

UNIVERSITY OF CHICAGO

WHO GETS TO BE A VICTIM?:
THE PROBLEM OF THE HUMAN TRAFFICKING VICTIM-OFFENDER OVERLAP IN
UNITED STATES COURTS

A thesis submitted to the Undergraduate Program in Global Studies in partial fulfillment of the
requirements for a Bachelor of Arts Degree

BY
EMMA ECKER

PRESENTED TO
PROFESSOR KIMBERLY KAY HOANG

SPRING, 2020

ABSTRACT

WHO GETS TO BE A VICTIM?:

THE PROBLEM OF THE HUMAN TRAFFICKING VICTIM-OFFENDER OVERLAP IN
UNITED STATES COURTS

By: EMMA ECKER

Advisor: PROFESSOR KIMBERLY KAY HOANG

Twenty years ago, the first counter-human trafficking laws were created with the introduction of the United Nations Palermo Protocols and the United States Trafficking Victims Protection Act of 2000. Both laws provide protections against prosecution for trafficking survivors who committed crimes related to their trafficking, but in practice actors throughout the criminal legal system primarily focus on the prosecution of traffickers rather than providing social services or legal relief to victims. The focus on prosecutions over victim-assistance means many survivors of trafficking are pulled into criminal prosecutions rather than recognized as victims. Despite the criminalization of many trafficking survivors, little research has been performed to discover how victims are prosecuted for trafficking-related crimes. Through the examination of victims' narratives and court documents, this project seeks to elucidate the causes of trafficking victim criminalization, including the influence of international law, complexities of the victim-offender overlap, and arguments made about criminalization and victimization by state actors, defense lawyers, and trafficking survivors. This thesis argues the complex views of the victim-offender overlap on human trafficking survivors correlates with the criminalization of survivors within the courtroom and provides insight into the ways criminalization occurs at multiple levels of the criminal legal system.

Keywords: victim-offender overlap, human trafficking, criminalization, victimization, criminal legal system

Acknowledgements

I would like to express my sincerest gratitude to all who were integral to the completion of this project over the past year.

To my faculty reader, Professor Kimberly Kay Hoang, for offering support and theoretical guidance since the early days of this research as I attempted to discover good data where little exists.

To Alice Kim and Roy Kimmey, for providing resources to study the criminalization of communities and both a physical and intellectual space to write and vent through the Pozen Family Center for Human Rights Laboratory Fellowship.

To Professor Reuben Miller, for teaching a class on punishment and social theory that gave me the theoretical tools to ground this study and sparked the idea to combine my research interests of human trafficking and criminalization into one project.

To my family, for providing words of encouragement and listening patiently as I attempted to explain my study at the dinner table.

And finally, to the survivors of trafficking who have spoken out about their criminalization, your stories are the heart of this project and should be the root of all counter-trafficking approaches. Thank you for speaking out.

Introduction

In November 2017, the name Cyntoia Brown¹ spread quickly through many social media platforms following an Instagram post from Rihanna calling for Brown's release from prison.² #FREECYNTOIABROWN went viral as thousands of people around the United States began to research the decade-old case of a 16-year-old human trafficking victim sentenced to life in prison for murder. Brown was convicted of first-degree murder after shooting a John, a buyer of sexual acts, she thought was reaching for a gun. Despite Brown's claims of being an underage prostitute, which is automatically considered to be a form of human trafficking under U.S. law, Brown was convicted and served 13 years in prison before being granted clemency in 2019 by the Tennessee Governor after considerable public pressure.³ As the most well-known human trafficking survivor unjustly criminalized and incarcerated in the United States, Brown's case opened the door for a new public understanding of the ways in which human trafficking survivors are punished for crimes related to their victimization.

Brown's case brought the plight of trafficking survivors in the criminal legal system into the public eye, but her case is not representative of the many crimes for which survivors face charges and the interactions they have with the criminal legal system. Despite common knowledge of Brown's case and celebrity backing, widespread support for survivors involved in the criminal legal system has not arisen, nor expanded to include a wider range of perceived crimes. Survivors of human trafficking are victims of forced labor that can take on many forms, and the crimes they are charged with are even more numerous. The types of forced labor include

¹ Now: Cyntoia Brown-Long

² @badgalriri. "Did we somehow change the definition of #JUSTICE along the way??" *Instagram*, Nov 21, 2017.

³ Johnathan Garcia. "A Timeline of the Cyntoia Brown Case, Her Story, and Eventual Clemency" *Nashville Tennessean*, Dec 11, 2018. <https://www.tennessean.com/story/news/2018/12/11/cyntoia-brown-case-facts-story-timeline-2018/2276009002/>.

traditional forms of labor like farming and construction, but also forced sexual acts.⁴ Trafficking is a complicated crime because it occurs in an informal market outside of the focus of the general public. Because trafficking is not an easily visible, seemingly black and white crime, the public often does not witness how the cases are handled within the criminal legal system and most victims do not have thousands of people advocating for their decriminalization.

The complicated nature of these cases results in complex sentences for trafficking survivors. Because they technically participate in criminal acts, the legal system often views them as criminals even if a trafficker forced them to commit these acts. For example, Shamere McKenzie currently lives with felony charges for driving minors across state lines to be sold for sex while she was a victim of human trafficking. The police and the courts did not acknowledge she was also a victim and her trafficker threatened to kill her if she did not drive the car.⁵ Vanessa Perkins was charged with drug trafficking crimes for the use and sale of the drugs that her trafficker used to keep her compliant.⁶ Other survivors with precarious immigration statuses are deported even if they were trafficked on U.S. soil. These are a few of the many manners in which the criminal legal system, at all levels of government agencies and federal courts, struggles to recognize the complexities of the victim-offender overlap of trafficking survivors and to operate in a manner that is not solely punitive.

The victim-offender overlap lies at the heart of the issue of the criminalization of trafficking survivors. The overlap describes the legal system's confusion about whether to treat people who commit crimes while being victimized as victims needing protection or criminals

⁴ 18 U.S.C. §§ 1589, 1591.

⁵ "Shamere Mckenzie," *End Slavery Now*, Jan 3, 2015. <http://www.endslaverynow.org/blog/articles/shamere-mckenzie>.

⁶ Vanessa Perkins, *How I Escaped Sex Trafficking through CATCH Court*, accessed February 24, 2020, https://www.ted.com/talks/vanessa_perkins_how_i_escaped_sex_trafficking_through_catch_court_jan_2019.

deserving prosecution.⁷ Instead of ensuring survivors are provided services like trauma care, shelter, and safety from the conditions that made them vulnerable to trafficking, many survivors end up prosecuted for crimes related to their trafficking. There is a lack of comprehensive national data on this topic due to a widespread failure to identify victims. The International Labor Organization estimates there are 1,280,000 people in forced labor in the Americas, but the United States State Department 2019 Trafficking in Persons Report indicates the National Human Trafficking Hotline only identified 10,658 cases in the U.S. in 2018 and only opened 230 federal trafficking prosecutions.⁸ The annual Trafficking in Persons Report does not report estimates of victims in each country, but instead the number of prosecutions carried out by state governments. Victims are identified at very low rates and instead targeted by the criminal legal system for prosecution. This point of failure leads to the main question of this project: How are survivors of human trafficking in the United States criminalized for crimes related to their trafficking when legal protections exist to prevent their criminalization? By examining relevant laws and their lack of implementation in the courtroom, this project seeks to understand their purpose and failings.

Recent progress in the legal field surrounding human trafficking has created more outlets for survivors of trafficking to access resources and for the United States government to harshly prosecute traffickers, but the criminal legal system has largely failed to implement the former. Laws such as the Trafficking Victims Protection Act (TVPA) passed by the United States Congress in 2000 and, the general victims' rights law, the Mandatory Victims Restitution Act of 1996 intend to create legal mechanisms for the state to prosecute traffickers, as well as provide

⁷ Ella Cockbain, *Offender and Victim Networks in Human Trafficking*, (London: Routledge, Taylor & Francis Group, 2018): 58.

⁸ "Trafficking in Persons Report," (United States Department of State, June 2019): 489.

services and restitution to survivors. These laws established a need to define and prosecute trafficking as its own crime rather than blur the lines between trafficking and smuggling or voluntary sex work. The TVPRA defines “severe forms of trafficking” with two categories: “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person...has not attained 18 years of age” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁹ Trafficking does not include human smuggling because smuggling is distinct in that the migrant being moved across borders consents to the movement.¹⁰ This project will rely on this definition of trafficking in order to study how it is applied unequally throughout the criminal legal system, while acknowledging sex trafficking, in reality, is not distinct from labor trafficking because both are forms of forced labor. Often sex and labor trafficking are distinguished from one another in the counter-trafficking field. This project maintains both are forms of forced labor because the same systems and structures of oppression make people vulnerable to all types of trafficking situations.¹¹

The Trafficking Victims Protection Act established a legal framework for protection for survivors that has been replicated on the local level. Some individual states have passed laws protecting children, and sometimes adults, from prosecution for crimes related to their trafficking, but like the TVPRA, these have largely failed to protect survivors. These failings exist at multiple levels of the criminal legal system but are largely hidden from the public eye. The legal standards for providing restitution for survivors alongside the media attention garnered

⁹ 18 U.S.C. §§ 1589, 1591.

¹⁰ United Nations, *Convention Against Transnational Organized Crime*, Nov 15, 2000.

¹¹ Kimberly Kay Hoang and Rhacel Parreñas, “Introduction,” in *Human Trafficking Reconsidered* ed. Kimberley Kay Hoang and Rhacel Parreñas (New York: International Debate Education Association, 2014): 6-7.

by law enforcement taking down large trafficking rings have created a misperception of the effectiveness of the legal system's counter-trafficking efforts, despite its failure to provide services and safety for all victims at both the local and federal level. The courtroom provides insight into one level of the complicated legal system that often fails to assist survivors.

Trends in criminal charges and prosecution of trafficking survivors in the United States do not reflect the laws regarding the rights of trafficking survivors. Despite legal protections for trafficking survivors from prosecution related to their trafficking and research claiming the negative effects of these proceedings on victims of trauma, trafficking survivors continue to face legal ramifications for acts committed while they were in a trafficking situation. Survivors are also lost in the system and difficult to recognize because they are not properly identified by law enforcement or the courts or choose not to identify themselves as trafficking victims for their own safety.¹² There are multiple levels of failure to identify and redirect survivors of forced labor that reflect the complicated nature of forced labor protections and victim protections in United States law. Since legal protections for trafficking survivors exist, survivors should be redirected to services rather than into the criminal legal system, but flaws in the system and failure to enforce legal protections have created the problem of criminal sentencing for survivors.

The power of the United States government over the criminalization of trafficking survivors is produced at multiple nodes starting at the international level and moving all the way down to the guards in a prison and parole officers who interact with survivors convicted of crimes. After exploring theories of the victim-offender overlap, racialized victimhood, international and local trafficking law, and criminalization in the courtroom, this project will

¹² Beth Jacobs and Stephanie Richard. "National Survivors Network Member Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking," *National Survivor Network*, August 2016. <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

hone in on the effectiveness of the state's and survivors' claims of criminalization and victimization to examine one of these nodes of failure to protect survivors: language of criminalization in courts. This project is limited to the data available. The lack of accessible data on the experiences of men, migrants, and people who are forced into forms of labor outside of sex work means they are naturally excluded from this analysis. Despite these limitations the conclusions made about the criminalization of trafficking survivors can be applied to many types of survivors that are more difficult to identify in the complex criminal legal system.

In this paper, I argue despite the protections promised to human trafficking survivors in U.S. law, the criminal legal system has instead criminalized survivors by failing to recognize the nuance in the victim-offender overlap and instead prioritize criminal prosecutions. The criminalization of trafficking survivors occurs at many levels both structural and individual, from international law focused on trafficker prosecutions rather than survivor rights and covers the areas of systemic racism and classism, to criminalizing language in the courtroom and the refusal to recognize migrant worker rights. All of these aspects together create an environment in which the criminal legal system does not understand the victim-offender overlap in the courts and chooses to focus on criminal prosecution rather than victims' rights.

The prioritization of criminal prosecutions over victims' services, reflected in the arrests and prosecutions of as many traffickers as possible, is common state practice. The U.S. influences other states' behavior as it enforces the criminalization of victims globally in order to assert its dominance as an international power. This global process helps disguise the smaller injustices happening on the ground in the United States. While the U.S. claims to be a leader in the counter-trafficking field, many trafficking victims get pulled into the criminal legal system and added to the prosecution count as traffickers. With a criminal record and without access to

social services, survivors of trafficking under the criminal legal system are left vulnerable to reentering a trafficking situation. This criminalization occurs both if a survivor claims the title of victim of trafficking or if they refuse but the indicators are visible. This disguises the number of victims who are criminal legal system involved and hides the complicity of the system in their punishment and precarity.

Existing literature has tackled the elements of international law, federal policy, police interactions with trauma, precarious migrant labor, and the victim-offender overlap, but few sources look at the overlap among more than a few of these aspects. This project centers on the United States courts as sites of intersection of many social and political factors that emerge as language of criminalization and victimization. While this act of arguing someone is a criminal or a worthy victim of human trafficking is tied to the courtroom, all arguments made in this context are tied to and influenced by these outside factors.

Local Impacts of International Standards

The United States has played a major role in shaping international law because the U.S. has enforced and reified its prosecution-oriented approach globally. The U.S. has both crafted international law to fit its standards of prosecution and used this international law as evidence of the success of its prosecution-oriented approach. It is difficult to combat the criminal focus of U.S. law and policing because it has been established as the global standard for combatting trafficking. Janie Chuang explicitly links the criminal focus of the UN Trafficking Protocol, which was heavily influenced by pressure from the U.S., to a global norm of favoring prosecutions over restitution and services for victims. The UN Office of Drugs and Crime which highly favored the U.S. law and order ideals, was charged with creating the law. In turn, the

strong and continuous U.S. influence on international politics has resulted in most countries adopting the same approach. Because the United States crafted international law in this way, the U.S. can now tout its influence on increased trafficker prosecutions globally and ignore the rights of survivors to care. It is much easier to globally report prosecutions and punishment than survivor services, which are more difficult data to track.¹³ Toby Shelley also links the U.S. influence on “law and order” approaches to immigration to global patterns of complicity in human trafficking. By focusing on the criminal side of the issue rather than prioritizing victims and by governments aligning themselves with forced labor practices to fuel their economies, he argues most governments are complicit in the global flourishing of human trafficking in the same manner as the U.S.¹⁴

These international level prosecution-oriented approaches trickle down to the local level. The Trafficking Victim Protection Act pulls from the language of the UN Trafficking Protocol. This language is meant to focus on prevention of trafficking, protection of survivors, and prosecution of traffickers.¹⁵ The implementation of this language in the U.S. follows the prosecution focus of the international sphere and tends to deprioritize the victims’ rights language.¹⁶ Not only is U.S. law impacted by the international standards the U.S. has set, but also the implementation of laws meant to protect survivors. The United States’ influence in the international governing sphere has direct impacts on criminalized survivors because it shapes the laws that are intended to protect them and influences practices that fail to provide these protections.

¹³Janie A. Chuang, “Exploitation Creep and the Unmaking of Human Trafficking Law.” *The American Journal of International Law* 108, no. 4 (October 2014): 609–49.

¹⁴Toby Shelley, *Exploited: Migrant Labour in the New Global Economy*, (London: Zed Books, 2007).

¹⁵ U.S. Congress, House, Trafficking Victims Protection Act of 2000, HR 3244, 106th Congress, Public Law No: 106-386.

¹⁶ Chuang, “Exploitation,” 609-49.

Since international law and U.S. law are aimed at arresting and prosecuting traffickers, rather than prioritizing victims, U.S. legal protections for survivors are often ignored as law enforcement prioritizes the prosecution elements of the Trafficking Victims Protection Act (TVPA). For example, Farrell and Fahey alongside Mehlman-Orozco note federal policy in the U.S. including the Trafficking Victims Protection Act prioritize arresting and prosecuting traffickers.¹⁷¹⁸ Although both the TVPA and additional states' "Safe Harbor" laws legally require victims to not be criminalized, these laws have mostly failed to protect minors because of improper police approaches and lack of funding for victim services, reflecting the overall U.S. focus on prosecutions over assistance to victims.¹⁹ Amy Farrell shows how police often approach human trafficking cases with a focus on arresting traffickers, and without much forethought for handling victims when they are found, instead routing them into courts for prosecution. This reflects both the international and federal laws guiding policymaking and actions of criminal legal system actors.

Federal Law's Mandates and Failings

The effects of international law are codified in United States law through the Trafficking Victims Protection Act (TVPRA) of 2000 and its subsequent reauthorizations (in 2003, 2005, 2008, 2013, and 2018). The TVPRA is the first U.S. law to make human trafficking and related crimes felonies. The law mostly includes language directed at apprehending and prosecuting traffickers, authorizing the U.S. government to assist foreign countries with their efforts to

¹⁷ Amy Farrell and Stephanie Fahy. "The Problem of Human Trafficking in the US: Public Frames and Policy Responses." *Journal of Criminal Justice* 37, no. 6 (December 2009): 617–26.

¹⁸ Kimberly Mehlman-Orozco, "Safe Harbor Legislation for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice," *Social Inclusion* 3, no. 1 (February 23, 2015): 52.

¹⁹ Mehlman-Orozco, "Safe Harbor," 59-60.

combat trafficking, and providing assistance to victims of trafficking.²⁰ Despite the inclusion of victims’ assistance language, advocates considered the law to be lacking in victims’ protections and instead focused too heavily on pursuing traffickers. Subsequent reauthorizations included stronger victims’ protections, but advocacy organizations are still fighting for stronger legal protections and enforcement of the law’s victim services programs.²¹

The TVPRA²² specifically addresses redirecting victims away from the criminal legal system and towards social services in the following sections of the U.S. Code. The first establishes rights for victims who are identified by law enforcement:

“Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall—(A) not be detained in facilities inappropriate to their status as crime victims; (B) receive necessary medical care and other assistance; and (C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including—(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and (ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.”²³

The second specifies the right of victims to information about services available to them to be provided by government entities:

“Victims of severe forms of trafficking shall have access to information about their rights and translation services. To the extent practicable, victims of severe forms of trafficking shall have access to information about federally funded or administered anti-trafficking programs that provide services to victims of severe forms of trafficking.”²⁴

Both of these sections of the TVPRA are intended to provide access to social services related to healthcare, housing, counseling, and financial support. In addition to these sections, the TVPRA

²⁰ 18 U.S.C. §§ 1589, 1591, 7102.

²¹ Melissa Gira Grant, “The Trump Administration Finally Broke the Anti-Trafficking Movement,” *The New Republic*, February 18, 2020.

²² This section relies on the TVPRA in its most recent form in the U.S. Code, the 2018 reauthorization: *Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018*, Public Law 115-425 (2018).

²³ 22 U.S.C. §§ 7105.

²⁴ 22 U.S.C. §§ 7105.

also mandates the Department of Justice provide trainings to law enforcement on victims' rights and identification. Although these are coded in the law, often law enforcement and other state entities fail to identify human trafficking victims and actually provide these resources.²⁵

The language in the TVPRA that is more often implemented comes from these sections focused on prosecutions of traffickers.

“Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both.”²⁶

This section above reflects the language used to officially criminalize the act of human trafficking in U.S. law. The language of “shall be fined... or imprisoned... or both” is used repeatedly to describe the consequences imposed by the state for acts of trafficking. Another section of the TVPRA states:

“The Attorney General shall ensure that each anti-human trafficking program operated by the Department of Justice, including each anti-human trafficking training program for Federal, State, or local law enforcement officers, includes technical training on—(i) effective methods for investigating and prosecuting covered offenders”²⁷

While this language seems straightforward in the same way the language about providing victims with services, this section is taken more seriously by law enforcement because it is easier for them to arrest and prosecute traffickers than to identify and assist victims, despite technical training showing officers how to do both.²⁸ The following sections explain how law enforcement and the courts make decisions based on how victims and offenders are perceived.

²⁵ Jennifer Musto, *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States* (Oakland: University of California Press, 2016), 31-34.

²⁶ 18 U.S.C. §§ 1590.

²⁷ 34 U.S.C. §§ 20709.

²⁸ Musto, *Control*, 31-34.

Losing Trafficking Victims in the Criminal Legal System

Alongside the contradictory motives expressed in federal and state law regarding approaches to dealing with survivors, there are also multiple layers of thinking from actors in the criminal legal system that fail to identify the victim-offender overlap and result in survivors of trafficking ending up defendants in criminal court. Jennifer Musto explains the law enforcement and criminal legal system counter-trafficking approach as, “Change imagined as pursuing more criminal cases against traffickers-pimps and buyers-johns.”²⁹ This approach first starts with state actors’ views on the organizational structure of human trafficking organizations. Vanessa Bouche argues, in both larger and smaller trafficking rings, victims are often coerced into participating in managing other victims, handling money, driving minors across state lines for sale, and distributing drugs. To the outside eye, this can appear similar to an organized crime operation leading many officers to arrest based on the visible crimes and prosecutors to take possible victims to court.³⁰ Ella Cockbain highlights the importance of the victim-offender overlap to the criminal operation’s success to show there is not a hierarchy like that of an organized crime network, but rather a hierarchy made possible by forcing victims to assist in victimizing others.³¹ The bias towards pursuing prosecutions instead of victims’ services starts at the police level and continues through the courtroom, ignoring the law protecting victims and using perceptions of organized crime rings rather than recognizing possible victim-offender overlap for trafficking survivors.

The second layer of thinking involves the criminalization of certain populations, especially communities and children of color, migrants, and poor communities. As many

²⁹ Musto, *Control*, 32.

³⁰ Vanessa Bouche, *An Empirical Analysis of the Intersection of Organized Crime and Human Trafficking in the United States*. [Washington, D.C.]: National Criminal Justice Reference Service, Office of Justice Programs, 2017.

³¹ Cockbain, *Offender*, 57.

scholars make clear, the criminal legal system disproportionately pulls in people of color and the poor people because it criminalizes their actions even if they would not be considered criminal for others.³²³³ These same issues are applicable to the human trafficking survivor's case with the addition of DeAnna Baumle's theory of the trauma-to-prison pipeline. Baumle argues not only are factors like race and class overpoliced, but so is trauma and gender. She highlights a causal connection between trauma and the criminalization of girls. Behaviors that are often responses to trauma, like truancy, substance abuse, and running away, are some of the most common crimes for which girls of color are arrested. People who experience interpersonal trauma and racial discrimination have higher post-traumatic stress symptoms and are more likely to become involved in the criminal legal system.³⁴

These incarceration-focused approaches to dealing with victimization and trauma are fueled by the efforts of carceral feminism. Despite efforts aiming to remove people from exploitative situations, they replace these with punitive systems that are incapable of distinguishing between victims and survivors and prevent survivors from accessing promised services.³⁵ Studies of the National Survivors Network provide examples of how survivors are criminally charged and how criminalization prevents them from accessing social services.³⁶ For trafficking survivors who are often picked up by the police and jailed in the midst of or immediately after a traumatic experience, the inability to gauge how trauma affects a person's actions is an inherent failure of the criminal legal system they are forced through. The perception that trauma reactions are indicative of criminal behavior and deserve a criminal punishment

³²Cockbain, *Offender*, 64.

³³ Baumle, DeAnna. "Creating the Trauma-to-Prison Pipeline: How the U.S. Justice System Criminalizes Structural and Interpersonal Trauma Experienced by Girls of Color." *Family Court Review* 56, no. 4 (October 2018): 696.

³⁴ Ibid, 698-701.

³⁵ Hoang and Parreñas, "Introduction," 11-12.

³⁶ Jacobs and Richard, "National."

rather than access to services, results in survivors of trauma and trafficking getting misidentified and lost in the criminal legal system.

Fast Girls and Worthy Victims

Concepts of victimization and criminalization start outside of the criminal legal system, in homes and schools. Since two of the cases in this project are of a young Black woman and a Black girl, it is important to acknowledge the structural and interpersonal factors that begin the criminalization process for them long before they reach the courtroom. Girls are being arrested and incarcerated at a much faster rate than boys and are punished more severely than boys for status offenses, such as running away, truancy, and prostitution.³⁷ Black girls are detained at significantly higher rates than white girls, regardless of the type of crime.³⁸ The children who express common reactions to trauma, including trauma resulting from violence or structural racism are the ones most often pushed out of schools into the criminal legal system.

Outside of schools, Black girls are often hypersexualized at an early age compared to their peers. This oversexualization creates a racial coding of victimhood for forced sex. While white girls are more often considered to be victims of sex trafficking, Black girls are disproportionately considered to be “fast” or “loose” and blamed for their own exploitation. Black girls are more often considered to be participating in “survival sex” rather than seen as victims of trafficking, despite the legal framework presuming all minors are victims.³⁹ Black

³⁷ Cynthia Godsoe, “Contempt, Status, and the Criminalization of Non-Conforming Girls,” *Cardozo Law Review* 35, no. 3 (February 2014): 1091-2.

³⁸ Baumle, “Creating,” 697.

³⁹ Note: This project is focused explicitly on human trafficking survivors as a point of reference. This focus is not intended to invalidate or condemn the use of survival sex or sex work or take an anti-prostitution stance.

youth make up 62 percent of prostitution offenses of minors.⁴⁰ Historically, the terms “Black woman” and “prostitute” could be used interchangeably.⁴¹ A long history of the bodies of Black women and girls being perceived as property provides the foundation for the sexualization of young Black women and girls and the perception that they are sexually deviant and incapable of being the victim. This inability to be a “worthy victim” is vital to understanding how people are criminalized in the courtroom. The ideal type of a worthy victim is based on socially crafted ideas of innocence and responsibility. For women of color, it can be impossible to convince a court they are morally responsible when they are perceived to be sexually deviant and to prove they are innocent of the crimes when they are criminalized by society.⁴² Their race and social standing makes it difficult to fit into the worthy victim trope.

Criminalization in the Courtroom

The act that formalizes the criminalization process is the conviction of guilt in a courtroom and subsequent criminal sentencing. At this point the criminal legal system officially makes similar claims to society and the prosecutors: that the survivor of violence is a criminal and should be punished as such despite any complicating circumstances. Leading up to this conviction, there are many statements and claims, both explicit and implicit, made in the courtroom meant to either paint the survivor as a criminal or a victim of trafficking. Oftentimes these claims are made by and for people who have not experienced the same trauma of victimization as the survivor. The state, the police officers who testify, and the lawyers for both

⁴⁰ Jasmine Phillips, "Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States," *UCLA Law Review* 62, no. 6 (2015): 1643-5.

⁴¹ *Ibid*, 1657-8.

⁴² *Ibid*, 1651.

sides craft claims meant to define the victim in a way that comprehensively fits the two options for a verdict: guilty or not guilty. Courts are often unable to make a decision that acknowledges both victimization and criminal activity because this binary limits the decision-making process.

The process of criminalization begins early in the courts. It is expected that prosecutors only bring cases to court in which they are sure the defendant is guilty, so more often than not, defendants are found guilty. Only one percent of defendants in federal cases from urban areas are acquitted during trial. Of the other 99 percent, 66 percent are convicted in trial courts, and 54 percent take plea deals and never make it to trial.⁴³ These statistics are relevant to this study because these cases all fall within the 99 percent of cases in which defendants are found guilty even though each defendant's case should not have been brought to courts under the protections in the TVPRA.⁴⁴

In addition, two case subjects take plea deals through the plea bargain system which is criticized for targeting people of color who are more likely to receive guilty verdicts and long sentences without the plea deal. Chief Justice William Young, in *U.S. v. Richard Green*, said "Our entire criminal justice system has shifted far away from trials and juries and adjudication to a massive system of sentence bargaining that is heavily rigged against the accused citizen."⁴⁵ Although plea deals imply admitted guilt by the defendant, both guilty and innocent defendants take plea deals because they present a rational choice of a lighter sentence versus the precarity of attempting to claim innocence in the courtroom.⁴⁶ The two of the subjects of this study who take

⁴³ Brian A. Reeves, "Felony Defendants in Large Urban Counties, 2009 - Statistical Tables." U.S. Department of Justice Bureau of Justice Statistics (December 2013): 22.

⁴⁴ 22 U.S.C. §§ 7105.

⁴⁵ *United States v. Green*, 346 F. Supp. 2d 259 (D. Mass. 2004).

⁴⁶ Russell D Covey, "Signaling and Plea Bargaining's Innocence Problem," *Washington and Lee Law Review* 66 no. 73 (2009): 58.

plea deals in their cases recognize they were forced to commit the crimes for which they pled guilty.

Once cases make it to the courtroom, certain language is used by all parties that argues for or against the defendant's guilt and may also imply innate criminality or instances of victimization of human trafficking. Conley, O'Barr, and Riner make it clear the language used by actors in a courtroom has strong effects on case outcomes. They say, "Discourse at its various levels is not mere talk, however; it is intimately connected to both thought and action. A way of talking about something is also a way of thinking about it, since what we say both reflects what we think and helps to shape what we and others will think in the future."⁴⁷ The discourse of lawyers and state actors in the courtroom, like prosecutors, police, and government employees who testify carry even more weight due to the hierarchy and power imbalances of the court. Questions asked by lawyers are highly constructed tools of persuasion to get specific answers from witnesses.⁴⁸ When prosecution lawyers insist on the criminal nature of a defendant, juries are more likely to listen and believe their narrative because of their authority as representatives of the state. In cases of trafficking, charged language regarding the sexual activities of defendants is common. Labels like "prostitute" imply an innate criminality of defendants because prostitution is seen as a moral failing throughout society. In turn, labeling someone a prostitute in a courtroom acts as a discursive tool to isolate a perceived criminal behavior of the defendant and push away consideration of outside forces that make someone vulnerable to trafficking.⁴⁹

⁴⁷ John M. Conley, William M. O'Barr, and Robin Conley Riner, *Just Words: Law, Language, and Power, Third Edition* (University of Chicago Press, 2019): 21.

⁴⁸ Conley, O'Barr, Riner, *Just Words*, 24.

⁴⁹ Susan Dewey, "Understanding Force and Coercion: Perspectives from Law Enforcement, Social Service Providers, and Sex Workers," in *Human Trafficking Reconsidered*, ed. Kimberley Kay Hoang and Rhacel Parreñas (New York: International Debate Education Association, 2014): 108-110.

The use of language of victimization and criminalization within the courts by defense lawyers, prosecutors, civilian and government witnesses, and survivors provides the site of analysis for this study. This language helps to elucidate how survivors of human trafficking in the United States criminalized for crimes related to their trafficking despite existing legal protections by honing in on the courts as a vital site of criminalization.

Methodology

This study analyzes the cases of three self-identified trafficking survivors who have faced criminalization related to their cases. Due to a lack of data identifying survivors, I had to rely on survivors who identified themselves and have a publicly accessible narration of their criminalization. Using these criteria, I was able to identify Cyntoia Brown and Shamere Mckenzie who both discuss their criminalization publicly. I identified Mckenzie after hearing her speak during August 2019 and Brown from media reports of her clemency case in 2018. The third case, Vanessa Perkins, was the only case I was able to access that resulted in a survivor receiving services. I stumbled upon Perkins' case by accident while researching other survivors who speak publicly. Perkins' case complicates this study because it involves both criminalization and recognition of victimhood and because Perkins is white while the other two case subjects are Black. I am unable to form any conclusions about the role race plays in these cases because there is not enough information about its role in each individual case or on a national scale in prosecutions.

This project relies on both the words of trafficking survivors who have faced criminalization and the legal documents related to their cases to analyze the arguments made for criminalization and victimization by the survivor, their lawyers, and the state. It is impossible to

justly represent a survivor's experience without representation of their voice. The voices of three survivors are represented using their writings and public interviews. The survivors' narratives were all obtained from interviews and writings in the public domain found through search engines. Shamere Mckenzie's interview comes from Global Perspectives, season 2016, episode 10 which originally aired April 24, 2016 on PBS.⁵⁰ Cyntoia Brown's narrative comes from her memoir released in October 2019 from Atria Books and a speaking event at the University of Chicago on January 30, 2020 that I attended.⁵¹ Vanessa Perkins' narrative stems from a recording of her TEDx Talk, "How I Escaped Sex Trafficking through CATCH Court" at Ohio State University in November 2018⁵² Using inductive coding, I identify themes of criminalization and victimization statements from the victims' narratives of their experiences in a trafficking situation and the process of moving through the criminal legal system. These themes are centered directly around concepts of trafficking victimization. Actors in these cases attempt to create a perfect victim of trafficking or a criminal who could not be a victim of trafficking because they are allowed to choose their fate. These narratives help to identify multiple sources of arguments for or against criminalization from the survivors' perspective.

While survivor voices are central to this analysis, the edited and polished nature of speeches, interviews, and memoirs do not go uncritiqued. Personal narratives are vital because they allow survivors to tell their own stories, but they also present a platform for creation of a seamless and sympathetic tale. These stories are prioritized, but I acknowledge the influence of editors, agents, and public pressure on the creation of the narratives presented to the public.

⁵⁰ Shamere Mckenzie. vol. 10, Global Perspectives, 2016. accessed January 27, 2020. <https://www.pbs.org/video/global-perspectives-shamere-mckenzie/>.

⁵¹ Cyntoia Brown-Long, *Free Cyntoia: My Search for Redemption in the American Prison System*, (New York: Atria books, 2019).

Cyntoia Brown-Long and Dr. Tara Betts, "In Dialogue with Cyntoia Brown-Long" (University of Chicago, January 30, 2020).

⁵² Perkins, *How I Escaped*.

Despite these influences, these survivors' stories explain the process of criminalization from the people who are often silenced and hidden by the process. They are able to identify multiple sources of criminalization that are not visible in court documents that detail just their charges and sentencing. Time and narrative crafting shape these stories to elicit certain reactions from audiences, but do not invalidate the experiences of criminalization the survivors share.

In contrast to the more obviously biased survivors' narratives, this project also relies on inductive coding of documents from case dockets of the survivors' trials and plea deals, resulting in the same themes. While legal documents are often associated with an objective and removed legal system that metes out fair judgments upon criminals, they are also sites of many forms of bias and influence over narratives.⁵³ The documents examined include plea deals, habeas corpus petitions, and appeals petitions which present narratives of criminalization and victimization from state actors, police officers, and lawyers. Each of these cases was retrieved through the Bloomberg Law database. Shamere Mckenzie's case is the plea deal accepted by United States Attorney for the District of Connecticut in her case, *United States v. Shamere Mckenzie*, case number 3:07-cr-00011-JCH.⁵⁴ Cyntoia Brown's legal documents include an appeal filed in the United States Sixth Circuit Court of Appeals, *Cyntoia Brown v. Carolyn Warden*, case number 16-6738; an appeal in the case *State of Tennessee v. Cyntoia Denise Brown* in the Court of Criminal Appeals of Tennessee at Nashville, case number M2007-00427-CCA-R3-CD; and a habeas corpus petition filed in the United States District Court for the Middle District of Tennessee Nashville Division, case number 3:15-CV-00712.⁵⁵ Vanessa Perkins' legal data

⁵³ Patricia Ewick and Susan S. Silbey, *The Common Place of Law*, (Chicago: University of Chicago Press, 1998): 31.

⁵⁴ *United States v. Shamere Mckenzie*, 2007, District of Conn, via Bloomberg LP, accessed Jan 24, 2020.

⁵⁵ *Cyntoia Brown v. Carolyn Jordan*, 2018, 6th Cir, via Bloomberg LP, accessed Jan 24, 2020.
State of Tennessee v. Cyntoia Brown, 2008, Tenn. App., via Bloomberg LP, accessed Jan 24, 2020.
Cyntoia Brown v. Vickie Freeman, 2015, M.D. Tenn., via Bloomberg LP, accessed Jan 24, 2020.

comes from two cases: State of Ohio v. Perkins, Vanessa L. in the Ohio Court of Common Pleas in Athens County, docket number 08CR0270 and State of Ohio v. Perkins, Vanessa L., in the Ohio Court of Common Pleas in Athens County, docket number 09CR0394.⁵⁶

These legal narratives allow these actors to make claims about the survivors' status as victims, criminals, or something in-between. In the same manner, the survivors' narratives must be analyzed with consideration of bias, these documents represent the opinions of state actors and lawyers who come into the courtroom with existing preconceptions and a desire to win the case. Lawyers make arguments about the survivors' personal lives and character as tools to win the debate over defendant's possible criminality. These narratives provide insight into the ways outside actors place labels and conceptions of the perfect trafficking victim or criminal on the defendants. They place the survivors into the confines of strict legal labels in order to win the case, which provides a window into the complexity of dealing with the trafficking victim-offender overlap in the courtroom. The language provided in these documents highlights language that criminalizes in specific ways related to trafficking, like implications of willing prostitution and shaping the defendant to be an innate criminal who could not be a trafficking victim.

Each case study begins with an overview of the materials used to analyze the case, the themes originating in the study, and the actors involved in crafting language of victimization and criminalization. Then a synopsis of the survivors' narrative and the story provided by the legal documents will be provided before analyzing the key themes identified in each case. The cases of survivors: Shamere Mckenzie, Cyntoia Brown, and Vanessa Perkins each provide unique insight

⁵⁶ State of Ohio v. Perkins, Vanessa L., 2008, Ohio Comm., via Bloomberg LP, accessed February 21, 2020. State of Ohio v. Perkins, Vanessa L., 2009, Ohio Comm., via Bloomberg LP, accessed February 21, 2020.

into the ways actors in the criminal legal system and outside of it decide who gets to be a trafficking victim and who is called a criminal in court records.

Shamere Mckenzie: the Ease of Charging Bottom Girls

Shamere Mckenzie was a college student seeking to pay her tuition when she met her future trafficker. Using the transcript from an interview with Mckenzie from the television show “Global Perspectives” and the plea deal from her joint trial with her trafficker, I identified key themes of criminalization and victimization language used to argue for or against Mckenzie’s innocence.⁵⁷ These themes originate from Mckenzie and state actors as she navigated her case.

Mckenzie’s Narrative

In her interview, Shamere Mckenzie discusses her trafficking situation beginning with her early life and identifying the conditions that led her to be trafficked, before unpacking her time being trafficked and subsequent criminal charges. Mckenzie met and dated her trafficker, Corey Davis, for a few weeks before he asked her to work a night in a strip club to earn money for school and she began being trafficked. Once he started to force her to have sex with Johns and took the money she was given away, he also became violent and controlling. Mckenzie describes the violence she and the other women under Davis’ control experienced as inescapable. She says, “But after a while, you realize the rules and you realize that you really have no choice. You either have to experience this type of harsh—type of physical violence or you just develop this compliant behavior where you just do everything he says so you won’t suffer the consequences.”⁵⁸ Despite a desire to leave, Mckenzie explains that Davis would threaten to kill her or threaten to harm her family in order to get her to stay. In the few instances in which

⁵⁷ *Shamere Mckenzie*, Global Perspectives.

⁵⁸ *Ibid.*

Mckenzie attempted to escape, he would call her and threaten to harm her mother until Mckenzie returned. Mckenzie describes herself as Davis' "'bottom," the pimp's most trusted prostitute.'⁵⁹ In a trafficking situation, this position is essentially the highest-ranking victim who is forced to help transport other victims, exchange money on behalf of the trafficker, and train the other victims to follow the trafficker's orders. This position is a target for the criminal legal system for criminal charges because the "bottom" commits acts that are seen as crimes rather than as victimization.

Mckenzie then details her experiences traveling with Davis and other trafficking victims to different locations and her eventual escape before explaining how she was convicted of a felony after getting away from her trafficker for the last time. Mckenzie uses trafficking-specific language of victimization and criminalization to describe her experience with the criminal legal system. She calls Davis a trafficker specifically and describes her experience as slavery. It is not clear if she was using this trafficking-specific language while she was in court, but she does recall using language of victimization and being forced to commit the acts she did to explain her situation to the prosecutor and judge. Shamere indicates she claimed to be a victim of exploitation and should not be criminalized for crimes she was forced to commit while in the courtroom.⁶⁰ In the end, Mckenzie's arguments of victimization were ineffective and she took a plea deal to testify against Davis rather than go to trial.

Mckenzie's Case

The court documents relevant to Shamere Mckenzie's case come from United States v. Corey Davis in the United States District Court of Connecticut. In this case Corey Davis and Shamere Mckenzie were both defendants and charged with the same conspiracy to traffic minors.

⁵⁹ *Shamere Mckenzie*, Global Perspectives.

⁶⁰ *Ibid.*

Mckenzie agreed to plead guilty for the charge of conspiracy to commit Mann Act violations in return for other charges being dropped and agreeing to testify against Davis.⁶¹ The plea deal outlines the charges Mckenzie agreed to in standard formal legal language often used in plea deals. After the plea, there is a “stipulation of offense conduct” which narrativizes the charges against Mckenzie and provides multiple instances of language of criminalization.⁶²

Who chooses to victimize and who chooses to criminalize?

The themes identified in Shamere Mckenzie’s narrative and the plea deal are language of criminalization, victimization, and sites of ambiguity that present both at the same time. The bulk of victimization language in Mckenzie’s case comes from Mckenzie herself, while most criminalization language comes. The state actors in this case are the United States Attorney Kevin J. O’Connor and Assistant United States Attorney Krishna R. Patel who authored and submitted the plea deal.⁶³

⁶¹ Note: The Mann Act, also known as the White-Slave Traffick Act of 1910, made it illegal to transfer minors across state lines to be sold for sex.

⁶² United States v. Shamere Mckenzie, 8.

⁶³ United States v. Shamere Mckenzie, 6.

Language of Criminalization and Victimization: Shamere McKenzie	
Mckenzie ⁶⁴	State Actors ⁶⁵
But she's also the most manipulated and suffers severe consequences if she doesn't comply with the pimp's requests	McKenzie met Corey Davis, a.k.a. "Magnificent," <u>a pimp</u> , and subsequently became his "bottom," the pimp's <u>most trusted prostitute</u> .
And, um, you would work the strip club and then you'll – and I use "work" and I put it in quotation, you know, it's really exploitation. And after the strip club, you'd be exploited on the streets.	While working at the various strip clubs the females danced and also <u>engaged in unlawful sexual acts for money</u> .
I witnessed him beating other girls the same way. But after a while you realize the rules and you realize that you really have no choice	at Davis's direction, <u>Mckenzie transported the females</u> who worked for Davis to Connecticut to work at various adult strip clubs
You know, I couldn't see why I was being criminalized for something that was done to me. ..And in my world, I'm thinking, but these are crimes that I commit under the direction of the real criminal	<u>And the prosecutor said, "Well you have to be held accountable for the crimes that you commit."</u>

Figure 1 – This chart shows examples of language of criminalization and victimization originating from Mckenzie and state actors. Bolded phrases represent language associated with arguments for victimization and those underlined represent criminalization.

The language used by Mckenzie indicates she intends to create an argument for her status as a victim of trafficking. She highlights her position as the “bottom” as one of vulnerability and victimization rather than one in which she had free will to commit the crimes for which she is charged.⁶⁶ In contrast, the language from state actors leans towards language of criminalization. While Mckenzie claims to be a trafficking victim, the state claims she was a prostitute and was trusted by Davis for her ability to help him traffic minors. The use of the word “prostitute” rather than “trafficking victim” deliberately separates Mckenzie from a narrative of victimization and labels her as an offender of prostitution and Mann Act violations.⁶⁷

The use of the word “work” from Mckenzie and the state actors in her case provides a site of comparison of ways in which words are used by both parties with different goals in mind.

⁶⁴ All quotes in this column originate in *Shamere McKenzie*, Global Perspectives.

⁶⁵ All quotes in this column originate in *United States v. Shamere McKenzie*, 2007, District of Conn, via Bloomberg LP, accessed Jan 24, 2020.

⁶⁶ *Shamere McKenzie*, Global Perspectives.

⁶⁷ *United States v. Shamere McKenzie*, 8.

The word “work” in the language of the state is used to place a layer of consent Mckenzie denies on the acts she performed.⁶⁸ The state says, “While working at the various strip clubs the females danced and also engaged in unlawful sexual acts for money.” The word “work” does not imply force or exploitation that put Mckenzie and the other women into strip clubs and “engage in unlawful sexual acts for money” implies the women kept the money given to them for sexual acts, placing them in the legal definition of the criminal act of prostitution.⁶⁹ Mckenzie, on the other hand, explicitly critiques the use of “work” in this context. She says, “I use “work” and I put it in quotation, you know, it’s really exploitation.”⁷⁰ Because Mckenzie claims to be forced to do this sexual labor and because she had to give the money she received to Davis, Mckenzie claims she is outside of the criminal definition and is instead a victim.

The specific language used to condemn Mckenzie of crimes related to the Mann Act aims towards criminalization by purposefully ignoring any extenuating circumstances. Mckenzie’s language highlights her feelings of having no choice but to participate in driving minors across the border due to threats of violence from Davis. Mckenzie recounts an instance in which she did try to avoid driving minors into Connecticut to be exploited,

“And I remember him asking me to choose between death and driving one day when I said I didn’t want to drive. And I said, “Just kill me.” And he said, “You wanna die? Well open your mouth.” And when I opened my mouth, he put the gun in my mouth and pulled the trigger, but the gun wasn’t loaded.”⁷¹

By calling upon language of lack of choice and memories of violence, Mckenzie argues for her victimhood and denies her willful involvement in crime. In contrast, the state focuses on the act of driving and describes Davis’ control instead as “direction.”⁷² This phrasing keeps blame on

⁶⁸ *Shamere Mckenzie*, Global Perspectives.

⁶⁹ *United States v. Shamere Mckenzie*, 8.

⁷⁰ *Shamere Mckenzie*, Global Perspectives.

⁷¹ *Shamere Mckenzie*, Global Perspectives.

⁷² *United States v. Shamere Mckenzie*, 8.

Mckenzie for her actions rather than placing control into Davis' hands, painting Mckenzie as a willing criminal rather than the victim she describes herself to be.

Mckenzie uses explicit language of criminalization while discussing her time in court to argue for her victimization. She describes the experience of being told she is a criminal while arguing the opposite: "You know, I couldn't see why I was being criminalized for something that was done to me... And in my world, I'm thinking, but these are crimes that I commit under the direction of the real criminal."⁷³ Here Mckenzie notices she is facing a process of criminalization through the arguments of the state's lawyers and judge's acceptance of it. While she thinks she has made the exploitation from Davis clear, the argument for criminalization from the state is considered to be stronger. She remembers an exchange with the state's prosecutor in which she asks why she is still facing criminalization despite being forced to drive the car to which she received this reply, 'And the prosecutor said, "Well you have to be held accountable for the crimes that you commit."⁷⁴ The argument of the state is not that she is not a victim, but instead that the criminal acts committed are more important than her victimization. In this exchange, the prosecutor gets the final criminalizing word and Mckenzie accepts her criminal charges after not being able to argue strongly enough for her victimization.

Cyntoia Brown: Belated Appeals to Victimization

Cyntoia Brown was 16 years old in 2004 when she was charged with murder and robbery for killing a man who brought her to his home for sexual acts while she was being exploited. Brown's case received support from celebrities and enough public pressure for the governor of Tennessee to commute her sentence in 2019. This section relies on Brown's memoir, *Free*

⁷³ *Shamere Mckenzie*, Global Perspectives.

⁷⁴ *Shamere Mckenzie*, Global Perspectives.

*Cyntoia: My Search for Redemption in the American Prison System*⁷⁵, which recounts her life up until her release from prison in 2019 and quotes from a recent talk given by Brown at the University of Chicago on January 30, 2019⁷⁶ to analyze her arguments for victimization and criminalization. Other actors involved in the case are Brown's lawyers and state actors like detectives and prosecutors. These sources indicate themes of criminalization, victimization, and ambiguity from arguments by the actors identified above used with varying amounts of success.

Brown's Narrative

Cyntoia Brown received a life sentence for killing a man who took her home to have sex with her while she was being exploited by a trafficker named Garion "Cut Throat" McGlothen. Despite attempts to keep her case in juvenile court, she was tried as an adult for the case in 2006 and no party argued she was a victim of trafficking despite the Trafficking Victim Protection Act's implementation five years prior. Brown's memoir details her life from beginning from childhood, through the years prior to her conviction, her 15 years in prison, and eventual release. The key areas of focus for this analysis are the chapters regarding her time being trafficked by McGlothen, the act that resulted in her criminalization, her interactions with the police, and her subsequent trial.⁷⁷

While Brown explains her situation, she applies language of trafficking and victimization retroactively. She did not consider herself to be a victim of trafficking or any kind of victim while she was with McGlothen. She considered him to be her boyfriend and thought they were saving money to move from Nashville to Vegas. Brown says she was able to use this idea to ignore the abuse she received and the fear that she felt.⁷⁸ During her trial and first round of

⁷⁵ Brown-Long, *Free Cyntoia*.

⁷⁶ Brown-Long and Dr. Betts, "In Dialogue."

⁷⁷ Brown-Long, *Free Cyntoia*, 205, 235-237, 430-432.

⁷⁸ *Ibid*, 145.

appeals, neither Brown nor her lawyers described her as a victim of trafficking.⁷⁹ The lawyers did use other forms of victimization language, but since it is not centered around human trafficking, its analysis is not relevant to this project. In her 2015 habeas corpus appeal, her lawyers began to use language of sex trafficking to describe the circumstances that led Brown to be in fear for her life in a stranger's bed.⁸⁰ McGlothen forced Brown to have sex for money with men and took the money upon her return. He gave her a gun for safety, which was the weapon she claims to have used in self-defense the night she killed a John. Brown describes her relationship with McGlothen from the perspective of an adult who has extensively read the law and spoken with victim advocates and Brown determines she is a survivor of human trafficking and should not have been criminalized because of it.⁸¹

Brown's Case

The court documents used to represent the state's arguments about Brown's case are the first appeal for Brown's trial case: *State of Tennessee v. Cyntoia Brown*, the brief associated with this case from Brown's legal team, and a Habeas Corpus petition filed on behalf of Brown claiming she was unlawfully imprisoned.⁸² Brown pled not guilty in her trial but was found guilty by the jury. The documents are from a series of appeals of this verdict over a period of 15 years.

Who decides who gets to be a victim and when?

The themes identified in Cyntoia Brown's case study are the same as those identified in Shamere McKenzie's: victimization and criminalization language. These themes are once again

⁷⁹ Brown-Long, *Free Cyntoia*, 432.

⁸⁰ *Cyntoia Brown v. Vickie Freeman*, 2015, M.D. Tenn., via Bloomberg LP, accessed Jan 24, 2020, 20.

⁸¹ Brown-Long, *Free Cyntoia*, 432.

⁸² *Cyntoia Brown v. Carolyn Jordan*, 2018, 6th Cir, via Bloomberg LP, accessed Jan 24, 2020.

State of Tennessee v. Cyntoia Brown, 2008, Tenn. App., via Bloomberg LP, accessed Jan 24, 2020.

Cyntoia Brown v. Vickie Freeman, 2015, M.D. Tenn., via Bloomberg LP, accessed Jan 24, 2020.

mostly centered around the defense and prosecution in the case. Most of the criminalization language comes from state actors and most of the victimization language comes from Brown and her pro bono defense lawyers. The state actors in this case are Judge J. Randall Wyatt, Jr. and D. Kelly Thomas Jr., David H. Welles, and Thomas T. Woodall who delivered the opinion of the court in the appeal case for *State of Tennessee v. Cyntoia Denise Brown*.⁸³

Language of Criminalization and Victimization: Cyntoia Brown		
Brown ⁸⁴	Lawyers for Brown ⁸⁵	State Actors ⁸⁶
<u>"I was described as a teenaged prostitute, not a trafficking victim. The word "trafficking" wouldn't be used in connection with my case until many years later. In the eyes of the prosecution, I was a murderous whore, an evil, out-of-control teen whom they were dead set on locking up."</u>	This is a case about a sixteen-year-old girl with unaddressed mental health issues and cognitive deficiencies, who had been sexually trafficked by a violent older man.	<u>the defendant said that "Cut" made her "leav[e] with other men," which Armstrong interpreted as prostitution.</u>
"I wasn't out there just hustling because I wanted to. That means Kut wasn't my boyfriend. He never was. Kut was my pimp."	Fearing returning to McGlothen empty-handed, Ms. Brown then stole money and other property from Allen's house.	<u>Martin said that "if he had her on the street, I would have to say that it was by her choice."</u>
"But the idea that I could possibly be considered a trafficking victim honestly hadn't entered my mind. When I thought of trafficking, I thought of girls being stuffed into suitcases, or kidnapped by Russian mobsters. It never occurred to me that you could be trafficked by someone you thought was your boyfriend."	The jurors did not know that Cyntoia had suffered sexual and physical abuse at the hands of a man who forced her into a life of prostitution at age 16.	<u>"Tears stung my eyes as he told the jury I was dangerous, that the streets were safer without me."</u> (From <i>Free Cyntoia</i> , describing the prosecutor in Brown's trial)
"I was in prison because I had listened to a man who told me everything I did had to be for him."		

Figure 2 – This chart shows examples of language of criminalization and victimization originating from Brown, her lawyers, and state actors. Bolded phrases represent language associated with arguments for victimization and those underlined represent criminalization.

⁸³ *State of Tennessee v. Cyntoia Brown*, 1.

⁸⁴ Quotes in this column originate in Brown-Long and Dr. Tara Betts, "In Dialogue." And, Brown-Long, *Free Cyntoia*.

⁸⁵ For quotes in this column see note 82.

⁸⁶ For quotes in this column see note 82 and 84.

One of the patterns of criminalization and victimization language in Brown's case revolves around defining her as a trafficking victim or as a prostitute. Brown claims the prosecution in her trial referred to her as a "teenage prostitute."⁸⁷ The court documents also use the language of a friend who interpreted Brown's description of her situation as "prostitution."⁸⁸ This language places Brown in the realm of criminal activity rather than in a position of victimization. The jury heard repeated language that indicated Brown was involved in criminal activity, but none in the trial that described her as a trafficking victim. Brown notes trafficking language was not applied to her case until years after her trial.⁸⁹ Brown's lawyers do not use language of human trafficking victimization until they filed a habeas corpus petition in 2015 which said, "This is a case about a sixteen-year-old girl with unaddressed mental health issues and cognitive deficiencies, who had been sexually trafficked by a violent older man."⁹⁰ This change in language centers the victim narrative of Brown rather than the criminal one the state used. The previous arguments for Brown's victimization centered on her childhood and mental health were ineffective. Even though this habeas corpus petition was denied, the argument Brown is a human trafficking victim was successful in gaining her clemency through an extra-court process.

Early court documents may not use trafficking-specific language of victimhood, but they do indicate Brown felt she was in danger from McGlothen and acted accordingly. Brown's lawyers argue fear was Brown's motive for shooting the John and for stealing a few items from his house. They claim, "Fearing returning to McGlothen empty-handed, Ms. Brown then stole

⁸⁷ Brown-Long, *Free Cyntoia*, 205.

⁸⁸ State of Tennessee v. Cyntoia Brown, 10.

⁸⁹ Brown-Long, *Free Cyntoia*, 427.

⁹⁰ Cyntoia Brown v. Vickie Freeman, 9.

money and other property...”⁹¹ This assertion of fear denies the state’s claim that Brown willingly sold sex for money and chose to rob the man she shot. This phrasing of victimhood contradicts a statement made by a juvenile justice case manager who supervised Brown and testified saying, “if he had her on the street, I would have to say that it was by her choice.”⁹² As a witness for the state, this person claimed from her position of authority over Brown after her arrest that she had chosen to be a prostitute and was not forced. Multiple types of state actors make claims about Brown’s criminal nature throughout her case that are meant to deny Brown’s lawyers claims that she was forced to commit the acts for which she is accused.

Claims meant to criminalize Brown also aimed at criminalizing her character in order to contradict a victim narrative. Brown recounts in her book, “Tears stung my eyes as he told the jury I was dangerous, that the streets were safer without me.”⁹³ Not only were claims made regarding Brown’s actions that night, but also about that she is inherently dangerous to society. These claims call upon narratives of criminality of entire populations of people and imply Brown could not be a victim because she is a criminal even before a conviction.

Vanessa Perkins: Both Criminal Conviction and Recognition as a Victim

Vanessa Perkins’ narrative and legal case represent a unique position in the trafficking victim-offender overlap because she pled guilty to a crime in order to gain access to rehabilitative services intended for survivors. This case study relies on a narrative provided by Perkins in her TEDx Talk, *How I Escaped Sex Trafficking Through CATCH Court*, and documents from her 2008 and 2009 criminal convictions and sentencing. This narrative draws

⁹¹ Cyntoia Brown v. Carolyn Jordan, 6.

⁹² State of Tennessee v. Cyntoia Brown, 15.

⁹³ Brown-Long, *Free Cyntoia*, 235.

out themes of victimization and criminalization like McKenzie and Brown's but also reveals language of redemption that does not show up in the other cases. Perkins' case is representative of a small number of trafficking survivors who have access to rehabilitative services like CATCH (Changing Actions To Change Habits) Court because these problem-solving courts exist at a small local level, victims are skipped over or missed in the system, and the courts are not without their flaws. Despite these limitations, Perkins' experience provides vital insights into a system designed to criminalize attempting to recognize victims.

Perkins' Narrative

Vanessa Perkins pled guilty to charges of aggravated trafficking of drugs in 2008 and trafficking in heroin in 2009 in the Ohio Court of Common Pleas. Perkins hints at her criminal record in her TEDx Talk in which she explains the factors in her life that made her susceptible to trafficking, her relationship with her first trafficker, her first release from prison and meeting her second trafficker, and diversion to CATCH Court allowed her to receive social services and not return to a trafficking situation.⁹⁴ This narrative provides insight into the ways Perkins was allowed to be both a criminal and a victim of trafficking under the criminal legal system.

In her speech, Perkins begins with a history of childhood sexual abuse and lack of emotional support from her family that she says led her to develop a substance use disorder and struggle to maintain a job. One day she was out on the street experiencing withdrawals and a man approached her and offered to bring her the drugs she needed. After this Perkins claims she fell in love with him and became dependent on him. Once she had spent some time with him, he claimed to own her and forced her to start selling sex for money and drugs. Eventually, Perkins is caught with drugs and spends some time in jail. When she gets out of jail, her first trafficker is

⁹⁴ Perkins, *How I Escaped*.

gone but she quickly finds another. She explicitly uses the word “trafficker” to describe both men. Her second trafficker is cold and businesslike. He builds off the first and forces her to have sex for money which he keeps.⁹⁵

The second time Perkins is arrested, she is charged with drug trafficking and maintains her innocence pretrial. As the case begins, she ends up pleading guilty to the charges. Because Perkins was identified in the court as a victim of trafficking, she became eligible for the CATCH Court program in Ohio which follows a carceral protectionist model to offer housing, drug treatment services, and job counseling to victims of trafficking who plead guilty to their charges.⁹⁶ Once a defendant has pled guilty, they may apply with a judge to be redirected to CATCH Court and complete a two-year rehabilitation program. Upon completion, they can apply to have their criminal record expunged.⁹⁸ Perkins was one of the first graduates of the program.⁹⁹ Perkins’ story highlights the priority of the courts to pursue criminal charges for victims rather than redirecting them to services. For Perkins to have access to services for survivors, the court had to both convict her of a crime and recognize her as a victim in order to send her to victim services. In her case, Perkins was able to gain access to more services by accepting the criminalization of the state, even though she should have been granted them without a criminal status. After completion of the program, Perkins earned her status as a victim in the state’s eyes and became eligible to have her record expunged.¹⁰⁰

⁹⁵ Perkins, *How I Escaped*.

⁹⁶ Musto, *Control*, 6, 20.

⁹⁷ Carceral Protectionism is understood as enforcement of laws through arrest or incarceration in order to provide protection and state services for victim-offenders.

⁹⁸ Dr. Karen Miner-Romanoff, “CATCH Court: Changing Actions to Change Habits: Research Findings,” Program Evaluation (Franklin University, 2015): 1-2.

⁹⁹ To learn more about the benefits of and issues with the operation of problem-solving courts, which is outside the scope of this project, see Becca Kendis, “Human Trafficking and Prostitution Courts: Problem Solving or Problematic?” Case Western Reserve Law Review 69, no. 805 (Spring 2019).

¹⁰⁰ Perkins, *How I Escaped*.

Perkin's Case

The court documents available for Vanessa Perkins' case come from the case docket of two cases titled *State of Ohio v. Perkins, Vanessa L.*¹⁰¹ The first was filed on June 9, 2008 and the second was filed on October 26, 2009. Both have disposition dates¹⁰² of February 1, 2010 because the cases were related and resulted in the same sentence: two years in CATCH Court. In both cases, Perkins pleaded guilty to the charges and received the same sentence. The dockets outline the charges against Perkins, the verdict, and the sentence.

Who decides someone is both a criminal and victim?

Vanessa Perkins case highlights the same themes of criminalization and victimization as Cyntoia Brown and Shamere Mckenzie's cases but presents one additional theme due to differences in the court's consideration of her as a victim: language of redemption. The actors who present language of victimization and criminalization are more varied in this case, with both state actors and Perkins presenting both themes. The language of redemption, analyzed in a later section, also comes from both Perkins and state actors. The state actors in this case are the judge and prosecutor in the case *State of Ohio v. Perkins, Vanessa L.* as well as Lara Baker-Morrish, the City Solicitor General for the Columbus City Attorney.¹⁰³¹⁰⁴

¹⁰¹ *State of Ohio v. Perkins, Vanessa L.*, 2008, Ohio Comm., via Bloomberg LP, accessed February 21, 2020.

State of Ohio v. Perkins, Vanessa L., 2009, Ohio Comm., via Bloomberg LP, accessed February 21, 2020.

¹⁰² A disposition date is the date a case reaches its final outcome. Two cases have the same date if the sentencing factors in penalties for other offenses.

¹⁰³ *State of Ohio v. Perkins, Vanessa L.*, 2-5.

¹⁰⁴ Holly Zachariah, "CATCH Court Provides Beacon of Hope for Human Trafficking Victims," *The Columbus Dispatch*, June 18, 2019, <https://www.dispatch.com/news/20190618/catch-court-provides-beacon-of-hope-for-human-trafficking-victims?fbclid=IwAR0n6KiTHpukpnl->

Language of Criminalization and Victimization: Vanessa Perkins	
Perkins ¹⁰⁵	State Actors ¹⁰⁶
I'll never forget what he said probably until the day I die. He sits across from me, he's looking me in the eyes, and he says to me, "You have to do what I want to do now because I own you now."	Defendant <u>shall remain in Franklin County Jail on other placement through CATCH Program until bed space is available</u> through CATCH program
<u>I can't go to the cops, I'm a drug addict. I'm a prostitute.</u>	Defendant shall be <u>subject to random drug and alcohol monitoring</u> through the APA
Or I can get into a car and I can face-to-face with a person that is actually there to buy rape . Those people are terrified and they're dark and they're evil and there's nothing I can do about it. So, my body, my mind tell me "just just give it just let them have this way so that you can live."	But with Vanessa, and all that she'd been through , she humanized that for us. We learned so much from her," she said. "You could see her self-confidence grow, and it was wonderful to watch the evolution ."

Figure 3 – This chart shows examples of language of criminalization and victimization originating from Perkins and state actors. Bolded phrases represent language associated with arguments for victimization and those underlined represent criminalization.

Perkins' language makes explicit claims to victimhood that are directly related to human trafficking. After highlighting the vulnerabilities that made her susceptible to manipulation and trafficking, Perkins claims the man she identifies as her trafficker told her, "You have to do what I want to do now because I own you now."¹⁰⁷ This phrasing uses the word "own" and implies she lost the ability to consent to the actions she is accused of because she was operating under the forced influence of someone else. "Own" brings up language of slavery that is often used to describe trafficking victims in the context of "modern slavery."¹⁰⁸ The quote implies she recognizes she was forced into prostitution and drug trafficking as a trafficking victim.

Perkins also makes claims to her status as a trafficking victim while describing the acts she was forced to do while in her trafficking situation, here:

Or I can get into a car and I can be face-to-face with a person that is actually there to buy rape. Those people are terrified and they're dark and they're evil and

¹⁰⁵ Quotes in this column originate in Perkins, *How I Escaped*.

¹⁰⁶ For quotes in this column see note 101.

¹⁰⁷ Perkins, *How I Escaped*.

¹⁰⁸ "Modern forms of slavery," *United Nations Educational, Scientific, and Cultural Organization*, 2017. <http://www.unesco.org/new/en/social-and-human-sciences/themes/slave-route/modern-forms-of-slavery/>

there's nothing I can do about it. So, my body, my mind tell me, "Just give it, just let them have this way so that you can live."¹⁰⁹

Perkins uses the language of purchase of rape rather than purchase of sex in this section. This choice of wording indicates she does not believe she consented to sex while she was with her trafficker. She also states those who purchased rape of her body are "dark" and "evil" which implies a sense of malice on the part of the buyer. The phrase, "just give it...so that you can live," indicates Perkins was under duress in these situations and did not willingly choose to have sex with these people. She states she followed along so her trafficker would not kill her.¹¹⁰ Perkins' use of this language separates her situation from that of a sex worker who chooses to perform sex acts for money, and instead further labels her as a victim of trafficking who did not willingly consent.

This case differs from the others in this study because language of trafficking victimization did not just originate with the survivor or her representation, but there is also evidence of language of victimization coming from state actors. After Perkins completes her time at CATCH Court, state employees spoke openly about Perkins' victim status in the context of her recovery from substance use disorder and in praising her for not ending up in another trafficking situation. For example, Lara Baker-Morrish, the City Solicitor General for the Columbus City Attorney, acknowledges "all that she'd been through" while discussing Perkins' journey after prison and CATCH Court to claim she had been through an "evolution" into someone free of a trafficker and contributing to society.¹¹¹ This language recognizes Perkins experienced victimization and entered the trafficking-specific deferred sentence program because of it.

¹⁰⁹ Perkins, *How I Escaped*.

¹¹⁰ Perkins, *How I Escaped*.

¹¹¹ Zachariah, "CATCH Court."

The language of criminalization in this case comes from Perkins and state actors who used her guilty plea to drug trafficking charges to redirect her sentence to CATCH Court. The state's language is limited to standard legal language announcing her sentence and the state claims she committed. After determining Perkins is guilty of drug trafficking and trafficking of heroin and will be redirected to CATCH Court, the Perkins' criminal status is not removed. Even though she is determined to be a victim in need of services, Perkins is still given a sentence that implies criminality. Perkins had to "remain in Franklin County Jail on other placement through CATCH Program until bed space is available" and was "subject to random drug and alcohol monitoring" throughout her treatment.¹¹² This sentence that has elements of recognition of trafficking victimization through CATCH Court also reminds Perkins she is a registered criminal by keeping her in jail and subjecting her to search for substances. Only after Perkins completes CATCH Court and can apply for record expungement does she get full recognition of trafficking victim-status and removal of criminal status.¹¹³

Perkins also uses language of criminalization while discussing her inability to escape her trafficker. She says, "I can't go to the cops, I'm a drug addict. I'm a prostitute."¹¹⁴ In this section, Perkins identifies herself as a prostitute rather than a trafficking victim when she speaks about how she experienced her trafficking situation in the moment. She identifies herself as a trafficking victim retroactively in other moments, but this one highlights how the criminal legal system often criminalizes trafficking victims. Even though she knew she was being exploited, she feared going to the police because she had committed acts that would be seen as crimes

¹¹² State of Ohio v. Perkins, Vanessa L., 2008, 4.

¹¹³ Zachariah, "CATCH Court."

¹¹⁴ Perkins, *How I Escaped*.

under the law. She was correct because she eventually was caught and convicted of drug charges related to her trafficking.

Is Redemption Tied to Both Victimization and Criminalization?

A clear difference in Vanessa Perkins' case compared to Cyntoia Brown and Shamere McKenzie's cases is the inclusion of language of redemption on behalf of the state. For Perkins, her criminalization resulted in the recognition of her status as a trafficking victim. While McKenzie and Brown received punitive sentences and live with criminal records, Perkins was able to receive social services and apply for record expungement. In this case, both the state and Perkins use language of redemption to describe the survivor. It is important to note Perkins is the only survivor in this study who is not a woman of color. Although it is not possible to determine if this is a factor in the state's recognition of her victimization with the limited data available, the privileges of having a white body in a courtroom should be acknowledged alongside this narrative.

Language of Redemption: Vanessa Perkins	
Perkins ¹¹⁵	State Actors
Anyway, <i>I put my resume in, they hire me.</i> Which didn't make any sense to me at all, I'm a convicted felon, have little education, what I do have I cheated for.	Vanessa stands as a <i>beacon of hope</i> that <i>if you put in the work, you can improve your life in so many ways.</i> And that you <i>deserve it.</i> ¹¹⁶
It makes all the difference in the world as a result because of the volunteers and CATCH court... <i>because we heal, we get to thrive.</i> And they were watching me, and <i>they decided that I might be worth taking a chance.</i>	Defendant <i>shall successfully complete CATCH program, follow all recommendations, and sign all releases</i> ¹¹⁷

Figure 4 – This chart shows examples of language of redemption originating from Perkins and state actors. Italicized phrases represent language associated with redemption.

Language of redemption in Perkins' case is directly tied to her experience with a deferred sentence to CATCH Court rather than a traditionally punitive sentence. Both the state and

¹¹⁵ Quotes in this column originate in Perkins, *How I Escaped*.

¹¹⁶ Zachariah, "CATCH Court."

¹¹⁷ State of Ohio v. Perkins, Vanessa L., 4.

Perkins recognize her status as a trafficking victim. Both parties also directly link this recognition to her later success. Perkins claims her sentencing to CATCH Court was successful here, “because we heal, we get to thrive. And they were watching me, and they decided that I might be worth taking a chance.”¹¹⁸ She connects her ability to prevent another trafficking situation with the assistance given to her at CATCH Court and substance use treatment. Not only does she feel her experiences are acknowledged, but that she is not just another criminal in the system and instead was given space to alter her situation. Perkins also notes because of the program she was able to get a job with the City of Columbus despite her criminal record because the CATCH Program labeled her as a redeemed victim of trafficking.¹¹⁹ Here there is a stark difference between Perkins and McKenzie, who struggled to obtain a job with her felony record. The label of redemption gave Perkins opportunities other survivors are unable to access because of their criminalization.

Actors within the state also contribute language of redemption to this case. This language is tied directly to her Perkins’ completion of the CATCH Court program which allows her to expunge her criminal record. Because Perkins is able to prove herself to be a trafficking victim worthy of redemption through following the court order to, “successfully complete CATCH program, follow all recommendations, and sign all releases,” she is allowed to no longer be a criminal in the state’s eyes.¹²⁰ Lara Baker-Morrish contributes to this ideal of redemption by saying, Vanessa stands as a beacon of hope that if you put in the work, you can improve your life in so many ways. And that you deserve it.¹²¹ Here, Baker-Morrish highlights the idea that you can earn the perks of being a redeemed trafficking victim putting in hard work to change your

¹¹⁸ Perkins, *How I Escaped*.

¹¹⁹ Perkins, *How I Escaped*.

¹²⁰ State of Ohio v. Perkins, Vanessa L., 2009, 4.

¹²¹ Zachariah, “CATCH Court.”

circumstances. This section shows how survivors are expected to earn their status as victims by improving their lives rather than the criminal legal system granting the status of victim promised by the TVPRA.

Discussion and Conclusions

This study shows the criminalization of human trafficking survivors occurs within courtrooms despite legal protections against criminalization in the Trafficking Victims Protection Act. It is not possible to see all of the sites in which survivors face criminalization, but their own words and the language of the state provide a place of insight into these processes of making a victim out to be a criminal. The language in this study is important because it puts into words processes of criminalization that are largely hidden within the bureaucracy of the criminal legal system. Language of criminalization, primarily originating from state actors, paints trafficking survivors as willing criminals, rather than people who were forced to commit crimes. The criminal legal system only allows some survivors to be labeled victims and receive the mandated services. The language used by state actors, lawyers, and survivors allows us to examine one of the many ways in which survivors are criminalized.

Survivors of trafficking who have faced criminal trials in this study report language of criminalization contributing to their eventual conviction of crimes related to their trafficking. For McKenzie, her claims to forced prostitution and acting as an unwilling “bottom girl” went unheard because the state successfully argued she was a criminal despite the circumstances of her trafficking situation. For Brown, despite TVPRA protections that should have immediately labeled her as a trafficking victim for participating in prostitution underage, the state ignored these clauses and argued she was a criminal and tried her as an adult. For Perkins, the

criminalization by the state allowed her a path to social services and out of the vulnerabilities that led her to be trafficked. Despite a different outcome than McKenzie and Brown's cases, criminalization was directly tied to Perkins' ability to gain recognition of her victim-status. All three women represent cases in which the state prosecutes survivors who are victim-offenders because it is unprepared to identify and redirect victims without prosecuting someone for an identified crime. Because the United States and international level counter-trafficking standards focus heavily on prosecution and less on victims' services, the U.S. courts follow the standards set and continue to prosecute victim-offenders. This process allows the state to prosecute more people for trafficking-related crimes to prove on an international stage they are meeting metrics of success of anti-trafficking programs, which the United States created themselves.

When language changes and veers away from the strict criminal versus victim standard set out by the U.S. court system and leans towards other themes, like redemption in Perkins' case, we can see sites of ambiguity that allow a survivor to be labeled as both a victim and a criminal in order to access promised social services. These sites show the strength of the continued operation of the victim and offender binary, but also its weak points in which a local branch of the criminal legal system has room to create opportunities for a less punitive approach to survivor relations. This case and redemptive language also bring to question the issues of race and class within the criminal legal system that result in standards being applied differently to different people. Other studies should seek to discover if survivors of different races, ethnicities, genders, and social classes are being identified more often as victims, face harsher sentences, or have more criminalizing language directed at them than others. This study represents a starting point in a field with limited research. The intersections of the criminal legal system and human

trafficking have not faced much scrutiny and are deserving of more attention in the legal and academic fields.

Flaws in the implementation of the TVPRA and the identification of victims of trafficking mean survivors face legal and punitive consequences for actions they were forced to commit. The lack of true protections for survivors and the punitive goals of the criminal legal system point to inherent flaws in the system as a whole. Survivors of violence and crime are lost in the system because it is unable to handle the victim-offender overlap. For trafficking survivors specifically, this means they are missing out on promised protections and services. A solution to this problem would require changes to the law, implementation of the TVPRA, policing methods, training for prosecutors and other state actors, removal of biases in the criminal legal system towards race, gender, and class, prioritization of victims' rights, and a comprehensive social safety net to prevent social vulnerabilities that can lead to trafficking.

The victim-offender overlap is misunderstood in the current scheme of the criminal legal system. The courts are unable to handle the complexities of the overlap. Instead of recognizing victimization as the cause for criminal acts, the courts experience tunnel-vision and are only equipped to handle complicated cases with criminalization. For the survivors in this study, this means criminalization is the only solution used by the courts or is used as a path to recognizing victim-status. Victims of trafficking are often tasked with earning their right to victim status by attempting to combat narratives of criminalization in courts or by proving they are worthy of the title of victim by completing alternative court sentences. The victim-offender overlap must be revisited by the courts and the criminal legal system on the whole. Court systems must be adjusted, and people retrained to recognize survivors at the overlap and acknowledge their

victimization as the cause of criminal acts. A large-scale rethinking of the victim-offender overlap is central to avoiding criminalizing survivors.

While this study is focused on the criminalization of trafficking survivors specifically in the courtroom, it provides insight into the many ways survivors are criminalized throughout the criminal legal system. By understanding the victim-offender overlap and the ways in which it operates on one level, we can better understand how the process of criminalization occurs on other levels of the criminal legal system. Future studies should focus on the process of criminalization through policing, socialization, holding victims in police custody, and immigration rules and procedures.

Bibliography

- @badgalriri. "Did we somehow change the definition of #JUSTICE along the way??" *Instagram*. Nov 21, 2017. Accessed Nov 11, 2019. <https://www.instagram.com/p/Bbwi26PjHf7/>
- Baumle, DeAnna. "Creating the Trauma-to-Prison Pipeline: How the U.S. Justice System Criminalizes Structural and Interpersonal Trauma Experienced by Girls of Color." *Family Court Review* 56, no. 4 (October 2018): 695–708.
- Bouche, Vanessa. *An Empirical Analysis of the Intersection of Organized Crime and Human Trafficking in the United States*. [Washington, D.C.]: National Criminal Justice Reference Service, Office of Justice Programs, 2017.
- Brown-Long, Cyntoia. *Free Cyntoia: My Search for Redemption in the American Prison System*. New York: Atria books, 2019.
- Brown-Long, Cyntoia and Dr. Tara Betts, "In Dialogue with Cyntoia Brown-Long" (University of Chicago, January 30, 2020).
- Chuang, Janie A. "Exploitation Creep and the Unmaking of Human Trafficking Law." *The American Journal of International Law* 108, no. 4 (October 2014): 609–49.
- Cockbain, Ella. *Offender and Victim Networks in Human Trafficking*. London: Routledge, Taylor & Francis Group, 2018.
- Conley, John M., William M. O'Barr, and Robin Conley Riner. *Just Words: Law, Language, and Power*, Third Edition. University of Chicago Press, 2019.
- Dewey, Susan. "Understanding Force and Coercion: Perspectives from Law Enforcement, Social Service Providers, and Sex Workers." In *Human Trafficking Reconsidered*, edited by Kimberly Kay Hoang, and Rhacel Parreñas, 102-112. New York: International Debate Education Association, 2014.
- Russell D Covey, "Signaling and Plea Bargaining's Innocence Problem," *Washington and Lee Law Review* 66 no. 73 (2009) 73-130.
- Ewick, Patricia and Susan S. Silbey. *The Common Place of Law*. Chicago: University of Chicago Press, 1998.
- Farrell, Amy. "Environmental and Institutional Influences on Police Agency Responses to Human Trafficking." *Police Quarterly* 17, no. 1 (March 2014): 3–29.
- Farrell, Amy, and Stephanie Fahy. "The Problem of Human Trafficking in the US: Public Frames and Policy Responses." *Journal of Criminal Justice* 37, no. 6 (December 2009): 617–26.
- Garcia, Johnathan. "A Timeline of the Cyntoia Brown Case, Her Story, and Eventual Clemency." Dec 11, 2018. <https://www.tennessean.com/story/news/2018/12/11/cyntoia-brown-case-facts-story-timeline-2018/2276009002/>.
- Gira Grant, Melissa. "The Trump Administration Finally Broke the Anti-Trafficking Movement." *The New Republic*. Feb 18, 2020. <https://newrepublic.com/article/156579/trump-administration-finally-broke-anti->

- trafficking-movement?fbclid=IwAR3gUZgOrw-0tn0QK0lFyJN_rabnTXbsy4gHze6q7c9EQjZ8YXlhSIbs5CA
- Godsoe, Cynthia. "Contempt, Status, and the Criminalization of Non-Conforming Girls." *Cardozo Law Review* 35, no. 3 (February 2014): 1091-1116.
- Hoang, Kimberly Kay and Rhacel Parreñas. "Introduction." In *Human Trafficking Reconsidered*, edited by Kimberly Kay Hoang, and Rhacel Parreñas, 1-16. New York: International Debate Education Association, 2014.
- Jacobs, Beth and Stephanie Richard. "National Survivors Network Member Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking." August 2016. <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.
- Mehlman-Orozco, Kimberly. "Safe Harbor Legislation for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice." *Social Inclusion* 3, no. 1 (February 23, 2015).
- Miner-Romanoff, Karen. "CATCH Court: Changing Actions to Change Habits: Research Findings." Program Evaluation. Franklin University, 2015.
- "Modern forms of slavery," *United Nations Educational, Scientific, and Cultural Organization*, 2017. <http://www.unesco.org/new/en/social-and-human-sciences/themes/slave-route/modern-forms-of-slavery/>
- Musto, Jennifer. *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States*. Oakland: University of California Press, 2016.
- Perkins, Vanessa. *How I Escaped Sex Trafficking through CATCH Court*. Accessed February 24, 2020. https://www.ted.com/talks/vanessa_perkins_how_i_escaped_sex_trafficking_through_catch_court_jan_2019.
- Phillips, Jasmine. "Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States." *UCLA Law Review* 62, no. 6 (2015): 1643-5.
- Reeves, Brian A. "Felony Defendants in Large Urban Counties, 2009 - Statistical Tables." U.S. Department of Justice Bureau of Justice Statistics, December 2013.
- Rupp, Kelsey. "Trafficking Victims Get Lost under Unjust Criminal Convictions." Text. TheHill, December 8, 2017. <https://thehill.com/opinion/civil-rights/363902-trafficking-victims-get-lost-under-unjust-criminal-convictions>.
- "Shamere Mckenzie," *End Slavery Now*, Jan 3, 2015. <http://www.endslaverynow.org/blog/articles/shamere-mckenzie>
- Shamere Mckenzie*. vol. 10, Global Perspectives, 2016. accessed January 27, 2020. <https://www.pbs.org/video/global-perspectives-shamere-mckenzie/>.
- Shamir, Hila. "A Labor Paradigm for Human Trafficking." *UCLA Law Review* 60, no. 1 (October 2012): 76-136.
- Shelley, Toby. *Exploited: Migrant Labour in the New Global Economy*. London: Zed Books, 2007.

“Trafficking in Persons Report.” United States Department of State, June 2019.

United Nations, *Convention Against Transnational Organized Crime*, Nov 15, 2000.

Zachariah, Holly. “CATCH Court Provides Beacon of Hope for Human Trafficking Victims.”

The Columbus Dispatch. June 18, 2019,

[https://www.dispatch.com/news/20190618/catch-court-provides-beacon-of-hope-for-human-trafficking-victims?fbclid=IwAR0n6KiTHpukpnl-](https://www.dispatch.com/news/20190618/catch-court-provides-beacon-of-hope-for-human-trafficking-victims?fbclid=IwAR0n6KiTHpukpnl-HHjdU1w3BgCAJJEvYOrm97U9hAM9GRSv991eHHIUIJzs)

[HHjdU1w3BgCAJJEvYOrm97U9hAM9GRSv991eHHIUIJzs.](https://www.dispatch.com/news/20190618/catch-court-provides-beacon-of-hope-for-human-trafficking-victims?fbclid=IwAR0n6KiTHpukpnl-HHjdU1w3BgCAJJEvYOrm97U9hAM9GRSv991eHHIUIJzs)