, or the issue is too “new.” Yet, this study has highlighted the ways in which this phenomenon shows elements of being part of a structural and systematic marking of consumability. The list of excuses and issues to blame is, arguably, quite long but also potentially irrelevant.

Additionally, some could understand this “culture of lack” as a cultural form of resistance or unwillingness to talk to or engage Western legal paradigms of safety. This possibility falls in line with this study’s encouragement of a Native break in the psychological dependence on the Western legal system for protection. Towards that end, the study’s encouragement of the practical exercise of Native self-determination via anti-trafficking code building which uses culturally legitimate understandings of governance (via tribal councils) and the crime (via language reflective of Indian Country realities) is in support of such choices to resist. The discussion of “lack” provided here does not highlight such resistance as problematic or within this culture that justifies ignoring the issue at hand. Rather, the study includes them as foundational building blocks of needed problem solving.

The policy environment’s reluctance to act, and act soon, is problematic in that it allows the perceived situation to continue which can increase a sense that, “This is just the way things are.” However, there are possibilities beyond the reality of how things are now and there are options that have not

been tested widely. Towards that end, Native self-determination, as discussed in both Chapters Two and Five, can be a source for change as applied within this Community Building framework. The groundbreaking work to consider the specific nature of sex trafficking of Native peoples began in Native communities. The innovative work of addressing the sex trafficking of Native peoples in a way that breaks the negative trends and provides a means around which to rally relationship building support can begin in and with Native communities, too. A strong policy and legal position is now needed to avoid the possibility of this phenomenon growing into an epidemic. A strong will is required to resist and confront the culture of lack directly. Right now, a few service providers and advocates are demonstrating that will. It is time for policy leaders—federal, state, local and international—to do their part.

What does seem to be relevant is that any effective intervention in Indian Country requires a core understanding that Native self-determination is both the issue and a major part of the solution—always. Developing interventions without this core understanding further complicates justice efforts. Interventions that are violent to a community's idea of itself do not protect communities from traffickers nor create enhanced opportunities for justice. Trafficking, and all Indian Country sexual violence, is an issue of Native self-determination. There is no wavering on that point. Neither reflects the content and character of Native goals. Historical perspective, informed by the insights of people doing the work in Indian Country, also tells us that Native-determined solutions must be a part of the answer. Ultimately, continued insistence and sole reliance on interventions developed

without community insight are violent to the community as well as the community's sense of itself. Approaches that neither accept nor work in service of Native self-determinism do not create safety, justice, or protection in Indian Country around sex trafficking or anything else.

That said, this recognition and will to engage Native self-determination seems especially required of policy leadership. Targeted trafficking of Native peoples is perceived to exist, be widespread and increasing in prevalence. At what point does the perception of need become such that the demand for better solutions encourages different choices? This study's findings seem to indicate that the time is now.

XXIII. Limitations & Future Research

This study comes early in the discussion about sex trafficking in and around Indian Country. As such, it was necessarily conducted among limitations which may have impacted this research and left room for future work around this topic. The use of a mixed methods design for exploratory insight helped to mitigate many potential data issues, while a stratified random sampling method helped to avoid potential over-representation of any one perspective due to the need to also rely on referrals and other “snowballing” techniques. Interviews helped to gather more descriptive “texture” for the more quantitative data. However, the dearth of existent literature, time and staffing limitations, and lack of a recognizable researcher's name might have impacted the amount of data collected. Additionally, sex trafficking is a particularly sensitive topic for many people

generally. The idea of targeted recruitment may be even more sensitive—creating barriers to participation.

More specifically, the lack of literature with a broader geographical scope required comparison to highly localized findings which, because the few reports are well known as the only and first studies, could have impacted the perspectives of study participants. While the exploratory nature of this study did not necessarily require different types of tools than those used, the short timeline and people-power available for this study conscripted the number and type of survey implementation tools used. That limitation might have decreased the number of potential participants as well as the geographic representation of Native America in collected perceptions. The lack of association with a contact well known throughout Indian Country or specific circles of policy influence made it challenging for potential participants to scrutinize the study's "credentials" locally—sometimes a requirement in close knit Native communities. And, although the participant pool was comprised of elite circles within Native community—those who influence policy and deal with sensitive topics related to sexual violence in a specific community—discussing the experience of being of and/or from a community targeted for recruitment does have the potential to bring up both shame (around communal vulnerability) and protectiveness (around exposing weakness). Both internal responses can impact decision to participate, decisions about disclosure and clarity of response. All of these responses can negatively impact the veracity of the data collected.

Aware of these limitations, the study process was adjusted to address as many of these as possible. Using a framework, perspective and theoretical foundation different than any of the reports previously released also meant that the conversation and focal points were different than known previous reports. As a result, the scenarios and reference points specific to any of those reports were more easily pulled out in aggregation. The timeline and staffing restraints were addressed by extensive efforts to discuss this research and present the process at numerous conferences, meetings and gatherings that potential participants might attend. That effort to present and attend these gatherings allowed potential participants to connect to the study directly and, hopefully, encouraged them to invite others to participate as well. Use of a website, emails, professional online networks and other forms of social media were also employed to create additional access to study tools and explanations as well as meet different comfort levels with the tools to encourage participation during a relatively short period of implementation. The techniques used to adjust for a short survey implementation phase and minimal staffing also helped to decrease the limitations created by the lack of well-known contacts throughout Indian Country. The choices of study tools also helped to decrease the potential for response shame or protectiveness by allowing participation from places of comfort as well as high levels of anonymity. For all but the interviewees—control about disclosure remained with participants. As for the interviewees, most conversations were conducted via phone such that the potential for feeling personally exposed were minimal. Further, all interviewees were engaged as authorities on the

subject matter engendering the additional atmosphere of control of the conversation.

As previously mentioned, there is still much research to do around this topic. Bigger, broader and more expansive efforts that are more collaborative would be helpful. Surveys conducted in person, perhaps available in several Native languages, would go a long way to expand the conversation around the differences between the legal and communal language around trafficking. Phone surveys would open participation up to those in areas without fully reliable Internet connection even in their places of work. And, even though there are a limited number of people engaged in the policy arena around trafficking, a longer timeline might have helped in the procurement of more interviews and allowed for more re-connecting with non-respondents/new respondents that is generally required with stratified random sampling.

It is worth mentioning again that the study did not seek to gather stories or case studies of Native survivors as a part of the mixed methods design. In some ways, not having one, or a few, set Native trafficking survivor stories to offer in illustrative support of the findings can be a detriment in the realm of public policy creation and politics. At the very least, not providing this runs against the common processes of doing this kind of research and could, at worst, alienate potential supporters. The conscious research choice not to engage survivors in this capacity was to avoid “persuasion through titillation.” The decision not to rely on the details of particular experiences of exploitation at the hands of traffickers followed by systematic exclusion from legal protection meant putting the focus squarely

on the shoulders of the policy environment—similar to the frequent request of survivor activists that laws focus on the behaviors of those who consume trafficking services rather than those who are forced into the activities. Additionally, it also further emphasizes that there is no one or few stories of targeted sex trafficking of Native peoples that speaks to all of the Indian Country reality. A careful reading of the findings indicates that, in all three elements of the legal definition, the Indian Country reality is not only different, but varied. Essentially, the similarities are that there is targeting by traffickers and a level of (effective) exclusion by law. That said, there is plenty of room and need for future researchers to take up the work of gathering case studies and stories to further expand our limited knowledge about what the Indian Country reality is, Native nation by Native nation. This is precisely the type of data gathering that Native and Native trusted researchers would be adept at collecting for the benefit of individual Native nations.

XXIV. Suggestions for New Goals

Overall this study suggests that the issue at hand is a lack of investing in and acting on Native self-determination, thus, the title of this section may be potentially misleading. The goal of focusing on Native self-determination is not new, though its application to address the phenomenon of targeted sex trafficking is.

The culture of lack discussed previously and Native self-determination are not exclusively Native issues—they are relevant for everyone. When there are improvements in the approach to targeted sex trafficking of Native

peoples, there are benefits that expand beyond Indian Country. Despite the challenges posed by a litany of problems with the current criminal jurisdiction scheme in place in Indian Country, the creation of important interventions for sex trafficking and anti-sex trafficking codes are possible. Building and enforcing Native code that is specific to the reality of targeted trafficking recruitment in Indian Country in a way that avoids simple mimicking of federal law has numerous potential benefits for Indian Country. Additionally, there are ways outside of code building and public policy alone that can and do support Native self-determination solutions to this issue. These include opportunities to

- ❖ Highlight the important role of service providers, community education and prevention efforts in addressing targeted sex trafficking of Native peoples
 - Direct financial and communal support towards continued prevention efforts that address issues of sex and sexuality in Native America by trusted sources to incorporate consideration of potential force or coercion beyond rape and domestic violence
 - This could be especially appropriate in existing HIV/AIDS, teen prevention and sexual education efforts and projects.
 - Expansion in anti-child abuse, rape and domestic violence efforts might help better address project participant needs. As one interviewee indicated, a trafficking survivor can't disclose that in shelter settings. There is

no current system for meeting that element of her needs, even if her other needs are addressed there.

- Develop and enhance service provision alliances such that full spectrum and wide reaching support for potential trafficking victim/survivors can meet the promising practice³⁵⁵ of being wide and far reaching, from initial contact to eventual prosecution of the victim/survivor trafficker and beyond. Such alliances would ideally be able to spring into action without warning.
 - Restructure and/or create systems that might engage with Native sex trafficking victims/survivors such that they do not rely so heavily on law enforcement and Western morality.
 - This involves physical as well as conceptual changes in the locations, language and process involved in recognizing and providing support to trafficking victim/survivors as well as any necessary law enforcement support.
- ❖ Put Native perspective first in the conversation around sex trafficking in Indian Country

³⁵⁵ In general, see the discussion in “Discussion—Area III: Interventions & Creating Solutions”, especially pages 317 -322. Also see the discussion on pages 230-231 of this text.

- Refocus the conversation to include the language that works best in Native America rather than just Western US law
- Initiate more exploratory data collection and, as appropriate, research throughout services provided and sectors that touch upon sex trafficking in Indian Country. Standardization is important and having some data (rather than little to no data) is even more important.
- Restructure the approach such that first contact with a survivor is not as traumatic as the experience of trafficking. Create system processes which focus on assessing supports before criminalizing such as
 - Victim/survivor assessments in service provider space rather than jail
 - Service provider assessments which ask probing, non-judgmental questions about potential force and coercion
- ❖ Address the inconsistencies in the accepted definition of trafficking
 - Movement
 - raise the importance of recognizing reservation and other Native specific boundaries
 - highlight that trafficking does not always include boundary crossing *nor* movement at all, depending on the surrounding environmental and social factors
 - Activities

- unravel the notion that sex trafficking is only prostitution such that
 - all potential victim/survivors might be recognized
 - those who prostitute or experience prostitution differently are not stigmatized or victimized in another way
 - Force, Fraud or Coercion
 - frame this element as the coercive control of another's physical being such that movement and activity are no longer the highest priority in the legal definition
- ❖ Break the psychological dependence on the US for defining safety and ensuring protection
 - Employ community specific and appropriate definitions
 - Embrace local opportunities to educate communities and do small scale interventions, if need be. The large centralized federal approach has some benefits but also involves a long, arduous process to change. Look to US law as a stopgap or enhancement rather than the only available or viable option.
 - Reconsider the prominent stereotypes about traffickers. The focus on specific characteristics as definitive do not hold true across all regions, just as what trafficking looks like will not hold true in all places in Indian Country.

- Turn the focus towards criminal behavior rather than racially defined redress. While helpful in some regard, the tribal provisions of VAWA and similar legislative efforts focus the attention on racial divisions and anchor the discussion in US jurisdiction schema (a Western construct) rather than the criminal behavior involved. If the focus is on the criminal behavior, more perpetrators of all ethnicities will likely be punished—not just the ones that fit into specific categories or stereotypes.

- ❖ Build alliances
 - Foster collaborative cooperation to build code in a less costly way
 - Train teams that can respond on multiple levels (providing legal protection and social supports) and in sync with one another
 - Embrace non-legal means to address the issue through de-centered prevention efforts coordinated throughout Native America
 - Ensure that any sex trafficking cases which use “creative lawyering” to ensure conviction in prosecution are also marked as trafficking cases for the purposes of more accurate understanding of prevalence—especially in and around Indian Country.

Further, this work is not just the work of Native communities and/or governance entities. As study respondents reiterated a number of times,

there is work to be done across a broad spectrum of policy spheres which requires collaborative cooperation across Native America, policy environment sectors and professions. If the goal is to develop effective, culturally appropriate interventions which address targeted sex trafficking of Native peoples in ways that speak to what Native communities already know to be true about themselves rather than continue to reinforce vulnerabilities initiated in racist and misogynist socio-historical impulses, then reinforcing Native self-determination is vital. Some ideas about ways to do that follow. While they are listed according to geographic locality, it is advisable to read them as options open to communities in any locality if it makes sense in context.

Suggested Local/State Policy Goals

In addition to the general ideas above, the local governance entities and states are in a position to address the issue of sex trafficking of Native people more directly, in some ways, than the federal government. They are simply in a better position to see their area's reality and better equipped with knowledge of the local resources. With the help of local coalitions and service providers, these types of policy makers are also more easily able to access and use the insight from service providers and harness local energy to work in collaborative cooperation. This affords local and state governance entities the opportunities to

- ❖ Collaborate and coalition build with reputable service providers and tribal entities addressing Native concerns around sex trafficking in their communities.

- As mentioned previously, a number of states have task forces already in place. But are those groups listening to service providers? And are they asking local survivors, Native community members, academics and activists to participate as much as law enforcement? These are the types of groups that can eventually fuel data collection efforts and research that will not only broaden the understanding about how contemporary targeted trafficking of Native peoples can be addressed, but also help expand universal approaches to prevention of trafficking, generally. This is also an opportunity to build bridges with Native governance entities, service providers and communities which will likely create greater local harmony over time.
- ❖ Seek out opportunities—preferably funded—where Native partners might be able to incorporate data collection around sex trafficking as a part of the agreement.
 - There are a number of new and enhanced funding initiatives that have resulted from the changes in the VAWA and TVPA authorizations. In partnership with local Native communities, these are opportunities for funding innovation as long as the focus is kept on figuring out long-term, future oriented options. This may also require understanding that some of the data, if not all of the data, will be under the authority of the Native community from whom that data is collected and only for the purpose of better understanding this particular phenomenon. It will also be key to have Native decision-makers on board and

heavily involved in the planning in large numbers. And, as possible, this is also an opportunity for collaboration across state as well as reservation borders. It is also important to keep the focus on the experience of the individual community to allow for Native nation-to-Native nation comparison rather than relying on comparisons to the United States as a whole—or even across one state. As entities and communities which, at times, cross state lines, and as survivors of attempted genocide, any other type of data comparison runs the risk of hiding the experiences of Native communities or flattening the nuances.

- ❖ Require law enforcement, service providers and other entities that might encounter sex trafficking survivors to include questions about sex trafficking in the intake process.
 - As previously mentioned, Pierce noted that Minnesota programs willing to ask questions about the possibility of someone trading or being traded for sex during their intake process saw more opportunities to address the issues surrounding trafficking directly because it increases the likelihood of disclosure. And, as one interviewee indicated, if the subject is approached as a matter of fact, without shaming or judgmental intentions, disclosure is much easier to navigate for all involved.
- ❖ Develop and support program interventions that do not solely rely on Western approaches, religions or perspectives in treatment.

- It is worth noting some of the interviewee comments that tribal communities can be reticent to engage in efforts structured in Western or religious ways. This makes sense, considering many Native communities' past experiences with both state and federal governments. At times, that reticence was what allowed for their physical and cultural survival. So, approaches steeped in religious and/or Western ideals are frequently problematic, at best. Fortunately, there are a number of interesting models in Minnesota and Alaska which are specific to the Indian Country reality of targeted sex trafficking. There also seem to be some models developing in locations threatened by an increasing potential for sex trafficking activities due to an influx of relocating industry workers—such as in North and South Dakota. This researcher found people happy to share what they know and discuss possibilities, so local and state governance entities do not have to completely invent new programs. It is an option to apply what seems to work already in a format that works locally. What they all have in common is a focus on Native identity and healing more than religious or Western philosophical approach. These approaches might provide insights into policy and programming for other communities as well.

- ❖ Change the language of anti-trafficking laws to better address the reality of sex trafficking in nearby Indian Country while clarifying issues around the legal definitions connected to movement of bodies,

the activities involved in sex trafficking (beyond and specifically including prostitution) and force/fraud/coercion (or the coercive control of bodies).

- As discussed throughout this study, the language currently used to define sex trafficking effectively excludes Native victim/survivors in Indian Country as much as it provides for general confusion in all of the three key elements. With the authority to make laws specific to the state or locality comes the opportunity to create clarity for the better use of the law overall.

Suggested Tribal Policy Goals

- ❖ Address international level obligations to prevent, punish and protect.
 - This is a strategic suggestion which speaks to Native self-determination. Often times, what distinguishes a sovereign state or nation is said state or nation recognizing that within itself. These sovereigns are evident to others because they act like sovereigns. Accepting and responding to these obligations surrounding trafficking is acting like a sovereign on an international level. Additionally, as the study findings show, for any in Indian Country, the perception is that tribal entities are much more responsive to Native needs. Indian Country is experiencing a need—the need to address contemporary targeted sex trafficking of Native peoples. As one of the types of governance entities perceived as legitimate in Indian Country generally, it is important to meet these obligations.

- ❖ Build code which specifically addresses the concerns of Native peoples around the issues of sex trafficking.
 - It has proven detrimental to Native peoples to rely solely on the United States government for safety or protection. This is true around a number of issues, not just the contemporary targeted sex trafficking of Native peoples. This has also been true throughout Indian Country and outside of its boundaries. Relying on Native definitions of safety and protection can be complicated around some issues, but anti-trafficking law is less troublesome than others. Again, the language used to define sex trafficking effectively excludes Native victim/survivors in Indian Country as much as it provides for general confusion in all of the three key elements. Not having any body of code that addresses it adds to that exclusion as well as increasing risk and exposure. And no one will ever be able to explain the reality of Indian Country as well as someone from and of Indian Country. At this moment in time, this is an opportunity for Native America to better define the conversation around sex trafficking such that it includes the reality of Indian Country. This is an opportunity to apply Native self-determination principles in a practical and impactful way that also breaks the imposed psychological dependency on the United States for safety and protection discussed throughout this text.

- ❖ Discuss and educate about the reality of sex trafficking in the local tribal community—in federally, state recognized and unrecognized lands.
 - There are already a number of areas doing this work, but there are many more communities in need of help. Again, defining the language used that is specific to Indian Country is important. But this does not always have to be policy or code specific. Changing attitudes can happen in small actions or practices that can be easily implemented with little effort. Including Native sex trafficking survivors as a concept in conversation or as an area that tribal social service departments can address helps change attitudes. And those changes in attitudes will support anti-sex trafficking policy that is specific to Native peoples.
- ❖ Encourage and support data and research on the impacts in Indian Country specifically. This is a good place to build relationship with trustworthy researchers.
 - It is no secret that “research” can be a dirty word in some Native communities. This is rightfully so. Research has been used to denigrate and dehumanize Native communities in the past. Currently, it is more likely being used to honor and attest to the resilience and fortitude of Native communities. Used positively and respectfully, this research can help Native communities address their needs in a manner steeped in Native self-determination as well as build bridges to other communities and across generations. Researchers who can and do prioritize

Native perspectives and who are interested in building viable, respectful research relationships are required for this work. Most importantly, they can help provide the tools to raise awareness as well as provide other systems, tied to making policy based on statistics, the type of information that they need.

Suggested Federal Policy Goals

- ❖ Invest in long term, long range and far reaching data collection in Indian Country that engages Native communities as full partners and uses Native approaches.
 - The NIJ initiative is a good beginning but should not be the end. Some ideas for this kind of investment include data sharing across federal, state and tribal entities which is focused on prevention (not just punishment) that is quick, efficient and inexpensive for the smaller governance bodies. An infrastructure, broader than what is possible just within law enforcement, is needed for this kind of data sharing which is respectful of Native community needs and nimble enough to change with the organic nature of offenses like sex trafficking. This is not the kind of infrastructure that can be built locally if it is to be effective as the crime is not predicated on just small movement alone.
- ❖ Support multi-level team trainings which educate about sex trafficking in Indian Country across levels of law enforcement in a way that

encourages team building, better understanding of the law and better use of the law.

- Interviewees mentioned that this kind of training has happened in the past around sexual violence specifically. This kind of training is encouraged in the reauthorizations of VAWA and TVPA around sex trafficking specifically, but is still new. Aggressively encouraging and supporting this kind of training that is specific to targeted sex trafficking, specific to the needs and experiences of Native peoples and that is not primarily focused on underage victim/survivors will be key. Especially because these are fields where personnel are trained to categorize people and their responses, it will be important to address the problems that relying on stereotypes creates as well as the nuances of sex trafficking as a crime different than, but related to, other forms of sexual and gendered violence.
- ❖ Build processes that better incorporate the understandings about Native survivor needs harnessed from service provider insights.
 - This includes insisting on service provider input at every stage of policy development and research. As some of the people most intimately in touch with the experiences of Native survivors of sex trafficking broadly their insight, along with the insight of survivors themselves, is valuable in ensuring that government entities are not reproducing harm in the name of providing safety.

Suggested International Policy Goals

- ❖ Accordingly, these goals are considerably broader than any of the other policy goals listed here. As many international understandings around human trafficking can be thought of as more aspirational than fully enforceable, at the very least it is helpful to provide as much clarity as possible.
 - Encourage extensive use of the broader Protocol definition of trafficking until even better, clearer language is created.
 - This may include reconsidering the primary focus on prostitution in the Protocol definition. This study alludes to the fact that sex trafficking activity is varied, organic, and not always reliant on prostitution. Finding a definition that can allow space for all sex trafficking victims in this protocol will help sovereigns avoid the inadvertent exclusion of non-prostituting sex trafficking survivors.
 - Engage actively with Indigenous communities worldwide to better understand the specific socio-cultural influences that impact vulnerability to targeted trafficking specific to these communities.
 - This will help with finding better, more inclusive language around the activities involved in sex trafficking, addressing the ethnoracial targeting that occurs and encouraging the adaptation of “coercive control of bodies”

in the definition. These elements all support trafficking prevention.

- Encourage sovereign states to work in conjunction with Indigenous communities on a local level to support data gathering and social services around sex trafficking that are specific to their communities. For this to work, international entities must require that the Indigenous communities involved control the data collection process, have a key role in the design and determine the use of the findings.

This minimal list is by no means definitive. This research began with the idea that policy can be thought of as guidelines that can help ensure that decision making aligns with the overarching vision of who and how the overall system knows itself to be—a provider of stories of hope about who we are and how we prioritize. There are ways to extend our efforts to the “boat women” such that they are not required to live as cautionary tales—and these are just a few, initial suggestions. What is important about them is that they address ways that the policy environment can better respond, on all levels, to the perceived widespread occurrence of targeted sex trafficking of Native peoples. What is different about them is that they are less focused on federal initiative and approval, as much as focused on using federal options as stopgaps and/or supplements to what Native peoples have determined is appropriate. Further, these ideas support Native self-determination as a

vital element of any policy intervention which has any hope of being effective in meeting the broad obligation to prevent, punish and protect from sex trafficking. They are collaboratively cooperative, pointedly specific to the realities of sex trafficking in Indian Country and helpful in addressing the culture of lack that has seemingly rendered some Native peoples consumable in contemporary times.

Appendix A: Interview Questions

Numbers =Tier 1—make sure to address these
Letters =Tier 2—if the conversation allows, address these.

These questions will be addressed in 2-3 thirty minute interviews which, with permission, will be digitally recorded and transcribed. The data will be analyzed and coded for non-verbal cues as well. Keep non-verbal cue notes separate without identifying information.

Ask if there is more to add after EVERY section.

Notes to keep in mind. (Read before beginning conversation):

There are some **basic definitional issues** that we as scholars are assuming we share with your participants, but maybe we don't. Specifically, what do they consider commercial sexual exploitation to mean? What does trafficking mean? Are there ways these activities are the same and ways they are different? Which of them do they feel are occurring currently in their tribal community and how seriously do tribal members view these activities?

I would also be interested in who they think of as **the most typical victim** (girl/boy/women/man) who is involved in commercial sexual exploitation/trafficking. Also, if your respondents **distinguish between commercial sexual exploitation and trafficking**, what is their **perception of the victims of each**-similarities or differences?

Another area that is foundational is how your respondents understand **the causes of commercial sexual exploitation/trafficking**. I have often found they key informants have very different and important perspectives on causality from what is found in existing scholarly analyses.

The gang questions are very interesting. It might be good to **clarify if the sexual exploitation is for commercial gain or is some horrible form of initiation ritual**. I also would be interested to know how your participants view the distinction between a pimp and a trafficker.

Research Conversation Points/Interview Questions

What does commercial sexual exploitation look like?

1. Please briefly describe what commercial sexual exploitation has looked like in your area over the past decade.
 - Does it exist there and have there been any shifts in prominence?
 - What type of “work”³⁵⁶ is involved (such as prostitution, pornography, stripping/nude dancing, etc.)?
 - Who is organizing it?
 - What is the demographic identity of those who are coerced or forced into this work, etc.?
2. What are the locally expressed “preferences” within the local commercialized sex trade in terms of ethnicity or other identity markers? How are they expressed?
3. What has been the prevalence of gangs active in your area in the past decade?
 - Also, please describe the type of gangs—if and as relevant.
 - i. Prompts, if needed: degree of organization (loose to highly organized), location (neighborhood, national or transnational), focus (territorial protection or entrepreneurial), membership (specific ethnicity or mixed), specific gang nation affiliation beyond their “set,” longevity (age restricted or multi-generational), format (traditional or hybrid), etc.
4. Some gangs build capital through activities involving drugs, extortion and/or forms of commercial sexual exploitation. What does gang related commercial sexual exploitation look like in your area? If there have been any shifts, please briefly describe those in your answer.
 - a. To your knowledge, is this commercial sex trade activity influenced by gangs classified as transnational criminal organizations?

³⁵⁶ It is noteworthy that many in legal and policy arenas still talk about the industries which are sometimes involved in trafficking as “areas of work.” This term is used very occasionally and with the clarification that we are speaking about commercial sexual exploitation specifically.

- b. How might I get statistical information on the local rate of arrest for prostitution, as well as a breakdown of the gender, age and ethnicity of those arrested?
5. What is the local cultural understanding of/response to Native Americans by law enforcement? Policymakers? Please describe any shifts in the past 5 years in your answer.
 - a. What is the local cultural attitude towards Native American women by law enforcement? Policymakers? Please describe any shifts in the past 5 years.
6. In your opinion, how has the presence of the current local commercialized sex trade influenced these shifts noted previously (if they were)? Why or why not?

Is it trafficking?

7. Have you seen an element of border crossing—reservation, city, state—in the commercial sexual exploitation in your area? Please briefly describe that.
 - a. What borders seem to be crossed more regularly?
8. How often are human trafficking victims or traffickers identified?
 - a. How is information maintained on the number of human trafficking victims identified?
 - b. How are those who are victims of sex trafficking distinguished from those who are victims of labor trafficking for the purposes of tracking prevalence locally?
 - c. How might I get statistical information on the local prevalence of sex trafficking, as well as a breakdown of the gender, age and ethnicity of those identified?
 - d. How is information maintained on the number of human traffickers identified?
 - e. How are those who are sex traffickers distinguished from those who are labor traffickers for the purposes of tracking local presence?
 - f. How might I get statistical information on the prevalence of sex traffickers, as well as a breakdown of the gender, age and ethnicity of those identified?

- g. Are there any common human trafficking scenarios that you have experienced or see on a regular basis?

Recruitment:

- 9. What have you noticed about the recruitment of people to work in the commercial sex trade?
 - a. What are the modes of recruitment—online, in person, etc?
 - b. What are the particular areas or events where you think recruitment happens?
 - c. Which specific communities do you think are targeted for recruitment locally?
 - d. Why do you think these areas might be targets?
 - e. Why do you think these communities might be considered vulnerable?
- 10. What do you think might be elements of force or coercion involved in this recruitment, if any? Please describe the circumstances of force or coercion that you believe might be in place?

Intervention: *(Be cognizant of possible PL-280 or other statute created state jurisdiction...)*

- 11. How is this commercial sexual exploitation addressed by federal and/or state authorities in your area?
 - a. How often are any of those identified as commercially sexually exploited also identified as victims of sexual trafficking?
 - b. How would law enforcement or legal services *usually* come in contact with a human trafficking victim?
 - c. How often are any of those identified as organizers of commercial sexual exploitation also identified as sex traffickers?
 - d. How would law enforcement or legal services *usually* come in contact with a human trafficker?
- 12. How often are human trafficking victims or traffickers identified, in general?
 - a. Where and how is information maintained on the number of local human trafficking victims identified?

- b. Where and how is information maintained on the number of human traffickers operating locally?
 - c. What are the common human trafficking scenarios that you have experienced or seen on a regular basis?
13. What kind of consultation on commercial sexual exploitation happens with Native officials or service providers?
14. How is this issue addressed by Native communities in your area?
15. What have been the conversations about using anti-trafficking laws to address this issue?
- a. What are the areas of overlap?
 - b. Where are the areas of cross-deputization with federal, state, county, tribal law enforcement?
 - c. Which areas engage in cross-training on commercial sexual exploitation? On sex work? On trafficking? What type of training is it/are these?
 - d. Please describe any collaborative, creative lawyering going on in your area around the issue of commercial sexual exploitation of which you are aware.
 - e. How are the particular needs of Native communities met in the prominent intervention(s)?

For later:

1. Who are the social service providers who might work specifically with these populations (those coerced or forced in the commercial sex trade) in your area?
 - a. What are their names?
2. What are the specific concerns about any kind of trafficking—sexual or otherwise—in your area?

Appendix B: Survey

A sample survey document follows.

Introduction

Welcome and thank you for your willingness to participate...

Your contribution to this research is much appreciated.

This survey explores current perception(s) and opinion(s) on the **contemporary targeted trafficking of Native peoples**--therefore **there are no right or wrong answers**. However, your answers are important and may inform future tribal and US efforts to address trafficking detection, policy making and service provision in a number of very important ways.

The information gathered by this survey, as well as all respondent identities, are managed and stored in an anonymous and confidential manner. Submission of a survey confirms both your acknowledgement of this process and agreement to have your response included, anonymously, in this dataset and the study author's analysis of it.

The **estimated time to complete the survey is 15 to 30 minutes**. Navigate the survey using the "prev" (backwards) and "next" (forward) buttons. You can change your answers using the navigation buttons or take a break from responding as long as you have not submitted the survey OR closed the survey window on your computer.

Once your answers are complete **please be sure to click the submit button at the end of the survey!** If you do not, your answers may not be recorded. When your results have been recorded, you should be directed to either a "Thank You for Participating" page or aprilpetillo.com.

If you have any questions or concerns about this process, please contact April or see www.aprilpetillo.com.

And now, let's begin....

Please Describe Yourself...

***1. Please provide a unique identifier for your response using:**

- a. The first letter of your first name**
- b. The last letter of your last name**
- c. The year you were born**

Your unique identifier should look something like this--MO1971

1st letter, 1st name	<input type="text"/>
last letter, last name	<input type="text"/>
year of birth	<input type="text"/>

2. What is your gender?

- Female
- Male
- Two Spirit
- Gender Neutral
- Other (please specify)

3. What is your ethnicity? (Please select all that apply.)

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black or African American
- Hispanic or Latino
- White / Caucasian
- Prefer not to answer
- Other (please specify)

4. What, if any, is/are your tribal affiliation(s)?

Note: This information will only be used to calculate the number of unique tribes that participants indicate have concerns around this issue. Tribe names will not be used in any report without permission of appropriate tribal councils and research internal review boards (IRBs).

***5. What is your job role and/or title?**

6. About how long have you been in your current position?

Years

Months

***7. In which region of the United States do you live?**

- 1. New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut)
- 2. Middle Atlantic (New York, New Jersey, Pennsylvania)
- 3. East North Central (Ohio, Indiana, Illinois, Michigan, Wisconsin)
- 4. West North Central (Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas)
- 5. South Atlantic (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida)
- 6. East South Central (Kentucky, Tennessee, Alabama, Mississippi)
- 7. West South Central (Arkansas, Louisiana, Oklahoma, Texas)
- 8. Mountain (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada)
- 9. Pacific (Washington, Oregon, California, Alaska, Hawaii)

Definitions

This survey uses the following language as defined here:

- **Human trafficking:** activities, methods and intentions which end with the exploitation of others for monetary or other gain. Under the “umbrella term” of human trafficking, there are several specific types of trafficking often categorized by the type of exploitation intended by the traffickers (i.e., sex or labor).
- **Indian Country:** reservation areas as well as the surrounding communities and urban communities where Native peoples reside and congregate in the area now included in the United States.
- **Native American or Indian:** peoples indigenous to the land now included in the United States. For the purposes of this survey, this includes indigenous peoples of Alaska (Alaska Natives) and Hawaii (Native Hawaiians). The term "Indian" is usually used in deference to relevant US law, as in "Indian Country."
- **Trafficking Victim/Survivor:** those who are exploited in situations of human trafficking.
- **Traffickers:** those who recruit persons to be trafficked and/or organize the trafficking activity.

This survey specifically asks for your perceptions and perspectives around sex trafficking. Sometimes, the survey also asks about your distinctions between sex trafficking and labor trafficking or the larger concept of human trafficking.

Defining Trafficking

8. Which activities qualify as sex trafficking? (Please check all that apply.)

- I don't know
- none
- nude dancing (in a club or at private parties)
- nude modeling
- organized prostitution
- phone sex
- pornography
- professional escorting
- sex with someone else at the request of an intimate partner (as "a favor")
- sexual texting
- street prostitution
- survival sex (sex in exchange for food, housing, protection or other basic life necessities)
- Other (please specify)

9. Describe the type of people you suspect might be vulnerable to or at greater risk than others for being sexually trafficked according to the categories below.

You will note that you are to define the boundaries of "in your area" and "beyond your area" and remain consistent in those categories throughout the survey.

(Please check all that apply in the appropriate column.)

		Vulnerable in your area	Trafficked in your area	Vulnerable beyond your area	Trafficked beyond your area	I don't know
Adult women (age 18 or older)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adult men (age 18 or older)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Girls (younger than 18)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boys (younger than 18)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Native American Indian		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Caucasian/White		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
African American/Black		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hispanic/Latino		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recently immigrated		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
US citizens		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
From (your) local area		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
From rural or isolated areas		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
From reservations		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
From urban areas		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please briefly describe other types of persons vulnerable to trafficking or being trafficked either in or beyond your area below.

10. Describe the type of person(s) and/or group(s) you believe are or might be involved in organizing sex trafficking--either in your area or beyond your area.

(Please check all that apply in the appropriate column.)

	In your area	Beyond your area	I don't know	Not applicable
Local gangs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regional gangs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
National gangs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Individuals locally (non-gang affiliated)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regionally organized groups (non-gang affiliated)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please be specific about other types of persons or groups trafficking either in or beyond your area below.

***11. To your knowledge, does sex trafficking, as you described it above, exist in your area?**

- Yes
- No, it used to exist here.
- No, it has never existed here.
- I don't know

Please know that future survey questions may ask about sex trafficking in your area. If they do and you cannot answer because you are unaware of trafficking in your area, please use the not applicable option where possible and appropriate.

Trafficking Scenarios

12. Describe any common local sex trafficking scenarios of which you have seen or been aware, especially those involving Native peoples.

- I have neither seen nor been aware of any local common trafficking scenarios.
- I have seen or been aware of the following locally common trafficking scenarios:

13. Would you say these activities (especially involving Native peoples) have increased, decreased, or stayed the same over the last decade?

- There has been increased participation in these activities.
- There has been decreased participation in these activities.
- Participation in these activities has stayed the same.
- I don't know.

If there has been increased or decreased participation, please explain:

Policy & Enforcement Attitudes

14. Are the following entities in your area cooperative with and responsive to the needs of Native peoples? (Please answer for each column.)

	local, non-tribal law enforcement	local tribal law enforcement	federal law enforcement	local, non-tribal policy makers	tribal policy makers	US policy makers
Yes, very	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Somewhat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Neutral	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Occasionally	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No, not at all	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please briefly describe any shifts in these relationships in the last 5 years below.

15. Have the following entities responded to Native women differently (better, similarly or worse) than they have towards the local tribes in general? (Please answer for each column.)

	local, non-tribal law enforcement	local tribal law enforcement	federal law enforcement	local, non-tribal policy makers	tribal policy makers	US policy makers
Better response	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Similar response	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Worse response	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please briefly describe any shifts in responses in the last 5 years below.

16. Generally, law enforcement officers' and policy makers' attitudes about sex trafficking may be influenced by several factors, including legislation.

Which of the following do you believe has had influence on these attitudes?

(Please indicate all that apply in the appropriate column.)

	local, non-tribal law enforcement	local tribal law enforcement	federal law enforcement	local, non-tribal policy makers	tribal policy makers	US policy makers
Local Anti-Prostitution Laws	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sex trafficking prevalence in the area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The Tribal Law and Order Act of 2010 (TLOA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The Violence Against Women Act Reauthorization of 2013 (VAWA 2013)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The Trafficking Victims Protection Act of 2000, 2003, 2005 & 2008 (TVPA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
None of these have been an influence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please list how these have had influence and/or other, similar factors that have influenced those attitudes below.

Recruitment

17. Are there general modes of recruitment and/or targeting that you believe are used for sex trafficking of Native peoples specifically?

- I don't have a belief about the particular modes of recruitment used.
- I believe that the following are the particular modes of recruitment used:

18. Are there particular areas or events where you think this recruitment happens?

- I don't think that there are particular areas or events where this recruitment happens.
- I think that there are particular areas or events where this recruitment happens, but I don't know where or what they are.
- I think that the following recruitment happens at the following particular areas or events:

19. Are there specific communities or tribes in your area that you think are likely targeted for this recruitment?

- Specific communities or tribes in my area are not likely to be targeted for this recruitment.
- I think there are specific communities or tribes where this recruitment happens, but I don't know which ones they are.
- I think that the following specific communities or tribes in my area are likely targeted for this recruitment:

Target Characteristics

20. Why do you think these communities or tribes might be targets?

21. What characteristics do you think these communities have which might make them seem vulnerable?

Fit with the Legal Definition

22. Do you know what kind(s) of force, fraud or coercion, if any, might be involved in recruiting those to be sexually trafficked?

- I don't know what kinds of force, fraud or coercion might be involved.
- I don't think that there are elements of force, fraud or coercion involved.
- I believe that the following kinds of force, fraud or coercion are involved:

23. In your opinion, is transport (the movement of a body or person) required in sex trafficking?

- Yes
- No
- I don't know

24. In the sex trafficking in your area, is there an element of transport (or movement of a body or person)?

- Yes
- No
- I don't know
- I am not aware of sex trafficking in my area.

Fit with the Legal Definition

25. Has that transport likely involved any border crossing? (Please check all that apply.)

- | | |
|--|--|
| <input type="checkbox"/> Yes, crossing reservation borders | <input type="checkbox"/> Yes, crossing country borders |
| <input type="checkbox"/> Yes, crossing city borders | <input type="checkbox"/> No, remained within area |
| <input type="checkbox"/> Yes, crossing county borders | <input type="checkbox"/> No, no transport involved |
| <input type="checkbox"/> Yes, crossing state borders | <input type="checkbox"/> None of the above |

There is more that I would like to add:

26. Rank the borders most regularly crossed in local sex trafficking in order of frequency.

On this scale, 1 = the borders crossed most regularly while 5 = borders crossed the least. You can only provide one answer or choice of border for each ranking.

<input type="text" value="1"/> Reservation	<input type="checkbox"/> N/A
<input type="text" value="1"/> City	<input type="checkbox"/> N/A
<input type="text" value="1"/> County	<input type="checkbox"/> N/A
<input type="text" value="1"/> State	<input type="checkbox"/> N/A
<input type="text" value="1"/> Country	<input type="checkbox"/> N/A

Contact

27. How do you think the following would usually come into contact with human trafficking victims or survivors in your area?

(Please check all that apply in the appropriate row.)

	Arrest	Call or Tip-off	Social Services	Hospital Visit	I don't know
law enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
service providers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
legal services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other method (please specify):

28. To your knowledge, how would the following usually come in contact with a human trafficker operating in your area? (Please check all that apply in the appropriate row.)

	Arrest	Call or Tip-off	Social Services	Hospital Visit	I don't know
law enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
service providers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
legal services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other methods (please specify):

32. Do you have a sense of how information on any Native people in your area who are identified in any of the categories below is maintained?

human trafficking
victims/survivors

human traffickers

sex trafficking
victims/survivors

sex traffickers

Pick from one answer on
each menu.

If yes, please briefly describe your understanding of how this information is maintained here:

33. How are those locally identified as sex trafficking victims/survivors distinguished from labor trafficking victims/survivors ?

- I don't know
- Not applicable
- Sex trafficking victims are not distinguished from labor trafficking victims in my area
- Sex trafficking victims are distinguished from labor trafficking victims locally by:

34. How are sex traffickers operating in your area distinguished from labor traffickers?

- I don't know
- Not applicable
- Sex traffickers operating in my area are not distinguished from labor traffickers operating in my area
- This is how sex traffickers operating in my area are distinguished from labor traffickers operating in my area:

Interventions: Tribes and/or Native peoples

35. What are some of the specific concerns about any kind of trafficking—sexual or otherwise—in your area?

36. How is this issue addressed by tribes or Native peoples in your area?

- I don't know.
- I don't see the issue addressed by tribes or Native peoples in my area because there is no need.
- I don't see the issue addressed by tribes or Native peoples in my area, but I see a need for it to be addressed.
- I see the following kinds of approaches and efforts:

Interventions: Tribes and/or Native peoples

37. To your knowledge, what kind of consultation on sex trafficking happens with the following Native representatives in your area?

(Please check all that apply in the appropriate column.)

	law enforcement	legal services	service providers	policy makers
Consultation with Native officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consultation with Native policy makers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consultation with Native service providers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consultation with Native legal services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I don't know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

These kinds of consultations are happening:

Interventions: Tribes and/or Native peoples

38. How are the particular needs of tribes and/or Native peoples met in the prominent intervention(s) in your area?

- I don't know
- I don't think that tribal or Native peoples' needs are being met.
- I think that the following tribal or Native needs are met in these interventions in these ways:

Interventions: Law Enforcement

39. Which law enforcement agencies address potential sex trafficking of Native peoples in your area? (Please check all that apply)

- Federal Authorities (i.e., the Federal Bureau of Investigation [FBI], the Bureau of Indian Affairs [BIA], etc.)
- State & County Authorities
- Tribal Authorities
- Law enforcement doesn't really address this in my area
- I don't know

Interventions: Law Enforcement

40. How do the law enforcement agencies you indicated above address potential sex trafficking of Native peoples?

41. To your knowledge, what have been the conversations about using anti-trafficking laws (TVPA, VAWA provisions) to address this issue?

- I don't know.
- No, these conversations are not happening to my knowledge.
- Yes, I see these kinds of conversations happening.

(please specify which laws were discussed, among whom and applicable where if possible):

Interventions: Service Providers

42. Do local social service providers work specifically with Native peoples who have been sexually trafficked?

- I don't know.
- No social service providers work specifically with these populations in my area.
- The following social service providers specifically work with these populations in my area:

Interventions: Service Providers

43. How do the service providers you indicated above address the potential sex trafficking of Native peoples?

Collaborative Interventions

44. Service providers and law enforcement may choose to collaborate with others, such as tribes, in a number of ways to positively impact social issues.

Do you see local service providers and law enforcement engaged in collaborations with others in any of the following ways?

(Please check all that apply in the appropriate column.)

	local, non-tribal law enforcement	local tribal law enforcement	local, non-tribal service providers	tribal service providers
Issue and Identification Training for law enforcement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Issue and Identification Training for service providers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Issue and Identification Training for tribal agencies.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural Training for officials.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural Training for law enforcement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural Training for service providers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cross-deputization.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cross networking among or with service providers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cross networking among or with tribal agencies.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal aspects of using Trafficking Victims Protection Act (TVPA) in these instances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal aspects of using the Tribal Law and Order Act (TLOA) in these instances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal aspects of using the Violence against Women act (VAWA) in these instances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintaining legislative/policy making sovereignty in connection to the issue.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintaining law enforcement sovereignty in connection to the issue.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintaining cultural sovereignty in connection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

to the issue.

I do not see collaboration.

I don't know.

I see these kinds of collaborations happening:

Thank you!

45. If you would like to add more information or provide any feedback, including a request to be in touch with the researcher, please do so in the space provided here:

Appendix C: The Indian Termination Era Information Sheet

Indian Termination, a United States policy of the mid-1940s to the mid-1960s, involved a series of pieces of legislation aimed at quickly assimilating Native Americans into mainstream American society, regardless of Native American consent or not. Born out of well documented abuses and mismanagement within the United States systems established to honor the special relationships set up through treaties and other agreements with Native peoples, Congress sought to end those responsibilities to tribes by ending Native identity. The governmental process included granting Native Americans all the rights and privileges of citizenship as well as reducing the need for previous mismanaged bureaucracy and related government expenses. In doing so in this manner, the United States impacted (i.e., reduced) federal honoring of tribal sovereignty, its trusteeship over Indian reservations, and the Native exclusion from state laws within a short time span. The speed of the transition with diminished control over the process had a devastating effect on many previously well managed Native communities, some of whom still feel the legacies of the Termination Era today. The policies involved included

- the Kansas Act of 1940 (Title 25 U.S. Code § 217a ch. 276, 54 Stat. 249)—trial legislation to test granting states criminal prosecutorial jurisdiction over all but federal offenses,
- the Meriam Report—a survey of Native American conditions and BIA processes,
- Public Law 394 (60 Stat. 229) —conferring the state of North Dakota criminal jurisdiction over Devils Lake Indian Reservation with the

exception of federal offences, wherein federal jurisdiction was maintained, per the Kansas Act.

- the Indian Claims Commission Act of 1946 (Pub. L. No. 79-726, ch. 959) —an act establishing the commission to process and settle Native land claims
- Public Law 846 (62 Stat. 1161) —conferring the state of Iowa criminal jurisdiction over the Sac and Fox Indian Reservation, with the exception of federal offences, wherein federal jurisdiction was maintained, per the Kansas Act.
- Public Law 881 (62 Stat. 1224) —conferring the state of New York criminal jurisdiction over all reservation lands within the state (an important deviation from the Kansas Act), with the exception of federal offences, wherein federal jurisdiction was maintained. This law also protected existing Native hunting and fishing rights from deprivation by state requirements for fish and game licenses (New York Act of 1948),
- Public Law 322 (63 Stat. 705) —conferring the state of California civil and criminal jurisdiction over Agua Caliente Indian Reservation and for other purposes, while maintaining tribal status (California Act of 1949),
- Public Law 785 (64 Stat. 845) —conferring New York state courts jurisdiction over inter- or intra- racial civil actions involving Native individuals or parties as well as preserving customs, exempting tribes from taxation, reaffirming hunting and fishing rights, prohibiting state judgments on relevant land disputes or retroactively applying any state laws to tribal lands or claims (New York Act of 1950),
- House Concurrent Resolution 108 of 1953—the formal congressional statement announcing Termination policy which involved withdrawal of all federal aid, services, and protection immediately, the immediate termination of several tribes and plans for additional terminations,
- Public Law 280 (PL-280)—granting states civil and criminal jurisdiction over all states within specific states and extending the

same to states that desired it via statute or an amendment to the state's constitution, and

- Indian Relocation Act of 1956 (Public Law 959 or the Adult Vocational Training Program)—a law establishing a program which encouraged the migration of Indian Country Native Americans to urban areas for greater employment opportunities by supplying one-way transportation costs.

Appendix D: Excerpt from “Human Trafficking & Native Peoples in Oregon: A Human Rights Report” (Juran, Scovel and Weedn 2014)

This excerpt is from Juran, Jason, Joseph Scovel & Hayley Weedn. 2014. “Human Trafficking & Native Peoples in Oregon: A Human Rights Report” American Indian Law Journal. 3 (1): 40-158, 38-41 and D8-D12.

The report provides an excellent legal assessment of the laws as well as the issues around human trafficking when the state has legal obligations to tribal communities via PL 280. This excerpt discusses federal law and its applicability in Indian Country and is provided with the authors’ permission.

This excerpt is from Juran, Jason, Joseph Scovel & Hayley Weedn. 2014. “Human Trafficking & Native Peoples in Oregon: A Human Rights Report” *American Indian Law Journal*. 3 (1): 40-158, 38-41 and D8-D12.

The report provides an excellent legal assessment of the laws as well as the issues around human trafficking when the state has legal obligations to tribal communities via PL 280. This excerpt discusses federal law and its applicability in Indian Country and is provided with the authors’ permission.

3. Tribal Jurisdiction

As briefly mentioned in Part IV.D, none of the tribes in Oregon have enacted laws specifically criminalizing human trafficking yet. However, even absent human trafficking laws, tribes can still prosecute offenders for similar or related crimes currently existing within their own criminal codes, such as: kidnapping, pimping, sex abuse, or child abuse.

Tribal Jurisdiction Chart:

DEFENDANT/ VICTIM	NON-PL 280	PL 280
<i>Indian/Indian</i>	Jurisdiction over all crimes (concurrent when applicable).	Shares concurrent jurisdiction with state.
<i>Indian/ Non-Indian</i>	Jurisdiction over all crimes (concurrent when applicable).	Shares concurrent jurisdiction with state.
<i>Non-Indian/ Indian</i>	No jurisdiction except in limited circumstances under VAWA.	No jurisdiction except in limited circumstances under VAWA.
<i>Non-Indian/ Non-Indian</i>	No jurisdiction.	No jurisdiction.

As for the question of “when is tribal jurisdiction implicated?” *Tribes generally have jurisdiction over all Indians committing crimes in Indian Country,*²²³ and that authority runs *concurrently* with any applicable state and/or federal criminal jurisdiction over the crime committed (as discussed in the previous subsections). On the other hand, the Supreme Court has consistently upheld the notion that absent an express grant of authority by Congress or treaty, *tribes are barred from exercising criminal jurisdiction over non-Indian offenders for crimes committed in*

²²⁰ Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified 18 U.S.C. § 1162, 28 U.S.C. § 1360, 25 U.S.C. §§ 1321-1326).

²²¹ This is in contrast to “optional” PL 280 states, where state, federal, and tribal authorities are all deemed to hold concurrent jurisdiction where applicable. 25 U.S.C. § 1321(a); *see infra*, Appendix D Part II.B (for further detail on jurisdiction in “optional” vs. “mandatory” PL 280 states).

²²² 18 U.S.C. § 1162(c); *McBraney*, 104 U.S. 621.

²²³ Although the United States traditionally recognizes a tribe’s jurisdictional authority over its own members (*U.S. v. Johnson*, 637 F.2d 1224, 1231 (9th Cir.1980)), the same has not always been recognized with respect to non-member Indians or Indians of other tribes (*Duro v. Reina*, 495 U.S. 676 (1990)). To plug the gap, Congress amended the Indian Civil Rights Act in 1991 to explicitly provide tribes with criminal jurisdictional authority over *all Indians committing crimes in Indian Country*, regardless of whether that Indian is a member of the prosecuting tribe. 25 U.S.C. § 1301 (also known as the *Duro*-fix); *see U.S. v. Lara*, 541 U.S. 193, 208-09 (2004) (validity upheld).

Indian country.²²⁴ Until recently, this essentially meant that tribes were prohibited from prosecuting non-Indians—period.

However, recognizing the persistent and disproportionately high degree of violence against Native women in Indian Country, Congress recently acted to provide a (very) small exception to the blanket rule. The 2013 reauthorization of the federal Violence Against Women Act²²⁵ now authorizes tribes to exercise jurisdictional authority to prosecute non-Indian offenders for crimes of violence against any Native American with whom the offender is in a “dating” or “domestic” relationship, as long as the crime charged is based on the presence of the relationship.²²⁶ A further requirement is that the non-Indian offender must reside or be employed on the reservation, *or* be the spouse, intimate partner, or dating partner of either a member of the tribe or a non-member Indian who resides in the tribe’s Indian country.²²⁷ Tribes who wish to prosecute under this amendment must also meet certain procedural requirements.²²⁸ Most importantly, though, while some instances of human trafficking might qualify for tribal prosecution here, it is neither effective nor intended to combat the problem overall.

Oregon also recently expanded authority of tribal law enforcement through passage of Senate Bill 412 (“SB 412”) in 2011.²²⁹ The bill ensures that certified²³⁰ tribal officers are granted the same “peace-officer” status provided to other Oregon law enforcement officers so long as

²²⁴ In *Oliphant v. Suquamish*, a non-Indian resident of Port Madison Reservation was charged with “assaulting a tribal officer and resisting arrest” by the Suquamish Tribe. Defendant claimed that because he was non-Indian, the tribe had no jurisdiction. The Supreme Court agreed. 435 U.S. 191, 194-97 (1978).

²²⁵ VAWA 2013, Pub. L. No. 113-4, § 901-910, 127 Stat. 54 (2013) (effective as of 2015).

²²⁶ *Id.* at § 904.

²²⁷ *Id.*

²²⁸ In addition to the Indian Civil Rights Act’s general guidelines (discussed *infra*, pp. 40-41), tribes must also allow non-Indian defendants: an impartial jury of community members; effective assistance of counsel (at no cost if indigent); a competent judge; and notice of right to file for writ of habeas corpus in federal court. *Id.* Tribes are further expected to uphold “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the [tribe’s] inherent power...to exercise” its jurisdiction. *Id.* At most, this language implies that tribes must provide criminal defendants with *all* rights protected by the U.S. Constitution. However, it is unclear because the issue has not yet been challenged.

²²⁹ Senate Bill 412, 2011 Or. Sess. Law (codified OR. REV. STAT. 40.275 et seq.). The impetus for SB 412 came from the Court of Appeals’ decision in *State of Oregon v. Kurtz*, 233 Or.App. 573 (2010). The *Kurtz* case arose in January 2005, when a Warm Springs Tribal officer pursued a non-Indian outside of reservation boundaries for a traffic infraction committed while driving through the reservation. Defendant failed to stop for the officer until both vehicles had crossed into Jefferson County and then resisted the officer’s efforts to take him into custody. As a result, Defendant was charged with attempting to elude a police officer and resisting arrest by a peace officer. After a state trial court convicted him of both charges, the Court of Appeals reversed, holding that tribal police do not fit either statutory definition of “police officer” or “peace officer” and therefore the defendant could not be charged with a state crime. *Kurtz*, 233 Or.App. 573. Ironically, a unanimous Oregon Supreme Court decision reversed the Court of Appeals decision while SB 412 was pending in the State legislature. *State v. Kurtz*, 350 Or. 65, 80 (2011) (concluding that the “legislature has recognized that tribal police are an integral part of the public safety system in this state and, because they are entrusted by government with the enforcement of Oregon laws, they should be treated as police officers for purposes training, certification, and discipline”).

²³⁰ As police officers according to OR. REV. STAT. 181.610-712.

specific conditions are met.²³¹ Such status *allows tribal officers, in certain circumstances, to pursue and arrest persons outside of a reservation who have committed a crime on a reservation.*²³² During the first two years of its implementation, SB 412 was limited to cases involving: investigation of crime committed in Indian Country, hot pursuit of a suspect,²³³ commission of a crime in an officer's presence, and approval of the law enforcement agency with jurisdiction. Since July 2013, SB 412 has granted the full scope of authority to tribal law enforcement officers, meaning they hold the same powers, authority, and protections as any other officer in Oregon. However, despite the expanded authority to arrest and detain, tribes nonetheless rely on the state to prosecute non-Indians for crimes committed on reservations. If the state declines, the offender is released. Furthermore, SB 412 is set to sunset on July 1, 2015.

In addition to the extreme limitations that tribes face in exercising jurisdiction over non-Indians who commit crime in Indian Country, the Indian Civil Rights Act ("ICRA")²³⁴ imposes further procedural limitations on the tribes even when they do have authority to prosecute. Originally enacted because tribes (as sovereigns not part of the federal government or the states) are not subject to the U.S. Constitution or Bill of Rights, the ICRA requires tribal courts to observe due process and other rights analogous to those arising in criminal prosecution under the Constitution (*i.e.*, the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments).²³⁵ In addition to its constitutional limitations, the ICRA also generally prohibits tribal courts from imposing sentences greater than "a term of one year and a fine of \$5,000, or both."²³⁶ The ICRA was recently further amended to expand the one year/\$5,000 sentencing limit and permit tribes to impose sentences of up to three years imprisonment (nine, if multiple convictions) and fines of up to \$15,000.²³⁷ However, the expansion applies only where tribes meet certain specific requirements²³⁸ and CTUIR is the only reservation in Oregon to qualify thus far.²³⁹ All others

²³¹ The officer must be in compliance with all of the Department of Public Safety Standards and Training set by the bill. Also, tribal governments must "comply with insurance requirements, adopt policies regarding discovery in criminal cases in conformity with state law and neighboring jurisdictions, and codify the following in tribal law: (1) waiver of sovereign immunity from tort liability; (2) provisions governing records retention, public access to records, and preservation of biological evidence; and (3) a deadly force plan." Staff Measure Summary, House Committee on Rules, Measure SB 412 C (June 27, 2011).

²³² The U.S. Supreme Court has already affirmed the authority of tribal police to stop and detain non-Indian offenders who violate state law *on* Indian land. *See* *Strate v. A-1 Contractors*, 520 U.S. 438, 456 n. 11 (1997).

²³³ As defined in OR. REV. STAT. 133.420.

²³⁴ Indian Civil Rights Act, Pub. L. No. 90-284, 82 Stat. 77 (1968) (codified at 25 U.S.C. § 1301 *et seq.*).

²³⁵ 25 U.S.C. § 1302; *see* WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 29, 137 (4th ed. 2004).

²³⁶ 25 U.S.C. § 1302(a)(7)(B).

²³⁷ Tribes may sentence up to three years imprisonment and/or \$15,000, *if*: (1) the defendant was previously convicted of the same or similar crime; *or* (2) the offense would be punishable for more than one year in a U.S. or state court. 25 U.S.C. § 1302(b). Collectively, sentences may add up to a maximum of nine years imprisonment where multiple convictions apply. 25 U.S.C. § 1302(a)(7)(D). This ICRA amendment was made through passage of the Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2261.

²³⁸ To meet the requirements, tribes must provide: (1) indigent defendants with competent no-cost representation on par with that "guaranteed by the U.S. Constitution"; (2) judges licensed to practice law in the United States who have sufficient knowledge of criminal proceedings; (3) public notice of criminal laws, procedure, and rules of evidence; and (4) record of criminal proceedings. 25 U.S.C. § 1302(c).

are still restricted to the one-year/\$5,000 maximum. Furthermore, regardless of which ICRA sentencing limits are applied, tribes are nonetheless left unable to adequately address the most serious crimes occurring in Indian Country, such as human trafficking.

V. FINDINGS AND CONCLUSIONS

This Part of the Report contains the findings of our research through a synthesis of the interviews and survey conducted.²⁴⁰ The findings are composed of general observations and conclusions regarding the nature, demographics, causes, effects, and potential solutions to human trafficking in Oregon as it relates to Native communities. In order to encourage thorough and candid cooperation on the part of participants, we have elected to represent their responses primarily in the form of consensus statements, although we offer some specific examples as illustration. To further provide an accurate description of the full range of responses, these findings also highlight major divergences in interviewees' responses. As a whole, the findings seek to portray interviewees' overall general observations of human trafficking, reactions to certain initiatives enacted to combat the problem, knowledge of barriers to effective resolution, and recommendations for addressing issues related to trafficking.

Based on these findings, we concluded that government officials (federal, state, and local) within Oregon are not meeting their obligations under international, federal, and state law to prevent trafficking among the Native American community; to prosecute offenders where Native Americans are victims; and to provide adequate services to Native survivors of trafficking.

III. APPLYING THE JURISDICTIONAL MAZE TO CRIMES OF HUMAN TRAFFICKING

A. Federal Jurisdiction Over Human Trafficking in Indian Country

1. *The Trafficking Victims' Protection Act*

The only provision of the Trafficking Victims' Protection Act ("TVPA") providing explicit guidance as to whether the Act applies in Indian Country is under its child trafficking statute, 18 U.S.C. § 1591. 18 U.S.C. § 1591 grants federal jurisdiction where the accused violates the law "*knowingly, in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States.*"⁵³ Such language implicates the crime both under the GCA⁵⁴ and as one of general applicability.

With regard to the GCA, this means that § 1591 applies to Native lands which the federal government never divested criminal jurisdictional authority to the state (Warm Springs), those falling under "optional" PL 280 jurisdiction, and those "mandatory" PL 280 jurisdictions that have returned to federal jurisdiction through retrocession (Umatilla and Burns Paiute) or the TLOA. It also means that any application of § 1591 through the GCA will be limited to interracial crimes involving both Indian and non-Indian parties, where the offender (if Native) has not already been "punished" by the tribe.⁵⁵

Alternatively, where § 1591 is violated "in or affecting interstate or foreign commerce,"⁵⁶ the statute can be applied regardless of who is involved and the location of the crime. This means that anyone violating § 1591, Native or not, off or on reservation (PL 280 or non-PL 280), is subject to jurisdiction of the federal courts as long as the crime meets the commerce hook. Although § 1591 is the only part of the TVPA expressly naming commerce as a jurisdictional

⁵³ 18 U.S.C. § 1591(a)(1).

⁵⁴ The authorizing language—*within special maritime and territorial jurisdiction*—identifies it as a federal enclave law (18 U.S.C. § 7), applying to Indian Country through the GCA (18 U.S.C. § 1152).

⁵⁵ 18 U.S.C. § 1152; *McBratney*, 104 U.S. 621 (state law applies to crime between non-Indians in Indian Country).

⁵⁶ 18 U.S.C. § 1591(a)(1).

basis (qualifying it as a federal crime of general applicability), federal courts *might* nonetheless *imply* such a jurisdictional basis in other of the TVPA’s provisions. However, because no part of the Act has yet been applied in Indian Country, the answer is unclear. Furthermore, in so far as any TVPA provision qualifies as a crime of general applicability by using “commerce” as a jurisdictional hook, the federal government *might* still theoretically be prohibited from exercising jurisdiction if the crime occurs *solely* on a reservation, or within the bounds of a state, and has *no* effect on interstate commerce.

If human trafficking occurred on a reservation under circumstances not implicating federal jurisdiction under the TVPA (neither through the GCA nor as a crime of general applicability), the tribe could still prosecute *if* the offender is Indian *and* the tribe maintains its own court system. However, even those tribes with both the authority and ability to prosecute would nonetheless be severely limited by the restrictive sentencing provisions discussed above with reference to the ICRA. This kind of situation also highlights the problem that tribes are presumed to have no jurisdictional authority over non-Indians. Thus, where federal jurisdiction does not attach and tribes lack their own court systems, or are barred from prosecution due to the offender’s status as non-Indian, the offender may be lost from prosecution in a proverbial jurisdictional black-hole.

2. *Finding Federal Jurisdiction Where the TVPA Does Not Apply*

Even where the TVPA does not apply, the federal government may still exercise jurisdiction over crimes of human trafficking in Indian Country where the MCA or GCA is implicated (in Oregon, this is Burns Paiute, Umatilla, and Warm Springs). However, without the TVPA, the federal government is restricted to prosecuting offenders for related crimes other than human trafficking. For example, a Native American suspected of human trafficking in Indian Country where the crime does not meet TVPA requirements might instead be charged with an alternative crime under the MCA, such as “kidnapping...a felony under chapter 109A [(sexual abuse)]...incest...[and] felony child abuse or neglect...”⁵⁷

Alternatively, remember that the ACA can apply state law through the GCA (subject to its limitations as discussed above). It seems that any federal effort to apply state human trafficking law under the ACA could go one of two ways. One possibility is that a federal court may find the rule in *Williams* to govern—prohibiting application of the ACA—because federal human trafficking crime exists (under the TVPA) and does not apply on the basis that the federal crime is defined differently than state law.⁵⁸ On the other hand, a federal court may construe *Williams* more narrowly, finding that application of the ACA is prohibited if the TVPA does not apply because the substantive elements of the crime differ from state law, but that the ACA does still apply where the TVPA is inapplicable purely by its failure to apply due to a procedural element,

⁵⁷ 18 U.S.C. § 1153(a).

⁵⁸ The Supreme Court, in *Williams*, denied extension of the ACA because an existing federal statute mirrored the state law, except that the federal statute was more narrow. 327 U.S. at 717; *see also Lewis*, 523 U.S. 155.

such as jurisdiction. Thus, while the ACA might conceivably be interpreted to allow federal prosecutors to substitute Oregon's (or any other state's) human trafficking laws where the TVPA does not apply, such application would likely be considered prohibitive because the ACA has so far only been interpreted to apply in cases where no parallel federal law exists.

B. State Jurisdiction Over Human Trafficking in Indian Country

Today, all fifty states including the District of Columbia have enacted legislation to combat human trafficking.⁵⁹ Oregon has three statutes making it a crime to subject a person to involuntary servitude or human trafficking.⁶⁰

In addition to their general application to human trafficking crimes committed within the state of Oregon, these state laws also apply to human trafficking crimes committed within Indian Country involving only non-Indians.⁶¹

As explained above however, where a crime of human trafficking involves either an Indian offender or victim in Indian Country, a state will only have criminal jurisdiction to prosecute if PL 280 jurisdiction applies. For states that have designated PL 280 Indian Country within their borders (mandatory or optional), states can apply their human trafficking laws in the same way those laws apply elsewhere in the state.⁶² For Oregon, this means the state has jurisdiction over all crimes of human trafficking occurring on Cow Creek, Coquille, Coos/Lower Umpqua, Grand Ronde, Siletz, Klamath Indian Reservations. Thus, Native defendants in these jurisdictions are subject to concurrent jurisdiction between the state and the tribe (and in certain circumstances, the federal government).⁶³

Remember from the preceding subsection that in certain circumstances federal courts *might* still allow *federal* application of state trafficking laws on reservations through the ACA where the crime involves Indian and non-Indian parties (depending on how narrowly *Williams* is construed). However, although this kind of situation would implicate state law, it would nonetheless fall under federal jurisdiction.

C. Tribal Jurisdiction Over Human Trafficking in Indian Country

Not all tribes in Oregon have criminal justice systems. Tribes that do generally only have jurisdiction to prosecute Natives for crimes committed in Indian Country, and that authority runs concurrent with any applicable state or federal criminal jurisdiction over the crime committed.

⁵⁹ Megan Fowler, *Wyoming Becomes 50th State to Outlaw Trafficking*, POLARIS PROJECT (Feb. 27, 2013), <http://www.polarisproject.org/media-center/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking>.

⁶⁰ OR. REV. STAT. §163.263; OR. REV. STAT. §163.264; OR. REV. STAT. §163.266.

⁶¹ See *McBratney*, 104 U.S. 621.

⁶² That is, assuming that a given "optional" PL 280 jurisdiction has opted for state criminal jurisdiction (rather than just civil). Remember that any state opting in to PL 280 could choose to assume only partial jurisdiction.

⁶³ See Part II.B (explaining the potential for concurrent ("tricurrent") criminal jurisdiction between all three governments for Indian Country that is "optional" PL 280 or "mandatory" but falling under the TLOA exception).

As a general rule, remember that tribes cannot prosecute non-Indians for crimes committed in Indian Country. Thus they are greatly inhibited in their ability to protect those living on their lands from crimes of human trafficking by non-Indians. Although in some cases tribes might assume jurisdictional authority over non-Indians for crimes arising out of certain “dating” or “domestic” relationships implicated under the VAWA provisions discussed above, such restrictions on prosecution of non-Indian offenders severely limits tribes’ abilities to punish and protect against human trafficking.

None of the tribes in Oregon have enacted laws specifically criminalizing human trafficking yet. However, even absent such laws, tribes (with criminal justice systems) can still prosecute offenders for similar or related crimes currently existing within their own criminal codes, such as: kidnapping, pimping, sex abuse, or child abuse. In the future, these tribes might also consider enacting tribal human trafficking laws. Tribes in a few other states have already enacted their own human trafficking laws, which may serve as a model for other tribes who wish to do the same in the future.⁶⁴

⁶⁴ Examples include: Absentee Shawnee Tribe of Oklahoma’s child trafficking law (AST. CRIM. LAW CODE § 568) and Snoqualmie Tribe’s sex trafficking law (SNOQ. TRIBAL CODE § 7.21).

INDIAN COUNTRY JURISDICTION MATRIX

	NON-PL 280			PL 280		
	FEDERAL	STATE	TRIBAL	FEDERAL	STATE	TRIBAL
<i>Indian¹ Offender/ Indian Victim</i>	Yes, concurrent jurisdiction if crime is an MCA listed felony (18 U.S.C. § 1153).	No jurisdiction.	Yes, all crimes (concurrent when applicable).	No, unless “optional” PL 280 or TLOA applies (even then, only if MCA applies).	Yes, shares concurrent jurisdiction with tribe.	Yes, shares concurrent jurisdiction with state.
<i>Indian Offender/ non-Indian Victim</i>	Yes. Concurrent if MCA felony (18 U.S.C. § 1153). Jurisdiction for GCA/ACA crimes (18 U.S.C. §§ 1153, 13) only if tribe did not punish defendant.	No jurisdiction.	Yes, all crimes (concurrent when applicable).	No, unless “optional” PL 280 or TLOA applies (even then, only if MCA or GCA applies).	Yes, shares concurrent jurisdiction with tribe.	Yes, shares concurrent jurisdiction with state.
<i>non-Indian Offender /Indian Victim</i>	Yes, sole jurisdiction for GCA/ACA crimes (18 U.S.C. §§ 1153, 13).	No jurisdiction.	No, unless VAWA is implemented and applies.	No, unless “optional” PL 280 or TLOA applies (even then, only if GCA applies).	Yes, jurisdiction.	No, unless VAWA 2013 is implemented and applies.
<i>non-Indian Offender /non-Indian Victim</i>	No jurisdiction.	Yes, for all crimes.	No jurisdiction.	No jurisdiction.	Yes, sole jurisdiction.	No jurisdiction.
<i>Victimless Crime by Indian Offender</i>	Yes, jurisdiction for GCA/ACA crimes (18 U.S.C. §§ 1153, 13) if tribe did not punish defendant.	No jurisdiction.	Yes, for all crimes.	No, unless “optional” PL 280 or TLOA applies (even then, only if GCA applies).	Yes, shares concurrent jurisdiction with tribe.	Yes, shares concurrent jurisdiction with state.
<i>Victimless Crime by non-Indian Offender</i>	No jurisdiction.	Yes, state has sole jurisdiction.	No jurisdiction.	No jurisdiction.	Yes, sole jurisdiction.	No jurisdiction.

****FEDERAL CRIMES OF GENERAL APPLICABILITY:** Authorize federal prosecution on grounds other than territorial jurisdiction.

¹ A person enrolled in any federally recognized Indian tribe or otherwise recognized as ‘Indian’ by a government, who has some degree of Indian blood.

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