

## ESSAY

# SEX TRAFFICKING OF AMERICAN INDIAN WOMEN AND GIRLS IN MINNESOTA

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The views represented in this article are those of the author. The terms “American Indian,” “Native American,” and “Indian” will be used interchangeably.

### I. INTRODUCTION TO THE PROBLEM

The Minnesota Indian Women’s Resource Center (MIWRC), in partnership with several culturally based non-profit service providers in the state, recently began investigating anecdotal reports of disproportionately high numbers of American Indian women and girls being trafficked into commercial sexual exploitation. While little data currently exists to support this theory, preliminary reports and accumulating anecdotal evidence indicate that there is a significant problem requiring more comprehensive research and interventions. This paper will present a logic model of evidence that leads to the conclusion that sex trafficking in American Indian communities poses a significant problem, requiring more study and broad-based intervention.

According to the United States Department of Justice and the United States Attorney’s Office, the Minneapolis and St. Paul metropolitan area represents one of the fifteen worst metropolitan areas for sex trafficking in the country.<sup>1</sup> It also houses the second largest urban Indian community in the country. As more people focused their attention on the growing problem of international human trafficking and its impact on the Twin Cities Metro area, MIWRC, along with its partners, began seeing evidence of disproportionately high rates of sex trafficking in American Indian communities. Personal stories and accumulating evidence have led us to believe that the domestic trafficking of minority women and children in our state is an under-reported and under-recognized crime. Additional research, culturally based direct services, increased cross-system education and community

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1. See U.S. ATTORNEY’S OFFICE, DIST. OF MINN., 2007 ANNUAL REPORT 15 (2007).

awareness, and policy advocacy are required to address this problem. Analyzing the existing information, along with an understanding of the disparities, cultural dynamics, and historical context in the American Indian community, leads to an alarming conclusion that the scope of victimization is much greater than previously imagined and that culturally based interventions must be combined with system changes to stop the victimization of Native women and children.

## II. ISSUES PERTINENT TO MINNESOTA'S INDIAN COMMUNITIES

Environmental factors that lead to vulnerability to predators include high rates of poverty, lack of education, lack of employment opportunity, social normalization of violence against women, fractured social structure, and high rates of demand for prostituted women and increasingly younger children. The State Department has identified these factors as indicators of vulnerability to traffickers internationally, and many of these disparities exist on Minnesota's American Indian reservations. In urban Indian communities, disproportionately high rates of single female head-of-households in poverty,<sup>2</sup> rates of fetal alcohol spectrum disorders,<sup>3</sup> and rates of physical violence suffered during a sexual assault<sup>4</sup> demonstrate significant environmental risk factors for Indian women. In our work at MIWRC, we see high numbers of young Native females, many of them homeless or runaway youth, who report that they exchanged sex for shelter, for food, or for drugs—what is known as “survival sex.” MIWRC clients report females as young as eight years old have been forced into prostitution by criminal networks, gangs, and occasionally, family members.<sup>5</sup> Mounting evidence from law enforcement, including the Duluth Police Department, also indicates that young Native females are being taken to the Port of Duluth to be prostituted.<sup>6</sup>

The overall indicators of sexual violence rates against American Indian women are a significant concern. High rates of overall sexual violence and

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2. Compare 28.9% of American Indian households being single-parent households with 5.1% of non-Hispanic white households being single-parent households in Minneapolis. HENNEPIN COUNTY CMTY. HEALTH DEP'T & BLOOMINGTON DIV. OF PUB. HEALTH, SHAPE 2002: RACIAL AND ETHNIC DATA BOOK, SURVEY OF THE HEALTH OF ADULTS, THE POPULATION AND ENVIRONMENT 132 (2003).

3. In North America, about 1% of babies suffer from fetal alcohol syndrome (FAS) or partial fetal alcohol syndrome (PFAS) while 7% to 16% of babies in American Indian communities suffer from FAS or PFAS. Christian Alliance for Indian Child Welfare, *Fetal Alcohol Spectrum Disorder: Incidence of Alcohol Abuse in Families*, <http://caicw.org/fasstatistics.html> (last visited Jan. 23, 2009).

4. Compare 50% of all American Indian women suffering physical injury in addition to sexual assault versus 30% for women in general in the United States. AMNESTY INT'L USA, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA 5 (2006).

5. Memorandum from MIWRC Staff (Oct. 2008) (on file with author).

6. Interview with City of Duluth Police Dep't (Aug. 2007).

the resulting trauma forecast a vulnerability to predatory behaviors. The Amnesty International Report, "Maze of Injustice," calls sexual violence against American Indian women a human rights violation. The U.S. Department of Justice estimates that "violent crime victimization among American Indian females" is "2½ times the rate for all females."<sup>7</sup> The Sacred Circle reports that seven of every one thousand American Indian women are sexually assaulted compared to four of every one thousand Black American women.<sup>8</sup> The accuracy of these statistics is questionable due to the fact that many Native women do not report assaults because of jurisdictional complexities. As a Public Law 280 state, Minnesota determines jurisdiction differently depending upon the nature of the crime, the identity of the victim, the identity of the perpetrator, and other factors.<sup>9</sup> Often, women do not report crimes due to the belief that authorities will not investigate or charge the crime.

American Indian women represent an increasingly high number of the homeless population in the Twin Cities area and throughout Minnesota, which also places them at a heightened risk of sexual violence. In Minnesota, American Indians comprise 11% of the total homeless population; however, this statistic is likely an under-representation as the same study indicated that 28% of American Indian homeless did not stay in shelters where these surveys are taken.<sup>10</sup> Women without custodial children and mothers of young children represent two of the most rapidly growing subgroups of homeless.<sup>11</sup> In fact, reports indicate that most homeless Native American women have histories of physical and/or sexual violence, with 92% of the women reporting violence occurring at some point in their lives and 43% reporting being sexually abused during childhood. Many women even identify childhood sexual violence as the leading cause of their homelessness. In addition, an increased likelihood of substance abuse and mental illness exacerbates these risk factors and heightens their chances of future assaults with additional trauma.

The links between childhood sexual violence, homelessness, and prostitution are alarming. In one study on prostituted women in North Minneapolis, 56% of respondents reported that they first experienced prostitution as

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7. STEVEN W. PERRY, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS PROFILE, 1992–2002: AMERICAN INDIANS AND CRIME 7 (2004).

8. *Restoration of Native Sovereignty and Safety for Native Women*, SOVEREIGNTY & SAFETY, Dec. 2008, at 13.

9. See generally SARAH DEER ET AL., TRIBAL LAW AND POLICY INST., FINAL REPORT: FOCUS GROUP ON PUBLIC LAW 280 AND THE SEXUAL ASSAULT OF NATIVE WOMEN (2007) (explaining various obstacles).

10. AMHERST H. WILDER FOUND., 2006 OVERVIEW OF HOMELESSNESS IN MINNESOTA 16 (2007); AMHERST H. WILDER FOUND., WILDER RESEARCH FACT SHEET: AMERICAN INDIAN HOMELESS IN MINNESOTA 1 (2006).

11. Lisa Goodman, Katya Fels & Catherine Glenn, *No Safe Place: Sexual Assault in the Lives of Homeless Women*, VAWNET, Sept. 2006, at 1, available at [http://new.vawnet.org/category/Main\\_Doc.php?docid=558](http://new.vawnet.org/category/Main_Doc.php?docid=558).

a juvenile and also overwhelmingly reported a history of sexual violence and substance abuse.<sup>12</sup> One local non-profit organization in St. Paul (Breaking Free) that works with prostituted women reports that the national average age of entry into prostitution is twelve years old.<sup>13</sup> Both Minnesota and federal law identify juvenile prostitution as a sex trafficking crime, yet it is rarely prosecuted as such. The federal law governing all forms of sex trafficking, the Trafficking Victims Protection Act (TVPA), requires the use of “force, fraud or coercion” to use someone in commercial sexual exploitation to prove the crime of sex trafficking.<sup>14</sup> However, if the victim is under the age of eighteen, no force, fraud or coercion must be proven; simply using someone under the age of consent in a commercial sex transaction is technically a violation of the TVPA. It is rarely charged or prosecuted for a variety of reasons. Former U.S. Attorney Tom Heffelfinger indicated that prosecution of juvenile prostitution cases often hinges on the testimony of the victim(s), and that many of these young girls are so heavily traumatized that they either do not make good witnesses or refuse to cooperate out of fear.<sup>15</sup> The Minnesota statute on sex trafficking, in contrast, eliminates this requirement and simply recognizes that no one can consent to be exploited.<sup>16</sup> While the state law is more expansive in understanding that victims need not be forced into sexual exploitation in order to have been victimized, this law has never been used to prosecute a sex trafficking case since the current penalties for those charged are weak. As a result, many cases of suspected sexual exploitation and trafficking are charged under other statutes, such as drug charges or money laundering, simply because the current law does not reflect the nature of the crime. It also sends victims the message that the violation of human beings is deemed less important than drug or money crimes. This must change to allow the successful prosecution of traffickers.

Minnesota police statistics contribute additional cause for concern. Ninety-three percent of all prostitution arrests in the state occur in the South Minneapolis neighborhood where MIWRC is located—in the Third Precinct—and where high concentrations of American Indians reside. A disproportionate number of prostituted women are Native women, with one report indicating that in 2005, Indian women represented 15% of all prosti-

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12. LAUREN MARTIN, CASE STUDIES ON NORTH SIDE PROSTITUTED WOMEN REPORT (2007).

13. Breaking Free, <http://www.breakingfree.net/default.aspx> (last visited Jan. 23, 2009).

14. Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–7112 (2006).

15. Interview with Tom Heffelfinger, former U.S. Attorney (May 2008).

16. MINN. STAT. § 609.321(7) (2008).

tution arrests in the precinct,<sup>17</sup> even though American Indians represent less than 2% of the state's total population.<sup>18</sup>

Finally, personal stories from Native women who have been victims of federal trafficking, as defined under the TVPA and the Minnesota statute, are accumulating. One client at MIWRC, for example, reported that her mother sold her into prostitution at age twelve to support the mother's crack addiction. At the age of fourteen, this young woman began pimping out younger girls to support her own crack habit. She subsequently went to prison and lost custody of six children. By the time she reached the age of twenty-eight, she wanted a job, but lacking a GED and employment history, she had few options. "Who is going to help me," she asked staff, "when the only way I know how to make money is to prostitute myself and no one will give me a break?"<sup>19</sup> This young woman was a victim of a federal crime, yet she was criminalized by a system that did not have adequate training or protocols in place to recognize domestic trafficking law and respond appropriately. In addition, this story raises the question of what happened to this mother that led to a life of drug addiction, prostitution, and such despair and hopelessness that the prostitution of her twelve-year-old daughter was an option. This is another indicator of the multi-generational trauma that so many Native women struggle to overcome.

### III. STATE RESPONSE

Minnesota prohibits the "solicitation, inducement, and promotion of prostitution"<sup>20</sup> and defines sex trafficking as "receiving, recruiting, enticing, harboring, providing or obtaining by any means an individual to aid in the prostitution of the individual."<sup>21</sup> The state, therefore, clearly identifies prostitution as a crime against the individual who has been prostituted, yet it has never used these statutory prohibitions against prostitution to prosecute a case of sex trafficking.

In October of 2005, the Minnesota Legislature established the Gerald D. Vick Human Trafficking Task Force (Vick Task Force) to bring together the voices and experiences of law enforcement, government, and the non-profit sector in order to identify and address human trafficking. The Vick Task Force aims "to work together in a victim-centered approach to combat crimes of human trafficking" and consists of a "multi-discipline, multi-ju-

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17. Data from City of Minneapolis Police Dep't (2007). Similarly, the percentage of Native women incarcerated at the Adult Correctional Facility in Plymouth, Minnesota on prostitution or related charges is disproportionately American Indian. MIWRC, STAFF REPORT (Sept. 2008) (on file with author).

18. U.S. CENSUS BUREAU, MINNESOTA: CENSUS 2000 PROFILE (2002).

19. Interview with client (2006).

20. MINN. STAT. § 609.322 (2008).

21. MINN. STAT. § 609.321(7)(a) (2008).

risdictional task force.”<sup>22</sup> Each year, it must provide a report to the Legislature. In 2007, MIWRC and several supporters asked that the Vick Task Force specifically include research quantifying the numbers of American Indian women who had been trafficked into prostitution in this report. The resulting survey identified a total of 342 American Indian victims and found an additional four law enforcement agencies who also reported working with American Indian victims of sex trafficking.<sup>23</sup> This report was the first documented evidence proving that (a) American Indian women are being trafficked into prostitution, and (b) these numbers are statistically significant given the relatively low response and limited understanding of the legal definition of trafficking among many service providers and law enforcement agencies.

More recently, the Advocates for Human Rights of Minneapolis conducted a comprehensive needs assessment.<sup>24</sup> This report verifies the complex jurisdictional barriers to successfully reporting, intervening, and prosecuting sex trafficking cases in American Indian communities. For example, in the City of Duluth, federal, state, and local jurisdictions collide, often barring potential cases. Minnesota and Wisconsin also each have differing laws addressing trafficking, while the Immigration and Customs Enforcement (ICE), the Coast Guard, the Department of Homeland Security, and the Federal Bureau of Investigation (FBI) all regulate the international seaport. Each entity has varying authority depending upon the allegations and situation. Factor in local and tribal considerations, and it becomes easy to see why sex trafficking victims may not receive equal consideration under the law simply because of the complexity of law.<sup>25</sup>

In 2008, MIWRC joined a coalition of organizations and individuals to address the heightened incidences of sex trafficking and prostitution seen around large conferences and conventions. This movement was driven by the Republican and Democratic National Conventions occurring in St. Paul and Denver, respectively. The group was dubbed ANESEM—Action Network to End Sexual Exploitation in Minnesota. ANESEM distributed fact sheets designed to achieve three key goals: (1) raise awareness of the severity of sex trafficking and prostitution in our state, (2) increase access to

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22. Handout from Gerald D. Vick Human Trafficking Task Force, Victim Protocols for Serving Suspected Victims of Human Trafficking in the State of Minnesota (Sept. 23–24, 2008).

23. MINN. OFFICE OF JUSTICE PROGRAMS & MINN. STATISTICAL ANALYSIS CTR., HUMAN TRAFFICKING IN MINNESOTA: A REPORT TO THE MINNESOTA LEGISLATURE (2007). In addition to quantifying the number of victims, the report also describes whether the victim has been moved. It notes that in some cases the victims were transported from a Minnesota reservation to a metro area, sometimes they were moved from one reservation to another, and sometimes to greater Minnesota from the metro area. Four service providers reported working with victims who were not moved at all. *Id.*

24. THE ADVOCATES FOR HUMAN RIGHTS, SEX TRAFFICKING NEEDS ASSESSMENT FOR THE STATE OF MINNESOTA (2008).

25. The report also notes the lack of appropriate culturally based victim-centered services for American Indian victims of trafficking under the current federal law. *Id.*

resources and safety-net services for women who have been exploited, and (3) hold perpetrators accountable.<sup>26</sup> According to ANESEM's report, 90% of women in prostitution have histories of abuse and lack the resources to leave these abusive situations despite their desire to do so.<sup>27</sup> ANESEM also highlights for the public that runaway and homeless youth on the streets have an average of only forty-eight hours before a pimp or "john" approaches them for sex.<sup>28</sup> These types of cross-systems partnerships focused on the issue of commercial sexual exploitation are growing, with many of them building education and awareness for the general public.

Minnesota frequently excuses inadequate responses to sex trafficking and prostitution on the state's financial situation—Minnesota forecasts a budget deficit of over \$5 billion for this year. Data shows that in 2005, however, the state spent over \$8 billion to address problems of sexual violence.<sup>29</sup> It is important to note that the majority of these funds were spent on perpetrators, not victim services or prevention. This data indicates that Minnesota is investing huge sums of financial resources in a responsive posture rather than proactively working on prevention and early intervention—Minnesota can do better than that.

#### IV. MOVING FORWARD

MIWRC and its partners introduced a bill during the legislative session requesting funding to conduct culturally-based research into the scope of sex trafficking of American Indians in Minnesota. Although the bill was not funded, these efforts brought significant attention to the issue. Several legislators indicated their interest in continuing to learn more about the problem, and the State Senate Judiciary Committee, chaired by Senator Mee Moua, held an informational hearing in the summer of 2008. MIWRC testified at this hearing about the impact of sex trafficking on Native communities. During the 2009 legislative session, a new legislation addressing the complex and often intersecting issues of sex trafficking and prostitution in our state will be introduced. This comprehensive bill is being crafted by the Minnesota Advocates for Human Rights and is largely based upon their Sex Trafficking Needs Assessment Report released in September 2008. The bill language will include the need for culturally based housing and support

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26. ACTION NETWORK TO END SEXUAL EXPLOITATION IN MINNESOTA, BUYING SEX STOPS HERE, [http://www.mcbw.org/files/u1/Talking\\_Points\\_as\\_of\\_8-18-08.pdf](http://www.mcbw.org/files/u1/Talking_Points_as_of_8-18-08.pdf) (last visited Jan. 23, 2009).

27. See ACTION NETWORK TO END SEXUAL EXPLOITATION IN MINNESOTA, <http://www.mcbw.org/anesem> (last visited Jan. 23, 2009).

28. *Id.*

29. This number does not reflect the costs to counties and tribes in Minnesota. The figure was arrived at by calculating the cost of medical care, victim work loss, sexually transmitted disease, unplanned pregnancy, suicide attempts, and substance abuse and victim services, along with costs to the criminal justice system to deal with perpetrators. MINN. DEP'T OF HEALTH, INJURY AND VIOLENCE PREVENTION, <http://www.health.state.mn.us/svp> (last visited Jan. 23, 2009).

services for Native victims of trafficking as part of the overall need. The bill will address the multiple needs of victims, training and education, and statute changes required to adequately begin to impact the sex trafficking trade. Minnesota needs to invest in helping women and children who are victims of domestic sex trafficking heal and rebuild their lives. In addition, our system must start holding predators accountable for their crimes. Currently, law enforcement arrests “johns” at a significantly lower rate than it arrests female prostitutes, an occurrence attributed to the fact that “john stings” require three times the amount of resources needed to conduct stings on women.<sup>30</sup> Minnesota needs an approach that recognizes that prostitution and sex trafficking are often the same crime, that women who have been prostituted overwhelmingly have extensive trauma histories and require long term social service to rebuild their lives, and that predators need to be held accountable for their crimes. Crafting such a response will reduce or eliminate the suffering and trauma of countless victims, minimize costs to the system in judicial and social service interventions, and enhance overall safety for Minnesota’s women and children.

Finally, the state needs a better understanding of the complex issues facing American Indians. A basic knowledge of the role that historic trauma<sup>31</sup> has played in Native American communities will encourage law enforcement and the judicial system to seek culturally based, sustained services for victims. MIWRC has demonstrated that culturally-based community services have more positive outcomes and that the role of culture in healing trauma is strong. With a better understanding of the complex dynamics, role of historic trauma, jurisdictional complexities, and how our systems intersect with Native victims of crime, we can begin to craft more appropriate and effective prevention, intervention and prosecutorial strategies. Changing the social norms that have allowed this systemic form of violence against women to continue will take time, but with strong qualitative and quantitative evidence supported by focused communication strategies, the disproportionate victimization of American Indian women and children will stop. Appropriate early intervention and prevention will also strengthen families struggling with vulnerability factors. It seems an overwhelming task, but to do nothing is not an option. Traditionally, Native

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30. Data from the City of Minneapolis Police Dep’t (2007). In addition to arresting fewer “johns,” they are also given restorative justice instead of jail time and/or fines as the women receive. Susan Segal, Minneapolis City Attorney, City of Minneapolis, Address at the Minneapolis City Council Informational Session (Oct. 2008).

31. Historic trauma is understood as the multi-generational impact of loss of land, culture, and language for American Indians, along with the prolonged suffering of forced attendance at boarding schools. Maria Yellow Horse Brave Heart has written extensively of this dynamic in Indian communities, and we believe it has great significance in the high rates of overall disparities in their communities. See Maria Yellow Horse Brave Heart, *The Historical Trauma Response Among Natives and Its Relationship to Substance Abuse: A Lakota Illustration*, in HEALING AND MENTAL HEALTH FOR NATIVE AMERICANS: SPEAKING IN RED 7 (Ethan Nebelkopf & Mary Phillips eds., 2004).

communities work for the benefit of the children as the most sacred gift. We must work together to protect and nurture all children so they may grow up safely and reach their full potential as community members.