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A THREAT TO HEALING AND A
BARRIER TO RECOVERY: AN
ASSESSMENT OF HEALTH
IMPACTS OF CRIMINALIZATION
THROUGH THE STAGES OF
DOMESTIC SEX TRAFFICKING

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International

**A THREAT TO HEALING AND A BARRIER TO RECOVERY: AN ASSESSMENT OF
HEALTH IMPACTS OF CRIMINALIZATION THROUGH THE STAGES OF
DOMESTIC SEX TRAFFICKING**

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Abstract:

Criminalization of domestic sex trafficking victims in the US is a pervasive issue. Indeed, a survey of US trafficking survivors, where respondents were largely survivors of sex trafficking, found that 90.8% had been arrested. However, discussions surrounding this issue often fail to address a core component of the injustice: its implications on survivors' health and wellbeing. We take a novel lens, analyzing the criminalization of sex trafficking survivors through survivor health and wellbeing across six stages of the trafficking experience, to enable a fuller understanding of the issue—an understanding that centers on survivors. We find that during *recruitment*, the cyclical and reinforcing relationships of criminalization, sex trafficking, and negative health implications emerge. During *exploitation*, the criminalization of victims compounds trauma and prevents them from accessing social and medical services. *Detention* likewise compounds trauma and increases traffickers' control over victims, making it more difficult to *exit trafficking*. Even after victims escape trafficking, criminalization stymies survivor recovery because it serves as a reminder of the trafficking experience and criminal records function to disempower individuals. Having a criminal record hinders survivor *integration* and serves as a barrier for reaching autonomy and self-defined goals. Finally, criminal records increase survivor vulnerability to being *re-trafficked*—because the barriers created by criminal records leave few options for fully reintegrating to life outside of trafficking—reversing the recovery process completely. Our findings reveal an immense need to improve safety and services for survivors during the trafficking experience, and so we call for an interdisciplinary, multi-agency response to trafficking which centers on the survivor experience in contrast to the current approach to anti-trafficking work which focuses largely on the prosecution and punishment of traffickers. An improved response would de-center the criminal justice system while still expanding criminal record relief for survivors. Future health research about the experiences of trafficking survivors should consider criminalization as a factor of survivor health and wellbeing and build on our findings with empirical studies.

Keywords:

Domestic Sex Trafficking, Criminalization, Criminal Record Relief, Health, Wellbeing

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and health, to ending human trafficking, to promoting financial equality in relationships. For more information on 4W, visit www.4w.wisc.edu. Primary support for this research came through the 4W STREETS Project (Social Transformation to End Exploitation and Trafficking for Sex). For more information on STREETS, visit www.4wstreets.wisc.edu.

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The ideas and opinions expressed in this work are those of the authors.

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Introduction

Sex trafficking is an insidious, dehumanizing crime defined by the Trafficking Victims Protection Act (TVPA) as a commercial sex act induced by force, fraud, or coercion (Trafficking Victims Protection Act, 2018). For those under the age of 18, it is any engagement in commercial sex, without the requirement of force, fraud, or coercion. Here, domestic sex trafficking refers to trafficking that occurs within the US (as opposed to the trafficking of foreign nationals into the US); victims of domestic sex trafficking make up a large percentage of all trafficking victims recovered in the US (Clawson et al., 2009). Despite common misconceptions, sex trafficking does not require physical transportation or restraint of victims; instead, sex trafficking typically occurs within the victim's community, or even within a victim's own home, through grooming and exploiting a victim's vulnerabilities (Gerassi & Nichols, 2018: 3-11).

Due to its covert nature, a poor cultural understanding of trafficking, and the shame many survivors experience, it is difficult to gather large-scale, accurate information about sex trafficking victims, and victims are undercounted. Utilizing reports of 1,611 potential US sex trafficking cases, information from 141 survivors receiving Polaris services, and 292 accounts from individuals who had contacted other service providers, the Polaris Project found that 90% of sex trafficking survivors in the US identify as female (Polaris Project, 2013, 2015). Additionally, just under half of the population of current sex trafficking victims are minors, with a significant portion of adult survivors reporting that their first experience of trafficking occurred when they were minors (Polaris Project, 2013, 2015). Data consistently shows sex trafficking disproportionately impacts Black, Indigenous, and People of Color (BIPOC), due to race-and-ethnicity-based oppressions, leaving those marginalized on the basis of race more vulnerable to trafficking (Gerassi & Nichols, 2018: 12). Traffickers deliberately target and groom those with vulnerabilities to facilitate dependency (Polaris Project, 2015). For instance, some of the greatest risk factors for sex trafficking include homelessness, runaway status, substance abuse, low socioeconomic status and poverty, child welfare system involvement, and low education attainment (Gerassi & Nichols, 2018: 12-14, 26-43; Polaris Project, 2015; United States Department of State, 2020). Often several of these risk factors co-occur for sex trafficking survivors as interlocking oppression, simultaneous systems of oppressions intersecting in a complex and exponentially traumatizing manner (Gerassi & Nichols, 2018: 12-13; Polaris Project, 2015; United States Department of State, 2020).

According to a 2016 survey by the National Survivor Network, 90.8% of survivors of trafficking, (where approximately 80% of survivors surveyed were trafficked for sex) reported having been arrested, and over half attributed all their arrests directly to their trafficking experience (National Survivor Network, 2016). A majority of survivors reported arrests for prostitution (65.3%); however, the types of crimes reported extend far past this, such as arrests for truancy (10.7%), drug possession (40%), and other crimes not listed, non-drug related, and unrelated to the sale of sex (60%) (National Survivor Network, 2016). These crimes may include violent offenses, committed as acts of self-defense. Trafficking victims may be coerced into committing crimes because "traffickers often control their victim by compelling them to engage in illegal activity and then threatening to expose them to criminal prosecution" (Katz, 2021). These tactics allow traffickers to avoid liability and use criminal behavior against victims, ultimately leading victims to cycle in and out of the criminal justice system (AEquitas, 2018; Justice in Government Project, 2020; Mogulescu, 2012; Mullins, 2019; National Survivor Network, 2016).

Criminalization of survivors is a pervasive issue, yet much of the current conversation ignores the implications of criminalization on survivors' health and wellbeing and thus fails to fully capture the nature of this injustice. To capture these components and center on survivor experience, we take a novel lens on the issue and analyze it through survivor health and wellbeing.

This paper posits that the all-too-common experience of criminalization impacts survivors' health and wellbeing in different ways throughout various stages of the trafficking experience. We employ a conceptual framework of six stages of trafficking created by Zimmerman et al. (2011) to analyze health outcomes across these stages of trafficking. Adapting Zimmerman et al.'s (2011) model of trafficking, we define the stages as follows. (1) Recruitment: individuals are contacted and groomed for trafficking purposes. (2) Exploitation: victims perform commercial sex acts for the financial gain of their trafficker, often due to force, fraud or coercion, and usually experience additional abuse. (3) Detention: when an individual has restricted freedom resulting from punitive regulations by state or federal authority. (4) Initial exit¹: the process of leaving trafficking. (5) Integration/Re-integration: when survivors integrate into a new community (integration) or previous home community (re-integration), conceptualized here as when long-term recovery from trafficking occurs. (6) Re-trafficking: survivors who have exited trafficking may be trafficked again. Re-trafficking can occur by either a new trafficker or a previous trafficker as a result of remaining or increased vulnerabilities following exploitation. Of note, the Zimmerman et al. (2011) conceptual model for health impacts from trafficking was created to address international trafficking in the context of migration, and thus it includes a travel and transit stage, which is not a stage of domestic sex trafficking (Gerassi & Nichols, 2018: 3-4, 77). Finally, though we map wellbeing and health impacts of criminalization across these six discrete stages, the stages themselves are fluid, may overlap, and will differ for each individual survivor and their unique experience of trafficking.

Beginning at the recruitment and exploitation stages when survivors are coerced into crime and lasting through the integration process, criminalization negatively impacts survivor wellbeing as they navigate exiting and healing from the trafficking experience. Criminalization poses additional threats to survivors' wellbeing and creates barriers to exiting trafficking because it minimizes trauma, presents risks of re-traumatization, and increases and prolongs traffickers' control. After exiting trafficking, criminalization stymies survivor recovery by decreasing access to resources necessary to achieve autonomy, serving as a reminder of the trafficking experience, and posing a threat to empowerment and self-identity. Finally, criminal records increase survivor vulnerability to being re-trafficked, reversing the recovery process and leading to greater length of time in trafficking. At each stage of trafficking, being labeled a criminal creates substantial barriers to survivor healing, ultimately having long-term, negative effects on survivor wellbeing and health.

Methods

This paper reviews extant literature related to survivors of sex trafficking who have been treated and viewed as criminals as a result of their trafficking experience to shed light on the impact criminalization has on their health and wellbeing. Some academic literature describes how

¹ Initial exit emerged as a critical stage which presents unique challenges to survivors and thus was added to the Zimmerman et al. (2011) model.

individual experiences of trafficking do not directly align with the legal definition of trafficking – but this may be because the legal definition lacks the ability to include the many grey areas that emerge in diverse individual experiences of trafficking (Bintliff et al., 2018). One of these grey areas includes the intersection of intimate partner violence (IPV) with trafficking. Similar power and control tactics, such as coercion, facilitate both forms of violence and oppression, sex trafficking and IPV. For instance, when a trafficker has a qualifying relationship with a victim (e.g., spouse, person in a dating relationship, parent, etc.) many of the control tactics used by traffickers — such as sexual assault, physical violence, and threats of the same — would constitute domestic abuse under state laws (Domestic Abuse Incidents, Wis. Stat. § 968.075(1), 2019-20). Additionally, IPV and sex trafficking are recognized to co-occur; for example, traffickers sometimes recruit through emotional bonds, such as “lover-boy pimping,” and “intimate partner trafficking” which are estimated to constitute a large majority of trafficking cases (Gerassi & Nichols, 2018: 9-11; Martin et al., 2014; Nichols & Heil, 2015). Additionally, sex trafficking can be conceptualized on a fluid continuum, ranging from victimization to agency, across trafficking, commercial sexual exploitation (CSE), and sex work (Gerassi & Nichols, 2018: 3-8). In recognition of these blurred distinctions and because IPV literature is much more established relative to sex trafficking literature, this paper utilizes IPV research on survivors who had been coerced into committing a crime and research that worked with survivors of CSE. Additionally, various social science literature recognizes that peer-reviewed journals do not provide the full picture of the trafficking experience as this literature mainly focuses on defining populations vulnerable to trafficking and characteristics of those trafficked, while the secrecy of trafficking makes these topics difficult to study (Clawson et al., 2009; Williamson & Folaron, 2003). Therefore, information for the present review was also gathered from advocacy and nongovernmental organizations, documented survivor perspectives, interviews with experts in the field, webinars, legal reports, and fact sheets in addition to empirical research from peer-reviewed journals.

Recruitment

Recruitment is an amorphous stage of trafficking where traffickers select, groom, and begin to exploit potential victims. Critically, while recruitment precedes exploitation in Zimmerman et al. (2011)’s model and in our analysis, recruitment is part of the entire trafficking scheme. Moreover, recruitment typically relies on exploitation, whether it is exploiting a relationship with the victim (e.g., the trafficker is a boyfriend or family member) or exploiting a victim’s existing vulnerabilities. Under the Trafficking Victims Protection Act (TVPA), “the term ‘sex trafficking’ means the *recruitment* [emphasis added], harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act” (Trafficking Victims Protection Act, 2018).

Traffickers target those who are most vulnerable in their recruiting. This includes runaway and homeless youth, LGBTQ+ youth, those experiencing poverty, people experiencing alcohol and other drug addiction, and those with criminal records (Gerassi, 2015; Gerassi & Nichols, 2018: 12-14, 26-43; Polaris Project, 2015; United States Department of State, 2020). For these marginalized and vulnerable communities, healthcare access and wellbeing outcomes are already poor, which only worsens when these individuals are trafficked. For instance, traffickers specifically recruit people who have been court-ordered to undergo substance abuse treatment,

even bailing individuals with addiction disorders out of jail to traffic them (AEquitas, 2018) — these victims are individuals who struggle with addiction and criminal justice involvement, both predictors of poor long-term health outcomes (Brinkley-Rubinstein, 2013; Patterson, 2013; Schulte & Hser, 2014). Adding to this, the intense trauma and violence of trafficking further deteriorates their ability to access health services — in this example, a trafficking victim will face a barrier to continued addiction treatment. Further, because the use of drugs as coercion is identified as a key trafficking tactic and many survivors report using drugs to cope with their trauma (US Department of State, 2020: 32-33), it would be reasonable to predict this survivor would have more interaction with the criminal justice system during their trafficking experience due to potential charges such as for drug possession (National Survivor Network, 2016). The recruitment stage begins to reveal the cyclical, reinforcing relationship between poor health and criminalization that is a direct result of being a victim of trafficking.

Exploitation

Recovering from trafficking is not a linear process, and accumulated experiences during exploitation may have downstream effects (i.e., effects which stem from a cause without direct or immediate impact) on one's ability to heal. Therefore, assessing the criminalization of victims² during the exploitation stage is necessary to fully grasp the impact of criminalization on survivor recovery. During exploitation, when the risk of criminalization is highest, victims are fearful of law enforcement, and by extension they are afraid of accessing medical and social services that are often intertwined with law enforcement. In a study of domestically ($n = 18$) and internationally ($n = 12$) trafficked victims as well as non-trafficked sex workers ($n = 8$), 38.9% of domestically trafficked victims report they had been prevented from obtaining health and medical treatment when they needed it while in sex work (Muftić & Finn, 2013). Yet, victims of sex trafficking face acute health concerns at disproportionately high rates compared to the rest of the population. For instance, in the same study, participants experienced significant health risks (Muftić, & Finn, 2013). Domestic trafficking victims experienced these health issues at the following rates: mental health problem (100%), suicidal ideation (80.0%), psychological violence (100%), sexual violence (83.3%), physical health problem (64.7%), physical violence (88.9%), sexually transmitted infections (STIs) (58.8%), became pregnant (42%), abortion among those who became pregnant (100%), and addiction (94.4%) — making health and wellness services absolutely vital (Muftić, & Finn, 2013). Of note, these health issues occurred at higher rates than for non-trafficked sex workers. When victims are reluctant to access services due to fear of being disbelieved, disrespected, and treated like criminals, a cumulative trauma builds on top of the trauma of trafficking itself. Moreover, negative and dehumanizing treatment within these systems poses additional, more insidious, threats to exiting trafficking and beginning the healing process.

Experiences with law enforcement compound the trauma of trafficking. For instance, victims may believe “that the police will charge them for some offense, or that the authorities are unable to protect them from traffickers’ reprisals” (Hodge, 2008: 144). Survivors reported that “arrests made them feel more like a criminal than a victim” to the point where they were “acutely

² This paper uses both the terms “victim” and “survivor.” We recognize that those who have experienced sex trafficking choose to identify in different ways. The term “survivor” may better capture the resilience and autonomy of those who have experienced trafficking, while the term “victim” better captures the status survivors often must have in the criminal justice system to counter or avoid criminalization.

aware of the ways system actors had criminalized them in the past,” showing distrust extended beyond individual arresting officers to entire criminal justice systems (Love et al., 2018: 6). Being marked as a criminal by law enforcement effectively ignores victimization, minimizing survivors’ experiences. In a study by Love et al. (2018: 6), one survivor reflected on this compounding trauma stating, “Cuffs for a prostitute means you’re being bound. They’re not sensitive to that... You’re already making me feel violated even further.” This vivid depiction, where an officer has put the survivor in a situation that replicates part of her trafficking experience and triggers her to feel increasingly violated, illustrates how the moment of arrest damages survivors’ mental health.

While any encounter with law enforcement is likely to pose problems for survivors, mistreatment within these systems only serves to add to this compounding trauma. Survivors reported negative experiences with law enforcement including “disrespectful treatment, sexual abuse, and criminalization for actions related to their trafficking experience, such as prostitution and drug use” (Love et al., 2018: 6). Critically, Black girls are at heightened risk of these forms of continuing abuse, with Black youth accounting for 62% of minors arrested for prostitution offenses (Phillips, 2015). Additionally, while encounters with the criminal justice system often occur during exploitation, it is sometimes individual law enforcement officers and criminal justice actors who are directly exploiting survivors, with reports of officers using their badges to coerce survivors, often with violence and abuse, into sex acts to avoid arrest (Dank et al., 2015). This range of reported encounters from verbal discrimination and harassment to propositions for sex, sexual assault, and rape were identified as a source of pain and as a use of power and control tactics, showing an alarming parallel to the experience of sex-trafficking (Dank et al., 2015). Ultimately, maltreatment exacerbates the dehumanization that survivors experience during trafficking. Indeed, survivors have called attention to the need to humanize our systems that respond to trafficking victims (HEAL Trafficking, 2018). These negative experiences lead survivors to have reduced trust in law enforcement, ultimately resulting in many not contacting police when in danger (Love et al., 2018). Lacking this resource for protection poses a risk to the physical safety of trafficking victims, who are at increased risk of injury (Muftić & Finn, 2013).

Moreover, when seeking care, criminalization poses more threats to those who are vulnerable due to trafficking victimization. For example, victims also avoid seeking health interventions for fears of dismissive reactions, negative treatment at the hands of providers, and the threat of criminalization. First, victims may fear “that social service providers will not take their claims seriously” (Hodge 2008: 144). Second, the stigma of being seen as a criminal impedes survivors’ access to healthcare, with one survivor sharing a story of being denied health services from an ER doctor because she was viewed as a prostitute (HEAL Trafficking, 2018). Another elaborated on avoiding hospitals due to fear of being treated with disrespect, showing the downstream effects of this discrimination. This is supported by quantitative and qualitative empirical research. Lazarus et al. (2018), surveyed sex workers ($n = 252$) and identified that as individuals reported increased occupational stigma of sex work, this was associated with reporting higher barriers to healthcare services. This relationship existed independently of other factors, including socio-demographic factors and work environment, providing evidence of a direct link between stigma of sex work and decreased access to healthcare. In addition, Bungay (2013), in working with street-involved women ($n = 57$), determined fear of refusal of care as a significant factor in women’s decisions to seek care and found that when seeking care, women often withheld health information (knowing it would sacrifice their medical treatment) so that they would be

treated with respect. Third, healthcare systems are tightly connected to law enforcement systems, with one survivor describing the link, saying, “most of the women I knew that were in the life³— we wouldn’t go to the hospital because we were afraid we would get our warrants” — a sentiment shared by other survivors listening to the interview (HEAL Trafficking, 2018). In fact, when asked about seeking medical care, one survivor posed the question to the other survivors, “who’s the first person you see at the hospital?” to which they collectively responded, “the sheriff” and “the cops” (HEAL Trafficking, 2018). The threat of criminalization, the associated stigma, and the subsequent negative treatment prevent victims from accessing medical resources. This may partially explain why survivors of trafficking are vulnerable to untreated chronic health problems (Barnert et al., 2017). For example, one survivor shared that once she was out of the “life”, she was diagnosed with stage three breast cancer (HEAL Trafficking, 2018). She reflected on how her current health could be different had she gone to the doctor during her trafficking experience, and she viewed her criminalization as a main barrier to seeking care (HEAL Trafficking, 2018). Among those with criminal records in general, 40% report discrimination on the basis of their criminalization, and this is associated with a decreased utilization of primary care services (Frank et al., 2014). Compounding the stigma of sex work, criminalized victims face immense barriers to seeking care while their experiences with law enforcement simultaneously exacerbate their trauma and need for these very services.

Detention

Here, detention includes incarceration in jail or prison settings as well as periods “on paper,” when a person experiences probation and parole conditions limiting their freedom. While all types of detention have negative health and wellbeing impacts, and not all survivors experience incarceration, the prison experience produces notable hazards to survivor health that make its inclusion critical to this discussion. Incarcerated people are at increased risk for serious physical injury and psychological trauma (Travis, 2001). Heightened risks of injury and trauma clearly pose a threat to survivors while in detention and can stymie the healing process following release. Although some sources conclude that prison can act as an entry point for health services for some marginalized populations, negative health impacts consistently outweigh benefits (Awofeso, 2010; Brinkley-Rubinstein, 2013; Patterson, 2013; Porter & DeMarco, 2019; Widdowson & Fisher, 2020).

In addition to the risks faced by all incarcerated people during the prison experience, survivors of trafficking face specific challenges to wellbeing. Survivors report restrictive environments as retraumatizing (McCoy et al., 2018). As another experience of control over their bodies, the punitive structure of detention exacerbates their trauma (Hickle, 2017). In addition to these direct effects of detention on survivor wellbeing, there are secondary effects that increase survivor vulnerability. Survivor vulnerability as a result of jail time includes both increased financial and emotional reliance on traffickers. First, IPV research conducted by Scaia (2017) found that victims’ financial dependence increases after arrest. Second, emotional reliance can increase as a direct result of jail time, where one survivor reported that the traumatic experience of going to jail also strengthened their attachment with their trafficker because he would promise to do what he could to bail her out and would call her while she was in prison (Katz, 2021).

³ “The life” is a phrase commonly used by survivors of sex trafficking to describe the trafficking experience.

Initial Exit Process

Exiting trafficking is a complex process for survivors, where challenges to initial exit can be differentiated from challenges faced in *remaining* [emphasis added] out of trafficking (Baker et al., 2010; Bruhns et al., 2018; and Hickle, 2017). In Bruhns et al.'s (2018) study, which worked with survivors of child commercial sexual exploitation, two challenges to initially exiting included reliance on exploiters for basic needs and exploiters using their control to prevent initial exit. Criminal activity and resulting records present identifiable risks augmenting these challenges.

When survivors are arrested and convicted of crimes, their vulnerability increases with lack of access to basic needs and housing. As for a place to stay, private and federal housing policy creates well documented barriers for people with criminal records to find housing (Legal Action Center, 2004; Travis, 2001). Barriers to safe housing can funnel survivors back into trafficking, as survivors emphasized “the need to provide for their basic needs and safety” in order to “make exiting realistic” (Bruhns et al., 2018: 444). Further, a survivor-advocate stated that “one of the biggest barriers of getting out of the life is a lack of a safe place to go. . . a lack of housing” (HEAL Trafficking, 2018). Lack of safe housing also poses its own health risks with homelessness recognized to create new health problems, exacerbate existing ones, and disrupt recovery and healing processes (National Health Care for the Homeless Council, 2019).

Substance abuse as a disruption to the recovery process may particularly impact survivors of sex trafficking, where 94.4% report addiction (Muftić, & Finn, 2013). Considering that 40% of trafficking survivors' criminal records were charges related to drug possession and 18.7% were for drug sales (National Survivor Network, 2016), and survivors report using drugs as a mechanism to cope with their experience, the potential for a toxic cycle of sex trafficking, substance use, and criminalization is clear (AEquitas, 2018; United States Department of State, 2020: 32-33). Ultimately, due in large part to criminalization caused by trafficking, survivors are left in the impossible position of choosing between homelessness and returning to their traffickers, and either option is associated with addiction and related negative health outcomes.

Criminal records also allow traffickers to leverage more direct control over survivors, another barrier to exiting trafficking (Bruhns et al., 2018). IPV literature shows that perpetrators use criminal activity in a variety of ways against their partner, leading IPV survivors to report decreased autonomy and ability to speak freely (Osthoff, 2008; Scaia, 2017). One specific mechanism abusers use is threatening to report substance use to a probation officer, again highlighting the relationship between trafficking, substance use, and criminalization (Scaia, 2017). Additionally, survivors of trafficking report experiencing threats of jail from their trafficker, one imitating her trafficker telling her she was “gonna go to jail, they're gonna keep you forever” (Katz, 2021). Coupled with IPV literature, this illustrates how criminal records create a new arsenal of threats to increase traffickers' control. Finally, exploiters are known to threaten to take away a survivor's child through family court actions—a threat that becomes all the more real when the survivor has accrued criminal charges, thus granting traffickers more control to leverage (Osthoff & Sadusky, 2016: 19, 95). In the re-trafficking section, we expand further on the weaponization of criminal records in child custody determinations. Altogether, criminal records increase the vulnerabilities of the survivor and the control of the trafficker, augmenting challenges to exit trafficking.

Integration

Survivors have described integration or recovery as consisting of three components: “ability to move on from their trafficking experiences”, “find autonomy”, and “[find] empowerment through achieving self-defined goals” (Love et al., 2018:15). However, criminalization disrupts the recovery process; specifically, criminal records make it difficult to move on from trafficking and create obstacles to both pursuing autonomy and feeling empowered. Thus, here, we outline recovery as it is impacted by criminalization: (1) moving on is more difficult with the shame and trauma of a criminal record (2) accessing tangible resources to support autonomy is prevented by a criminal record, and (3) these factors accumulate as roadblocks to accomplishing self-defined goals, making it difficult to feel empowered.

First, criminalization serves as a direct threat to moving on from the trafficking experience, which in turn hinders establishing positive new identities. To begin, survivors are constantly asked to retell, and thus relive, their trafficking experiences. They report that retelling their story is the worst part of receiving services, thus it is not surprising that one survivor refers to her convictions as a “black cloud” over her head that never left her, and a legal expert described seeing fear, shame and sadness as a survivor explained the circumstance of their record (Goldberg, 2015; HEAL Trafficking, 2018; Mogulescu, 2020). Indeed, Molly Clark-Barol, a researcher in the field of criminal justice and women’s wellbeing, states that a common source of pain for women with criminal records is that society has access to the worst moments of their lives (personal communication, October 1, 2020). Next, survivors emphasize that integrating trauma is critical to recovery, but many survivors of domestic sex trafficking cope through ignoring, minimizing, and denying victimization (Bruhns et al., 2018; Kristiansson & Whitman-Barr, 2015). It stands to reason that because criminalization is, in many ways, the opposite of being viewed as a victim, survivors who have been criminalized may struggle to integrate the trauma of victimization. For example, one study of women who experienced IPV found that many survivors coerced into crime expressed confusion and guilt regarding their actions (Loring and Beaudoin, 2000). Outside of confusing internal perceptions of self-worth, even when survivors had been coerced into crime, they nonetheless face “blame and lack of understanding of others” (Loring & Beaudoin, 2000: 13). Although specific to IPV, this study may apply to sex trafficking survivors, as many are coerced into crime (AEquitas, 2018; Mogulescu, 2012; Mullins, 2019; National Survivor Network, 2016). A criminal record serves as a reminder of the trafficking experience, explaining it to anyone – including friends, family, service providers, medical professionals, or authorities – takes emotional labor, and feeling internalized shame and confusion surrounding victimization after being coerced into crime all hinder a survivor’s ability to move on from trafficking.

Second, directly combatting one’s ability to achieve autonomy, criminal records present widely recognized roadblocks to pursuing employment, housing, and public benefits, education and job training (Legal Action Center, 2004; Silva, 2010; Travis, 2001). Although “ban the box” laws have been effective in prohibiting one from asking for criminal history on job applications, stigma from employers and time out of the labor market remain as more insidious barriers to employment (Travis, 2001). Trafficking survivors’ experiences could compound these obstacles as they face stigma from being involved in commercial sex and because during trafficking, they lose time developing career skills (Gerassi & Nichols, 2018; Hotaling, 2006). Additionally, familial support is a main predictor of ability to obtain employment and overall success following

incarceration (Nelson et al., 2011; Travis, 2001). As trafficking survivors are subject to various forms of isolation tactics by their trafficker, they may face increased challenges to finding employment due to lack of a support network (Hagan et al., 2021). Survivors' reports reflect these harsh realities, with 73% and 58% of survivors reporting that their criminal record created barriers to employment and housing, respectively (National Survivor Network, 2016). As one survivor puts it, "We can't get jobs. It ruins our lives" (Goldberg, 2015).

Third, difficulty moving on from trafficking and an inability to access critical resources due to a criminal record prevents many survivors from accomplishing their self-defined goals. For instance, one survivor reported that after spending over two years getting sober, going to therapy, and outlining goals, her record still prevented her from the dream job she spent so long pursuing (Goldberg, 2015). This may result in survivors being barred from fulfilling jobs that would allow them to fully participate in and care for society, nourishing their recovery process, such as foster parenting or holding a position in healthcare. Because these jobs involve close care with vulnerable populations, having criminal convictions makes them either legally impossible or very difficult to attain. Another advocate for a trafficking survivor said, "convictions kept her from living in victory" (Katz, 2021). In line with these firsthand accounts from survivors, Clark-Barol stated that "by definition, having a criminal record is disempowering" (personal communication, October 1, 2020). Illustrating how this blockade to recovery is directly intertwined with mental health, one survivor explained how after finally exiting trafficking, she was unable to pursue her planned career as a lawyer due to her federal conviction (4W STREETS, 2021). Overwhelmed by her placement on the sex-offender registry and unable to move on from trafficking, she strongly contemplated ending her life (4W STREETS, 2021). Additionally, the emphasis of self-defined goals is important to highlight as in Bruhn et al.'s (2018) study of survivor perspectives on recovery, developing new positive identities emerged as a key component of the process. In sharp contrast, criminalization and resulting criminal records ultimately instill shame and low self-worth such as one survivor who reported feeling like "sh*t on the bottom of your shoe" due to her criminal record (Goldberg, 2015). Amidst these challenges, survivors are resilient and find ways to be flexible around the permanence of a criminal record. For instance, the same survivor who was unable to pursue her dream of becoming a lawyer now serves as a national public speaker on survivor advocacy (4W STREETS, 2021). Taken altogether, survivors' difficulties reaching their goals and accompanying poor self-esteem are mutually reinforcing roadblocks to all aspects of recovery.

Re-trafficking

Even though previous analysis of recovery and exit stages present themselves with clear borders where recovery occurs directly following exit, Baker et al. (2010) and Bruhns et al. (2018) illustrate that exiting exploitation to recovery is not a linear process, as cycles of exiting and re-exploitation are common. Being re-exploited is especially important to consider when assessing health because it increases one's length of time being trafficked, which not only causes survivors to lose precious time in their lives, but also emerged as a specific risk factor to survivor health (Hotaling et al., 2006; Muftić & Finn, 2013). Length of time in sex work for a sample of 38 women, 30 of whom had been sex trafficked, significantly predicted both mental health problems and addiction to alcohol and/or drugs, and the authors concluded that length of time trading sex was even more predictive of negative health outcomes than access to healthcare (Muftić & Finn, 2013).

Critically, criminal records not only pose threats to recovering, they also have the potential to facilitate re-exploitation through increasing the vulnerabilities of the survivor while providing opportunities to greater power and control for the trafficker. For example, survivors concluded they were vulnerable to re-trafficking when they experience ongoing financial stressors (Bruhns et al., 2018). The same barriers to jobs and housing that challenge autonomy during integration decrease access to resources and contribute to these stressors.

Criminal records expand the power and control of the trafficker, making the survivor more vulnerable to returning to exploitation. One specific way this plays out is having children taken away in a custody determination. As one survivor-advocate puts it, “if we get our kids taken away that is a whole other thing that motivates you to go back to the life” (HEAL Trafficking, 2018). The survivor’s word choice about external factors that can motivate one to return to a trafficking situation sheds light on the power and control tactics of the trafficker, leading survivors to view their re-exploitation as the result of their own faults or choices instead of as survival tactics in response to coercion and continued victimization by their trafficker. Empirical research supports this survivor’s statement on child custody because strengthening connection with children emerged as a core component of successful recovery (Hickle, 2017). In a study of women who experienced IPV, Osthoff (2008: 2) concluded that, “if a woman is convicted of a crime either as a result of a trial or plea, this fact will almost certainly be used against her in any custody hearing,” and because society, and likely courts, hold mothers to higher standards than fathers, this can be especially detrimental to women.

In addition, survivors stated they were vulnerable to re-trafficking when the security of their new identities wavered (Bruhns et al., 2018). Building on this finding, in a qualitative analysis of interviews with 19 survivors, Hickle (2017) found that personal connection, resources, and personal growth emerged as the central components of successful exit. These personal connections extended to community level, where the societal stigma from a criminal record and its legal restrictions on participating in community poses a threat to forming and maintaining personal connections in the greater community (Goldberg, 2015; Katz, 2021; Legal Action Center, 2004; Loring & Beaudoin, 2000; Silva, 2010). The societal stigma survivors encounter reinforces the lies traffickers tell them — one survivor explained her trafficker had continuously told her if she tried to leave, the world would always see her as a prostitute (4W STREETS, 2021). Thus, upon exiting trafficking and experiencing the stigma of her criminal record and history in the sex industry, she questioned if he was right, considered returning to the “life,” and ultimately faced immense challenges to her new sense of self-identity (4W STREETS, 2021). Shame and stigma combat one’s ability to move on from trafficking and feel empowered, ultimately challenging personal growth and overall identity. Criminal records are a barrier to recovery, and they simultaneously facilitate revictimization.

Implications: Policy

This research reveals gaps in public policy at all levels: failure to identify and respond to victims, failure to recognize the broad range of crimes victims of sex trafficking commit as a direct result of trafficking, the lack of a trauma-informed response by stakeholders in healthcare and criminal justice systems, and a failure to provide accessible record relief for survivors. At the core of protecting survivors from criminalization and supporting those who have been criminalized is

addressing trafficking as a human rights issue and understanding the context in which sex trafficking occurs (4W Initiative, 2022). Setting this as the stage for anti-trafficking work is vital to ensuring policy development and the implementation that best supports the health and well-being of survivors.

Failure to identify trafficking victims “can cause a chain reaction of negative outcomes, such as the criminalization of the victim due to misidentification...” (Phelps & Miyasaki, 2020: 22). Thus, our research supports the need to improve victim identification and combat the misconception of the “ideal victim” as a mechanism to prevent criminalization (Gerassi & Nichols, 2018: 48-51, 76-77). Additionally, lack of survivor-specific services and coordination amongst agencies leads survivors to be arrested (MNHTTF, 2019; Phelps & Miyasaki, 2020). Our research findings expose the interplay between the criminal justice system, public safety, public health, and social services in survivor experience and outcomes. Therefore, our findings support a multi-agency approach to address trafficking. The use of multi-disciplinary teams results in significant improvement in victim identification, responses to trafficking, and supporting survivors (MNHTTF, 2019; Minnesota Department of Health, 2019). Systems which rely heavily on the Department of Justice or other criminal justice systems to combat sex trafficking should assess the benefits of this approach as well as the unintended negative consequences to identify where other agency and stakeholder involvement is needed. Of note, the multi-agency approach has been successful at the community level, because this facilitates coordination across agencies and more readily involves individuals with lived experience (MNHTTF, 2019; Minnesota Department of Health, 2019).

Additionally, a need to make the criminal justice system more humanizing and respectful emerged from survivor perspectives (Bruhns et al., 2018; HEAL Trafficking, 2018; Love et al., 2018; McCoy et al., 2018). Specific suggestions include implementing trauma-informed techniques such as using informal, understandable language and avoiding the use of uniforms and weapons — ultimately making an effort to be more relatable to allow the opportunity to foster relationships (Love et al., 2018; McCoy et al., 2018). This would improve outcomes for survivor wellbeing, and may increase trust, having positive downstream effects on relationships between survivors and safety systems (Love et al., 2018). Creating a survivor-led first response system may be the gold standard to increase the ability for survivors to relate to system actors (i.e., all those who are involved in the justice system or in the provision of health, social or legal services through the government or through a non-governmental organization), humanize the system, and likely decrease the number of survivors criminalized because of their trafficking experience (MNHTTF, 2019; Minnesota Department of Health, 2019).

In addition to these recommendations pertaining to victim response and service provision, our research points to necessary legislative changes too, such as the inclusion of safe harbor provisions to prevent young people from being prosecuted as prostitutes and broader laws to allow for removal of criminal records accrued due to being trafficked. Nationally, only 30 states have legislation to prohibit the criminalization of sexually exploited youth for prostitution, through “Safe Harbor” laws, and only 18 of these 30 extend protections beyond prostitution charges (Shared Hope International, 2018). Our results suggest this gap in many states’ policies puts the health and safety of survivors at risk, and because our findings were not exclusive to children

trafficked for sex, they show the need to expand policies to include protections for survivors trafficked as adults.

The results of this research underscore the need to allow survivors to clear their criminal record through expungement or vacatur to provide relief from the detrimental impacts of criminalization, especially in integration and re-trafficking stages. In 2016, the National Survivor Network found that 75.4% of survivors were unable to vacate convictions, and those who did described it as a long, difficult process (National Survivor Network, 2016). Work is underway to expand and improve record removal, with researchers identifying and addressing systemic barriers to expungement. For example, the Polaris Project has ranked state laws for their ability to provide survivors with record relief, and legal experts have created precise, model record relief legislation (Hulse et al., 2019a, 2019b; Marsh et al., 2019; Mogulescu, 2020; Mullins, 2019).

The Polaris Project's state report cards on record relief rank states across various categories, and Polaris recognizes shortcomings as connected to survivor wellbeing (Marsh et al., 2019). First, some states include time limitations for engaging in record relief, which puts survivors who have not fully recovered at risk of re-traumatization by forcing them to participate in this process, which involves reliving their trafficking experience, before they are ready (Marsh et al., 2019). Second, when undergoing the process of record relief, some states require survivors to appear in court or have no protections for survivor confidentiality which can cause significant anxiety and stress, both through the shame they may experience in publicly telling their story as well as the risk to their safety that sharing it poses (Marsh et al., 2019). Third, the level of proof which a survivor must provide to show their victim status varies by state and can be highly burdensome, requiring survivors to dig deeper and repeatedly into painful memories and risking invalidation of their experience as a survivor of sex trafficking (Marsh et al., 2019).

Finally, many states fail to provide comprehensive relief to survivors for all criminal records accrued due to victimization. Survivors are criminalized not only for prostitution and related offenses, but a myriad of crimes they commit due to their traffickers' power and control. (AEquitas, 2018; Mogulescu, 2012; Mullins, 2019; National Survivor Network, 2016). Yet, in many states even where legislation exists to provide record relief for prostitution convictions, it does not allow for removal of other types of crimes that survivors commit as a direct result of trafficking (Marsh et al., 2019; Mullins, 2019). Altogether, record removal mechanisms must be expanded to provide more holistic relief and must better account for the health and safety of survivors. Considering the drastic ramifications of criminalization on survivor health, improvements to record relief are essential to survivors' wellbeing and health.

Implications: Research

Future avenues for research emerged from the current analysis as the criminalization of survivors showed specific impacts on wellbeing that have not been adequately addressed in health research. Future research should build on Loring and Beaudoin's (2000) findings of the confusion associated with committing crimes under coercion. Additionally, research should investigate how being viewed as a criminal instead of a victim may impact coping, be internalized, and have downstream effects on healing. This may have direct implications on the initial exit stage as Bruhns et al. (2018) found that the impetus to exit child sexual exploitation (CSE) is mainly internally

driven. With regard to the integration and re-integration stage, measures of criminal involvement and the presence of a criminal record should be assessed in health and wellbeing research. In Muftić and Finn's (2013) study where length of time in sex work emerged as a major risk factor, the authors were unable to fully explain patterns in health outcomes from these data. Future health research of survivors of sex trafficking must consider if survivors have criminal history and/or records to provide empirical evidence of the impact that criminalization of survivors has on their health and wellbeing. Including this factor has the potential to help explain patterns in health outcomes of trafficking survivors. Finally, while our study analyzed the impact of criminalization on the health of survivors of domestic sex trafficking specifically, future research should examine the impact of criminalization on the health of labor trafficking survivors and the impact of criminalization, and resulting consequences in the realm of immigration law, on the health of survivors of foreign (sex or labor) trafficking. Both potential similarities and differences across these groups in their experience with and perspectives on policing and health were notable throughout our research.

Conclusion

Criminalization of survivors of domestic sex trafficking poses threats to their health and wellbeing at each stage of their trafficking experience. Beginning in recruitment, being treated as a criminal is a barrier to safety and medical services for survivors, threatens their mental and physical health and has been documented to re-traumatize them. In initially exiting trafficking, criminalization exacerbates existing challenges, and once an individual is in recovery, it both serves as a barricade to the main components of healing while also facilitating vulnerability to being re-trafficked. Because of these dramatic impacts, improving victim identification, facilitating safer experiences with the healthcare and criminal justice systems, and expanding access to record relief are necessary. Additionally, future research must dive deeper into understanding the role criminalization plays in wellbeing and should, as general practice, be included as a factor when conducting health research with survivors of sex trafficking in the United States.

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