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Legal complexities of the sex trafficking of minors

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Legal Complexities of the Sex Trafficking of Minors

by

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Thesis

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Dedication

This thesis is dedicated to my parents Dean and Dawn McCormick; my girlfriend, Lynne Burk, and to all of my friends and family for all their love and support. This is also dedicated to all the victims of human trafficking across the world: may their stories be heard, and may they find peace of mind.

Acknowledgements

I would like to thank Brian Sellers and Paul Leighton for all their supervision and guidance throughout this process, and to all of my past professors over the semesters for their instruction and help with my course work.

Without all your help this would not have been possible. Thank you!

Abstract

Among human rights abuses in modern society, the trafficking of women and children for labor, prostitution, and other forms of sexual exploitation is one of the greatest. While a large amount of time and financial support has gone into efforts to suppress trafficking and shelter its victims, there has not been enough done to tackle this problem. Before reaching the age of 18, it is predicted that 80% of adolescents in the United States will have traded money for sex. Many adolescent girls who have been trafficked in the commercial sex industries are subject to serious criminal penalties for prostitution-related offenses regardless of being forced or coerced to commit these criminal acts against their will by either traffickers or pimps. At the present, more juveniles are finding themselves being adjudicated for sexual solicitation than are being found victims, and this outcome may be circumstantially based on a particular jurisdiction's law. The purpose of this study will be to examine the judicial response to adolescent female human trafficking victims who are charged with the crime of prostitution. Specifically, how does the justice system respond to these under-aged prostitutes who are victims of human trafficking? Prior research has not looked at case law as a narrative source to unearth juridical decision making and how justice is dispensed for trafficked girls charged with prostitution. As such, this study applies a qualitative case law methodology that utilizes two layers of textual analysis to identify leading jurisprudential intent and discover the underlying themes of judicial temperament and convictions found within six court decisions, which make up the sample. Four prevailing themes emerged from the analyses, which best convey the jurisprudential intent of how and why the court ruled in these specific decisions. The four prevailing themes are: relief, best interest, rehabilitation, and individual accountability. Implications for policy and practice, as well as directions for future research, ensue from the discussion of these qualitative findings.

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Chapter One: Introduction

Among rights abuses in modern society, the trafficking of women and children for labor, prostitution, and other forms of sexual exploitation is one of the greatest. While a large amount of time and financial support has gone into efforts to suppress trafficking and shelter its victims, there has not been enough done to tackle this problem. Since modern-day slavery became an international criminal offense in 2000, the federal government, all fifty states, the District of Columbia, and all U.S. territories have enacted human-trafficking legislation (Peters 2016). Furthermore, in 2017 the U.S. Department of Justice put forth \$45 million to support programs that help victims of human trafficking (U.S. Department of Justice, 2017; Williams, 2018, p. 628). While that has done much to help the fight against trafficking, more needs to be done. For example, according to Polaris Project (2017), there have been 44,000 cases identified in the United States through their helplines, but that is not the full breadth of the problem. Underreporting of the problem can be due to lack of knowledge of the crime or the absence of resources like helplines in certain regions of the country.

Before reaching the age of 18 it is estimated that 80% of adolescents in the United States traded money for sex (Birkhead, 2011; Baird, 2019). Many adolescent girls who have been trafficked in the commercial sex industry are subject to serious criminal penalties for prostitution-related offenses that they were forced to commit. Victims of sex trafficking, who commit acts of prostitution are most commonly controlled by a pimp. The traffickers find adolescents easier to mold and shape (Barnard, 2014). Many of the victims are forced into acts of prostitution through the use of physical and psychological acts, such as: sexual abuse, brainwashing, beatings, and the confiscation of personal documents (Barnard, 2014).

The bulk of individuals who are arrested for prostitution and loitering with the intent of prostitution fit the legal precedent for sex trafficking (Mogulescu, 2012). This may be because those who are most likely to be arrested for prostitution are street prostitutes, and are victims of sex trafficking (Mogulescu, 2012). Furthermore, some documentation points to the fact that some victims of trafficking are arrested specifically because they are victims of this crime, simply so they can be coerced into sharing information about their sex trafficker (Barnard, 2014). More problems are faced by victims, both, while being trafficked and after, if they are able to escape their trafficker. While with their trafficker, victims are often told that an arrest on their record will prevent them from gaining employment outside the sex industry (Mogulescu, 2012). In a further attempt to keep them under their thumb, traffickers will tell their victims that no one will believe them if they try and file a report against their trafficker because of their previous record (Barnard, 2014; Mogulescu, 2012). True to what the traffickers tell their victims, a prior arrest for prostitution can impede a victim's chance at employment outside the industry. Furthermore, it can prevent a victim from gaining public or private housing (Barnard, 2014). It can also, interfere with the victim being considered a fit parent and can impede being seen as a fit parent in custody disputes (Barnard, 2014). For those who are foreign, an arrest on their record can effect their chances at getting legal immigration status (Mogulescu, 2012).

Currently, in the United States, it appears more juveniles are finding themselves being adjudicated for sexual solicitation than are being found victims of human trafficking, and this may be situationally based on a particular jurisdiction's law (Adelson, 2008; Barnard, 2014). Thus, a larger question has emerged, is the U.S. court system experiencing tension in whether to protect or punish female youth arrested for prostitution who also claim to be victims of human trafficking? Or has the judicial system convinced itself there is no moral tension that exists in

these instances because punishment of the youth in question serves as a form of protection for the youth individually and for the society at large? To date, there appears to be no study that empirically assesses the jurisprudential intent that influences how judicial rulings are reached in cases where adolescent girls who claim to be victims of human trafficking are charged with prostitution. This study applies a qualitative textual analysis of existing case law to identify the leading rationales, justifications, and perceptions used by the courts to determine if the youthful defendant should receive punitive sanctions or granted relief as human trafficking victims.

Chapter Two: Literature Review

Historical Background

Not only is human trafficking not a new concept, in different ways, it is also related to slavery. For instance, 30% to 40% of Imperial Rome was composed of slaves, brought in from various other countries, such as, Germany, Gaul, Britain, and Thrace (Coolingridge, 2006; Logan et al., 2009). Consequently, America has much experience in the ways of slavery. History shows that starting in 1619, both White and African American slaves were imported there (Davis, 2006; Jordan & Walsh, 2007). Eventually in 1807, a law abolished the importing of African slaves, which ultimately led to a civil war against slavery from 1860 until 1865. Between those years, in 1863, laws were created which abolished slavery (Logan et al., 2009).

Consequently, the slavery of our past transitioned into a new kind of slavery that exists today, called human trafficking. Among the profitable criminal industries of this world, human trafficking is considered the second highest. It generates around \$31.6 billion in profits each year (Baird, 2019). There is a law/act forbidding human trafficking called Trafficking Victims Protection Act (TVPA). This act considers it illegal to “use force, fraud, or coercion to exploit a person for profit or personal services” (Kim, 2007; Logan et al., 2007, 2009, p. 4). Under the umbrella of human trafficking lies sex exploitation/trafficking and labor exploitation/trafficking. Sex exploitation/trafficking involves “a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform the sex acts is under 18 years of age” (Kim, 2007; Logan et al., 2007, 2009, p. 4). Unlike other crimes, the trafficking of sex relies on the sexual assault and brutality of someone else to gain a profit (Farley, 2006). With the lack of legal enforcement and the great financial gains to be made through the act of human trafficking, there is little to deter traffickers from repeatedly violating the law (Heiges, 2006). With that

understanding, there is little to deter the growth of this enterprise (Mir, 2013). Labor exploitation/trafficking involves the use of “individuals to perform labor or services through the use of force, fraud, or coercion” (Polaris, 2006).

How People Are Trafficked

Even though it is generally debated as to how many people are trafficked each year, a comfortable number for most hovers around 40 million people across the world (Baird, 2019). There are several ways that individuals end up in the world of trafficking: (a) born in to, (b) taken, sold into trafficking, or unwillingly; or (c) tricked (Bales, 1999; Logan et al., 2009). In some cases, unfortunate families, “have been slaves, or in debt bondage literally for generations” (Logan et al., 2009, p. 11; Skinner, 2008). Debt bondage occurs when an individual incurs a debt or a loan they cannot pay back right away, so they sell themselves into slavery until it is paid in full. Sometimes the debt is never paid back, because it is continuing to grow while they are paying it back (End Slavery Now, 2018). The second way to end up in the world of trafficking is to be sold into it. Many families struggle to feed their families and have too many mouths to feed. Parent’s or caregiver’s only available option is to sell off one of the children to make money to pay off their debt (Logan et al., 2009). Being tricked by traffickers is the third way individuals end up in the world of trafficking. Many individuals come to America looking for a better life. That is what they believe they are getting when they are approached about a good paying job, which may even involve signing a contract, but this is all a front (Logan et al., 2009). For instance, “employment, modeling, and marriage agencies are used to attract potential victims” (Hodge, 2008, p. 145-146; Hughes, 2004a). According to Baird (2019), “to gain control of victims, traffickers employ a variety of control tactics, including physical and emotional

abuse, sexual assault, confiscation of identification and money, isolation from friends and family, and even renaming victims” (p. 344).

The conviction and prosecution of human traffickers not only fulfills a legal function when done properly, but it is also necessary to protect the trafficker’s victim(s). However, one of the legal complications of human trafficking is identifying trafficking victims. Providing services to victims of human trafficking can be a problem, because they are able to hide under the radar. Sometimes victims are identified by way of trained law enforcement officers who know how to identify the situation, or it occurs during the course of an ongoing investigation (Clawson et al., 2006; Free the Slaves, 2004; Logan, 2007; Logan et al., 2009). This makes awareness of human trafficking essential, not just for service providers but for all citizens of the United States (Logan et al., 2009).

Part of the problem with identifying victims is the lack of training. Police may be restricted in their awareness of trafficking as well as their skill at recognizing and reacting to it (Nichols & Heil, 2015; Tyldum & Brunovskis 2005). Another part of the problem is that, “the justice system largely places responsibility for the police identification and reporting of trafficking on the victims themselves” (Ugarte, Zarate, & Farley, 2003; Nichols & Heil, 2015, p. 10).

Victim Reporting

While this can complicate the situation greatly, some victims may not want to be identified for a variety of reasons (Adams, 2011; Nichols & Heil, 2015). There are several reasons that victims of human trafficking may not come forward. First the abuse both physical and psychological can keep them from wanting to report their traffickers (Heil, 2012). Believing that social service workers will disbelieve his or her claims, is another reason a victim may be

reluctant to report their trafficker(s). Yet another reason not to come forward is fearing arrest and/or lack of protection from authorities (Hodge, 2008). This fear extends to the likelihood that they will be treated as criminals rather than recognized as victims of trafficking who were coerced into prostitution (Hodge, 2008). Victims often fear “reprisals from traffickers, that officers are crooked, that they don’t care, or are in cahoots with the traffickers themselves” (Hodge, 2008, p. 148). It can often be difficult to get assistance from victims of trafficking since they will frequently defend their abuser the way they would a partner or spouse. Additionally, these girls are operating with their abuser, even though in most cases they are being forced to, they do not believe others will see it that way. Their ultimate fear is law enforcement and prosecution (Hanna, 2002). There is also the fear that if their trafficker does get arrested, he will not stay in jail/prison long. Prosecutors cannot expect victims to testify against their trafficker if he or she gets out shortly after being arrested (Hodge, 2008). Threats of harm to family members, is yet another reason, a victim chooses not to report, (Logan et al., 2009). Still another reason is isolation. For instance, monitoring their victim’s whereabouts and keeping them out of the public eye, ensures the trafficker’s control over them (Logan et al., 2009). Fear of deportation is yet even another reason found by researchers in Texas and Florida, that many victims reconsider speaking up (Busch-Armendariz et al., 2009; Heil, 2012; Nichols & Heil, 2015). Furthermore, many victims do not realize that they are actual victims of human trafficking, so they do not seek out help. This is a result of what is known as “psychological paralysis, a condition that makes them believe they cannot escape prostitution despite opportunities to do so, thereby forcing them to accept their victimization” (Baird, 2019, p. 346).

However, when individuals do speak up, there are people out there who will listen to them. For example, the National Trafficking Resource Center (Polaris, 2018) is a place that

welcomes calls from victims and will do their best to help them. According to Polaris (2018), in 2017, the National Trafficking Resource Center had 8,524 human trafficking cases reported, and their hotline got 26,557 calls; some of those calls were from victims and some were from survivors.

Hodge (2008) suggested a way to bridge the gap between those who may identify and those that can come to their aid. He thought that organizing teams of social workers, clergy, immigration lawyers, and local and federal law enforcement officials would help bring people together who are likely to identify potential victims. Additionally, the potential victims can be connected with people who can provide “protective and rehabilitative services,” making the transition from identification to protection a smooth one (p. 148).

Corruption/Collusion

When those with the power to influence and make decisions use it for negative selfish means, it causes problems. For instance, the police, prosecutors and judges, have the power and ability to choose and play their part in whether case has a shot at going to trial, how severe the charges are, and how things ultimately are settled (McDonald, 2014). Furthermore, if a new reform bill is trying to be pushed through, judges have the power to stop it in its tracks, should they feel so inclined. This very situation occurred in the 1970s and 1980s when rape law reforms were the current affair (McDonald, 2014). It was believed that the reform would have led to a great number of arrests, prosecutions, and convictions for rape; however, that is not what happened. Attorneys’ fears of jury confusion at the new offenses, victim’s lack of believability, and possibility of conviction were a couple of reasons for the reform’s failure to succeed (McDonald, 2014). Additionally, Heinrich and Shreeharsha (2013) did a study, which showed that if local and state prosecutors refuse or are likely to refuse to prosecute a case on trafficking,

then the local and state investigators are equally as unlikely or unwilling to pass cases in front of their desks. If the chance of losing a case is not enough incentive to pass it up, there are other ways to prevent the freedom for another victim.

All it potentially takes is the right amount of bribery and/or persuasive fear tactics to sway an officer of the law, judge, prosecutor, defense attorney, etc., to bend to the will of the trafficker. According to McDonald (2014), “There is a remarkable capacity of criminal courts to adjust to and effectively thwart reforms” (p. 130). Hodge (2008) argues that advocacy strategies need to focus on protecting victims, preventing efforts, and prosecuting traffickers.

Furthermore, statistics can be created by defenders to either authenticate, or to disprove, the existence of trafficking in their individual towns. For instance, 64 hotline calls were recorded in St. Louis, by the National Trafficking Resource Center in 2011, although only 24 of them, based on legal indicators, were treated as potential trafficking situations (Nichols & Heil, 2015). However, according to the U.S. Department of Justice (2016), “Other research ranks St. Louis as number 18 on the list of ‘the most intense [top 20] trafficking jurisdictions in the country’” (p. 35). Ultimately, no one can agree on the pervasiveness of sex trafficking in the United States or the city of St. Louis for that matter (Nichols & Heil, 2015). According to some scholars (Busch-Armendariz et al., 2009; Farrell et al., 2012; Goodey, 2008; Kotrla, 2010; Rand 2009; Reid; 2010; Stransky & Finkelhor, 2008; Trohshynski & Blank, 2008; Nichols & Heil, 2015), when working with an isolated and defenseless population, such as trafficking victims, variations in estimates are anticipated. While no one questions the existence of human trafficking (McDonald, 2004), there is debate over the magnitude of the problem (Hodge, 2008).

Enforcement of Laws

Sadly, as a result of being a victim of human trafficking, many are arrested and charged with prostitution and other infractions (Meiers 2015):

With the enactment of the Trafficking Victims Protection Act (TVPA) in 2000 (U.S. Department of Justice, 2011), Congress committed the United States to join the latest in a series of international campaigns (McDonald, 2004) to establish a global prohibition regime (Nadelmann, 1990) against trafficking in persons for labor and sexual exploitation. (McDonald, 2014, p. 126)

Unfortunately, the United States is not succeeding in finding help for “tens of thousands” of victims according to an investigation done by the Kansas City Star (McGraw & Bauer, 2009, McDonald, 2014, p. 125). That investigation revealed, “as of 2011, 7,206 sex trafficking and 508 labor trafficking prosecutions are estimated to have occurred. Also, in 2011, there is an estimated 4,239 convictions made for sex trafficking and 320 for labor trafficking. A total of 41,210 victims were identified (meaning not given in report)” (U.S. Department of State, 2012; McDonald, 2014, p. 128). Furthermore, on a somber note, the penalty for trafficking a human being is less than the penalty for trafficking drugs or weapons (Bertone, 2000; Raymond & Hughes, 2001; Hodge, 2008).

Not only are murder investigations difficult when victims cannot be identified, but the absence of concerned relatives, or anyone who is missing the trafficking victim, compounds the difficulty (Logan et al., 2009). Cases like these often involve difficult victims, unsympathetic juries, and judges and prosecutors as authentic victims (McDonald, 2014).

Prostitution Arrests

What drives the arrests of prostitutes is the desire to shield society and advocate a moral code, (Javidian, 2003); in and of themselves, these catalysts are not dubious. However, these ideas should back up and amplify age of consent laws, so that domestic juveniles are defended from profiteering traffickers (Birkhead, 2011). Young minors need fresh legislation to shield them from the victimization they deal with daily, (Hanna, 2002) and to deal with the unanswered atrocities played out by their traffickers and their cronies (Heiges, 2006). While federal law is supposed to shield and protect victims of sex trafficking and prevent them from facing criminal charges that often fails to happen (Baird, 2019). Frequently, many states decline to use the laws that are there to safeguard victims (Baird, 2019). Due to this miscarriage of justice, many victims are charged and convicted of infractions committed because they were victims of human trafficking (Baird, 2019).

Part of the reason victims of sexual exploitation/trafficking are often not considered genuine is due to them having been arrested for prostitution, when they have actually been forced into the life. For instance, Logan (2009) states, “Many victims are forced to commit criminal acts themselves (e.g., prostitution involvement, illegal activities, drug use, or using false documents) and are afraid to come forward” (p. 6). This type of situation makes visibility for the trafficking victim very difficult. A cop would need to know they are dealing with a victim, but how, when by all appearances they look like a prostitute? The only exception would be someone who is under-aged. Moreover, the world of human trafficking is quite hidden from anyone who doesn’t know what to look for (Logan et al., 2009). In the case where the prostitute is a minor, according to Hoatling et al., (2006), 12 to 13 years of age is when the act of prostitution begins on average. Often, once recognized by the police these minors are charged with violating the law, placed in

jail, and then eventually let go, often back into the arms of their trafficker/victimizer (Lustig, 2007). Even though the TVPA considers juveniles who perform sex acts to be victims, there are still prosecutors and judges that are charging them with prostitution, rather than seeing them as victims of sexual exploitation (Mir, 2013). While acknowledgement that juveniles who are prostituted are not criminals and are in fact victims, has garnered attention federally with connection to “foreign national juveniles,” juveniles of the domestic persuasion are not currently given similar treatment, or offered the same services (Brittle, 2008, p. 2). Regardless that these youth have been hurt many times over and preyed upon by their parents, hustlers, and “johns” and, according to statutory rape provisions, are unable to consent to sexual activity, they are being prosecuted, locked up, and released back to the streets for more abuse (Hansen, 2001; Brittle, 2008, p. 2).

Prostituted Juveniles

While great attention and care is being paid to human trafficking victims in other countries around the world, (Raymond & Hughes, 2001), there is a lack of concern within the United States for our victims here (Kristoph, 2011). Among contemporary democratic countries in the world, only in the United States are the greater number of trafficking victims its own people (Heiges, 2006). The current issue among prostituted minors in the United States is the imaginary line that is drawn between domestic minors and foreign national minors, and the attention that each receives from the police, prosecution, and social services (Kittling, 2006). Even though each is in the same age group, has endured similar types of sexual and physical abuse, socioeconomic challenges and torture, only “foreign national youth brought into the United States,” coerced into prostitution are viewed as “victims of sex trafficking” (Lustig, 2007;

Brittle, 2008, p. 2), while domestic youth in the same predicament are considered criminals (Cecil, 2005).

Domestic Prostituted Juveniles

Due to the lack of a powerful “national domestic trafficking policy” (Klain, 1999; Brittle, 2008, p. 3), the act of prostitution by juveniles’ is generally dealt with as a violation against a states’ own penal code (Brittle, 2008). Once law enforcement is made aware of them, these infractions are addressed by the adult criminal or the juvenile justice system (Hanna, 2002).

A juvenile can be between the ages of 15 and 17, and still be directed by the juvenile justice system; however, there are statutory exceptions for particular offenses, where the youth will be sent to the adult system (Snyder & Sickmund, 2006). Social service agencies may be made aware of youth who are attended to by the juvenile system. Furthermore, the minor’s position in life may be looked in to with interest (Hanna, 2002). Regardless of their age or the torture they have endured, domestic juveniles are still often looked at as though they were adult committing an act of prostitution or as a juvenile delinquent. Whichever view law enforcement sides with, it still means lock up, of some form for the juvenile (Heiges, 2006).

When an act of juvenile prostitution occurs, law enforcement will be the department to step forward and act first. Furthermore, because of the nature of prostitution, law enforcement is more likely to be aware that juvenile prostitution is occurring than other agencies (Bova Conti & O’Connor, 2005). Due to being unsure how to handle juvenile offenders or having a lack of experience, law enforcement may decide to not place charges on youth apprehended for prostitution. This choice is an attempt to avoid having to associate with the social service agency or the juvenile justice system (Finklehorn & Ormond, 2004). Allowing this form of corruption to continue is only aiding the pimps and traffickers in their exploitation of (Brittle, 2008).

According to Evans (2004), youth may either be placed in a lockdown facility or go with child protective services (CPS) and end up in a foster home, or a care facility for groups. If there is a lack of inclusive services to tend to the complicated requirements of prostituted youth, then the likelihood of these juveniles remaining at their placements is low. Many are likely to runaway (Evans, 2004; Hanna, 2002; Lustig, 2007). Furthermore, many of these youth are skeptical of social service agencies and law enforcement (Kreston, 2000), which makes intervention between groups and the youth needing help arduous (Brittle, 2008).

Foreign Prostituted Juveniles

The government has made progress over the years in distinguishing that prostituted minors trafficked into the United States are in fact exploited juveniles, and not criminals (Hanna, 2002; Kittling, 2006; Tanagho, 2007). This focus was furthered by the use of the Trafficking Victims Protection Act (TVPA) “ of 2000 (22 U.S.C. §§7101) and its consecutive rewrites in 2003 and 2005, (Pub. L. No.109-164, 119 Stat. 3558; Pub. L. No. 108-193, 117 Stat. 2875) Congress denounced human trafficking” (22 U.S.C. §7101(b)(23)).

Victims of exploitation are protected whether they were forced, fraudulently enticed or coerced by their trafficker. This is because it is well known that victims cannot give consent to being trafficked (Hanna, 2002). The addition of governmental care and help for victims of trafficking is a great achievement (Tangagho, 2007).

Foreign national victims of trafficking are supplied with far-reaching and inclusive services (Caliber, 2007). However, whether the prostituted juvenile is considered domestic or foreign certain forms of aid are imperative. Included in the essential forms of aid are: shelter for the juveniles, first aid, safeguarding from their trafficker and financial assistance to remain afloat while their situation gets sorted out (§7105(c)(3)).

Unequal treatment for same level of abuse

Whether foreign or domestic prostituted juveniles are taken advantage of by traffickers in the same fashion, both have been strong armed into acts of prostitution against their will, through the use of lies and control (Hoatling, 2006). While foreign and domestic prostituted juvenile share similar trafficking stories, their stories change drastically as soon as law enforcement becomes involved. The way each group is treated can be compared to night and day. While one is viewed as immoral and a law breaker (Finkelhorn & Ormrod, 2004) the other is considered a victim who has been abused and needs assistance (Hoatling, 2006). An example of this could be, “when a prostituted foreign national juvenile is placed in a safe form of shelter (22 U.S.C. §7105(c)(1)), and a prostituted domestic juvenile is sealed up in confinement (Lustig, 2007).

The reason for the variances in the way foreign nationals and domestic minors are handled has to do with an arduous entanglement of psychological, legal, and social considerations. Federal law is responsible for foreign nationals due to foreign policy and immigration affairs (Hanna, 2002). When things are handled this way, the chances that services rendered and provided to the youth will be the same or similar across the board (Caliber, 2007). Depending on the jurisdiction in which a domestic national is apprehended will determine what state laws will be applicable to the youth (Langley, 2005). Due to localized state agencies handling these situations, the way the youth are treated can vary greatly from one jurisdiction to the next. With the age limit varying depending on the state, as to what qualifies a youth to be included in the juvenile justice system, (Synder & Sickmund, 2006) as well as its specific laws and ways of handling cases of youth prostitution, a domestic youth accused of prostitution may face different treatment in one state compared to another (Brittle, 2008).

One determinant that makes a difference in how some youth are treated is his or her general mental outlook. The fear of being sent back to their country of origin keeps foreign youth leery and fearful of interacting with police. For the youth that come from countries that are severely harsh towards prostituting, this fear is compounded (Young, 1998).

On the other hand, for social workers and police who attempt to persuade domestic youth to abandon their victimizer, they may be faced with opposition and aggressiveness (Klain, 1999; Kreston, 2000). Often, even when minors are faced with the opportunity to vacate their situation, the mental link they have to their deeply rooted lifestyle is so great that they cannot do it (Hoatling, 2006).

Unfortunately, since trafficking numbers are hard to estimate, it only seems like a problem to some. Without consistent numbers, the funding and training necessary for law enforcement and legal aid, just to name a few, will not happen. At least not in the magnitude necessary to make a difference. For example, Logan (2007) argues that there is a great need for more education, a more reactionary approach, training, and policies and procedures to serve victims better (Logan, 2009). According to Flowers (2001), it is approximated that somewhere between 100,000 and 3 million children below the age of 18 are operating in prostitution rings; however, to know exactly how many American girls have been drawn into prostitution movements is quite a complicated feat to tackle. To add to the problem of estimates, law enforcement is often not even aware that juveniles are being exploited sexually. Police were only able to draw a link between the hiring of teenage runaways by “dance parties” with sex corporations, in Greensboro, North Carolina, after the creation of a task unit focused on prostitution (Swoffard, 2002).

Safe Harbor Laws

One thing that has been done in the U.S. to move in the right direction is Safe Harbor Laws. “The crime of human trafficking has received much political and media attention in recent years. Lawmakers and actors within the criminal justice system have yet to fully grasp the challenges human trafficking victims face in securing the rights, benefits, services, and protections reserved for this group” (Peters 2016). In order to stop the cycle of exploitation and the revictimization of trafficked youth seven states, including; Connecticut, Illinois, New York, Massachusetts, Minnesota, Vermont, and Washington, (Mir, 2013) have passed Safe Harbor legislation, which identifies minors as victims of commercial exploitation (Adelson, 2008). Furthermore, Safe Harbor Laws allocate amnesty to minors who are caught in the throes of human trafficking (Baird, 2019). Centered around the victim, Safe Harbor laws focus on removing the criminalization that victims of sex trafficking endure when picked up for prostitution. These laws accommodate victims by giving them various forms of aid, such as; intervention for crises, placement in safe environments, and other forms of aid that fit the needs of each sexually exploited juvenile (Adelson, 2008). However, even though there have been a few academics who have explained why states should be interested in approving laws that will help victims of trafficking, as well as provided examples of ways this could work, there has been little to no reaction from the states (Baird, 2019). Baird (2019) believes that the public requires education as to how sex trafficking works in the United States, how to identify victims, and who is likely to become a victim.

Purpose of the Current Study

At the present, more juveniles are finding themselves being adjudicated for sexual solicitation than are being found victims, and this outcome may be situationally based on a

particular jurisdiction's law (Adelson, 2008). Those juvenile prostitutes who are domestic get victimized twice as bad as foreign juvenile prostitutes. The minor is first attacked by their trafficker or hustler, and then the judicial system takes them for a ride, when they are supposed to be protecting them and keeping them safe (Harrington, 2010). In effort to annul the current issues juvenile prostitutes are dealing with, and in order to keep them safe, other states may need to follow New York's lead and pass Safe Harbor laws. Doing so might help actualize the belief of amnesty in the prostituted juvenile and help them get the aid they so desperately need, and/or a delinquency petition depending on the individual juvenile's situation (Mir, 2013).

Therefore, the purpose of this study will be to examine the judicial response to adolescent female human trafficking victims who are charged with the crime of prostitution. Specifically, how does the justice system respond to these under aged prostitutes who are victims of human trafficking? Are the courts primarily punitive or do they take into account the victim status of these trafficked youth and permit them relief from delinquent or criminal charges? Prior research has not looked at case law as a narrative source to unearth juridical decision-making and how justice is dispensed for trafficked girls charged with prostitution. As such, this study applies a qualitative case law methodology that utilizes two layers of textual analysis to identify leading jurisprudential intent and discover the underlying themes of judicial temperament and convictions found within these court decisions. The findings, while exploratory, can hopefully be used to build upon theory, illuminate potential policy implications, and construct new research questions and hypothesis for future research.

Chapter Three: Methodology

This study conducted a qualitative examination of the rationales and justifications for why female youthful offenders, who are charged with prostitution, are either treated punitively or leniently as victims of human trafficking. Court cases, within the past 10 years, which address the arrest of adolescent girls charged with prostitution who have been victims of human trafficking were examined. Specific sampling criteria were used to isolate the cases that will be textually analyzed in this study. First, a search of Westlaw Campus Research was conducted using key terms. The terms included, *human trafficking victim*, *charged with prostitution*, *minor*, *girl*, *adolescent*, and *due process*. The term “human trafficking victim” was used because the focus of this investigation is on victims of trafficking. However, the term “charged with prostitution” was added to the search query because this study is interested in understanding how victims of trafficking are treated when criminally charged with the crime of prostitution. The next terms added to the query were *minor*, *girl*, and *adolescent*. These terms were added to the criteria in order to narrow down the results of the cases to include only those dealing with female minors or adolescents who have been trafficked as well as arrested for prostitution. Lastly, the term “due process” was added to the query in an effort to capture court cases that explored whether the due process rights of these youth were adequately taken into account. These terms used were used all together because of the results they yielded. These particular terms, when used by themselves, produced too many results and/or results that were not focused on the girls as victims, and instead focused on the trafficker themselves. So these six specific terms were added to the query, which yielded six cases that fit the purposive criteria for the sample. The cases that the search yielded include the following: *The People of the State of New York vs L.G.(2013)*, *In re Aarica S (2014)*, *In re N.C. (2016)*, *People v. G.M. (2011)*, *People v. Samantha*

R. (2011), and *In re M.D. (2014)*. All six of these cases met the criteria for query because each involved an adolescent girl who was trafficked against her will and charged with prostitution for working in the sex trade.

In order to examine these cases several questions were posed that helped to assess the judicial decisions made in the cases involving these young girls. The following 8 questions were asked about each of the cases:

- 1) What are the dimensions of attitudes or perceptions that are held?
- 2) What factors underlie particular attitudes or perceptions?
- 3) Why are decisions or actions taken, or not taken?
- 4) Why do particular needs arise?
- 5) Why are services or programs not being used, or are used?
- 6) What are the goals, purposes, and concerns of the decisions or actions taken, or not taken?
- 7) What needs of society are represented by the decisions or actions taken, or not taken?
- 8) What are the differences in the arrests made for foreign adolescent victims of trafficking as opposed to domestic adolescent victims of trafficking?

Through posing these questions to each case in the sample, the intended aim was to glean a better understanding of how juvenile prostitution cases are adjudicated when the defendant is also a victim of human trafficking. The first two questions sought to discover what attitudes and perceptions are conveyed through the judicial decisions in regards to the culpability of trafficked adolescent girls who are arrested for prostitution. Additionally, these first two questions intended to explore factors that may influence such attitudes or perceptions to arise. The third question was aimed at figuring out why the judge decided to make one choice and not another. For

example, the judge may decide to give the adolescent probation instead of sending her to secure confinement. Or perhaps the case is dismissed in lieu of mitigating circumstances due to the trafficking claim and victim services are applied to the youth. This inquiry hopes to elucidate whether victims of trafficking are treated with leniency or harshness. The fourth question probes whether specific needs of the defendant, the court, or society at large are taken in account to justify decisions made. For instance, one girl may need to be protected from retribution from her former pimp, when she is allowed to go free. If she is not given some form of protection, she may be harmed or worse. Question 5 will explore if sanctions are recommended for a youthful defendant and whether those sanctions are rehabilitative or punitive in nature. Also, this question will examine in any services are offered to address the youth's victimization or not. Questions 6 and 7 will assess the needs, rationales, justifications, and purpose underpinning why particular decisions were made or action were taken in each case. For example, was the decision to adjudicate the youth and sentence her to secure confinement made out of a patriarchal concern for controlling her sexuality, a legal moralism concern over public health and public safety in regards to sexual crimes, or a paternalistic concern geared toward protecting the youth from exposure to perceived immoral behavior? Lastly, Question 8 will evaluate if there is disparity in how lenient or harsh the court's ruling based on the youthful defendant's national origin (i.e., native or foreign born).

A recently developed case law methodology (see, Arrigo, Bersot, & Sellers, 2011; Sellers & Arrigo, 2009; Sellers & Arrigo, 2018), which consists of two levels or stages of textual analysis was conducted to collect qualitative data and analyze it. The application of this method abided by a "*justifiability-of-interpretation*" attitude throughout the data-mining procedure rather than relying on quantitative validity and reliability checks common in codable quantitative

content analyses (Sellers & Arrigo, 2018, p. 523). Thus, to avoid the researcher's tendency to impose any arbitrariness, subjectivity, or bias that is not already grounded in the data, the logics of transparency, conformability, communicability, and coherence reinforced all interpretable justifications (Sellers & Arrigo, 2018).

This method necessitates a careful re-reading of the legal texts with the aim of identifying jurisprudential intent and unearthing the underlying themes of judicial temperament and convictions found within these court cases (Sellers & Arrigo, 2018). The first level of textual analysis entails the researcher using the eight research questions to guide an examination of the plain decisional meaning of particular terms, phrases, or passages within the set of court decisions from the sample. Text segments that represent respective responses to these guiding research questions, were documented as evidence of the plain meaning of the underlying jurisprudential intent rooted within each court decision. Any evidence that failed to support a research question was also documented at this stage to achieve confirmability. The textual data (manifest content) collected from the first level of analysis was next to undergo a second level of analysis requiring an intratextual and intertextual investigation of emergent jurisprudential themes within and across the court cases (Sellers & Arrigo, 2018). In this second level of data collection and analysis, repetitively conveyed legal language was identified to reveal intratextual and intertextual themes of jurisprudential intent, which reflect the court's attitudes, convictions, perceptions, rationales, and justifications for how decisions are reached in cases where adolescent girls who are trafficked are judged when charged with prostitution (Sellers & Arrigo, 2018). The emergent themes guiding the judicial intent of these court decisions were critiqued for their constitutional soundness, compliance/noncompliance with existing human trafficking

legislation (TVPA), and whether the rights of exploited victims of human trafficking are upheld.

Implications for policy and practice ensued from the discussion of the qualitative findings.

Chapter Four: Results

There were six court cases that made up the qualitative data set for two levels of textual analysis in this study. Three of the court cases originated out of the State of New York, and three originated out of the State of California. A brief description of these cases, which includes the case background and the court's ruling summarily, follows:

Summaries of Case Files

(1) *The People of the State of New York, Plaintiff v. G.M., Defendant (2011)*

Background (New York Case—defendant is foreign born/non-U.S. citizen). The defendant, a native of the Dominican Republic, had been recognized by a federal agency as a victim of human trafficking and provided the court with a very compelling narrative of the circumstances surround all of her arrests, demonstrating that they were the product of years of brutal physical, psychological, and sexual violence by her husband, which resulted in her having been trafficked by him. During a five-month span, from September 1997 through January 1998, defendant G.M. was arrested on six separate occasions, twice each from prostitution, criminal trespass, and drug possession. As a result of the guilty pleas taken in each of these cases, she was ultimately convicted of two violations and four class B misdemeanors. The defendant now moves to vacate these convictions pursuant to criminal procedure law §440.10¹ on the grounds that, among other things, she was a trafficking victim at the time these offenses occurred. On April 1, 2011, this court issued an oral ruling granting the defendant's motion to vacate the convictions and dismissing the accusatory instruments, indicating that the written decision would follow.

G. M. Court's Decision. The motion to vacate charges was granted for G.M.

¹ A 440 motion to vacate a criminal conviction is a motion for post-conviction relief pursuant to Article 440 of the New York Criminal Procedure Law.

(2) *The People of the State of New York v. Samantha R., Defendant (2011)*

Background (New York Case—defendant is U.S. Citizen). The defendant is a 16-year old with no criminal history who is charged with the offense of loitering for the purpose of prostitution. The charge is a non-criminal violation punishable by no more than fifteen days jail. When she appeared before me in the arraignment part she was also the subject of a warrant that had issued out of family court. The accusatory instrument pertinently alleges that Police Officer Albert Q. Dodson: “Observed the defendant remain in or wander about a public place for twenty minutes, during which defendant repeatedly beckoned to passers-by and stopped two passers-by, engaging in conversation with said passers-by; stop only males passers-by and defendant did not beckon to or converse with female passers-by during the same period...; standing in the middle of the road while beckoning to motorists... Defendant stated, in substance, “I was coming home from a party with my cousin.” At defendant’s arraignment, I addressed *sua sponte* whether I should dismiss this prosecution both as an exercise of my interest-of-justice power and in light of the recently enacted Safe Harbor² for Exploited Children Act (the “Safe Harbor Act”) (as added by L 2008, ch 569 {eff Apr. 1 2010}), which I read to express the intent of the Legislature that 16- and 17-year-olds who are charged with prostitution offenses should be referred to Family Court rather than prosecuted criminally. The People requested an opportunity to address my proposed dismissal in writing, even though I noted that the legislative sponsors to the Safe Harbour Act believed that the mere pendency of criminal charges against these children was itself harmful.”

Samantha R. Court’s Decision. The case was dismissed by the judge.

(3) *The People of the State of New York v L.G. (2013)*

² A *safe harbor* is a provision in a law or regulation that affords protection from liability or penalty under specific situations, or if certain conditions are met that specifies that certain conduct will be deemed not to violate a given rule. Sometimes a *safe harbor* reduces liability if "good faith" is demonstrated.

Background (New York Case—defendant is U.S. Citizen). L.G. claims her prior convictions are directly related to her arrests for prostitution offenses, and that because she is a victim of human trafficking, those convictions must be vacated and the cases dismissed. Defendant also argues that she was denied effective assistance of counsel when she pleaded guilty in each case. L.G. was convicted in the criminal court of the city of New York, Queens County of disorderly conduct and criminal possession of a weapon in the fourth degree, and was sentenced to a term of probation. L.G. moved to vacate judgment based on her alleged status as a sex trafficking victim. The people argue that L.G.’s second conviction for criminal possession of a weapon should not be vacated because it is not a prostitution related charge, and as a matter of public policy, CPL 440 should not grant greater protection to human trafficking victims in weapons cases. They also assert that the defendant failed to seek relief under CPL 440 with due diligence because she filed her motion three years after she ceased to fear her trafficker in 2008, and a year after CPL 440 was amended in 2010 to allow relief for human trafficking victims. L.G. was first arrested when she was 14 years old. In 2010, New York became the first state in the country to pass a law, which allows defendants to vacate their prior convictions, which resulted from their experiences as victims of human trafficking.

L.G. Court’s Decision. Judgments of conviction were vacated for L.G. (favorable to defendant).

(4) *The People, Plaintiff and Respondent v, Aarica S., Defendant and Appellant (2014)*

Background (California Case—defendant is U.S. Citizen). A petition was filed alleging that 17-year-old minor solicited prostitution. The Superior Court, Los Angeles, No. MJ20515, Catherine J. Pratt found true allegations of the petition, sustained the petition and declared the minor to be a ward of the court. In the Court of Appeal, Willhite, J. held that

evidence supported juvenile court's determination that Aarica S. was not a victim of human trafficking in relation to the solicitation of prostitution at issue. Aarica S. appeals from an order of wardship following the finding that she committed the crime of soliciting prostitution.

Appellant contends that because she was a victim of human trafficking, the juvenile court erred in denying her motion under Evidence Code section 1161 subdivision (a), to exclude evidence that she committed a commercial sex act, namely the solicitation of prostitution underlying the wardship petition.

The court holds that Evidence Code Section 1161, subdivision (a), applies only when there is a specific causal connection between the person's status as a victim of human trafficking and the commission of the commercial sex act at issue.

Aarica S. Court's Decision. Prior court's decision affirmed (unfavorable to defendant).

(5) The People, Plaintiff and Respondent v. N.C., Defendant and Appellant (2016)

Background (California Case—Defendant is U.S. Citizen). The juvenile charged with prostitution in the delinquency proceeding filed motion to exclude evidence under Proposition 35, the Californians Against Sexual Exploitation Act (CASE Act), claiming she was a victim of human trafficking. The Superior Court, Los Angeles County, No. PJ51576, Robert J. Schuit J., denied motion. Juvenile appealed and matter was transferred to the superior court, Costa County, for disposition. The Court of Appeal, P.J. Kline held that CASE Act Statute declaring that evidence that a victim of human trafficking engaged in a commercial sexual act as a result of human trafficking is inadmissible to prove liability for that act applies in juvenile delinquency proceedings, and as a matter of first impression, CASE Act Statute applies to uncompensated sexual conduct.

N.C. Court's Decision. Court reversed lower court's ruling (favorable to defendant).

(6) *The People, Plaintiff and Respondent, v. M.D., Defendant and Appellant (2014):*

Background (California Case—defendant is a U.S. Citizen). After petition was filed to adjudicate the minor as ward of the juvenile court for alleged misdemeanor violation of loitering with intent to commit prostitution, the minor filed motion in limine to exclude evidence of her alleged commercial sexual activity on ground that she was a victim of human trafficking.

The Superior Court, Contra Costa County, Lewis A. Davis, denied the motion, and following jurisdictional hearing, he declared the minor a ward of the juvenile court and placed her on probation. Minor appealed. Holdings included:

- 1) As a matter of first impression, procedural fairness did not support reallocation of burden of proof.
- 2) Public policy did not support reallocation of burden of proof.
- 3) Evidence was insufficient as a matter of law to show the minor was a victim of human trafficking.
- 4) Failure of counsel to present additional evidence did not prejudice minor

Opinion (Pollak, J.). A minor appeals from an order of wardship following a finding that she committed the crime of loitering that the juvenile court erred in denying her in limine motion to exclude evidence under Evidence Code Section 1161 on the ground that she committed the alleged commercial sex act as a result of being a victim of human trafficking. Alternatively, she contends that she received ineffective assistance of counsel in presenting her motion and that two conditions of her probation are unconstitutionally vague. The court found no error in the denial of her motion and no merit in her alternative arguments. The court affirms the prior courts orders.

M.D. Court's Decision. The court affirmed the lower court's ruling (unfavorable for defendant).

Next, the data collected for both levels of qualitative analysis will now be presented for each case. The raw data for Level I textual analysis is reported in Appendix B and raw data for Level II thematic analysis are reported in Appendix C. The first level of textual analysis identifies key words, phrases, or entire passages that reflect the plain meaning, as guided by the eight research questions, for the jurisprudential intent expressed in these six court decisions. Below, the selected examples of the textual data produced from the first level of analysis are listed for each research question across all six court cases examined. Following the reporting of the Level I textual results, the Level II thematic results are presented. The second layer of analysis builds upon the first by unearthing underlying themes that emerge from the language and concepts convey through the plain meaning data produced at the Level I textual analysis within individual cases and across all six cases examined. Level II results, presented below list text segments, phrases, or entire passages are that are representative of major themes that surfaced in the decision-making process for each court case. There were four themes that consistently appeared within or across the courts decisions evaluated in the study and they include: best interest, relief, rehabilitation, and individual accountability. The results for each level of analysis are presented below.

Level I Analysis

In the case of, *The People of the State of New York v. L.G (2013)*, Research Question 1 reveals the dimensions of attitudes or perceptions that are held, involve the court wanting to make sure all the details relating to each conviction are examined before they decide to vacate said convictions. For example, consider the following passage:

“In order for the court to exercise its discretion to consider vacatur of each of the defendant’s judgments of conviction, the court must examine the unique factual circumstances pertaining to each conviction” (p. 442).

For Research Question 2, the factors which underlie particular attitudes and perceptions of the court are two-fold. The court felt the defendant needs to show that she was a trafficking victim at the time of her arrest and that the charge she was convicted of was the result of her having been trafficked. Thus, the court opined that:

“The movant must establish that (1) she was a trafficking victim at the time of her arrest, and (2) her conduct or “participation in the offense” leading to her arrest resulted from her being trafficked” (p. 436).

As for Research Question 3, the decisions or actions taken or not taken involve 3 passages. The first regards the court agreeing L.G. was a victim of trafficking at the time of both of her arrests, but that her second conviction should not be vacated. For example, consider the following passage:

“The people do not contest either to defendant’s status or the circumstances surrounding both of her arrests; only that her second conviction should not be subject to vacatur under this statute” (p. 437).

The second passage touches on the decision of whether L.G.’s conviction for a non-prostitution offense, which was the result of having been trafficked, can be vacated. For example, consider the following passage:

“The only disputed issue in this case is whether defendant’s conviction for non-prostitution offense, which was the direct result of her having been forced into sex trafficking, may be vacated under CPL 440.10(1)(i)” (p. 437).

The third passage explains that the court feels L.G.'s conviction for possession of a weapon should be vacated because her participation in the offense was the direct result of her having been trafficked. Thus, the court opined the following:

“This court holds that L.G.'s conviction for possession of a weapon in the fourth degree falls within the ambit of the vacatur statute because her participation in that offense was undeniably connected to the coerced trafficking activity which led to her arrest on prostitution related charges and should therefore be vacated” (p. 437).

As for Research Question 4, the particular needs that arise include L.G. being in school and wanting to move forward with her life. Convictions on her record would cause a road block for her and would likely impede her employment in the future. For example, consider the following passage:

“Defendant is currently a student at Medgar Evers College, and expects to graduate in 2014 with a bachelor's degree in public administration and social work. She avers that she wants “to vacate my convictions so that I can move forward with my life and career without being held back by my past”” (p. 434).

In regards to Research Question 5, the services being used include the GEMS program. L.G. took part in the program back when she was 14. The provided her with support and counseling. Several years later after leaving prostitution she returned to GEMS as an active member. Furthermore, she took part in their education initiative program and several therapy groups, before returning to school. For example, consider the following passage:

“L.G. had previously been mandated by the family court to participate in the GEMS program⁸ back in 2001 when she was 14 years old. As a result, she received support and counseling from them. After leaving prostitution in 2004 she reconnected with GEMS

and became an active member, participating in the educational initiative program and in various therapy groups before starting back to school again” (p. 434).

For question six, the concerns of the court regard the suffering of trafficked people. They don't feel those who have been trafficked should continue to endure pain for things they were forced to do against their will. For example, consider the following passage: “Trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion (*Id*)” (p. 438). No data was ascertained for research questions seven and eight.

In the case of *The People of the State of New York v. G.M. (2011)*, Research Questions 1 and 2 reveal the dimensions of attitudes or the perceptions that are held, as well as what factors underlie those particular attitudes or perceptions, can be addressed in the following passage. In this passage, the court found the defendant had suffered years of victimization at the hands of her husband/pimp, all of which led to her arrest:

“Moreover, the defendant has provided a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him” (p. 280).

For Research Question 3, decisions or actions that were taken in regard to G.M. involved the court deciding that all of her convictions should be vacated, and the case dismissed. Consider the following passage:

“This court concurs with the People's position that all of the defendant's convictions are entitled to the relief requested. Thus, under the provision of the new amendment, this court “must vacate the judgment and dismiss the accusatory instrument[.]” (CPL 440.10[6].)” (p. 280-281).

As for Research Question 4, the particular need that arose for G.M. was the safety of her children and herself. She explains that she was forced to take part in illegal dealings, which included prostitution. If she refused, threat of harm to herself or her children in the Dominican Republic was held over her head. Consider the following passage:

“...D.S. forced her to engage in these illegal activities, including prostitution, upon threat of physical harm or actual violence if she did not comply. ...If she refused to comply with any of his demands, he would threaten to kill her or harm her children in the Dominican Republic” (*id.* at 9)” (p. 276).

For Research Question 5, the services and or programs that G.M. used included outside organizations, which helped her to reclaim her life. Consider the following passage:

“The defendant eventually sought assistance from outside organizations to help her put her life back together, and in 2009, she received a “T Visa” (T – 1 Nonimmigrant Classification Status), after proving to the federal government that she was a victim of human trafficking” (p. 277).

As for Research Question 6, the concerns of the court in this instance are that the new legislation allows for the defendant’s conviction to be dropped if the charge was prostitution or loitering, for the purpose of committing a prostitution offense as a result of being a victim of human trafficking. Consider the following passage:

Specifically, this new legislation allows for vacatur of convictions where the underlying charge was for prostitution (Penal Law [“PL”] § 230.00) or loitering for the purpose of engaging in a prostitution offense (PL § 240.37) and the defendant’s arrest on that charge “was a result of having been a victim of sex trafficking under section 230.34 of the penal

law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78)[.] (CPL 440.10[1][i].) (p. 279)

No research data was ascertained for Research Questions 7 and 8.

In the case of *The People of the State of New York v. Samatha R. (2011)*, Research Questions 1 and 2 revealed the dimensions of attitudes or perceptions that are held, and what factors underlie those particular attitudes and perceptions. They are explained in the following sentences. The court believes the interpretation of the recently enacted Safe Harbor for Exploited Children Act implies that 16- to 17-year-olds who have been charged with prostitution offenses should be sent to the Family court rather than prosecuted criminally. Consider the following passage:

“At the defendant’s arraignment, I addressed *sua sponte* whether I should dismiss this prosecution both as an exercise of my interest-of-justice power and in light of the recently enacted Safe Harbour for Exploited Children Act (the “Safe Harbour Act”) (as added by L 2008, ch 569 [eff Apr. 1, 2010]), which I read to express the intent of the Legislature that 16- and 17-year-olds who are charged with prostitution offenses should be referred to Family Court rather than prosecuted criminally” (p. 1).

As for Research Question 3, the decisions of the court include not feeling that handing out a sentence on Samatha R. is a good idea, and that doing so would do more harm than good.

Consider the following passage:

“Fifth, I find that there would be little purpose in imposing a sentence on the defendant and that the effect of any such sentence would do more harm than good” (p. 6).

For question four, the particular needs that arise are the prevention of further pain and suffering for Samatha R. In addition, she should be treated as a victim and given protection and services to help her reacclimate to society. Consider the following three passages:

Arresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult.

Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are victims of crime and should be treated as such.

Sexually exploited youth deserve the protection and services of the family court through processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long-term housing services. (p. 1)

As for Research Question 5, services that should be used for Samatha R. cannot be used if she is processed through the juvenile justice system, because they do not exist for sexually exploited youth. Samatha R. is a victim of crime and should be treated as one. Consider the following passage:

Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are victims of crime and should be treated as such. (p. 1)

In regards to Research Question 6, the goals of the court are not to treat Samatha R. as a criminal and prosecute her. Instead, the court wants to treat her as a victim and provide her with services.

Consider the following passage:

“Therefore, *sexually exploited youth should not be prosecuted under the Penal Law for acts of Prostitution*. Instead, services should be created to meet the needs of these youth outside of the justice system” (p. 1).

As for Research Question 7, the needs of society represented by actions taken, are explained in the following passages. First, the defendant is a sexually exploited youth and deserves help to get back on her feet, as explicated in this argument:

Sexually exploited youth deserve the protection and services of the family court through processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long-term housing services. (p. 1)

Second, the amount of damage caused by the defendant’s actions is small. To charge her with a crime would do her more harm than any societal harm she may have caused. For instance, consider the following explanation from the court:

Second, the extent of harm caused by the offense is likewise minimal. Although, I recognize...that prostitution may negatively impact all participants as well as the neighborhoods where it occurs, the harm of the violation her is minimal. More importantly, I am persuaded that the harm to the defendant’s own physical and mental welfare from the alleged conduct is greater than any societal harm that I can see in this particular case. (p. 5)

Third, the courts do not believe dismissing the charges will create a problem for the safety or welfare of the community, as expressed in this passage:

Sixth, I do not believe that dismissal will impact the safety or welfare of the community. Although prostitution may have negative collateral effects on the community, attributing

such effects to the alleged conduct of this particular defendant would surely be an exaggeration. (p. 6)

For Research Question 8, the difference in the arrests made for domestic adolescent victims of trafficking as opposed to foreign adolescent victims is explained in the following quote. This quote explains that congress provided a form of relief for children who are under 18 and are victims of a severe form of trafficking. The example given is prostitution through “T” and “U” visas as conveyed in the following passage:

In 2000, Congress also provided avenues of immigration relief for children under 18 who are victims of a severe form of trafficking, i.e., prostitution, through “T” and “U” visas (see Slocum, *Immigration Remedies for Victims of Human Trafficking*, Lawyers Manual, at 209, 215). (p. 2)

In the case of *The People, Plaintiff and Respondent v. N.C. (2016)*, Research Questions 1 and 2 reveal the dimensions of attitudes or perceptions and factors underlying those particular attitudes or perceptions involves not punishing the defendant. The court believes the defendant should be rehabilitated and not left with a criminal record. Consider the following passage:

As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record. (p. 1243-1244)

In regard to Research Question 3, the court decided that N.C. was a victim and did commit the offenses as a result of being a victim of human trafficking, however they declined her request to

exclude evidence, because they feel that Evidence Code section 1161 does not apply. Consider the following passage:

Although, without objection from the district attorney, the court found the appellant to have committed the charged acts “as a result of being a victim of human trafficking,” it nevertheless denied her motion to exclude evidence after concluding that, as matters of law, Evidence Code section 1161 does not apply to cases such as this, in which the victim of human trafficking did not actually engage in “sexual conduct on account of which anything of value is given or received by any person” (Pen. Code, § 236, subd. (h)(2)). (p. 1242)

As for Research Question 4, the defendant felt she needed to exclude all evidence that was to be provided by the district attorney. Consider the following passage:

At the commencement of the jurisdictional hearing, appellant moved under section 1161 to exclude all evidence sought to be introduced by the district attorney to show that she solicited acts of prostitution in violation of Penal Code section 647, subdivision (b). (p. 1239)

For Research Question 5, the services that were not used include Social Services. Social Services refused to accept N.C. as a client because her family lived in Northern California. Consider the following passage:

On June 24, after the Los Angeles County Department of Social Services declined to accept the appellant as a client because her family resided in Northern California, the court ordered the matter transferred to Contra Costa County for disposition ⁹. (p. 1243)

For Research Question 6, the goal, purpose, or concern of the court is not to punish the defendant, but to rehabilitate her. Consider the following passage:

As delinquency judges and advocates our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record. (p. 1243-1244)

As for Research Question 7, the court decides in the interest of society that the defendant needs to have a form of adult supervision, so she doesn't fall back into a dangerous situation as depicted in the following passage:

I think it is great that [appellant's] grandparents are willing to take care of her in these uncertain and difficult times, but as a judge who has observed [appellant's] history, my biggest concern, and it's a concern in all these sorts of cases, is that without court supervision, without becoming either a 300 or 602 ward, there is no incentive for her to follow through. She has not reached the maturity level that would satisfy any reasonable judge in believing that she might not run. Believing appellant lacks "real adult supervision," the court stated that the bottom line is, without some kind of jurisdiction over the minor, this minor is in serious danger of, well, falling by the wayside, whether she runs away, whether she re-engages with one of the pimps that have been testified about. There is no way for a juvenile judge to protect a minor like this without a declaration of wardship, without gaining jurisdiction over the minor. (p. 1244)

No data was ascertained for Research Question 8.

In the case of *The People, Plaintiff and Respondent v. M.D. (2014)*, Research Questions 1 and 2 reveal the dimensions of attitudes or perceptions held and the factors underlying those

attitudes or perceptions, involve the court believing there is insufficient proof that M.D. was a victim of human trafficking at the time of her arrest as expressed in the following passage:

At the conclusion of the hearing, the court found there was insufficient evidence that the minor was a victim of human trafficking under the definition set forth in *Penal Code section 236.1* and denied the minor's motion. (p. 998)

For Research Question 3, the court makes the decision that it is M.D.'s responsibility to provide the burden of proof that she was a victim of human trafficking. Thus, the court opined the following:

We disagree. The facts necessary to establish that the minor was a victim of human trafficking are in fact "peculiarly" within *her* personal knowledge. She has the most knowledge as to the circumstances that led her to engage in prostitution, who – if anyone – induced or persuaded her to do so, and to whom – if anyone – she is reporting or delivering the proceeds of her prostitution activity. (See, e.g., *People v. Mower (2002) 28 Cal.4th 457, 477 [122 Cal. Rptr. 2d 326, 49 P.3d 1067]*). (p. 1000)

For Research Question 4, the defendant feels the court is wrong in requiring her to present the burden of proof that she was a victim of human trafficking. Thus, the defendant opined the following:

The minor contends the court erred by placing the burden of proof on her to establish she was a victim of human trafficking and, alternatively, that even if the burden was hers, the evidence she presented was sufficient to meet her burden. (p. 999)

No data was ascertained for Research Question 5. As for Research Question 6, the goal of the court is to show that for the defendant to be found a victim it is necessary for her to show that the alleged human trafficker forced her to engage in prostitution. The court ruled that:

Thus, for the minor to be found to be a victim of human trafficking, it was necessary for her to prove that Antonio, the alleged human trafficker, persuaded or attempted to persuade her to engage in prostitution with the intent “to effect or maintain” a violation of *Penal Code section 266i*. (p. 1003)

For Research Question 7, the needs of society depicted by the court are that they protect the people of their state, particularly the children from sexual exploitation as conveyed in the following argument:

The people of the state of California find and declare: 1. Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance. (p. 998)

No data was ascertained for Research Question 8.

In the case of *The People, Plaintiff and Respondent v. Aarica S. (2014)*, Research Questions 1 and 2 reveal the dimensions of attitudes or perceptions that are held and the factors that underlie those attitudes or perceptions, involve the court not believing that the defendant was a victim of human trafficking at the time of her arrest. The court opined that:

She wasn't working for anybody or paying anybody any money. I don't think that based upon that she was a victim of sexual trafficking. And when the incident occurred on the 31st of January, that she was acting independently on her own with no solicitation or encouragement by anyone else to get her to do it. I don't think it has any connection. You would have a much stronger case at the time she was doing it [if] she was still under the power and under the control of one of these pimps, but she was not. And it appeared that it was several months before that she wasn't. (p. 1485)

For Research Question 3, the court decided to deny the defendant's request to exclude evidence that related to her soliciting sex. Consider the following passage:

The court denied the appellant's motion to exclude evidence relating to her having solicited a commercial sex act with Officer Morales. The court reasoned that, when appellant approached Officer Morales, "she was acting as an independent contractor, nobody threatening her or threatening to kill her if she doesn't make money. (p. 1485)

For Research Question 4, the defendant expresses the need to make a quick buck. She explains why she approached the man she later found out was a cop. She also admits she did not have a pimp at the time of her arrest as conveyed in the following passage:

When asked why she decided to approach Officer Morales, she explained that she saw him circling the neighborhood. She explained that she was thinking, 'Don't go to the car; don't do it. You are better than that. But he just kept coming by, so I just decided that I could do whatever he wanted really quick and then have money in my pocket, because I didn't have any money.' She agreed that no one forced her to get into the car and that she did not have a pimp, so she would get to keep all the money she made. She had not had a pimp since November 2012. (p. 1485)

No data was ascertained for Research Question 5, 6, 7 and 8. Table 1 presents the number of instances per court decision where plain meaning results could be identified for any of the eight guiding research questions for the Level I textual analysis. All six court decisions yielded data for the first four research questions, while only five cases produced results for Research Question 5, only four cases produced data for Research Question 6, three cases found results for Research Question 7, and a single case produced findings for Research Question 8.

Table 1. *Level I Summary Table of Plain Meaning Results for Each Question*

Questions	People v. G.M {NY} (2011)	People v. Samatha R. {NY} (2011)	People v. L.G. {NY} (2013)	In re. Aarica S. {CA} (2014)	In re. N.C. {CA} (2016)	In re. M.D. {CA} (2014)	Total
1	✓	✓	✓	✓	✓	✓	6
2	✓	✓	✓	✓	✓	✓	6
3	✓	✓	✓	✓	✓	✓	6
4	✓	✓	✓	✓	✓	✓	6
5	✓	✓	✓		✓		4
6	✓	✓	✓		✓	✓	5
7		✓			✓	✓	3
8		✓					1
Total	6	8	6	4	7	6	

Level II Analysis

There are four common themes found among the six court cases: relief, best interest, rehabilitation, and individual accountability. For each of the themes, a quote has been chosen

from one of the six court cases, that best represents it. The quote will be followed by an explanation of what the quote is saying.

The first theme is “relief.” “Relief” is defined as meaning alleviation, ease, or deliverance through removal of pain, distress, oppression, anxiety, or redress of a hardship. Relief also extends the connotation of providing "support," "reinforcement," and "legal backing," which is why the similar concept of "protection" that often appeared in passages as evidence of the theme of relief, was also included as a term synonymous with the larger notion of relief. Moreover, the concept of relief also includes connotations closely related to the concept of "mercy" and the usage of both terms seeks to grant "mitigation," "amelioration," "reprieve," and "forgiveness." The following quote was chosen from the case of *The People of the State of New York v. L.G. (2013)* to illustrate the concept of relief: “Trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion (*Id*)” (p. 438).

This quote is saying that the individual who was trafficked should not have to endure further discomfort and agony for acts they were forced to do. They should be granted relief.

The second theme is “best interest.” Best interest is defined as meaning to the advantage, benefit, or advancement of someone, especially in the context of providing the best interest of the child with the ultimate goal of fostering and encouraging the child's happiness, security, mental health, and emotional development into young adulthood. The following quote was chosen from *The People of the State of New York v. Samatha R. (2011)* to convey the message of the theme:

Nor can I ignore that her continued prosecution in a criminal court may traumatize her to a greater extent than the prosecution of an adult defendant would affect an adult. These concerns counsel against continuing a prosecution, no matter how sensitively handled by

the District Attorney, of an individual whom the law alternatively regards a child and an adult or quasi-adult (*see n. 3 supra*), and whom the law also calls an “exploited child” and possibly a “victim,” particularly where another appropriate forum may address the circumstances of her alleged offense ⁴. (p. 5)

This quote is saying that the judge believes the defendant’s time spent in court defending her case may do her more harm than it would an adult defendant and that would be a concern no matter how delicately the District Attorney handled the case. Furthermore, the judge believes this case should be taken to another forum besides a criminal court. The judge is looking out for Samatha R.’s best interest.

The third theme is “rehabilitation.” Rehabilitation is defined as meaning, to restore someone to a condition of good health, normal life, and former reputation after falling into disfavor for wayward actions and behaviors. The following quote was chosen from *The People, Plaintiff and Respondent v. N.C. (2016)* to explicate this theme:

As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record (p. 1243-1244)

This quote is saying that the court believes N.C. should be rehabilitated rather than be punished further or have her future permanently tainted by a criminal record. The court thinks she should be protected from the repercussions of her choices since she was under the age of 18 at the time of her arrest, and that punishment will not restore her to a better state. Thus, rehabilitation is

merited for the restoration of her tarnished character. Furthermore, N.C. should have the opportunity to make something of her life and become a contributing member of society.

The fourth and last theme is “individual accountability.” Individual accountability is defined as meaning the state of being accountable, liable, or answerable, which also captures the concept of “free agency.” Free agency suggests that a person is self-determining and acting of their own volition. The following quote was chosen from *The People, Plaintiff and Respondent v. Aarica S. (2014)* to provide meaning for this theme:

She wasn't working for anybody or paying anybody any money. I don't think that based upon that she was a victim of sexual trafficking. And when the incident occurred on the 31st of January, that she was acting independently on her own with no solicitation or encouragement by anyone else to get her to do it. I don't think it has any connection. You would have a much stronger case at the time she was doing it [if] she was still under the power and control of one of these pimps, but she was not. And it appeared that it was several months before that she wasn't. (p. 1485)

This quote is saying that the court believes Aarica S. was choosing to prostitute herself without any coercion from a pimp at the time of her arrest. She didn't have to answer to anyone except herself. While she may have been a victim of human trafficking in the past, at the time of her arrest she was acting of her own volition. She was accountable, only to herself. A procedural concept related to “insufficient evidence” also emerged among the cases examined suggesting some defendants did not deserve relief because they provided inadequate proof of their victimization. After reviewing the context of how "insufficient evidence" was employed, it was concluded that the court was still predominantly preoccupied with the notion of "individual accountability" in that the court was placing the "burden of proof" and any attempt at providing a

defense solely on the defendant's ability to do so. Therefore, the court was holding the youth to account for any inability to prove a defense with adequate evidence; thus, placing the fault on the individual defendant.

Table 2 presents the thematic data to highlight visually where themes emerged within court cases and across court cases. Each court case had at least one emergent theme and three court cases had more than one theme emerge. The theme of “relief” was most common and utilized across four court decisions (i.e., three New York rulings and one California ruling). “Rehabilitation” appeared in three court rulings (i.e., two New York rulings and one California ruling), while individual accountability appeared in two decisions (i.e., both California rulings), and best interest only surfaced in one New York ruling.

Table 2. *Level II Summary Table of Commonly Found Themes*

Themes	People v. G.M. {NY} (2011)	People v. Samatha R. {NY} (2011)	People v. L.G. {NY} (2013)	In re. Aarica S. {CA} (2014)	In re. N.C. {CA} (2016)	In re. M.D. {CA} (2014)	Total
Relief	✓	✓	✓		✓		4
Best Interest		✓					1
Rehabilitation	✓	✓			✓		3
Individual Accountability				✓		✓	2
Total	2	3	1	1	2	1	

Chapter Five: Discussion

Research Questions 1 and 2 sought to unearth the dimension of attitudes or perceptions held by courts and the factors underlying those particular attitudes when juvenile girls who were arrested for prostitution claimed to be trafficking victims. The plain meaning results from the Level I textual analysis revealed variation in the attitudes held across the six court cases; however, for the majority of the cases, the courts maintained a desire to seek relief through Safety Harbor Acts or rehabilitative alternatives for the girls in question, which would aim to prevent further victimization of these youth. Only a couple of court decisions (i.e., *In re Aarica S.* and *In re M.D.*) appeared to exhibit attitudes or perceptions of skepticism toward the defendants' claims of coercion, and in these instances, the courts focused on the youthful defendants' abilities to adequately prove they were indeed human trafficking victims.

Research Question 3 intended to examine the decisions or actions taken or not taken by the courts in the cases being analyzed. In the majority of the cases, the courts decided not to take punitive action against the girls who claimed to be trafficking victims. The courts reasoned that the girls deviant behavior was a product of their coercion and to sanction punishment would do more harm than good. As such, the courts frequently sought to grant relief and vacate charges that would lead to punitive sanctions against the defendants. However, the *In re Aarica S.* (2014) and *In re M.D.* (2014) court rulings decided differently than the other four cases and found that the charges should not be vacated and defendants should not be allowed to exclude evidence because the courts found their proof of being trafficking victims to be insufficient.

Research Question 4 assessed what particular needs surfaced from these cases. One common need that emerged across four of the cases was the defendant's need for safety from the

threat of further harm and suffering at the hands of their traffickers. Another common need expressed in the majority of the cases, was that further punitive action by the courts would only serve as a detriment for the defendant's recovery and desistance from crime. On the other hand, the *In re Aarica S.* (2014) and *In re M.D.* (2014) court decisions acknowledged the need for these youthful defendants to solely take on the burden of proof when it came to substantiating their claims of victimization and coercion as human trafficking victims. The jurists in the *Aarica S.* and *M.D.* rulings were less concerned with the defendants' safety and security and more concerned with holding them accountable for their delinquent acts.

Research Question 5 was concerned with whether particular services or programs were used, or not used, in these cases. In the majority of the cases, rehabilitative (e.g., GEMS program, counseling) and victim-based services (T- or U- Visa, crisis intervention, emergency long-term housing) were employed to help the youthful defendants reclaim their lives and recover from their victimization. Only two cases (i.e., *In re Aarica S.* and *In re M.D.*) did not use services or had no mention of providing services to the defendants.

Research Questions 6 and 7 evaluated the needs, rationales, justifications, and purpose underpinning why the courts, in these cases, made certain decisions. Four of the court decisions (i.e., *People v. L.G.*, *In re N.C.*, *People v. G.M.*, and *People v. Samantha R.*) justified their rationales for seeking to be more lenient on the defendants as being motivated by a desire to rehabilitate, provide relief to, and protect these youth since they were victims of trafficking. These four court rulings believed it was in society's best interest to support these youth and get them back on their feet to lead productive lives. *In re Aarica S.* and *In re M.D.* appeared to be mostly concerned with holding the youthful defendants accountable for their delinquent

behaviors and to protect the larger goals of society from sexual deviance promoted by prostitution.

Research Question 8 aimed to ascertain if the defendant's status as native or foreign-born entailed more leniency or harshness from the court based on the ruling outcomes. Only one case, *People v. Samantha R.*, addressed this issue of defendant nationality. It was found that foreign-born defendants were granted some measure of mercy for their victim status as trafficked youth and were granted access to T- or U-Visas for safety and protection.

Interestingly, the thematic analysis found that the themes of rehabilitation, best interest, and relief were most common among the three New York court decisions and only one of the California rulings. Conversely, two of the California decisions were more punitive toward the youthful defendants claiming to be victims of human trafficking, and the theme of individual accountability for one's action predominantly prevailed in those two cases.

Chapter Six: Conclusion

This thesis used a qualitative examination of the adjudication of underaged girls picked up for prostitution, who claim to have been victims of human trafficking. The study involved six court cases. Three were from New York (NY), and three were from California (CA). The first level of analysis narrowed in on plain meaning, which was guided by a series of eight questions that revealed information as to the court's jurisprudential intent. The second level of analysis focused on recurrent themes that revealed themselves throughout the six court cases.

Prior research on this subject found that in general many girls who were picked up for prostitution who were victims or claimed to be victims of human trafficking were charged and left with a record (Meiers, 2015). There were regional differences found between NY and CA. California was overall more punitive than NY. Out of the three cases from California, only one girl had her charges reversed (i.e., *In re N.C.*). The other two girls were left with records. However, the two cases where the girls were left with charges on their records, the girls failed to prove that they were victims of human trafficking at the time of their arrest. It is impossible to know if things would have gone differently if the same girls had been tried in NY. It is clear that the NY courts pushed for the common theme of relief when it came to girls whom had been arrested that were victims of human trafficking, whereas the one common theme displayed by CA was individual accountability. What is clear from the court cases is that the three cases tried in NY each girl was given relief from her charges. NY also happens to be the front-runner for Safe Harbor Law legislation as of 2008 (Baird, 2019), but whether that has any bearing on the outcomes is unclear. In the cases from CA, two of the girls were not able to prove they were victims at the time of their arrest.

Implications for Policy and Practice

It is critical that a form of legislation is created, and used, nationwide that allows victims of human trafficking to have their records expunged. While some states have legislation that does this, not all states are on board as of yet: “Several states have enacted legislation intended to relieve the victim of the burdens associated with her criminal record. In 2010, New York Criminal Procedure Law Section 440.10 (i) became the first statute of its kind allowing a victim of human trafficking to vacate certain convictions” (Meier, 2015, pp. 217-218). According to Baird (2019), 34 states endorsed Safe Harbor laws for minors as of 2016. However, the states each disagree as to what age the minor must be in order for the law to be administered. While some states are making minors eligible for safe harbor laws when they are under the age of 16, others must be under the age of 16. Furthermore, some states demand that more requirements be met in order to receive relief (Baird, 2019). This is why it is important for all states to get on the same page. Safe Harbor laws would be a great place to start, if more states, if not all of them, adopted the legislation and could come to an agreement on the requirements. Baird (2019) believes that “until society, future prosecutors, future defense attorneys, judges, and legislators understand the victimology of sex trafficking, adequate laws will not be passed or applied correctly” (p. 340).

The effect of a criminal record can be a great burden to the victim who is trying to re-enter society. Acquiring housing, financial assistance, education, and employment with a criminal record, that originates from being a victim of sex trafficking can be quite burdensome, if it is even possible to achieve. Furthermore, being granted custody of a child is also an uphill climb for those with a criminal record. A form of legal relief that grants expungement is imperative, in order to clear the constraints placed by a victim’s criminal record (Meiers, 2015).

In order for more states to realize the importance of enacting legislation for victims of human trafficking, if not getting on the safe harbor law band wagon, more education is necessary. The public is in dire need of education and elaboration on the ramifications of trafficking and prostitution and how minors come to be entrapped in and stay involved in the commercial sex industry (Baird, 2019). Prospective practitioners of law and criminal law enforcement agencies need to be taught how to identify sex trafficking victims, as well as how to guarantee that no unlawful charge is brought against them. Furthermore, teach them how to help victims gain access to laws that are fashioned to help them. Another venue where education is important is law professors and their students. Helping their students by educating them about human trafficking is imperative. Only once the fallacies of victims of human trafficking are eradicated will things begin to change (Baird, 2019).

Thompson and Artiles (2016) provide an example of potential model for other juvenile justice systems, presented by Texas in response to sex trafficking and prostitution. What Texas has done is considerably reduced the level of prostitution related arrests and referrals to the juvenile justice system. The researchers claim, "Texas has taken a step in the right direction of not re-victimizing sexual abuse victims and decreasing the future prison population" (Thompson & Artiles, 2016, p. 240). The pathway that Texas takes when approaching juveniles who are implicated in human trafficking situations is an all-inclusive one. Their pathway focuses on the relevance of decriminalizing sex-related offenses in the juvenile justice system, and accurately identifying victims of sexual abuse as victims and not criminals. Of the bills Texas Legislature created, one of the most crucial in the fight to keep minors who are victims of sexual abuse out of prison, was Senate Bill 92 (S.B.92). This bill helped to decriminalize sexual abuse victims, as well as, gave probation departments the ability to generate diversion programs, which provide

services and treatments for minors who may be victims of sex trafficking (Thompson & Artiles, 2016). Another set of bills that Texas has created that human trafficking victims include; House Bill 1272 (H.B. 1272) and House Bill 2725 (H.B. 2725). What H.B. 1272 did was, allowed the 2009 Human Trafficking Prevention Task Force to operate for another two years. The other bill H.B. 2725, helps protect victims by giving human trafficking shelters, and agencies that place children to be free of having to respond to particular public information requests. These would include staff and victim's personal contact information. Texas has significantly reduced the number of arrests for minor girls and adult women by decriminalizing juvenile offenses and looking for substitute methods to locking up victims of sexual abuse (Thompson & Artiles, 2016). Another step Texas has taken to improve the outcomes for victimized minors has been to allow them access to treatment, rehabilitative services, counseling, and access to necessities. In order to give the minors access to rehabilitative services was to decriminalize sex-based offenses, specifically prostitution, in situations where the act was committed by a minor. This was made possible by training law enforcement, the juvenile justice department, family services, and any other groups who were responsive, as to how to accurately identify triggers of trauma, specifically sexual abuse (Thompson & Artiles, 2016). Texas's example has shown that with the right bills and training it is possible to help keep victims of sex trafficking and prostitution out of the system, even in a state historically known for "get tough" approaches to crime and delinquency.

Limitations and Directions for Future Research

In regard to limitations, this study was limited to only six court decisions. Therefore, comparisons can only be made among those six cases and the two states the cases were tried in, New York and California. The deciding factor was ultimately if the underaged minor was able to

prove that they were a victim of human trafficking at the time she was arrested. As mentioned before, four of the six cases allowed the victim of human trafficking relief from their original charges. Three of the cases were tried in New York and one was tried in California. The four underaged females were allowed a chance at a productive future. Two of the cases, which happened to have been tried in California did not allow their minors a clean slate. Neither of the underaged girls were able to prove that they were victims of human trafficking at the time of their arrest. The common themes that arose among cases tried in New York were relief, best interest, and rehabilitation. The common themes in the one case where the minor tried in California and was freed of her tainted record, were relief and rehabilitation, whereas the common theme found in the California cases where the minors were left with a record was, individual accountability.

Future research would be possible with more cases from more states. With a larger pool of data, it would be feasible to compare how the cases were tried and discover what if any common themes arise. Another possible angle at future research would be the potential interviewing of victims of human trafficking. Using this data, another pool of common themes could be generated and compared, from which conclusions could be made.

References

- Adams, C. (2011). Re-trafficked victims: How a human rights approach can stop the cycle of re-victimization of sex trafficking victims. *George Washington International Law Review*, 43, 201-234.
- Adelson, W. J. (2008). Child prostitute or victim of trafficking? *University of St. Thomas Law Journal* 96, 108.
- Arrigo, B. A., Bersot, H. Y., & Sellers, B. G. (2011). *Ethics of total confinement: A critique of madness, citizenship, and social justice*. New York, NY: Oxford University Press.
- Baird, D. (2019). Changing the narrative: Sex trafficking and its victims. *BYU Journal of Public Law*, 33(2), 321-354.
- Bales, K. (1999). *Disposable people: New slavery in the global economy*. Berkeley and Los Angeles: University of California Press.
- Barnard, A. M. (2014). The second chance they deserve: Vacating convictions of sex trafficking victims. *Columbia Law Review*, 114(6), 1463-1501.
- Bertone, A. M. (2000). Sexual trafficking in women: International political economy and the politics of sex. *Gender Issues*, 18, 4-22.
- Birkhead, T. R. (2011). The youngest profession: Consent, autonomy, and prostituted children. *Washington University Law Review*, 88, 1055, 1097.
- Bova Conti, J. S., & O'Connor, T. P. (2005). The role of the first responder in the criminal investigation process. *Medical, Legal, & Social Science Aspect of Child Sexual Exploitation*, 603.

- Brittle, K. (2008). Child abuse by another name: Why the child welfare system is the best mechanism in place to address the problem of juvenile prostitution. *Hofstra Law Review*, *Vol.36(4)*, p.1339-1375.
- Busch-Armendariz, N., Nsonwu, M., Cook Heffron, L., Garza, J., & Hernandez, M. (2009). *Understanding human trafficking: Development of typologies of traffickers*. Austin: Center for Social Work Research School of Social Work, Institute on Domestic Violence and Sexual Assault, University of Texas at Austin.
- Caliber. (2007). *Evaluation of comprehensive services for victims of human trafficking: Key findings and lessons learned*. Retrieved from <http://www.ncjrs.gov/pdffiles1/nij/grants/218777.pdf>
- Cecil, J. L. (2005). Enhanced sentences for child prostitution: The most hidden form of child abuse. *McGeorge Law Review*, *36*, 815.
- Clawson, H., Dutch, N., & Cummings, M. (2006). *Law enforcement response to human trafficking and the implications for victims: Current practices and lessons learned* (Grant No. 2004-WG-BX-0088). Washington, DC: U.S. Department of Justice. Retrieved July 18, 2008, from <http://www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf>
- Collingridge, V. (2006). *Boudica: the life and legends of Britain's warrior queen*. Woodstock, NY: Overlook Press.
- Davis, D. (2006). *Inhuman bondage: The rise and fall of slavery in the new world*. New York: Oxford University Press.
- End Slavery Now. (2018). National Underground Railroad Freedom Center. Retrieved from <https://www.endslaverynow.org/>

- Evans, H. (2004, Jan 25). Desperate bid to save kids who sell sex. *Daily News*, 22. Retrieved from <http://www.nydailynews.com/archives/news/desperate-bid-save-kids-sell-sex-mayor-office-finally-addressing-scandal-teen-prostitution-happen-fast-youngest-victims-oldest-profession-article-1.604127>
- Farley, M. (2006). Prostitution, trafficking, and cultural amnesia: What we must not know in order to keep business of sexual exploitation running smoothly. *Yale Journal of Law & Feminism*, 18, 109.
- Farrell, A., McDevitt, J., Pfeffer, R., Fahy, S., Owens, C., Dank, M., & Adams, W. (2012). *Identifying challenges to improve the investigation and prosecution of state and local human trafficking cases*. Washington, DC: National Institute of Justice
- Finkelhorn, D., & Ormrod, R. (2004). Prostitution of juveniles: Patterns from NIBRS. *Juvenile Justice Bulletin*. p.1-11. Retrieved from <https://www.ncjrs.gov/pdffiles1/ojjdp/203946.pdf>
- Flowers, R. B. (2001). The sex trade industry's worldwide exploitation of children. *Annals of the American Academy*, 575, 147-157.
- Free the Slaves & Human Rights Center (University of California). (2004). *Hidden slaves: Forced labor in the United States*. Retrieved July 18, 2008, from http://safestate.org/documents/HT_Final_Report_ADA.pdf
- Goodey, J. (2008). Human trafficking: Sketchy data and policy responses. *Criminology & Criminal Justice*, 8, 421-442.
- Hanna, C. (2002). Somebody's daughter: The domestic trafficking of girls for the commercial sex industry and the power of love. *William and Mary Journal of Women and Law*, 9(1), 1-29.

- Hansen, J. O. (2001, Jan 7). Special report: Selling Atlanta's children. *Atlanta Journal-Constitution*, A1.
- Harrington, O. (2010). Free Lolita! The contradictory legal status of Seattle's prostituted youth. *Seattle Journal for Social Justice*, 9, 401- 419.
- Heiges, M. (2006). From the inside out: Reforming state and local prostitution enforcement to combat sex trafficking in the United States and abroad. *Minneapolis Law Review*, 94, 428- 437.
- Heil, E. (2012). *Sex slaves and serfs: The dynamics of human trafficking in a small Florida town*. Boulder, CO: First Forum Press.
- Heinrich, K., & Shreeharsha, K. (2013, Winter). The state of state human-trafficking laws. *Judges Journal*, 52(1). Retrieved from <https://www.americanbar.org>
- Hoatling, N., Miller, K., & Tradeau, E. (2006). The commercial sexual exploitation of women and girls: A survivor service provider's perspective. *Yale Journal of Law & Feminism*, 18, 181, 183.
- Hodge, D. R. (April 2008). Sexual trafficking in the United States: A domestic problem with transnational dimensions. *Social Work*, 53(2), 143-152.
- Hughes, D. M. (2004a). The role of 'marriage agencies' in the sexual exploitation and trafficking of women from the former Soviet Union. *International Review of Victimology*, 11, 49-71.
- Javidian, P. (2003). Invisible targets: Juvenile prostitution, crackdown legislation, and the example of California. *Cardoza Women's Law Journal*, 9, 237-239.
- Jordan, D., & Walsh, M. (2007). *White cargo: The forgotten history of Britain's white slaves in America*. New York: New York University Press.

- Kim, K. (2007). Psychological coercion in the context of modern-day involuntary labor: Revisiting *U.S. v Kozminski* and understanding human trafficking. *University of Toledo Law Review*, 38, 941-972.
- Kittling, N. (2006). God bless the child: The United States' response to domestic juvenile prostitution, *Nevada Law Journal*, 6, 913-918.
- Klain, E. J. (1999). *Prostitution of children and child-sex tourism: An analysis of domestic and international responses*. Alexandria, VA: Center for Missing and Exploited Children.
- Kotrla, K. (2010). Domestic minor sex trafficking in the United States. *Social Work*, 55, 181-187.
- Kreston, S. S. (2000 Nov-Dec). Prostituted children: Not an innocent image. *Prosecutor*, 34(6), 37-41. Available from <https://1-next-westlaw-com>.
- Langley, L.K. (2005). Giving up on youth: The dangers of recent attempts to federalize juvenile crime. *Journal of Juvenile Law.*, 25(1), 14.
- Logan, T. (2007). *Human trafficking in Kentucky*. Lexington: University of Kentucky. Retrieved July 18, 2008, from <http://cdar.uky.edu/VAW/docs/Human%20Trafficking%20in%20Kentucky.pdf>
- Logan, T. K., Walker, R., & Hunt, G. (2009). Understanding human trafficking in the United States. *Trauma, Violence, & Abuse*, 10(1), 3-30. <http://doi.org/10.1177/1524838008327262>
- Lustig, J. (2007, April 9). The 13-year-old prostitute: Working girl or sex slave? *New York Magazine*. Retrieved from nymag.com
- McDonald, W. F. (2004). Traffic counts, symbols, and agendas: A critique of the campaign against trafficking of human beings. *International Review of Victimology*, 11, 143-176.

- McDonald, W. F. (2014). Explaining the under-performance of the anti-human-trafficking campaign: experience from the United States and Europe. *Crime, Law and Social Change*, 61(2), 125-138. <http://doi.org/10.1007/s10611-013-9511-5>
- Meiers, S. M. (2015). Removing insult from injury: Expunging state criminal records of persons trafficked in the commercial sex trade. *University of Toledo Law Review*, 47(1), 211-242.
- Mir, T. (2013). Trick or treat: Why minors engaged in prostitution should be treated as victims, not criminals. *Family Court Review*, 51(1), 163-177. <http://doi.org/10.1111/fcre.12016>
- Mogulescu, K. (2012). The public defender as anti-trafficking advocate, An unlikely role: How current New York City arrest and prosecution policies systematically criminalize victims of sex trafficking. *City University of New York Law Review*, 15, 471.
- Nadelmann, E. A. (1990). Global prohibition regimes: the evolution of norms in international society. *International Organization*, 44(4), 479-526.
- Nichols, A. J., & Heil, E. C. (2015). Challenges to identifying and prosecuting sex trafficking cases in the Midwest United States. *Feminist Criminology*, 10, 7-35. <http://doi.org/10.1177/1557085113519490>
- Peters, A. (2016). Reconsidering federal and state obstacles to human trafficking victim status and entitlements. *Utah Law Review*, 535.
- Polaris Project (2006). *Myths and misconceptions*. Retrieved from <http://www.polarisproject.org/human-trafficking/overview/myths-and-misconceptions>
- Polaris Project. (2017). *Growing awareness, growing impact*. Retrieved from <http://polarisproject.org/sites/default/files/2017NHTHStats%20%281%29.pdf>
- Polaris Project. (2018). Freedom happens now. Retrieved from <https://polarisproject.org/human-trafficking>

- Rand, A. (2009). It can't be happening in my backyard: The commercial sexual exploitation of girls in the United States. *Child & Youth Services*, 3, 138-156.
- Raymond, J. G., & Hughes, D. M. (2001). *Sex trafficking women in the United States*. Retrieved September 1, 2006, from http://action.web.ca/home/catw/attach/sex_traff_us.pdf
- Reid, J. A. (2010). Door wide shut: Barriers to the successful delivery of victim services for domestically trafficked minors in a southern US metropolitan area. *Women & Criminal Justice*, 20, 147-166.
- Sellers, B. G., & Arrigo, B. A. (2009). Adolescent transfer, developmental maturity, and adjudicative competence: An ethical and justice policy inquiry. *Journal of Criminal Law & Criminology*, 99(2), 435-488.
- Sellers, B. G., & Arrigo, B. A. (2018). Virtue jurisprudence and the case of zero tolerance disciplining in U.S. public education policy: An ethical and humanistic critique of captivity's law. *New Criminal Law Review*, 21(4), 514-544 DOI: <https://doi.org/10.1525/nclr.2018.21.4.514>
- Skinner, E. B. (2008). *A crime so monstrous: Face-to-face with modern-day slavery*. New York: Free Press.
- Stransky, M., & Finkelhor, D. (2008). *How many juveniles are involved in prostitution in the U.S.?* Retrieved from http://www.unh.edu/ccrc/prostitution/Juvenile_Prostitution_fact-sheet.pdf
- Struhsaker Schatz, M. C., & Furman, R. (2002). Sexual trafficking of girls and young women: Strategies for developing trauma recovery response team. *Social Development Issues*, 24, 60-67.

- Swoffard, S. (2002, May 5). Education spurs action: The teen prostitution task force says cooperation and knowledge are its major accomplishments during its first six months. *Greensboro News & Rec*, pp. B1.
- Synder, H. N. & Sickmund, M. (2006). *Juvenile Offenders and Victims: National Report*. Washington, D.C. Office of Juvenile Justice & Delinquency Prevention. U.S. Department of Justice.
- Tanagho, J. (2007). New Illinois legislation combats modern-day slavery: A comparative analysis of Illinois anti-trafficking law with its federal and state counterparts. *Loyola University of Chicago Law Journal*, 38(895), 913-14.
- Thompson, J & Artiles, C. (2016). Dismantling the sexual abuse-to-prison pipeline: Texas's approach. *Thurgood Marshall Law Review*, 41(2), 239-270.
- Troshynski, E. I., & Blank, J. K. (2008). Sex trafficking: An exploratory study and interviewing traffickers. *Trends in Organized Crime*, 11, 30-41.
- Tyldum, G., & Brunovskis, A. (2005). Describing the unobserved: Methodological challenges in empirical studies on human trafficking. *International Migration*, 43, 17-34.
- Ugarte, Zarate, & Farley, (2003). Prostitution and trafficking of women and children from Mexico to the United States. *Journal of Child & Adolescent Trauma*, 2, 46-61.
- U.S. Department of Justice. (2006). *Report on activities to combat human trafficking fiscal years 2001-2005*. Retrieved from <http://www.ansarilawfirm.com/docs/DOJ-Report-on-Activities-to-Combat-HumanTrafficking.pdf>
- U.S. Department of Justice. (2011). *Attorney general's annual report of congress of assessment of U.S. government activities to combat trafficking in persons: Fiscal year 2010*.

Retrieved 02/11/2012, from U.S. Department of Justice:

<http://www.justice.gov/ag/annualreports/tr2010/agreporhumantrafficking2010.pdf>.

U.S. Department of Justice. (2017). *Justice department invests more than \$47 million to combat human trafficking and assist victims*. Retrieved from

<https://www.justice.gov/opa/pr/justice-department-invests-more-47-million-combat-human-trafficking-and-assist-victims> [<https://perma.cc/Q2TX-YBMY>].

U.S. Department of State (2012). *Trafficking in persons report*. United States: Department of State. Retrieved 26/06/2012, from http://www.unfigt.org/doc/knowledgehub/resource-centre/Governments/US_TIP_2012_Report_Intro.pdf

Williams, B. A. (2018). Efforts to stop human trafficking. *Harvard Journal of Law & Public Policy*, 41(2), 623-629.

Young, B. (1998). Note trafficking of human across the United States borders: How United States laws can be used to punish traffickers and protect victims. *Georgetown Immigration Law Journal* 13, 73-76.

APPENDICES

Appendix A: Court Cases

The People of the State of New York v. G.M. (2011), 31 Misc.3d 274

People v. Samantha R. (2011), 33 Misc.3d 1235(A)

The People of the State of New York vs L.G.(2013)

In re Aarica S (2014), 223 Cal.App.4th 1480

In re M.D. (2014), 231 Cal.App.4th 993

In re N.C. (2016), 4 Cal.App.5th 1235

Appendix B: Codes, Statutes, and Acts

Pub. L. No. 108-193, 117 Stat. 2875

Pub. L. No. 109-164, 119 Stat. 3558

Trafficking Victims Protection Act 2000

Trafficking Victims Protection Act of 2005,

Trafficking Victims Protection Act of 2003

22 U.S.C. §§7101-05 (2000)

22 U.S.C. §7105(c)(1)(A) (2000).

22 U.S.C. §7101(b)(23)

§7105(c)(1)(B).

§7105(c)(1)(C).

§7105(c)(3).

Appendix C:

Quotations Selected for Level I Textual Analysis

Level I Analysis – Findings - #1 The People of the State of New York v. G. M. (2011)**Question 1:**

“This defendant was convicted of four crimes and two violations, only two of the crimes are covered by [this statute]. It is the People’s position that based on our reliance on the defendant’s truthfulness, the right thing to do is to consent to the defendant’s motion. Again, the People are stressing that we are not looking to expand on the statute, this is not a case to refer to in future 440 motions. This case in no way sets a precedent for how the People will view other cases, nor the People expect this decision to effect the defendant’s cases in any other county. Having said all of that your Honor, the People do consent to defense’s 440.10 motion” (p. 278).

“Moreover, the defendant has provided a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him” (p. 280).

“While the defendant has moved to vacate all six convictions based on the provisions of the new amendment, and even though only two are prostitution offenses technically covered by the scope of **766 CPL 440.10[1][i]), this issue need not be addressed in the instant case because the People have consented to the defendant’s motion in its entirety. ⁷” (p. 280).

Question 2:

“Your Honor, you know the People have spent a great deal of time reviewing all of the facts of this case. While every 440.10 motion is viewed on its own merit, this case was an exceptional case and the merits of the case were based totally on the People’s reliance on the defendant’s truthfulness of what she disclosed in the affidavit on May 13th as well as her interview on November 22nd. [...] The People are exercising discretion in this particular case, the People are not looking to expand the statute” (p. 278).

“This defendant was convicted of four crimes and two violations, only two of the crimes are covered by [this statute]. It is the People’s position that based on our reliance on the defendant’s truthfulness, the right thing to do is to consent to the defendant’s motion. ... Having said all of that your Honor, the People do consent to defense’s 440.10 motion” (p. 278)

“With respect to the case at bar, a federal agency has already recognized the defendant as a victim of human trafficking. While “official documentation of the defendant’s status” from a federal agency is not required for granting a motion to vacate under CPL 440.10(1)(i), it nevertheless “create(s) a presumption that the defendant’s participation in the offense was the result of having been a victim of sex trafficking or trafficking in persons” (440.10[1][i][ii])” (p. 280).

“Moreover, the defendant has provided a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him” (p. 280)

“Based upon the unique circumstances presented here, this court concurs with the People’s position that all of the defendant’s convictions are entitled to the relief requested. Thus, under the provisions of the new amendment, this court “must vacate the judgement and dismiss the accusatory instrument[.]” (CPL 440.10[6].)” (p. 280-281).

Question 3:

“This defendant was convicted of four crimes and two violations, only two of the crimes are covered by [this statute]. It is the People’s position that based on our reliance on the defendant’s truthfulness, the right thing to do is to consent to the defendant’s motion. Again, the People are stressing that we are not looking to expand on the statute, this is not a case to refer to in future 440 motions. This case in no way sets a precedent for how the People will view other cases, nor the People expect this decision to effect the defendant’s cases in any other county. Having said all of that your Honor, the People do consent to defense’s 440.10 motion” (p. 278)

“Moreover, the defendant has provided a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him” (p. 280)

“While the defendant has moved to vacate all six convictions based on the provisions of the new amendment, and even though only two are prostitution offenses technically covered by the scope

of **766 CPL 440.10[1][i]), this issue need not be addressed in the instant case because the People have consented to the defendant's motion in its entirety. ⁷" (p. 280).

"Based upon the unique circumstances presented here, this court concurs with the People's position that all of the defendant's *281 convictions are entitled to the relief requested. Thus, under the provisions of the new amendment, this court "must vacate the judgement and dismiss the accusatory instrument[.]" (CPL 440.10[6].)" (p. 280-281).

Question 4:

"In early 1996, D.S. went to the Dominican Republic and begged the defendant to move back with him to New York, promising to find her a good job and to help her with her immigration status. She decided to do so "in the hope that it would improve my life and the lives of my children" (Affidavit of **G.M.** at 2). Upon her return to New York, the defendant discovered that her husband was addicted to crack cocaine. The abuse resumed, and was often more severe when he was under the influence of drugs" (p. 275)

"The continued violence at times resulted in visits to the hospital and left the defendant scarred and disfigured. D.S. also raped her when he was high on crack cocaine and imprisoned *276 her against her will, sometimes for an entire weekend. He succeeded in completely isolating her from others and exerted control over almost every aspect of her life, taking all the income she earned working at various jobs. He exercised complete control over her, physically and psychologically, such that her "every move was tracked by [D.S]" and she was not "allowed" to leave the room or apartment without him (id. at 3). He would often drop her off and pick her up

from her jobs, waiting in a car parked outside to make sure she did not go somewhere else.” (p. 275-276).

“According to the defendant’s affidavit, D.S forced her to engage in these illegal activities, including prostitution, upon threat of physical harm or actual violence if she did not comply. . . .If she refused to comply with any of his demands, he would threaten to kill her or harm her children in the Dominican Republic.” (*id.* at 9) “ (p. 276).

“In 2003, the defendant tried unsuccessfully to leave her abusive husband. That year, she escaped from him and returned to the Dominican Republic to be with her children, whom she had not seen in over eight years. He ultimately tracked her down and forced her to return by issuing threats to harm a close family friend. When she returned to New York City, she found that “nothing had changed. I just went back to the nightmare I was living. The beatings were even worse because [D.S] was angry that I went to the Dominican Republic” (*id.*). The defendant’s ordeal ended in January 2005, when D.S. left *277 one day and never returned. To date, the defendant does not know where he is and he has not attempted to contact her. The defendant eventually sought assistance from outside organizations to help her put her life back together, and in 2009, she received a “T Visa” (T- 1 Nonimmigrant Classification Status), after proving to the federal government that she was a victim of human trafficking. ³” (p 276-277).

Question 5:

“The defendant eventually sought assistance from outside organizations to help her put her life back together, and in 2009, she received a “T Visa” (T- 1 Nonimmigrant Classification Status), after proving to the federal government that she was a victim of human trafficking. ³” (p 277).

“With the assistance of the Sex Workers Project of the Urban Justice Center, she was approved to work again after successfully contesting DOH’s decision” (p. 277).

Question 6:

“Specifically, this new legislation allows for vacatur of convictions where the underlying charged was for prostitution (Penal Law [“PL”] § 230.00) or loitering for the purpose of engaging in a prostitution offense (PL § 240.37) and the defendant’s arrest on that charge “was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78)[.]” (CPL 440.10[1][i].) “ (p. 279).

“The passage of this new law was based upon a recognition that “[v]ictims of sex trafficking who are forced in to prostitution are frequently arrested for prostitution-related offenses and are saddled with the criminal record. They are blocked from **765 decent jobs and other prospects for rebuilding their lives. Even after they escape from sex trafficking, the criminal record victimizes them for life” (Sponsor’s Mem., 2010 N.Y. Assembly Bill A7670). Thus this legislation “would give victims of human trafficking a desperately needed second chance they [deserve]” (*id.*)” (p. 279).

Level I Analysis – Findings - #2 The People of the State of New York v. Samatha R. (2011)

Question 1:

“At the defendant’s arraignment, I addressed *sua sponte* whether I should dismiss this prosecution both as an exercise of my interests-of-justice power and in light of the recently enacted Safe Harbour for Exploited Children Act (the “Safe Harbour Act”) (as added by L 2008,

ch 569 [eff Apr. 1, 2010]), which I read to express the intent of the Legislature that 16- and 17-year-olds who are charged with prostitution offenses should be referred to Family Court rather than prosecuted criminally” (p. 1).

“The People requested an opportunity to address my proposed dismissal in writing, even though I noted that the legislative sponsors of the Safe Harbour Act believed that the mere pendency of criminal charges against these children was itself harmful” (p. 1).

“Now, on a record that includes a submission by the People, I conclude that this prosecution should be dismissed in the interests of justice” (p. 2).

“The factors set forth in CPL 170.40 clearly demonstrate to me that the prosecution of this defendant would constitute injustice” (p. 5).

“Third, I will assume that evidence of guilt is strong. Further, I am aware of no misconduct in the investigation, arrest and prosecution of the defendant. To the contrary, the District Attorney is prosecuting this case with a focus on rehabilitative, rather than punitive, concerns. But even so, the absence of these factors does not dissuade me from my conclusion that dismissal is appropriate” (p. 6).

Question 2:

“Arresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult” (p. 1).

“My review of the factors relevant to such a dismissal is informed by recent legislative enactments that reveal an understanding that the victim of a prostitution offense may be the prostitute herself. In fact, if the prostitute or, as here, alleged would-be prostitute, is 16- or 17-years-old, the Legislature defines her as a “sexually exploited child” who may obtain child welfare services for sexually exploited children (see Social Services Law 447-a[1][b]; [d]; 447-b)” (p. 2).

“More recently, the Criminal Procedure Law was amended to provide that a victim of sex trafficking may seek vacatur of judgements of conviction for loitering (the charge here) and prostitution (*see* CPL 440.10[i] [eff Aug.13, 2010])” (p 3).

“For example, a report prepared for the New York State Office of Children and Family Services determined that, in this state, the overwhelming majority of children who were identified as having been subjected to commercial sexual exploitation, including prostitution, had prior child-welfare involvement through child abuse and neglect investigations and/or foster care placement” (p. 3).

“First, the seriousness and circumstances of the offense alleged here are as minimally serious as can be. The charged offense, Penal Law 240.37, is a violation, which is not even a “crime” under the Penal Law’s classification scheme (*see* Penal Law 10.00[3]; [4]). The circumstances of the

offense are likewise minimally serious: the defendant is alleged to have engaged in the proscribed conduct-loitering in the middle of the street-for a total of twenty minutes and to have stopped two passers-by to engage them in “conversation” “ (p. 5).

“Third, I will assume that evidence of guilt is strong. Further, I am aware of no misconduct in the investigation, arrest and prosecution of the defendant. To the contrary, the District Attorney is prosecuting this case with a focus on rehabilitative, rather than punitive, concerns. But even so, the absence of these factors does not dissuade me from my conclusion that dismissal is appropriate” (p. 6).

“Fifth, I find that there would be little purpose in imposing a sentence on defendant and that the effect of any such sentence would do more harm than good” (p. 6).

Question 3:

“Arresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult” (p. 1).

“The Chief Judge’s questions are particularly relevant in the context of this case. The Safe Harbour Act specifically addresses the conduct charged here and provides for its non-punitive, non-criminal adjudication in Family Court. The other recently enacted state and federal laws previously mentioned would strongly suggest that criminal prosecution of a 16- or 17-year-old

for a prostitution offense is inappropriate, and that the right response of law enforcement would be to bring the child before Family Court” (p. 4).

“Clearly the District Attorney, by offering the STAR program is not seeking to punish but to help her. Nonetheless, no matter how truly laudable are the District Attorney’s efforts to provide a treatment option to defendant and others like her, I cannot ignore the fact that the court retains the power to sentence the defendant to up to fifteen days in jail if she would ultimately fail to finish the STAR program and is then convicted of the charged offense, and that as a consequence of any such conviction she would have potentially life-long criminal record, albeit for a violation” (p. 5).

“Third, I will assume that evidence of guilt is strong. Further, I am aware of no misconduct in the investigation, arrest and prosecution of the defendant. To the contrary, the District Attorney is prosecuting this case with a focus on rehabilitative, rather than punitive, concerns. But even so, the absence of these factors does not dissuade me from my conclusion that dismissal is appropriate” (p. 6).

“Fifth, I find that there would be little purpose in imposing a sentence on defendant and that the effect of any such sentence would do more harm than good” (p. 6).

“The sentencing options in Criminal Court are limited. The likely sentence in a case such as this would not involve jail. Even if the sentence were a conditional discharge with required attendance at a counseling program, I see no purpose in imposing such a sentence when the

options available in Family Court, as suggested by the Chief Judge, are likely superior because of the statutory mandate of considering the child's "best interests" (p. 6).

"On the other hand, the effect of a conviction in this case would be seriously and inappropriately detrimental to the defendant. If convicted and sentenced, she would have a record, albeit for a non-criminal offense." (p. 6)

"In sum, defendant here may have a life-long record of conviction of a stigmatizing offense (unless it were subsequently vacated pursuant to CPL 440.10[i] or some other provision of law),⁵ when other adolescents whose cases were resolved in more unfavorable circumstances (*i.e.*, conviction of a misdemeanor or felony) or adults similarly situated (*i.e.*, convicted of a violation other than Penal Law 240.37) would not suffer the same detriment" (p. 6).

Question 4:

"Arresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult" (p. 1).

"Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are victims of crime and should be treated as such" (p. 1).

“Sexually exploited youth deserve the protection and services of the family court through processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long term housing services” (p. 1).

“Many of these children have been the victims of sexual and other physical abuse; many suffer from learning disabilities and limitations; many engage in what has been called “survival sex.” They are at risk for HIV infection, post-traumatic stress disorder and other forms of mental illness and violence (*id.* at 3-5, 8, 25)” (p. 3).

“Do we really want these teenagers processed in an adult criminal justice system focused on punishment and incarceration?... where rehabilitative options are limited... where they may be jailed... where they may be victimized... and where they may be burdened with a criminal record that bars them from future employment and educational opportunities” (p. 4)?

Question 5:

“Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are victims of crime and should be treated as such” (p. 1).

“The Legislature passed the Safe Harbour Act, among other things to make the Family Court’s services available to sexually exploited children up to the age of 18. It amended the definition of a “person in need of supervision” (“PINS”), with regard to whom a Family Court proceeding may be originated, to include a child under 18 charged with prostitution (*see* Family Ct Act

712[a]) or loitering for the purpose of prostitution (*see* Family Ct Act 712[a]; Social Services Law 447-a [1][d])¹” (p. 2).

“As a Family Court judge has observed, the Safe Harbour Act “expresses a preference that children who have been sexually exploited be spared criminal prosecution...in favor of receiving rehabilitative services.” (*Matter of Bobby P.*, 28 Misc. 3d 959, 969, 907 N. Y. S. 2d 540 [Fam Ct Queens County 2010]; *see also* Sobie, Practice Commentaries, McKinney’s Cons Laws of NY, Family Ct Act 732” (p. 2).

“Before enumerating these factors, I wish to observe that the District Attorney offered the defendant the Saving Teens at Risk (“STAR”) program, which is part of his office’s own initiative to address prostitution by offenders under the age of 22 with counseling rather than incarceration. The program is free. If a defendant completes it, she will receive an Adjournment in Contemplation of Dismissal. No plea is required in order for her to participate in this program” (p. 5).

Question 6:

“Therefore, *sexually exploited youth should not be prosecuted under the Penal Law for acts of prostitution*. Instead services should be created to meet the needs of these youth outside of the justice system” (p. 1).

“As a Family Court judge has observed, the Safe Harbour Act “expresses a preference that children who have been sexually exploited be spared criminal prosecution...in favor of receiving

rehabilitative services.” (*Matter of Bobby P.*, 28 Misc. 3d 959, 969, 907 N. Y. S. 2d 540 [Fam Ct Queens County 2010]; *see also* Sobie, Practice Commentaries, McKinney’s Cons Laws of NY, Family Ct Act 732” (p. 2).

“The intent is to immunize most children who have committed sexual offenses from criminal prosecution..., substituting PINS adjudication and services.”])” (p. 2).

“Nor can I ignore that her continued prosecution in a criminal court may traumatize her to a greater extent than the prosecution of an adult defendant would affect an adult. These concerns counsel against continuing a prosecution, no matter how sensitively handled by the District Attorney, of an individual whom the law alternatively regards a child and an adult or quasi-adult (*see n. 3 supra*), and whom the law also calls an “exploited child” and possibly a “victim,” particularly where another appropriate forum may address the circumstances of her alleged offense ⁴” (p. 5).

“I further surmise that the District Attorney may find that maintaining a prosecution against the alleged teen prostitute might give law enforcement a tool with which to fight trafficking. Yet I doubt whether any public interest in this regard cannot equally be achieved if this case were handled in Family rather than Criminal Court” (p. 6).

Question 7:

“Sexually exploited youth deserve the protection and services of the family court through processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long term housing services” (p. 1).

“Second, the extent of harm caused by the offense is likewise minimal. Although I recognize, as Judge Richard Weinberg of Midtown Community Court reasoned when he denied a motion similar to the present (*see People v. Lewis*, 2010NY03560, NYLJ, decided July 12, 2011, at *1 [Crim Ct, N.Y. County, Weinberg, J.]), that prostitution may negatively impact all participants as well as the neighborhoods where it occurs, the harm of the violation here is minimal. More importantly, I am persuaded that the harm to defendant’s own physical and mental welfare from the alleged conduct is greater than any societal harm that I can see in this particular case” (p. 5).

“Sixth, I do not believe that dismissal will impact the safety or welfare of the community. Although prostitution may have negative collateral effects on the community, attributing such effects to the alleged conduct of this particular defendant would surely be an exaggeration” (p. 6).

“I further surmise that the District Attorney may find that maintaining a prosecution against the alleged teen prostitute might give law enforcement a tool with which to fight trafficking. Yet I doubt whether any public interest in this regard cannot equally be achieved if this case were handled in Family rather than Criminal Court” (p. 6).

“Seventh, I believe that the public’s confidence in the criminal just system will be enhanced by a dismissal here. The criminal justice system is not always the best venue for addressing societal problems. Here, the alleged offense-which is not a crime-involves someone who, according to the Penal Law, is barely an adult, if even that (*seen. 3 supra*), and who, according to the Social Services Law, is a “sexually exploited child”” (p. 6).

“I believe that as a result of a dismissal there, the public will be confident that our laws are not inflexible or unduly harsh and that they do not operate in isolation of a growing awareness that, in the appropriate case, the lessened culpability of a 16-year-old vis-à-vis an adult , as well as the recognition that she is exploited if not also victimized, may require that the allegations against her be addressed outside criminal court” (p. 6).

Question 8:

“In 2000, Congress also provided avenues of immigration relief for children under 18 who are victims of a severe form of trafficking, i.e., prostitution, through “T” and “U” visas (*see Slocum, Immigration Remedies for Victims of Human Trafficking, Lawyers Manual, at 209, 215*)” (p. 2).

Level 1 Analysis Findings #3 - The PEOPLE of the State of New York v. L.G (2013)

Question 1:

“The People do not contest the factual allegations presented by defendant. Rather, they argue that her second conviction for criminal possession of a weapon should not be vacated because it is

not a prostitution related charge, and as a matter of public policy, CPL 440 should not grant greater protection to human trafficking victims in weapons cases” (p. 429).

“They also assert that defendant failed to seek relief under CPL 440 with due diligence ***430** because she filed her motion three years after she ceased to fear her trafficker in 2008, and a year after CPL 440 was amended to 2010 to allow relief for human trafficking victims (*see* CPL 440.10[1][i])” (p. 430).

“This court finds that LG was clearly a victim of sex trafficking under both federal and New York state standards. LG has demonstrated that she was clearly a victim of sex trafficking under the relevant state sex trafficking statute because of her trafficker’s use of force and fear to compel her participation in prostitution (PL §230.35[5])” (p. 436).

“Defendant also meets ***437** the requirements under the federal TVPA as a victim of a “severe” form of trafficking because she was induced into commercial sex while under 18 years of age ¹¹ (22 USC § 7102[8][A]; *People v. G.M.*, 32 Misc.3d 274, 280, 922 N.Y.S.2d 761 [Crim. Ct., Queens County 2011]; *see also People v. Doe*, 34 Misc.3d 237, 935 N.Y.S.2d 481 [Sup. Ct., Bronx County 2011])” (p. 437).

“More to the point, LG’s participation in the offenses which led to her convictions was the direct result of her actions as a trafficking victim forced into street prostitution by her pimp/trafficker” (p. 437).

“The People do not contest either defendant’s status or the circumstances surrounding both of her arrests; only that her second conviction should not be subject to vacatur under this statute” (p. 437).

“Thus, the only disputed issue in this case is whether defendant’s conviction for a non-prostitution offense which was the direct result of her having been forced into sex trafficking may be vacated under CPL 440.10(1)(i)” (p. 437).

“For the reasons explained below, this court holds that LG’s conviction for possession of a weapon in the fourth degree falls within the ambit of the vacatur statute because her participation in that offense was undeniably connected to the coerced trafficking activity which led to ****425** her arrest on prostitution related charges and should therefore be vacated” (p. 437).

“The New York legislature passed the new vacatur law, codified at CPL 440.10(1)(i), based upon a recognition of the continuing harm done to trafficking victims who are burdened with criminal convictions as a result of their victimization in ***438** the commercial sex trade” (p. 438).

“This new legislation was thus intended to “give victims of human trafficking a desperately needed second chance they deserve” (Sponsor’s Mem. In Support, Bill Jacket, L. 2010, ch. 332, §§ 1-5 at 13 [N.Y. Assembly Bill A7670]; see *People v. G.M.*, Misc.3d at 279, 922 N.Y.S.2d 761; *People v. Doe*, 34 Misc.3d at 237, 935 N.Y.S.2d 481 [new legislation designed to assist minor trafficking victims])” (p. 438).

“Central to the issue raised by the instant motion is determining what is meant by the term “arresting charge” in CPL 440.10(1)(i), and whether eligibility for relief is confined only to prostitution and loitering offenses” (p. 438).

“There is no dispute that she was clearly a minor victim at the time of her arrest, under coercive control of her trafficker, and that she possessed a pocket knife to protect herself on the streets where she was *440 forced to work under dangerous conditions because she had been raped and kidnapped in the past” (p. 440).

“Her conviction for criminal weapons-possession was clearly the result of her having been trafficked and therefore the arrest charge could be considered a prostitution-related offense” (p. 440).

“*442 Accordingly, in order for the court to exercise its discretion to consider vacatur of each of defendant’s judgments of conviction, the court must examine the unique factual circumstances pertaining to each conviction” (p. 442).

Question 2:

“The People do not contest the factual allegations presented by defendant. Rather, they argue that her second conviction for criminal possession of a weapon should not be vacated because it is not a prostitution related charge, and as a matter of public policy, CPL 440 should not grant greater protection to human trafficking victims in weapons cases” (p. 429).

“They also assert that defendant failed to seek relief under CPL 440 with due diligence ***430** because she filed her motion three years after she ceased to fear her trafficker in 2008, and a year after CPL 440 was amended to 2010 to allow relief for human trafficking victims (*see* CPL 440.10[1][i])” (p. 430).

“As noted earlier, the facts are undisputed in this case. At issue here is whether Criminal Procedure Law 440.10(1)(i) empowers the court to dismiss non-prostitution convictions which directly resulted from defendant’s victimization as a trafficked person or whether the statute’s scope must be narrowly applied to vacate only convictions for prostitution related offenses” (p. 435).

“In 2010, New York became the first state in the country to pass a law which allows defendants to vacate their prior convictions which resulted from their experiences as victims of human trafficking (CPL 440.10[1][i]).⁹” (p. 435).

“Thus, in order to obtain the requested relief, the movant must ***436** establish that (1) she was a trafficking victim at the time of her arrest, and (2) her conduct or “participation in the offense” leading to her arrest resulted from her being trafficked” (p. 436).

“On the federal level, the Trafficking Victims Protection Act specifically mentioned in CPL 440.10(1)(i) defines “severe forms of trafficking in persons” to include sex trafficking either in which the victim is induced to engage in a commercial sex act through force, fraud or coercion,

or where the victim induced to engage in the commercial sex act has not attained the age of 18 (22 USC § 7102[8][A])” (p. 436).

“Severe forms of trafficking in persons also include “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” (*id.* at § 7102[8][B])” (p. 436).

“This court finds that LG was clearly a victim of sex trafficking under both federal and New York state standards. LG has demonstrated that she was clearly a victim of sex trafficking under the relevant state sex trafficking statute because of her trafficker’s use of force and fear to compel her participation in prostitution (PL §230.35[5])” (p. 436).

“Defendant also meets *437 the requirements under the federal TVPA as a victim of a “severe” form of trafficking because she was induced into commercial sex while under 18 years of age ¹¹ (22 USC § 7102[8][A]; *People v. G.M.*, 32 Misc.3d 274, 280, 922 N.Y.S.2d 761 [Crim. Ct., Queens County 2011]; *see also People v. Doe*, 34 Misc.3d 237, 935 N.Y.S.2d 481 [Sup. Ct., Bronx County 2011])” (p. 437).

“More to the point, LG’s participation in the offenses which led to her convictions was the direct result of her actions as a trafficking victim forced into street prostitution by her pimp/trafficker” (p. 437).

“The People do not contest either defendant’s status or the circumstances surrounding both of her arrests; only that her second conviction should not be subject to vacatur under this statute” (p. 437).

“Thus, the only disputed issue in this case is whether defendant’s conviction for a non-prostitution offense which was the direct result of her having been forced into sex trafficking may be vacated under CPL 440.10(1)(i)” (p. 437).

“For the reasons explained below, this court holds that LG’s conviction for possession of a weapon in the fourth degree falls within the ambit of the vacatur statute because her participation in that offense was undeniably connected to the coerced trafficking activity which led to ****425** her arrest on prostitution related charges and should therefore be vacated” (p. 437).

“Victims of trafficking into commercial sex are frequently arrested for prostitution-related offenses and are then saddled with the criminal record for life, long after they may be freed from exploitation. This record may prevent them from obtaining gainful employment and impair their ability to access or stay in public or private housing, advance their education, or participate in other important aspects of life” (p. 438).

“Indeed, human trafficking victims are frequently arrested and charged for a variety of offenses based on actions which the victims were unwillingly coerced into committing by their traffickers.” (p. 438-439).

“Similarly, the governor’s approval memorandum recognized that a defendant could be arrested for prostitution but convicted of another offense, and seek vacatur of that conviction under the statute (Governor’s Approval Mem., Bill Jacket, L. 2010, ch. 332 at 5-6 [N.Y. Assembly Bill A7670]). Thus, the legislative history of CPL 440.10(1)(i) shows that the legislature anticipated that a victim of human trafficking arrested on prostitution-related charges may ultimately plead guilty to an alternate count” (p. 439).

“It necessarily follows that where, as here, one of the arresting charges was loitering for the purpose of engaging in prostitution, and the defendant pleaded guilty to a related non-prostitution crime, then that conviction must be regarded as having *resulted* from defendant’s having been a victim of sex trafficking. Consequently, that charge may be vacated under CPL 440.10(1)(i)” (p. 439).

“There is no dispute that she was clearly a minor victim at the time of her arrest, under coercive control of her trafficker, and that she possessed a pocket knife to protect herself on the streets where she was *440 forced to work under dangerous conditions because she had been raped and kidnapped in the past” (p. 440).

“Her conviction for criminal weapons-possession was clearly the result of her having been trafficked and therefore the arrest charge could be considered a prostitution-related offense” (p. 440).

“*442 Accordingly, in order for the court to exercise its discretion to consider vacatur of each of defendant’s judgments of conviction, the court must examine the unique factual circumstances pertaining to each conviction” (p. 442).

Question 3:

“The People do not contest the factual allegations presented by defendant. Rather, they argue that her second conviction for criminal possession of a weapon should not be vacated because it is not a prostitution related charge, and as a matter of public policy, CPL 440 should not grant greater protection to human trafficking victims in weapons cases” (p. 429).

“They also assert that defendant failed to seek relief under CPL 440 with due diligence *430 because she filed her motion three years after she ceased to fear her trafficker in 2008, and a year after CPL 440 was amended to 2010 to allow relief for human trafficking victims (*see* CPL 440.10[1][i])” (p. 430).

“The People do not contest defendant’s factual averments. Accordingly, the court accepts as true the following facts set out in defendant’s moving papers:” (p. 430).

“Thus, in order to obtain the requested relief, the movant must *436 establish that (1) she was a trafficking victim at the time of her arrest, and (2) her conduct or “participation in the offense” leading to her arrest resulted from her being trafficked” (p. 436).

“This court finds that LG was clearly a victim of sex trafficking under both federal and New York state standards. LG has demonstrated that she was clearly a victim of sex trafficking under the relevant state sex trafficking statute because of her trafficker’s use of force and fear to compel her participation in prostitution (PL §230.35[5])” (p. 436).

“The People do not contest either defendant’s status or the circumstances surrounding both of her arrests; only that her second conviction should not be subject to vacatur under this statute” (p. 437).

“Thus, the only disputed issue in this case is whether defendant’s conviction for a non-prostitution offense which was the direct result of her having been forced into sex trafficking may be vacated under CPL 440.10(1)(i)” (p. 437).

“For the reasons explained below, this court holds that LG’s conviction for possession of a weapon in the fourth degree falls within the ambit of the vacatur statute because her participation in that offense was undeniably connected to the coerced trafficking activity which led to ****425** her arrest on prostitution related charges and should therefore be vacated” (p. 437).

“Additionally, the court rejects the People’s argument that defendant failed to file this motion with due diligence after she ceased to be a victim of sex trafficking, as required under CPL 440.10(1)(i). According to defendant’s uncontested factual averments, she escaped her trafficker in 2204, but feared until 2008 that he would track her down and harm her” (p. 441).

“Additionally, the court notes that based upon LG’s uncontroverted factual averments, she was only 14 years at the time of her conviction for disorderly conduct. Because disorderly conduct is an offense for which criminal responsibility is not imposed on a minor under 16 (PL § 30.00 [2]), the conviction on that charge is a nullity and should be dismissed (PL § 30.00[1]; *People v. Lebron*, 197 A.D.2d 416, 602 N.Y.S.2d 602 [2d Dept.], app. Denied, 82 N.Y.2d 898, 610 N.Y.S.2d 165, 632 N.E.2d 475 [1993]; *People v. McFadden*, 194 A.D.2d 566, 598 N.Y.S.2d 567 [2d Dept.], *lv denied*, 82 N.Y.2d 722, 602 N.Y.S.2d 820, 622 N.E.2d 321 [1993])” (p. 442).

“Accordingly, the judgment convicting defendant of disorderly conduct was ordered vacated, and the accusatory instrument dismissed by this court” (p. 442).

“On November 7, 2003 defendant was arraigned under Docket number 2003QN050066 and charged with loitering for the purpose of engaging in a prostitution offense (PL § 240.37[3]), criminal possession of a weapon in the fourth degree (PL § 265.01[1]) and disorderly conduct (PL § 240/20[5]). Defendant pleaded guilty to criminal possession of a weapon in the fourth degree and received a sentence of three years’ probation. It is apparent both from the defendant’s factual averments, and the factual allegations contained in the complaint filed in the case, that the knife at issue which gave rise to the weapons possession charge, was recovered incident to defendant’s prostitution-related activity, and that she was a victim of trafficking at the time of her arrest. Accordingly, the judgment convicting defendant of criminal possession of a ***443** weapon in the fourth degree was ordered vacated and the accusatory instrument dismissed by this court” (p. 442-443).

“Based upon the foregoing, this court vacated the judgments of conviction entered under Docket number 2000QN056893 and Docket number 2003QN050066 pursuant to CPL 440.10(1)(i) and dismissed the accusatory instruments in each of these cases by Order dated January 2, 2013. The court further ordered that the records of the defendant’s convictions be sealed under CPL 160.50(1), (3)(f)” (p. 443).

Question 4:

“Defendant asserts that her prior convictions are directly related to her arrests for prostitution offenses, and that because she is a victim of human trafficking, those convictions must be vacated and the cases dismissed. Defendant also argues that she was denied effective assistance of counsel when she pleaded guilty in each case” (p. 429).

“When LG was about thirteen years old, she started working for “C.” She was required to give him the money she made in exchange for her own room. She did not **421 enjoy her life being prostituted: “[i]t wasn’t like I wanted to be out there, but being in foster care, going from home to home, I felt like nobody cared about me. It made me feel so miserable.”” (p. 431).

“”Johns”⁷ had raped, assaulted and threatened LG with weapons many times while she was forced to work at a prostitute. Defendant explained that “[a]t the time of my second arrest, I had heard that there was a guy out there who pretended to be a client, but would then rape girls and beat them up. It felt like every time I turned around, some girl was missing. Another girl I knew was raped and beaten up by a trick. She ended up in the hospital. I had already been raped by clients and was terrified of it happening again. Every time I went out I was scared of being raped or killed” (p. 433).

“In 2004, LG was 18 years old when she was finally able to leave “the life.” Her pimp “E,” had been arrested, which gave her the chance to escape. She returned to a foster care placement agency, and for the first time in her life, disclosed what had happened to her as a child. They place her with a family on Staten Island to keep her away from Brooklyn, where she did not feel safe because she had been informed that her pimp was looking for her. She went back to school and stayed with her foster family in Staten Island for a year before she was able to get a subsidized apartment right before her 21st birthday” (p. 433).

“She received a home health aide degree in February 2007 and was working in that capacity during most of 2007, until the New York City Department of Health ran a background check and informed her that she could no longer work because of her past conviction. She received a GED in 2010 and subsequently qualified for a certificate as a medical assistant. More recently, LG was questioned about her ability to be a fit guardian when she petitioned for custody of her nephew – because of her convictions” (p. 434).

“Defendant is currently a student at Medgar Evers College, and expects to graduate in 2014 with a bachelors degree in public administration and social work. She avers that she wants “to vacate my convictions so that I can move forward with my life and career without being held back by my past”” (p. 434).

“LG argues that while her second conviction for weapons possession is admittedly not a prostitution offense, it should nevertheless be dismissed because it resulted from her forced involvement in trafficking activity by her pimp when he required her to engage in street

prostitution. To support the connection between the weapons conviction and defendant's coerced prostitution activities, defense counsel notes that LG possessed a pocketknife to protect herself against unpredictable and potentially violent situations involving "johns," and was told to do so by her trafficker" (p. 437).

Question 5:

"While living with her grandmother, LG was sexually abused by an uncle, but she never received any medical attention even though ACS was involved and informed about the abuse" (p. 430).

"Following her grandmother's death, LG was placed into foster care and over the next few years, she was bounced around different foster homes until she was 12 years-old, when something happened that changed her life" (p. 430).

"When LG was about thirteen years old, she started working for "C." She was required to give him the money she made in exchange for her own room. She did not **421 enjoy her life being prostituted: "[i]t wasn't like I wanted to be out there, but being in foster care, going from home to home, I felt like nobody cared about me. It made me feel so miserable.'" (p. 431).

"*432 After about six months, LG met another pimp called "D" who took her to Atlantic City, New Jersey. In 2000, "D" sent her by bus to Washington D.C., and then to Miami, Florida. In Florida, defendant, who was 14 years old at the time, attempted to leave "the life" ⁶ by calling her brother's father who lived in Ft. Lauderdale. He came to get her, and she lived with him and her brother for about two weeks. A friend bought her a ticket back to New York, where she

resumed foster care placement. However, the family she was placed with did not support her” (p. 432).

“In 2004, LG was 18 years old when she was finally able to leave “the life.” Her pimp “E,” had been arrested, which gave her the chance to escape. She returned to a foster care placement agency, and for the first time in her life, disclosed what had happened to her as a child. They place her with a family on Staten Island to keep her away from Brooklyn, where she did not feel safe because she had been informed that her pimp was looking for her. She went back to school and stayed with her foster family in Staten Island for a year before she was able to get a subsidized apartment right before her 21st birthday” (p. 433).

“*434 LG had been previously mandated by the family court to participate in GEMS program ⁸ back in 2001 when she was 14 years old. As a result, she received support and counseling from them. After leaving prostitution in 2004 she reconnected with GEMS and became an active member, participating in their educational initiative program and in various therapy groups before starting school again” (p. 434).

Question 6:

“The People do not contest the factual allegations presented by defendant. Rather, they argue that her second conviction for criminal possession of a weapon should not be vacated because it is not a prostitution related charge, and as a matter of public policy, CPL 440 should not grant greater protection to human trafficking victims in weapons cases” (p. 429).

“Thus, the only disputed issue in this case is whether defendant’s conviction for a non-prostitution offense which was the direct result of her having been forced into sex trafficking may be vacated under CPL 440.10(1)(i)” (p. 437).

“The New York legislature passed the new vacatur law, codified at CPL 440.10(1)(i), based upon a recognition of the continuing harm done to trafficking victims who are burdened with criminal convictions as a result of their victimization in ***438** the commercial sex trade” (p. 438).

“Victims of trafficking into commercial sex are frequently arrested for prostitution-related offenses and are then saddled with the criminal record for life, long after they may be freed from exploitation. This record may prevent them from obtaining gainful employment and impair their ability to access or stay in public or private housing, advance their education, or participate in other important aspects of life” (p. 438).

“Trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion (*Id*)” (p. 438).

“Rather, this new law is premised upon the profound understanding that “trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion [of a trafficker]” (Sponsor’s Letter in Support, July 20, 2010 at 10, Bill Jacket, L. 2010, ch. 332, §§ 1-5), in which they are “presumably not criminally liable for the offense” (Peter Preiser, Supp Practice Commentary, McKinney’s Cons. Laws of N.Y., Book 11A, CPL 440.10, 2013 Pocket Part at 99” (p. 439).

Level 1 Analysis Findings # 4 – The People, Plaintiff and Respondent v. Aarica S. (2014)

Question 1:

“We hold that Evidence Code section 1161, subdivision (a), applies only when there is specific casual connection between the person’s status as a victim of human trafficking and the commission of the commercial sex act at issue. Because, supported by substantial evidence, the juvenile court found that the appellant was not a victim of human trafficking in relation to the solicitation of prostitution at issue here, we conclude that the Evidence Code section 1161 does not apply, and affirm the juvenile court’s order” (p. 1482).

“She wasn’t working for anybody or paying anybody any money. I don’t think based upon that she was a victim of sexual trafficking. And when the incident occurred on the 31st of January, that she was acting independently on her own with no solicitation or encouragement by anyone else to get her to do it. I don’t think it has any connection. You would have a much stronger case at the time she was doing it [if] she was still under the power and under the control of one of these pimps, but she was not. And it appeared that it was several months before that she wasn’t” (p. 1485).

“Here the juvenile court found that when appellant solicited prostitution, she was acting as “an independent contractor” because she was not working for a pimp or giving a pimp the money she earned at the time. This finding is supported by the evidence and dispenses with application of Evidence Code section 1161” (p. 1488).

“The evidence thus supports the conclusion that the appellant did not solicit prostitution in this instance “as a result of being a victim of human trafficking.” (Evid.Code, § 1161, subd. (a), italics added.) The juvenile court accordingly did not err in denying the appellant’s motion to exclude evidence pursuant to the statute” (p. 1488).

Question 2:

“She wasn’t working for anybody or paying anybody any money. I don’t think based upon that she was a victim of sexual trafficking. And when the incident occurred on the 31st of January, that she was acting independently on her own with no solicitation or encouragement by anyone else to ****140** get her to do it. I don’t think it has any connection. You would have a much stronger case at the time she was doing it [if] she was still under the power and under the control of one of these pimps, but she was not. And it appeared that it was several months before that she wasn’t” (p. 1485).

“Evidence Code 1161, subdivision (a), applies only to “[e]vidence that a victim of human trafficking, as defined in [Penal Code section 236.1], has engaged in any commercial sexual act *as a result of* being a victim of human trafficking.” (Evid.Code, § 1161, subd. (a), italics added.) The italicized language – “as a result of” – clearly requires a specific causal connection between the victim’s status as a victim and the commercial sex act at issue” (p. 1487).

“Unless the evidence relates to a commercial sex act that the victim committed “as a result of being a victim of human trafficking,” Evidence Code section 1161 does not apply” (p. 1487).

“Thus, when Evidence Code section 1161 refers to commercial sex acts committed “as a result of being a victim of human trafficking,” it contemplates the act or acts that makes the victim a victim of human trafficking in the first place – act or acts the victim has been “cause[d], induce[d], or persuade[d] ... to engage in” (Pen.Code, § 236.1, subd. (c))” (p. 1487).

“Here the juvenile court found that when appellant solicited prostitution, she was acting as “an independent contractor” because she was not working for a pimp or giving a pimp the money she earned at the time. This finding is supported by the evidence and dispenses with application of Evidence Code section 1161” (p. 1488).

“Appellant testified that she was not working for a pimp at the time of the incident.” (p. 1488).

“The evidence thus supports the conclusion that the appellant did not solicit prostitution in this instance “as a result of being a victim of human trafficking.” (Evid.Code, § 1161, subd. (a), italics added.) The juvenile court accordingly did not err in denying the appellant’s motion to exclude evidence pursuant to the statute” (p. 1488).

Question 3:

“We hold that Evidence Code section 1161, subdivision (a), applies only when there is specific casual connection between the person’s status as a victim of human trafficking and the commission of the commercial sex act at issue. Because, supported by substantial evidence, the juvenile court found that the appellant was not a victim of human trafficking in relation to the

solicitation of prostitution at issue here, we conclude that the Evidence Code section 1161 does not apply, and affirm the juvenile court's order" (p. 1482).

"The court denied the appellant's motion to exclude evidence relating to her having solicited a commercial sex act with Officer Morales. The court reasoned that, when appellant approached Officer Morales, "she was acting as an independent contractor, nobody threatening her or threatening to kill her if she doesn't make money" (p. 1485).

"The juvenile court found true the allegations of the petition filed on February 1, 2013, sustained the petition, and declared appellant to be a ward of the court pursuant to Welfare and Institutions Code section 602. The court removed appellant from the care and custody of her parents, placed her in the care, custody and control of the probation officer, and ordered her suitably placed. The court ordered the maximum term of confinement to be 10 months and ordered her to be moved to Central Juvenile Hall for placement screening. Appellant filed a timely notice of appeal" (p. 1485).

Question 4:

"Appellant contends that because she was a victim of human trafficking, the juvenile court erred in denying her motion under Evidence Code section 1161, subdivision (a), to exclude evidence that she committed a commercial sex act, namely, the solicitation of prostitution underlying the wardship petition" (p. 1482).

“Appellant testified that she had had a total of approximately 10 pimps. She testified that she never received any of the money she made and was abused by some or most of the pimps. She also testified that she was afraid of some of the pimps” (p. 1484).

“Under cross-examination, appellant testified that, on January 31, 2013, the date of her arrest she did not have a pimp and was living with her *1485 grandmother. Her grandmother was providing her with food and housing at that time. On the date of the arrest, she left her grandmother’s home and took a bus to go enroll in school. She made plans to meet her sister after enrolling herself in school” (p. 1485).

“When asked why she decided to approach Officer Morales, she explained that she saw him circling the neighborhood. She explained that she was thinking, “ ‘Don’t go to the car; don’t do it.’ You are better than that.’ But he just kept coming by, so I just decided that I could do whatever he wanted really quick and then have money in my pocket because I didn’t have any money.” She agreed that no one forced her to get into the car and that she did not have a pimp, so she would get to keep the money she made. She had not had a pimp since November 2012” (p. 1485).

Level 1 Analysis Findings #5 – The People, Plaintiff and Respondent v. M.D. (2014)

Question 1:

“*998 At the conclusion of the hearing, the court found there was insufficient evidence that the minor was a victim of human trafficking under the definition set forth in *Penal Code section 236.1* and denied the minor’s motion” (p. 998).

“Because minors are legally incapable of consenting to sexual activity, these minors are victims of human trafficking whether or not force is used.” (Prop. 35, § 2, as approved by voters Gen. Elec. (Nov. 6, 2012) eff. Nov. 7, 2012.)” (p. 999).

“If the judge is persuaded by the party with the burden of proof, he finds in favor of that party in regard to the preliminary fact and either admits or excludes the proffered evidence as required by the rule of law under which the question arises. Otherwise, he finds against that party on the preliminary fact and either admits or excludes the proffered evidence as required by such finding.” (Assem. Com. on Judiciary com., reprinted at 29B, pt. West’s Ann. Evid.Code (2011 ed.) foll. § 405, pp. 41-42.)” (p. 999).

“In determining whether the normal allocation of the burden of proof should be altered, the courts consider a number of factors: the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of particular fact, and the probability of the existence or nonexistence of the fact” (p.1000).

“Thus, for the minor to be found to be a victim of human trafficking, it was necessary for her to prove that Antonio, the alleged human trafficker, persuaded or attempted to persuade her to engage in prostitution with the intent “to effect or maintain” a violation of *Penal Code section 266i*” (p. 1003).

Question 2:

“*998 At the conclusion of the hearing, the court found there was insufficient evidence that the minor was a victim of human trafficking under the definition set forth in *Penal Code section 236.1* and denied the minor’s motion” (p. 998).

“At the conclusion of the jurisdictional hearing, the court found the allegation that the minor loitered with intent to commit prostitution to be true. At the dispositional hearing, the court declared the minor a ward of the juvenile court, placed her on probation and ordered her to reside in her father’s home. Among other probational conditions, the court ordered her to attend school regularly and “use [her] best efforts in doing well.” The court ordered her “not to be on any school campus unless you are enrolled there, or unless you are attending events that the probation officer has approved you attend in advance” (p. 998).

“If the judge is persuaded by the party with the burden of proof, he finds in favor of that party in regard to the preliminary fact and either admits or excludes the proffered evidence as required by the rule of law under which the question arises. Otherwise, he finds against that party on the preliminary fact and either admits or excludes the proffered evidence as required by such finding.” (Assem. Com. on Judiciary com., reprinted at 29B, pt. West’s Ann. Evid.Code (2011 ed.) foll. § 405, pp. 41-42.)” (p. 999).

“In determining whether the normal allocation of the burden of proof should be altered, the courts consider a number of factors: the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy

in the absence of proof of particular fact, and the probability of the existence or nonexistence of the fact” (p. 1000).

“In determining the incidence of the burden of proof, ‘the truth is that there is not and cannot be any one general solvent for all cases. It is merely a question of policy and fairness based on experience in the different situations.’ “ (Cal. Law Revision Com. com.29B, pt. 1B, West’s Ann Evid. Code, *supra*, (2011 ed.) foll. § 500, p. 310.) The minor argues that *section 1161* warrants reallocation of the burden of proof as a matter of both procedural fairness and public policy” (p. 1000).

“Thus, we find no error in the court’s decision to place the burden of proof on the minor to establish that she was a victim of human trafficking” (p. 1001).

“We need not evaluate the adequacy of trials counsel’s performance in this case, as the minor has failed to establish that any such error was prejudicial. (*Strickland v. Washington (1984) 466 U.S. 668, 687 [80 L.Ed. 2d 674, 104 S. Ct. 2052]* “[A] court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of alleged deficiencies.” (*Wong v. Bemontes (2009) 558 U.S. 15, 19 [175 L.ed2d 328, 130 S. Ct. 383].*)” (p. 1003).

Question 3:

“*998 At the conclusion of the hearing, the court found there was insufficient evidence that the minor was a victim of human trafficking under the definition set forth in *Penal Code section 236.1* and denied the minor’s motion” (p. 998).

“At the conclusion of the jurisdictional hearing, the court found the allegation that the minor loitered with intent to commit prostitution to be true. At the dispositional hearing, the court declared the minor a ward of the juvenile court, placed her on probation and ordered her to reside in her father’s home. Among other probational conditions, the court ordered her to attend school regularly and “use [her] best efforts in doing well.” The court ordered her “not to be on any school campus unless you are enrolled there, or unless you are attending events that the probation officer has approved you attend in advance” (p. 998).

“We disagree. The facts necessary to establish that the minor was a victim of human trafficking are in fact “peculiarly” within *her* personal knowledge. She has the most knowledge as to the circumstances that led her to engage in prostitution, who – if anyone – induced or persuaded her to do so, and to whom – if anyone – she is reporting or delivering the proceeds of her prostitution activity. (See, e.g., *People v. Mower* (2002) 28 Cal.4th 457, 477 [122 Cal.Rptr.2d 326, 49 P.3d 1067]” (p. 1000).

“Thus, we find no error in the court’s decision to place the burden of proof on the minor to establish that she was a victim of human trafficking” (p. 1001).

“We need not evaluate the adequacy of trials counsel’s performance in this case, as the minor has failed to establish that any such error was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 [80 L.Ed. 2d 674, 104 S. Ct. 2052] “(*Wong v. Bemontes* (2009) 558 U.S. 15, 19 [175 L.ed2d 328, 130 S. Ct. 383].)” (p. 1003).

Question 4:

“At the conclusion of the jurisdictional hearing, the court found the allegation that the minor loitered with intent to commit prostitution to be true. At the dispositional hearing, the court declared the minor a ward of the juvenile court, placed her on probation and ordered her to reside in her father’s home. Among other probational conditions, the court ordered her to attend school regularly and “use [her] best efforts in doing well.” The court ordered her “not to be on any school campus unless you are enrolled there, or unless you are attending events that the probation officer has approved you attend in advance” (p. 998).

“The minor contends the court erred by placing the burden of proof on her to establish she was a victim of human trafficking and, alternatively, that even if the burden was hers, the evidence she presented was sufficient to meet her burden” (p. 999).

“Section 405 provides the evidentiary rules that are applicable when a party moves to withhold evidence from the jury because it is unreliable or because, as in this case, public policy requires its exclusion. ³ “Under section 405, the judge first indicates to the parties who has the burden of proof and the burden of producing evidence on the disputed issue as implied by the rule of law under which the question arises.... After the judge has indicated to the parties who has the

burden of proof and the burden of producing evidence, the parties submit their evidence on the preliminary issue to the judge” (p.999).

“The minor argues that the burden of proof should be allocated to the prosecution because the prosecution has superior access to evidence bearing on whether she was a victim of human trafficking and whether she was such a victim is “not a fact peculiarly within [her] personal knowledge.” She argues that “in a juvenile delinquency case, the government has the clear advantage in having access to the evidence of the crimes alleged against both the minor and the purported adult human trafficker. From the start of the case, the prosecution has the initial access to the police reports and witnesses to support its case” (p. 1000).

“The minor argues that if this court finds there was sufficient evidence she was a victim of human trafficking, she was denied effective assistance of counsel because counsel failed to introduce additional evidence that she was persuaded by Antonio to go to Concord to prostitute herself.” (p. 1002-1003).

Question 6:

“In determining whether the normal allocation of the burden of proof should be altered, the courts consider a number of factors: the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of particular fact, and the probability of the existence or nonexistence of the fact” (p.1000).

“Since the minor’s implicit contention is that the evidence supports only the finding that she was a human trafficking victim, “the question for a review court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’” (*In re I.W. (2009) 180 Cal.App.4th 1517, 1528 [103 CalRptr.3d 538].*)” (p. 1002).

“Thus, for the minor to be found to be a victim of human trafficking, it was necessary for her to prove that Antonio, the alleged human trafficker, persuaded or attempted to persuade her to engage in prostitution with the intent “to effect or maintain” a violation of *Penal Code section 266i*” (p. 1003).

Question 7:

“The people of the state of California find and declare: 1. Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance” (p. 998).

Level 1 Analysis Findings # 6 – The People, Plaintiff and Respondent v. N.C. (2016)

Question 1:

“As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those who are under the age of 18 from the

consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record” (p. 1243-1244).

“As the court stated, “I think it’s absolutely vital for me and the Court of Appeal to consider the word ‘criminal.’ The court emphasized that “if the Legislature had decided that [section 1161] should apply to delinquency proceedings, they could have clearly stated that” (p. 1244).

“The court acknowledged the many similarities between the juvenile justice system and the criminal justice system, but it was also “mindful of the fact that there are significant differences, and one of the most important differences is that we adhere to protect [a juvenile] from herself, so to speak in times of trouble.” (p. 1244).

“The trial court found Evidence Code section 1161 inapplicable in juvenile proceedings because the evidence inadmissible under the statute is only that offered to prove “criminal liability” and, as declared in Welfare and Institutions Code 203, “[a]n order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding” (p. 1244).

“Finally, one of the chief purposes of the CASE Act is to protect minors, as the crime of “human trafficking” is specifically made applicable to “[a]ny person who causes, induces, or persuades, or attempts to cause, induce or persuade, a person who is a minor at the time of commission of

the offense to engage in commercial sex act with the intent to effect or maintain a violation of [various specified sexual crimes]. (Pen. Code, § 236.1, subd. (c).)” (p. 1245).

“The Attorney General agrees appellant committed the charged offenses “as a result of being a victim of human trafficking,” but claimed in her brief that this case is not within the ambit of section 1161 because, as the trial court agreed, appellant was not charged with a “commercial sexual act,” as defined by Penal Code section 236.21; that is, appellant was charged with an offense that does not require sexual conduct in return for money or anything else of value. (*People v. Mecamo* (2013) 214 Cal.App.4th 1061, 1070, 154 Cal.Rptr.3d 519.)” (p. 1246).

“We review the matters of statutory interpretation de novo. (*Carver v. Chevron U.S.A, Inc.* (2002) 97 Cal.App.4th 132, 142, 118 Cal.Rptr.2d 569.) Where the issue involves the proper interpretation of a statute and its application to undisputed facts our review is independent. (*Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367.)” (p. 1247).

“Prostitution invariably commences, as it did in this case, with a discussion between the parties of the sexual activity or activities offered by one party and at what cost to the other party, an agreement as to the act and reciprocal payment, and conduct indicating a specific intention to perform the agreement. Because this preludial conduct criminalized by Penal Code section 647, subdivision (b), has both a commercial and a sexual aspect it may reasonably be thought to constitute a “commercial sexual act,” or at least an element of such an act, despite the fact that nothing of value has yet been given or received by any person as compensation for that sexual conduct” (p. 1248).

“However, the reasoning of *Casas* is hardly the only justification for concluding that the phrase “commercial sexual act” is ambiguous and amenable to interpretation, and that the mere act of soliciting prostitution may properly be considered a “commercial sexual act” despite the absence of a completed sexual act” (p. 1248)

“Although Evidence Code section 1161 refers to Penal Code section 236.1, the syntax of the single sentence that comprises subdivision (a) of section 1161 indicates that the reference to Penal Code section 236.1 is solely to its definition of “human trafficking” in subdivision (a), (b), and (c) of that statute;¹² not to its definition in subdivision (h)(2) of “commercial sex act.” The distinction appears purposeful.” (p. 1248-1249).

“**367 We recognize that Evidence Code section 1161 and Penal Code section 236.1, subdivision (h)(2), are both provisions of the CASE Act, and the latter statute defines language very similarly to that used in the former. ...But the phrase “commercial sexual act” in section 1161 is *not* “identical” to the phrase commercial sex act” in the Penal Code section 236.1, subdivision (h)(2) and, more importantly, the two statutes do not specifically relate to the same or analogous subject matter.” (p. 1249).

“Persons are rarely arrested for acts of prostitution “on account of which anything of value is given or received.” (Pen. Code, § 236.1, subd. (h)(2).) Because law enforcement officers may not themselves engage in sex with suspected prostitutes, let alone compensate them with “anything of value” (*ibid*), prostitution is in this state ordinarily punished “as a type of disorderly conduct”

under Penal Code section 647, subdivision (b). (2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 76, p. 480.)” (p. 1252).

Question 2:

“A person agrees to engage in an act of prostitution when with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission ****359** of an act of prostitution by the person agreeing to engage in that act.”³ (p. 1239).

“Before the presentation of the evidence, the district attorney argued that the exclusion of evidence authorized by section 1161 did not apply to appellant because it only applies to evidence offered to prove the commission of a “commercial sex act,” and neither petition alleged she had engaged in any such act.” (p. 1240).

“As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those *** 1244** who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record” (p. 1243-1244).

“Moving on to the text of section 1161, the trial judge placed great weight on the fact that the “[e]vidence that a victim of human trafficking ... has engaged in any commercial sexual act” which is excluded by the statute is that which “prove[s] the victim’s *criminal* liability.” (Italics added.)” (p. 1244).

“As the court stated, “I think it’s absolutely vital for me and the Court of Appeal to consider the word ‘criminal.’ The court emphasized that “if the Legislature had decided that [section 1161] should apply to delinquency proceedings, they could have clearly stated that” (p. 1244).

“The court acknowledged the many similarities between the juvenile justice system and the criminal justice system, but it was also “mindful of the fact that there are significant differences, and one of the most important differences is that we adhere to protect [a juvenile] from herself, so to speak in times of trouble. And so in an effort to prevent [appellant] from become essentially a revolving door where she gets off the bus at someplace between here and home and reconnects with a pimp, it’s important for me to adopt a position that [section 1161] can’t absolve her from a declaration of wardship” (p. 1244).

“Finding section 1161 inapplicable to juvenile proceedings because it refers to “criminal liability” also ignores the reasoning of *In re Winship* (1970) 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 as to why the “civil labels” employed in delinquency proceedings, and rehabilitative goals of the juvenile law, provide no basis upon which to deprive minors of protections analogous to those conferred by the CASE Act, that would deny them a meaningful opportunity to present a complete defense” (p. 1245).

“Finally, one of the chief purposes of the CASE Act is to protect minors, as the crime of “human trafficking” is specifically made applicable to “[a]ny person who causes, induces, or persuades, or attempts to cause, induce or persuade, a person who is a minor at the time of commission of the offense to engage in commercial sex act with the intent to effect or maintain a violation of [various specified sexual crimes]. (Pen. Code, § 236.1, subd. (c).)” (p. 1245).

“Given the extraordinary number of minors trafficked for sexual purposes (see *In re M.D.*, *supra*, 231 Cal.App.4th at p. 999, 181 Cal.Rptr.3d 761; Office of the Attorney General, Cal. Dept. of Justice, *The State of Human Trafficking in California* (2012) at pp. 22-26, 48-56 (State of Human Trafficking) and the policy of the CASE Act to treat these minors as victims, not criminals (*in re Aarica S.*, *supra*, 223 Cal.App.4th at p. 1486, 168 Cal.Rptr.3d 136)), the inapplicability of section 1161 in juvenile proceedings would obstruct one of the chief purposes of the CASE Act: acknowledgment that minors sexually exploited by human traffickers are not criminals or delinquents, but victims” (p. 1245).

“The issue before us is whether the “commercial sexual act” referred to in section 1161 is the same as the “commercial sexual act” defined in Penal Code section 236.1, subdivision (h)(2), or, as appellant maintains, “commercial sexual act” must be read more expansively as to include **365 uncompensated sexual conduct punishable under Penal Code section 647, subdivision (b). As previously indicated, this issue, which is one of first impression,¹¹ will soon be presented only in prosecutions in criminal proceedings against an adult *1247 claiming he or she engaged

in the charged commercial sexual acts “as a result of being a victim of human trafficking.” (§ 1161, subd. (a).)” (p. 1246-1247).

“The Court of Appeal found no abuse of discretion because the victim’s statement reflected her “willingness to engage in sexual intercourse,” which constituted “sexual conduct” and therefore fell within the ambit of Evidence Code sections 782 and 1103. (*Casas*, at p. 895, 226 Cal.Rptr. 285.)” (p. 1248).

“We agree that *Casas* calls for a more expansive interpretation of the phrase “commercial sex act” than the construction adopted by the trial court. The phrase contemplates “the practice of occupation of engaging in sexual activity with someone for payment,” which is the Oxford English Dictionary definition of “prostitution” (p. 1248).

“Prostitution invariably commences, as it did in this case, with a discussion between the parties of the sexual activity or activities offered by one party and at what cost to the other party, an agreement as to the act and reciprocal payment, and conduct indicating a specific intention to perform the agreement. Because this prelude conduct criminalized by Penal Code section 647, subdivision (b), has both a commercial and a sexual aspect it may reasonably be thought to constitute a “commercial sexual act,” or at least an element of such an act, despite the fact that nothing of value has yet been given or received by any person as compensation for that sexual conduct” (p. 1248).

“However, the reasoning of *Casas* is hardly the only justification for concluding that the phrase “commercial sexual act” is ambiguous and amenable to interpretation, and that the mere act of soliciting prostitution may properly be considered a “commercial sexual act” despite the absence of a completed sexual act” (p. 1248)

“Although Evidence Code section 1161 refers to Penal Code section 236.1, the syntax of the single sentence that comprises subdivision (a) of section 1161 indicates that the reference to Penal Code section 236.1 is solely to its definition of “human trafficking” in subdivision (a), (b), and (c) of that statute;¹² not to its definition in subdivision (h)(2) of “commercial sex act.” The distinction appears purposeful.” (p. 1248-1249).

“But the phrase “commercial sexual act” in section 1161 is *not* “identical” to the phrase commercial sex act” in the Penal Code section 236.1, subdivision (h)(2) and, more importantly, the two statutes do not specifically relate to the same or analogous subject matter. Penal Code section 236.1 defines the nature and punishment of various forms of human trafficking, while section 1161 pertains to the exclusion of evidence in certain prosecutions of a victim of human trafficking” (p. 1249).

“As indicated, at the present time, almost all persons arrested for prostitution in this state are charged with violating either Penal Code sections 647, subdivision (b), as was appellant, or 653.22, subdivision (a),¹⁴ which makes it unlawful for any person to loiter in any public place with the ****370** intent to commit prostitution.¹⁵ However, neither of these so called “prostitution statutes” (see, e.g., *In re M.V.*, *supra*, 225 Cal.App.4th at p. 1524, 171 Cal.Rptr.3d 519), requires that ***1253** “anything of value be given or received.” (§ 236.1, subd. (h)(2).)¹⁶ Therefore, if the interpretation of section 1161, subdivision (a), urged by the Los Angeles County District

Attorney in this case and adopted by the trial court is correct, the CASE Act would provide no protection at all for victims of human trafficking prosecuted for acts of prostitution they were forced by traffickers to perform. Such a ridiculous result cannot, of course, be judicially countenanced” (p. 1253-1253).

Question 3:

“The district attorney opposed the motion on the ground that evidence is inadmissible under Evidence Code section 1161 only when offered to prove that a victim of human trafficking is criminally liable for a “commercial sexual act,” and the offense described by subdivision (b) of Penal Code section 647 is not such an act. According to the district attorney, the phrase “commercial sexual act” in Evidence Code 1161 is defined by section 236.1, subdivision (h)(2) of the Penal Code, which states that a “commercial sex act” means “sexual conduct on account of which anything of value is given or received by any person.” As the district attorney emphasized, Penal Code section 647, subdivision (b) does not require, and appellant was not given and did not receive, anything of value as a result of her commission of that offense” (p. 1239).

“Finding that section 1161 does not apply in juvenile proceedings, and that the trial court’s acceptance of the prosecutor’s interpretation of that statute would virtually wipe out a significant protection afforded victims of human trafficking by the CASE Act, we shall reverse the judgment” (p. 1239)

“On May 28, 2015, ⁴ the Los Angeles County District Attorney filed a wardship petition (Welf. & Inst. Code, § 602) in case No. PJ51576A (Petition A), alleging that on May 12, appellant, age 17, committed misdemeanor *1240 disorderly conduct by soliciting or agreeing to engage in prostitution in violation of Penal Code section 647, subdivision (b), and was therefore subject to the jurisdiction of the juvenile court pursuant to section 602 of the Welfare and Institutions Code. That same day, the district attorney filed a second petition in case No. PJ51576B (Petition B), alleging that the appellant committed the same offense on May 27.⁵” (p. 1239-1240).

“The trial court elected to defer ruling on that issue, and proceed with an evidentiary hearing, because it felt it appropriate to “make a record” with respect to two threshold legal questions: (1) whether section 1161 applies only in criminal cases and not juvenile proceedings, ⁷ and (2) whether, even *1241 if it does apply in juvenile proceedings, it is inapplicable in this case because, as the district attorney claimed, no evidence shows that appellant engaged in a “commercial sex act” as defined in Penal Code 236.1, subdivision (h)(2), as meaning “sexual conduct on account of which anything of value is given or received by any person.” (p. 1240-1241).

“Although, without objection from the district attorney, the court found the appellant to have committed the charged acts “as a result of being a victim of human trafficking,” it nevertheless denied her motion to exclude evidence after concluding that, as matters of law, Evidence Code section 1161 does not apply to cases such as this, in which the victim of human trafficking did not actually engage in “sexual conduct on account of which anything of value is given or received by any person.” (Pen. Code, § 236, subd. (h)(2).)” (p. 1242).

“*1243 On June 24, after the Los Angeles County Department of Social Services declined to accept appellant as a client because her family resided in Northern California, the court ordered the matter transferred to Contra Costa County for disposition⁹” (p. 1243).

“The trial court found Evidence Code section 1161 inapplicable in juvenile proceedings because the evidence inadmissible under the statute is only that offered to prove “criminal liability” and, as declared in Welfare and Institutions Code 203, “[a]n order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding” (p. 1244).

“The Attorney General agrees appellant committed the charged offenses “as a result of being a victim of human trafficking,” but claimed in her brief that this case is not within the ambit of section 1161 because, as the trial court agreed, appellant was not charged with a “commercial sexual act,” as defined by Penal Code section 236.21; that is, appellant was charged with an offense that does not require sexual conduct in return for money or anything else of value. (*People v. Mecamo* (2013) 214 Cal.App.4th 1061, 1070, 154 Cal.Rptr.3d 519.)” (p. 1246).

“The Court of Appeal found no abuse of discretion because the victim’s statement reflected her “willingness to engage in sexual intercourse,” which constituted “sexual conduct” and therefore fell within the ambit of Evidence Code sections 782 and 1103. (*Casas*, at p. 895, 226 Cal.Rptr. 285.)” (p. 1248).

Question 4:

“At the commencement of the jurisdictional hearing, appellant moved under section 1161 to exclude all evidence sought to be introduced by the district attorney to show that she solicited acts of prostitution in violation of Penal Code section 647, subdivision (b)” (p. 1239).

“On June 10, appellant moved under section 1161 to exclude all evidence the district attorney planned to introduce to prove she engaged in commercial sexual acts, because she was a “victim of human trafficking,” who had been coerced into performing those acts by a pimp who was a human trafficker within the meaning of Penal Code section 236.1, subdivision (c), which defines and criminalizes sex trafficking. ⁶ The motion also claimed that, since ****360** the evidence sought to be excluded consisted solely of the testimony of two undercover police officers regarding the alleged acts of commercial sex, the petitions should be dismissed after the exclusion of the officers’ testimony” (p. 1240).

“As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those *** 1244** who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record” (p. 1243-1244).

“We review the matters of statutory interpretation de novo. (*Carver v. Chevron U.S.A, Inc.* (2002) 97 Cal.App.4th 132, 142, 118 Cal.Rptr.2d 569.) Where the issue involves the proper interpretation of a statute and its application to undisputed facts our review is independent.

(*Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367.)

Initially, “[a]s in any case of statutory interpretation, our task is to determine afresh the intent of the Legislature by construing in context the language of the statute.” (p. 1247).

Question 5:

“*1243 On June 24, after the Los Angeles County Department of Social Services declined to accept appellant as a client because her family resided in Northern California, the court ordered the matter transferred to Contra Costa County for disposition⁹” (p. 1243).

Question 6:

“As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those * 1244 who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record” (p. 1243-1244).

“I think it’s great that [appellant’s] grandparents are willing to take care of her in these uncertain and difficult times, but as a judge who has observed [appellant’s] history, my biggest concern, and it’s a concern in all these sorts of cases, is that without court supervision, without becoming either a 300 or 602 ward, there is no **363 incentive for her to follow through. She has not reached the maturity level that would satisfy any reasonable judge in believing that she might not run.” Believing appellant lacks “real adult supervision,” the court stated that “the bottom line is, without some kind of jurisdiction over the minor, this minor is in serious danger of, well, falling

by the wayside, whether she runs away, whether she re-engages with one of the pimps that have been testified about. There is no way for a juvenile judge to protect a minor like this without a declaration of wardship, without gaining jurisdiction over the minor” (p. 1244).

“The court acknowledged the many similarities between the juvenile justice system and the criminal justice system, but it was also “mindful of the fact that there are significant differences, and one of the most important differences is that we adhere to protect [a juvenile] from herself, so to speak in times of trouble. And so in an effort to prevent [appellant] from become essentially a revolving door where she gets off the bus at someplace between here and home and reconnects with a pimp, it’s important for me to adopt a position that [section 1161] can’t absolve her from a declaration of wardship” (p. 1244).

“Finding section 1161 inapplicable to juvenile proceedings because it refers to “criminal liability” also ignores the reasoning of *In re Winship* (1970) 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 as to why the “civil labels” employed in delinquency proceedings, and rehabilitative goals of the juvenile law, provide no basis upon which to deprive minors of protections analogous to those conferred by the CASE Act, that would deny them a meaningful opportunity to present a complete defense” (p. 1245).

“Finally, one of the chief purposes of the CASE Act is to protect minors, as the crime of “human trafficking” is specifically made applicable to “[a]ny person who causes, induces, or persuades, or attempts to cause, induce or persuade, a person who is a minor at the time of commission of

the offense to engage in commercial sex act with the intent to effect or maintain a violation of [various specified sexual crimes]. (Pen. Code, § 236.1, subd. (c).)” (p. 1245).

“Given the extraordinary number of minors trafficked for sexual purposes (see *In re M.D.*, *supra*, 231 Cal.App.4th at p. 999, 181 Cal.Rptr.3d 761; Office of the Attorney General, Cal. Dept. of Justice, *The State of Human Trafficking in California* (2012) at pp. 22-26, 48-56 (State of Human Trafficking) and the policy of the CASE Act to treat these minors as victims, not criminals (*in re Aarica S.*, *supra*, 223 Cal.App.4th at p. 1486, 168 Cal.Rptr.3d 136)), the inapplicability of section 1161 in juvenile proceedings would obstruct one of the chief purposes of the CASE Act: acknowledgment that minors sexually exploited by human traffickers are not criminals or delinquents, but victims” (p. 1245).

Question 7:

“I think it’s great that [appellant’s] grandparents are willing to take care of her in these uncertain and difficult times, but as a judge who has observed [appellant’s] history, my biggest concern, and it’s a concern in all these sorts of cases, is that without court supervision, without becoming either a 300 or 602 ward, there is no **363 incentive for her to follow through. She has not reached the maturity level that would satisfy any reasonable judge in believing that she might not run.” Believing appellant lacks “real adult supervision,” the court stated that “the bottom line is, without some kind of jurisdiction over the minor, this minor is in serious danger of, well, falling by the wayside, whether she runs away, whether she re-engages with one of the pimps that have been testified about. There is no way for a juvenile judge to protect a minor like this without a declaration of wardship, without gaining jurisdiction over the minor” (p. 1244).

Appendix D:

Quotations Selected for Level II Thematic Analysis

Level II Analysis—Emerging Themes:**#1 The People of the State of New York v G.M:****Theme: Relief:**

“Based upon the unique circumstances presented here, this court concurs with the People’s position that all of the defendant’s convictions are entitled to the relief requested. Thus, under the provisions of the new amendment, this court “must vacate the judgement and dismiss the accusatory instrument[.]” (CPL 440.10[6].)” (p. 280-281).

Theme: Rehabilitation:

“The passage of this new law was based upon a recognition that “[v]ictims of sex trafficking who are forced in to prostitution are frequently arrested for prostitution-related offenses and are saddled with the criminal record. They are blocked from decent jobs and other prospects for rebuilding their lives. Even after they escape from sex trafficking, the criminal record victimizes them for life” (Sponsor’s Mem., 2010 N.Y. Assembly Bill A7670). Thus this legislation “would give victims of human trafficking a desperately needed second chance they [deserve]” (*id.*)” (p. 279).

#2 The People of the State of New York v. Samatha R. :**Theme: Relief:**

“In these circumstances, the purposes of the Penal Law, which include providing “an appropriate public response to particular offenses” (*see* Penal Law 1.05[5]). Favor an exercise of the criminal justice system’s mercy-dispensing power to dismiss this prosecution” (p. 6).

Theme: Rehabilitation:

“Do we really want these teenagers processed in an adult criminal justice system focused on punishment and incarceration?... where rehabilitative options are limited... where they may be jailed... where they may be victimized... and where they may be burdened with a criminal record that bars them from future employment and educational opportunities” (p. 4)?

“Arresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult” (p. 1).

Theme: Best Interest:

“Fifth, I find that there would be little purpose in imposing a sentence on defendant and that the effect of any such sentence would do more harm than good” (p. 6).

“The sentencing options in Criminal Court are limited. The likely sentence in a case such as this would not involve jail. Even if the sentence were a conditional discharge with required attendance at a counseling program, I see no purpose in imposing such a sentence when the options available in Family Court, as suggested by the Chief Judge, are likely superior because of the statutory mandate of considering the child’s “best interests”” (p.6).

“Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are victims of crime and should be treated as such” (p. 1).

“Sexually exploited youth deserve the protection and services of the family court through processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long term housing services” (p. 1).

“Nor can I ignore that her continued prosecution in a criminal court may traumatize her to a greater extent than the prosecution of an adult defendant would affect an adult. These concerns counsel against continuing a prosecution, no matter how sensitively handled by the District Attorney, of an individual whom the law alternatively regards a child and an adult or quasi-adult (*see n. 3 supra*), and whom the law also calls an “exploited child” and possibly a “victim,” particularly where another appropriate forum may address the circumstances of her alleged offense⁴” (p. 5).

“I further surmise that the District Attorney may find that maintaining a prosecution against the alleged teen prostitute might give law enforcement a tool with which to fight trafficking. Yet I doubt whether any public interest in this regard cannot equally be achieved if this case were handled in Family rather than Criminal Court” (p. 6).

“Second, the extent of harm caused by the offense is likewise minimal. Although I recognize, as Judge Richard Weinberg of Midtown Community Court reasoned when he denied a motion similar to the present (*see People v. Lewis*, 2010NY03560, NYLJ, decided July 12, 2011, at *1 [Crim Ct, N.Y. County, Weinberg, J.]), that prostitution may negatively impact all participants as well as the neighborhoods where it occurs, the harm of the violation here is minimal. More

importantly, I am persuaded that the harm to defendant's own physical and mental welfare from the alleged conduct is greater than any societal harm that I can see in this particular case" (p. 5).

"Seventh, I believe that the public's confidence in the criminal just system will be enhanced by a dismissal here. The criminal justice system is not always the best venue for addressing societal problems. Here, the alleged offense-which is not a crime-involves someone who, according to the Penal Law, is barely an adult, if even that (*seen. 3 supra*), and who, according to the Social Services Law, is a "sexually exploited child" (p. 6).

#3 The People of the State of New York v. L.G.:

Theme: Relief:

"In *People v. G.M.*, this court left open the question whether CPL 440.10(1)(i) could be applied to non-prostitution offenses where the People have not consented to vacatur of the resulting conviction(s). It is not evident from the foregoing analysis of the legislative history behind this statute, that the legislature's goal in amending the statute was to avoid punishing the victims of human trafficking by saddling them with a criminal record. It is also apparent that the legislature fully expected the statute to provide relief to trafficking victims who were not only arrested for prostitution or loitering for the purposes of prostitution, but were also convicted of other charges. Finally, the legislature noted that discretion remains with the court to determine which convictions should be vacated" (p. 441).

"Trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion (*Id*)" (p. 438).

#4 The People, Plaintiff and Respondent v. Aarica S.:**Theme: Individual Accountability:**

“She wasn’t working for anybody or paying anybody any money. I don’t think based upon that she was a victim of sexual trafficking. And when the incident occurred on the 31st of January, that she was acting independently on her own with no solicitation or encouragement by anyone else to get her to do it. I don’t think it has any connection. You would have a much stronger case at the time she was doing it [if] she was still under the power and under the control of one of these pimps, but she was not. And it appeared that it was several months before that she wasn’t” (p. 1485).

“Here the juvenile court found that when appellant solicited prostitution, she was acting as “an independent contractor” because she was not working for a pimp or giving a pimp the money she earned at the time. This finding is supported by the evidence and dispenses with application of Evidence Code section 1161” (p. 1488).

“The court denied the appellant’s motion to exclude evidence relating to her having solicited a commercial sex act with Officer Morales. The court reasoned that, when appellant approached Officer Morales, “she was acting as an independent contractor, nobody threatening her or threatening to kill her if she doesn’t make money” (p. 1485).

“The evidence thus supports the conclusion that the appellant did not solicit prostitution in this instance “as a result of being a victim of human trafficking.” (Evid.Code, § 1161, subd. (a),

italics added.) The juvenile court accordingly did not err in denying the appellant's motion to exclude evidence pursuant to the statute" (p. 1488).

"Appellant testified that she was not working for a pimp at the time of the incident. She explained that the reason she approached Officer Morales was that she "could do whatever he wanted really quick and then have money in [her] pocket because [she] didn't have any money." She agreed that no one forced her to get into the car and that she would get to keep the money she made because she did not have a pimp at the time " (p. 1488).

"Here the juvenile court found that when appellant solicited prostitution, she was acting as "an independent contractor" because she was not working for a pimp or giving a pimp the money she earned at the time. This finding is supported by the evidence and dispenses with application of Evidence Code section 1161" (p. 1488).

"The evidence thus supports the conclusion that the appellant did not solicit prostitution in this instance "as a result of being a victim of human trafficking." (Evid.Code, § 1161, subd. (a), italics added.) The juvenile court accordingly did not err in denying the appellant's motion to exclude evidence pursuant to the statute" (p. 1488).

"When asked why she decided to approach Officer Morales, she explained that she saw him circling the neighborhood. She explained that she was thinking, " 'Don't go to the car; don't do it.' You are better than that.' But he just kept coming by, so I just decided that I could do whatever he wanted really quick and then have money in my pocket because I didn't have any

money.” She agreed that no one forced her to get into the car and that she did not have a pimp, so she would get to keep the money she made. She had not had a pimp since November 2012” (p. 1485).

#5 The People, Plaintiff and Respondent v. M.D.:

Theme: Individual Accountability:

“The minor suggests that the evidence shows that Antonio was leading her “on the streets in an area known for prostitution activity, while demonstrating methods for luring potential customers” and argues that “the police officers’ reasonable belief that Antonio was pimping [the minor], when they arrested the older woman for that crime,” further supports the inference that she was a victim of human trafficking. While this evidence might have been sufficient to support the finding that she was a victim of human trafficking, it does not establish that she was a victim as a matter of law. The evidence is also consistent with numerous other possibilities, such as that she and Antonio were merely friends, both of whom voluntarily and on their own initiative were soliciting prostitution. Neither the fact that Antonio was somewhat older than the minor, nor that she was arrested for pimping, necessarily compels the conclusion that the minor was a victim of Antonio’s trafficking. We find no error in the court’s denial of the minor’s motion. ⁴ “ (p. 1002).

“Thus, for the minor to be found to be a victim of human trafficking, it was necessary for her to prove that Antonio, the alleged human trafficker, persuaded or attempted to persuade her to engage in prostitution with the intent “to effect or maintain” a violation of *Penal Code section 266i*” (p. 1003).

“At the conclusion of the hearing, the court found there was insufficient evidence that the minor was a victim of human trafficking under the definition set forth in *Penal Code section 236.1* and denied the minor’s motion” (p. 998).

#6 The People, Plaintiff and Respondent v. N.C.: Rehabilitation & Relief:

Theme: Rehabilitation:

“As delinquency judges and advocates, our responsibility is not to punish a person who commits a crime. It is, rather to rehabilitate and protect those who are under the age of 18 from the consequences of their conduct and perhaps get them to a position where they become law-abiding citizens in a way that does not leave them with an enduring or lasting criminal record” (p. 1243-1244).

Theme: Relief:

“I think it’s great that [appellant’s] grandparents are willing to take care of her in these uncertain and difficult times, but as a judge who has observed [appellant’s] history, my biggest concern, and it’s a concern in all these sorts of cases, is that without court supervision, without becoming either a 300 or 602 ward, there is no incentive for her to follow through. She has not reached the maturity level that would satisfy any reasonable judge in believing that she might not run.” Believing appellant lacks “real adult supervision,” the court stated that “the bottom line is, without some kind of jurisdiction over the minor, this minor is in serious danger of, well, falling by the wayside, whether she runs away, whether she re-engages with one of the pimps that have been testified about. There is no way for a juvenile judge to protect a minor like this without a declaration of wardship, without gaining jurisdiction over the minor” (p. 1244).

“The court acknowledged the many similarities between the juvenile justice system and the criminal justice system, but it was also “mindful of the fact that there are significant differences, and one of the most important differences is that we adhere to protect [a juvenile] from herself, so to speak in times of trouble. And so in an effort to prevent [appellant] from become essentially a revolving door where she gets off the bus at someplace between here and home and reconnects with a pimp, it’s important for me to adopt a position that [section 1161] can’t absolve her from a declaration of wardship” (p. 1244).

“Finally, one of the chief purposes of the CASE Act is to protect minors, as the crime of “human trafficking” is specifically made applicable to “[a]ny person who causes, induces, or persuades, or attempts to cause, induce or persuade, a person who is a minor at the time of commission of the offense to engage in commercial sex act with the intent to effect or maintain a violation of [various specified sexual crimes]. (Pen. Code, § 236.1, subd. (c).)” (p. 1245).