



REMARKS OF
ASSISTANT COMMISSIONER ELIZABETH DANK
MAYOR'S OFFICE TO COMBAT DOMESTIC VIOLENCE

BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON COURTS AND
LEGAL SERVICES AND THE COMMITTEE ON WOMEN'S ISSUES

"OVERSIGHT: EFFECTIVENESS OF HUMAN TRAFFIC
INTERVENTION COURTS"

September 18, 2015

Good morning Chairperson Lancman and Chairperson Cumbo and members of the City Council Committee on Courts and Legal Services and the Committee on Women's Issues. I am Elizabeth Dank, Assistant Commissioner at the Mayor's Office to Combat Domestic Violence (OCDV). Thank you for the opportunity to join the Honorable Toko Serita and my colleagues at the Mayor's Office of Criminal Justice to speak with you today about our collaboration with the Human Trafficking Intervention Court.

The Mayor's Office to Combat Domestic Violence oversees the delivery of domestic violence related services in New York City. Through the NYC Family Justice Centers and the Domestic Violence Response Team, the Office to Combat Domestic Violence administers and coordinates direct services to victims of intimate partner violence, elder abuse and sex trafficking.

The Borough of Queens is most commonly known as the epicenter for trafficking in New York City. In fact, the NYC Family Justice Center (FJC) in Queens accounts for 56% of the sex trafficking cases seen throughout the four Centers in New York City. One of the first Human Trafficking Intervention Courts (HTIC) in New York State was instituted in Queens County, recognizing that many defendants who are charged with prostitution

related offenses are victims of sex trafficking, and ensuring that they are connected to comprehensive supportive services.

Last year, the Mayor's Office to Combat Domestic Violence, Sanctuary for Families and the Honorable Toko Serita, presiding Judge for the Queens County Human Trafficking Intervention Court, launched the Queens Trafficking Intervention Pro Bono Project, a comprehensive civil legal program to connect foreign-born sex trafficking victims with access to free quality immigration legal assistance, ranging from advice to legal representation services. The Queens HTIC refers foreign-born sex trafficking victims to the Queens FJC where they can meet with culturally and linguistically competent pro bono attorneys from New York's most prestigious law firms, under the supervision of experienced Sanctuary for Families immigration attorneys. While at the Queens FJC, individuals have access to over 35 community organization partners which offer risk assessment, safety planning, case management, counseling services for adults and children, civil legal assistance, immigration assistance, economic empowerment and supportive services. The FJCs are walk-in Centers that provide free and confidential services regardless of the client's language, income, immigration status, gender identity or sexual orientation.

Since its inception in June of 2014, the Queens Trafficking Intervention Pro Bono Project provided 158 screenings on behalf of 155 individuals, all women, including transwomen, 36 of whom affirmatively disclosed trafficking. The vast majority of the other defendants screened showed indicia of trafficking, such as debt bondage, confiscation of documents for “safe keeping,” and/or lack of freedom of movement. Most disclosed a history of gender-based violence, most frequently domestic violence.

The average age of the clients screened through the Trafficking Project at the Queens FJC is 41 years old with the youngest client being 19 years old. The most common primary language is Mandarin and the most common birth county is China. Approximately 72% of the clients were undocumented at the time of the legal screening.

This collaborative Project has provided critical services to foreign-born sex trafficking victims who appear in front of the Queens HTIC. I would like to take a moment to briefly tell you about one client. “Santa”, who was born “Sandro” and identified by others as a boy for the first 17 years of her life, fled to the United States from Mexico and met her trafficker while working at a pizzeria in midtown. “John” was at least 20 years older than Santa and told Santa she could live with him and he would

take care of her. However, John started bringing men to the apartment and told Santa that she had to please them sexually however they demanded. John also continuously provided Santa with various narcotics. The more men she was forced to see, the more she became dependent on drugs to numb the experience of each unwanted sexual encounter. John charged Santa for the drugs he gave her and to pay for the drugs, she was forced to prostitute more. Santa was eventually arrested by an undercover police officer and appeared before Judge Serita at the Queens HTIC. Judge Serita strongly recommended that she participate in an immigration screening through the Queens Trafficking Intervention Pro Bono Project at the Family Justice Center. Through the services Santa received at the Queens FJC, she has now applied for a T-Visa, enrolled in a cosmetology course, is on her way to officially and legally become Santa, and is working to rebuild her life.

In closing, the Human Trafficking Intervention Courts have revolutionized the way that the criminal justice system identifies and responds to victims of trafficking. Through this innovative approach, HTIC defendants are recognized as victims and survivors of commercial sexual exploitation and human trafficking and are connected with broad resources and tools to empower them to rebuild their lives.

We look forward to continuing to work with the City, the Courts, community partners and with the Council on our shared goal of raising awareness about trafficking and enhancing resources for victims throughout New York City. Thank you.

Statement of Ilana Turko

Associate Council, Mayor's Office of Criminal Justice

New York City Council

Oversight: Effectiveness of Human Trafficking Intervention Courts
Committee on Courts and Legal Services

September 18, 2015

Good morning Chairperson Lancman and members of the Committees. My name is Ilana Turko and I am Associate Counsel at the Mayor's Office of Criminal Justice. The Mayor's Office of Criminal Justice, which advises the Mayor on public safety strategy and, together with partners inside and outside government, develops and implements policies aimed at achieving three main goals: reducing crime, reducing unnecessary arrests and incarceration, and promoting fairness.

I am grateful to you for holding this hearing and for giving us the opportunity to testify. And I am pleased to appear with the Honorable Toko Serita and Assistant Commissioner Elizabeth Dank from the Mayor's Office to Combat Domestic Violence, to discuss with you our experiences working with survivors of commercial sexual exploitation and trafficking.

Since 2008 the Mayor's Office of Criminal Justice has worked to provide services for survivors of sex trafficking and commercial sexual exploitation. We provide funding for survivor legal services, author and publish a resource directory, and administer contracts for survivor service providers. We're looking forward to hearing input today and working more with our partners to put an end to sex trafficking.

Thank you for the opportunity to testify today and I would be happy to answer any questions.



REMARKS OF
AFUA ADDO
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BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON COURTS AND LEGAL SERVICES AND THE
COMMITTEE ON WOMEN'S ISSUES

RE: "OVERSIGHT: EFFECTIVENESS OF HUMAN TRAFFICKING INTERVENTION COURTS"

SEPTEMBER 18, 2015

Good morning. My name is Afua Addo, and I am the Women's Services Coordinator for the Hidden Victims Project, an initiative of the Center for Court Innovation and the Queens Criminal Court. I'd like to thank the Chairs and members of the Committee on Courts and Legal Services and the Committee on Women's Issues for addressing this important topic.

The Center for Court Innovation seeks to help create a more effective and humane justice system by designing and implementing operating programs, performing original research, and providing reformers around the world with the tools they need to launch new strategies. Founded as a public/private partnership between the Fund for the City of New York and the New York State Unified Court System, the Center creates operating programs that test new ideas and solve problems. Through the lessons learned from operating projects and independent research, the Center strives to expand the use of effective alternatives to incarceration where appropriate; help victims of crime or abuse find safety, support, and services; improve access to justice for those in need of help; enhance the legitimacy of the justice system and strengthen public trust in justice; encourage the justice system to make more informed decisions in individual cases and in matters of policy; and work in collaboration with both the government and community partners to advance meaningful change.

Developing an enhanced problem-solving approach to individuals arrested for prostitution-related offenses has been part of the Center for Court Innovation's work from its very beginning. Prior to increased national awareness of trafficking, staff at the Midtown Community Court tested new ways to engage with people arrested for prostitution, and as a result, gained a deeper understanding of the dynamics at work in these cases.

The Center's anti-trafficking projects, which include the Midtown Community Court, Brooklyn Justice Initiatives, Bronx Community Solutions, and the Queens Hidden Victims Project, require an in-depth understanding of the particular issues these individuals face. Not all individuals involved in the commercial sex industry experience identical problems, and responding appropriately demands flexibility and creativity. In some parts of the city, for example, substance use is a chronic issue, while in other areas this is not a major factor. Regardless of the particular issues that clients bring with them, staff in each of the Center for Court Innovation programs use a trauma-informed approach with defendants, offer a sense of safety, and partner closely with community agencies and the courts to ensure that the complex needs of individual clients are met. Program staff in Queens, Manhattan, the Bronx, and Brooklyn screen each participant for experiences of interpersonal and systemic violence and for experiences of trafficking.

The Hidden Victims Project in the Queens Criminal Court builds upon this expertise, and recognizes the numerous challenges faced by individuals arrested for prostitution. Many victims of trafficking, sexual assault, and intimate partner violence have multiple experiences of trauma, and may struggle with drug use or other challenges. Despite overwhelming evidence that this population experiences high levels of poverty and violence from multiple sources—including family members, intimate partners, pimps and purchasers—systems may not identify this victimization (or systems may have responded poorly in the past). The Hidden Victims Project seeks to address this gap by screening female and transgender defendants in drug court, mental health court, and the Human Trafficking Intervention Court for experiences of trauma and victimization, and offering connections to critical resources, case management, and

counseling where appropriate. As the Women's Services Coordinator, I focus on helping individuals with immediate needs, such as access to shelter, health care, child-related needs, or government benefits. Case management is often intensive, due to the severe lack of shelter beds or intermediate- or long-term housing options for victims of trafficking. MetroCards, too, are in short supply and can be a significant barrier to individuals seeking help in addressing their safety and well-being. I also refer some clients to longer-term counseling with our partner agency, STEPS to End Family Violence, an agency specializing in working with survivors of intimate partner violence that are justice system-involved.

Following Chief Judge Lippman's expansion of the Human Trafficking Intervention Court model to 11 jurisdictions statewide, the Center for Court Innovation took on a coordinating role among service providers in the New York City Human Trafficking Intervention Courts. By bringing together service providers from across boroughs, and through the lens of problem-solving court experience, the Center for Court Innovation has helped in the effort to respond consistently to potential victims of trafficking.

In addition to providing coordination for service providers, the Center for Court Innovation's own programs have seen increased numbers of participants, demonstrating a great need for continued services. In 2014, the Midtown Community Court (which receives all prostitution-related cases from Manhattan) saw 495 individuals, Brooklyn Justice Initiatives saw 161 individuals, and Bronx Community Solutions saw 212 individuals, all of whom were arrested for prostitution-related charges. The numbers have been similarly high in 2015; from January to June of 2015, the Midtown Community Court saw 235 individuals; Brooklyn Justice Initiatives saw 89 individuals; and Bronx Community Solutions interfaced with 102 individuals. Program

completion rates are also high: in Midtown Community Court, from July 2014 to June 2015, 149 of 179 participants completed trauma-informed programming.

Among these individuals, specific populations and needs arise in different boroughs. In Manhattan and Queens, for example, the percentage of Asian defendants is high—in Midtown Community Court, 36% of defendants from January to June 2015 were Asian—illustrating a significant need for service provision that is culturally relevant and available in Mandarin, Korean, or other languages. In the Bronx, a significant number of transgender defendants participate in programming—11% in 2014, and 12% in the period from January to June of 2015. This, too, requires specific expertise on the part of Center for Court Innovation, and illustrates that a one-size-fits all model does not work for our programs. Staff at each of our projects deliver tailored services: for example, at the Midtown Community Court, staff developed a group curriculum specific to transgender individuals. Staff have also worked to strengthen partnerships with agencies that have Mandarin- and Korean-speaking counseling services.

Center for Court Innovation programs work to identify and achieve performance measures for our programming that are responsive to the context of the women and transgender individuals receiving counseling and support. For example, many individuals engage in counseling voluntarily following the completion of their mandate; in Midtown, 45 participants engaged in voluntary services during the period from July of 2014 through June of 2015. Additionally, Center for Court Innovation staff work specifically on obstacles that lead to re-arrest and re-victimization for some defendants; the lack of basic supports often keeps individuals in “the life.” These basic needs are often tied to poverty, and include shelter/housing, MetroCards to reach appointments for government or employment-related

services, and information and services in their preferred language for those litigants with limited English proficiency. In addition to these barriers to stability, coercion and exploitation by an abusive partner or pimp may take autonomy away from the individual, possibly leading to recidivism—and may mean the individual meets the legal definition of a trafficking victim.

The best way to illustrate the complexity of the issues I've discussed is through the story of a Hidden Victims Program client. As an adolescent, she experienced extensive poverty, housing instability, lack of educational assistance for her learning needs, family dysfunction and, then, the death of a parent and abandonment by another. She was then placed in a foster home and, subsequently, she ran away and into "the life." She was soon arrested for prostitution related charges and her case was transferred to the Human Trafficking Intervention Court. At her first court appearance, she was a few months pregnant and had not received any prenatal care. The judge and her attorneys referred her to me at the Hidden Victims Project for case management and assessment. I provided her with one-on-one counseling, access to stable health and prenatal care and referrals to job readiness and vocational rehabilitation training. Even with the many challenges and barriers facing her, the client was able to successfully complete her court mandate and today is still receiving a continuum of care for her and her baby. This example illustrates how the Hidden Victims Project, in partnership with the Human Trafficking Intervention Court, is able to address trafficking survivors' complex trauma needs by providing access to comprehensive crisis intervention and longer term supportive services that lead to survivor empowerment.

The Center for Court Innovation plans to continue to expand its role as a liaison connecting and coordinating all of the service providers working with defendants in the Human Trafficking Intervention Courts city-wide. By bringing a consistent trauma-informed framework to each of the courts, criminal justice staff, stakeholders, and allies can better respond to

sexually exploited and trafficked individuals and ensure that their encounter with the courts is an opportunity for outreach and services rather than convictions and incarceration.



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

**Jillian Modzeleski – Criminal Defense Practice
*BROOKLYN DEFENDER SERVICES***

Presented before

The New York City Council Committees on Courts & Legal Services and Women's Issues

Oversight Hearing on the Effectiveness of Human Trafficking Intervention Courts

September 18, 2015

My name is Jillian Modzeleski and I am a trial attorney with Brooklyn Defender Services (BDS). Our organization provides innovative, multi-disciplinary, and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy to more than 40,000 indigent Brooklyn residents every year. I thank the New York City Council Committees on Courts & Legal Services and Women's Issues, and in particular Chairs Rory Lancman and Laurie Cumbo, for the opportunity to testify on the effectiveness of Human Trafficking Intervention Courts (HTICs).

BDS is fortunate to have the support of the City Council, as well as other elected officials and the Office of Court Administration, to supplement the services we provide as the public defense office in Brooklyn for people who have been arrested, those who are facing child welfare allegations and those who are facing deportation. We have developed a model of specialization to best represent certain types of clients, including people with mental illness, adolescents, and victims of human trafficking. Through specialized units of the office, we provide extensive wrap-around services that meet the needs of these traditionally under-served clients in a comprehensive way.

Since the inception of the HTIC in Kings County, I have served as BDS' dedicated defense attorney assigned to the part. In addition, we have had two specialized social workers assigned to the part who are in court weekly to assist with assessments, placements, crisis intervention, and other social service needs. BDS also has specialized immigration attorneys with

experience in the area of human trafficking, as well as family court attorneys available. We also attend the quarterly stakeholder meetings for the HTIC, which are facilitated by the judge and which have resulted in meaningful collaborations and effective resolution of numerous issues that have arisen since the part began.

HTICs can be a critical tool to protect trafficking victims from many of the devastating consequences of involvement with New York's criminal justice system, but only when District Attorneys and Judges use them for that purpose. In BDS' experience, HTICs predominately function as prostitution courts with connections to overstretched service providers. District Attorneys use the specter of punishment to persuade defendants who have been identified as potentially trafficked to inform on traffickers, but in my two and a half years of experience in HTICs, I have never—not once—seen this strategy work. Instead, some of my clients see case dispositions that mirror those of traditional criminal courts, though there has been an increase in ACDs since Brooklyn's HTIC opened—from 49% of cases in which prostitution is the top charge to 66%. If the prosecution or the court deems one of my clients a victim of human trafficking, coerced into sex work as the mission of the court suggests, why do they not immediately dismiss the case or decline to prosecute?

When people arrested for prostitution-related charges are identified as having been trafficked, the criminal justice system should immediately cease treating that person as a "defendant." Sexually exploited and/or trafficked individuals have complex needs and concerns, often including issues related to shelter, safety, children, immigration status, prior criminal justice involvement, addiction, and trauma. However, the court itself is not in the best position, nor is the prosecutor, to address those needs without running the risk of re-victimization and further trauma. BDS' experience working with specialized populations, such as youth, veterans, people living with mental illness, has shown us that vulnerable individuals in contact with the criminal justice system bring a host of additional needs that often require substantial trust and rapport-building in order to adequately assess and address. Continued court involvement is not only onerous but can be detrimental, particularly for people who are identified as victims of sexual exploitation. BDS believes the potential for any trafficking victims to be penalized within the criminal court context, with court mandates, criminal consequences, far-reaching collateral consequences and further coercive control in their lives is counterproductive and wrong. Anyway, when services and support are delivered through the entities that are capable of punishing them, they are not likely to trust the system or see it as an ally in identifying their traffickers and holding them accountable.

BDS has a great working relationship with the other public defenders testifying today, and we share their belief that the fundamental problems with HTICs begin with the ludicrous idea that our City must arrest people to connect them with services.

Overcriminalization

While the intent of the HTICs may be an improvement over traditional criminal court, clients charged with the eligible offenses would be best served by not being arrested in the first place. This can be achieved in part by either repealing or, at the City government level, declining to prioritize enforcement of certain criminal statutes.

Among the most common charges that are handled by HTICs is Loitering for the Purpose of Prostitution, which should not be a crime. The statute refers to “wander[ing] about in a public place” and “repeatedly...attempt[ing] to engage passers-by in conversation” for the purposes of prostitution.¹ Engaging or offering to engage in a sex act for a fee is criminalized in another statute; this loitering law only serves to give law enforcement the discretion to profile, arrest, and charge those whom officers deem likely to commit prostitution in the future—or those whom they want to harass—with a lower standard of proof. Enforcement of the law, if not the law itself, is patently sexist and racist. Of the BDS clients charged with this offense in the last three years, 76% were black and 87% were identified on their rap sheets as women. (The latter figure is complicated by police officers’ inconsistent approach to recording gender identities and expressions, as many of our clients are transgender.) They are commonly identified by their clothing choices. The law is also likely unconstitutional; in 2012, New York City settled a \$15 million lawsuit for enforcing laws prohibiting loitering to panhandle or search for a sex partner after they were struck down by state and federal courts.² **Loitering charges clog the system, stretch the resources of service-providers whose focus would be better served on sexually exploited people who truly need them, and distract from the real work of identifying human traffickers and assisting victims.** Since Brooklyn’s HTIC opened, the percentage of BDS’ loitering for prostitution cases that result in ACDs has doubled—from 26% to 53%—but another 40% continue to result in convictions. While the City Council cannot rewrite state law, it can certainly push the New York Police Department and local District Attorneys to stop enforcing unconstitutional, counterproductive statutes.

Certainly, many trafficking victims and sex workers would be ensnared in our criminal justice system regardless of prostitution-related statutes. HTICs could help connect these individuals with needed services while offering favorable case dispositions but, again, this would only be true when judges and District Attorneys use them for this purpose. To that end, one critical improvement to HTICs would be to open them up to handling additional charges. Furthermore, cases which may not involve sexual exploitation but involve another form of trafficking, such as labor trafficking, could be identified and better addressed through HTICs. Lastly, HTICs should be provided with dedicated Mandarin translators, as many cases are held up while the court waits for translators it shares with other parts.

The Systemic Injustice of Bail

Another critical flaw in HTICs is symptomatic of a broader injustice: the misuse of bail and pre-trial detention. I deeply appreciate that the Council, and Chair Lancman in particular, has sought to address this issue, and BDS is hopeful that one or more of the proposals currently in development will help our clients who are charged with HTIC-eligible offenses. Factors that could indicate a greater degree of victimhood, such as a long history of prostitution arrests, are also factors that make judges more likely to set bail. According to New York State law, bail is only to be used to secure a defendant’s return to court. However, it is an open secret that District Attorneys and Courts use it to ensure pre-trial detention, ostensibly in the interest of public safety. Cash bail is not uniquely good at achieving either of these objectives. Studies show that unsecured sureties and appearance bonds (e.g. promissory notes or credit card holds) are just as

¹ § NYS CPL 240.37

² <http://www.nytimes.com/2012/02/08/nyregion/new-york-settles-suit-on-illegal-arrests-for-loitering.html>

effective as securing defendants' return to court. Outsourcing enforcement to bail bonds companies, whose only objective is profit, has never been shown to improve public safety. Moreover, nearly every BDS client in HTIC has been charged with only non-violent offenses, and thus public safety is not an issue.

Every year, tens of thousands of New Yorkers suffer the brutality of Rikers Island and other City jails simply because they are poor and cannot afford bail. They include people with serious mental illness, people who are medically fragile, adolescents, and victims of human trafficking. The vast majority are people of color, including 89% of those held on \$1,000 or less.³ Each day inside increases the likelihood of job loss, loss of shelter or apartment placement, mental and physical health deterioration, and even death. Many suffer the torture of solitary confinement while still "presumed innocent." As with other courts, cash bail deprives poor people of the right to a fair trial in HTICs. Pre-trial detention has been proven to distort case outcomes, as detained defendants who are inhibited from participating in their own defense and desperate to return to their families, jobs, and homes will accept far worse plea deals saddling them with a criminal record whether or not they are innocent, just to be released from Rikers with a sentence of "time served."⁴ Almost none of my HTIC clients have ever made bail, and they almost always end up taking pleas with a more onerous mandate just to get out of jail. Moreover, I cannot interface with my incarcerated clients and therefore cannot connect them with critical support services to keep them healthy and safe. Significantly, I cannot start to form a meaningful relationship with them that would make them feel comfortable opening up about their histories and potential trafficking. The longer that sex workers are in custody, the longer they wait for help, should they want or need it.

Rikers is especially dangerous for individuals within the demographic groups whose cases are most likely to be handled by HTICs—namely women and transgender people. A survey conducted by the U.S. Department of Justice found the percentage of people at Rose M. Singer Center, the jail for women on Rikers Island, who reported staff sexual misconduct to be more than three times higher than the national average for all jails, and approximately two and a half times the national average for women's jails.⁵ Incarcerated transgender women are particularly vulnerable, as numerous studies have shown that rates of violence and sexual assault against them are far higher than those against cisgender individuals.⁶

Adriana, a BDS client in HTIC, was prominently featured in a recent New York Times Magazine article, entitled "The Bail Trap." She had left her daughter with a friend when she went to pick up diapers, and returned to find police officers waiting to arrest her for endangering the welfare of a child. The Assistant District Attorney on her case sought \$5,000 bail, and the judge ultimately set it at \$1,500, which made no difference, as Adriana could never afford either amount. (She had no conviction record, and no history of missed court appearances.) She spent the next two weeks on Rikers Island, with her daughter in foster care and the life that she was working hard to build crumbling more and more each day, while BDS attorneys sought without

³ Jamie Fellner, *The Price of Freedom* (Human Rights Watch 2010).

⁴ Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jails in America* (VERA 2015)

⁵ <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>

⁶ E.g., Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (Irvine: Center for Evidence-Based Corrections, University of California, 2007), 3.

success to get bail lifted. Because Adriana had a history of sex work, her attorneys were able to get her case transferred to the HTIC, where the judge released her with conditions. She had to participate in a program. Meanwhile, a family court judge found that she had been a victim of human trafficking—something law enforcement should have considered much earlier given her history of prostitution-related court appearances in different states. Nonetheless, the Assistant District Attorney and judge continued to treat her case as a matter of child endangerment, and not as one of a single mother overcoming immense hardships and doing everything she could to provide for her daughter.

In most cases, HTIC judges can and should release our clients pending trial. Otherwise, judges should impose the least onerous form of bail—beginning with an unsecured appearance bond—that is required to secure a defendant’s return to court, and show cause on the record for the use of any form other than unsecured sureties. In addition, Assistant District Attorneys should be required to submit unique written motions requesting bail conditions and explaining the reasons for the request. Lastly, courts should have to reconsider bail at the end of every week of a defendant’s incarceration and consider her inability to pay as a “change of circumstance” that warrants a bail reduction or a conversion to a less onerous form. HTIC hearings are held every week, so the court has the ability to adjourn cases for short return, reducing the already small chances that a defendant will miss a court appearance. **Ultimately, New York should live up to the American ideal of presumed innocence and end pre-trial detention for all but the most serious cases. Bail reform is one critical step to making that a reality.**

Vacating Convictions

In 2010, New York State passed legislation enabling victims of sex trafficking to vacate their convictions for prostitution and loitering for the purposes of prostitution through a procedure established in Section 440.10 of the Criminal Procedure Law. This law was drafted and passed with critical support from a coalition of advocates and service providers that included sex workers, under the leadership of the Sex Workers Project, and represented a major victory against the criminalization of trafficking victims. However, the onus should not be on victims to vacate convictions. Instead, the onus should be on law enforcement to not arrest and prosecute them. Moreover, policymakers who are concerned about the collateral consequences of criminal convictions should look beyond the most politically sympathetic groups and address the permanent impacts of criminal convictions on those involved in sex work by choice or circumstances, as well. A robust sealing law is long-overdue in New York State.

Judicial Selection

The judge who currently sits on the bench in Brooklyn’s HTIC regularly demonstrates a deep understanding of the issue of human trafficking, and clearly cares about the well-being of our clients. That has not always been true in specialized courts, including in HTICs. BDS strongly believes that the position must be held by judges who volunteer for it, and who have committed to being educated and trained on issues related to human trafficking and the needs of its victims. Given the reality of HTIC, judges must also understand sex work. They also must be open to learning about the communities we serve, including trans clients, people struggling with addiction, and victims of domestic violence, and commit to evidence-based responses to the issues they face. This is also true, though perhaps to a lesser extent, for court staff. The current

staff in Brooklyn's HTIC is well-informed and treat our clients with the respect, and it is important for this practice to continue as staff turnover.

Condoms as Evidence

In accordance with a variety of new policies and informal agreements, we have not seen possession of condoms used as evidence of prostitution in Brooklyn in many months. This is a welcome change that is particularly visible in HTICs. The fact that these instruments of safe sex were ever criminalized is shameful, and the end of this practice represents important progress that should be emulated everywhere.

Conclusion

HTICs have served many of our clients well in terms of providing services and diversion from criminal convictions through offers that include ACD with program participation. However, for all practical purposes the part operates as a successful prostitution diversion court. For the mission of the HTIC to be actualized, all of the actors in the criminal justice process would have to alter their treatment of a case as soon as an individual is identified as potentially trafficked. In addition, policymakers and law enforcement officials must devise a new strategy around sex work that does not involve arrests. Even in the best outcomes in HTICs, that arrest remains a part of a person's record in both government-run and private, for-profit databases for the rest of their life. It is long past time that we as a society confront the scourge of human trafficking without subjecting its victims to additional challenges, trauma and abuse.



TESTIMONY

The New York City Council
Committee on Courts and Legal Services
Committee on Women's Issues

Oversight: Effectiveness of Human Trafficking Intervention Courts

September 18, 2015
New York, New York

The Legal Aid Society
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Presented by:

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My name is Ryan Wall, and I am an attorney in the Legal Aid Society's Criminal Defense Practice. I am here with Cait Mullen from our Juvenile Rights Practice. I work in a specialized unit in the Criminal Practice called the Exploitation Intervention Project, dedicated to identifying and advocating for victims of human trafficking caught in the criminal justice system. The project represented individuals charged with prostitution offenses in Criminal Court prior to the commencement of Chief Judge Lippman's Human Trafficking Intervention Initiative and now continues to represent these same clients in the Human Trafficking Intervention Courts ("HTICs"). As the EIP team represents clients in these courts across the City every single day, we appreciate the interest in the efficacy of these courts and are happy to share our experience over the past two years.

Annually, in all five boroughs of New York City, The Legal Aid Society ("LAS") provides legal assistance in more than 300,000 individual matters for low-income families and individuals with civil, criminal, and juvenile rights legal problems. Founded in 1876, The Legal Aid Society is the nation's oldest and largest provider of legal services to indigent clients. Since 1965, we have served as the primary defender in New York City. In addition to representing many thousands of people each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

The Legal Aid Society's Exploitation Intervention Project ("EIP") was the first effort in the United States by a public defender office to meaningfully address the issue of human trafficking. EIP focuses its work on the representation of individuals charged with prostitution offenses throughout New York City and represents many victims of sex trafficking who are arrested and prosecuted for engaging in prostitution. This marginalized and underserved population has a long history of criminalization and has frequently been cycled through the

criminal justice system. Despite increased awareness about the issue of human trafficking, the criminal justice system routinely fails to identify trafficking victims among those being prosecuted in the numbers in which they truly exist. Our clients include both citizens and non-citizens, many of whom experience extreme abuse, subjugation and exploitation. To date, EIP has represented thousands of individuals charged with prostitution-related offenses in New York City courts.

Likewise, our Juvenile Rights Practice has been a national leader in representing young trafficking victims and runaway and homeless youth and was the leading legal advocate for the enactment of New York's Safe Harbor Act to protect the children we represent from abuse and exploitation by traffickers. Our Civil Practice, which includes our Homeless Rights Project, handles more civil legal matters than any civil legal services program in New York State each year and provides expert legal assistance for victims of human trafficking as well as survivors of domestic violence. Our perspective comes from our daily contacts with clients and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies, including the various District Attorney's Offices and the New York City Police Department.

As we have testified before the Council in the past, The Legal Aid Society is deeply concerned about the criminalization of victims of human trafficking. More specifically, our concerns center on the lack of appropriate services for this population and the harmful ways in which court involvement can exacerbate the problems this vulnerable group confronts.

When Chief Judge Lippman announced the creation of the Human Trafficking Intervention Initiative in September of 2013, The Legal Aid Society supported the initiative. Indeed, given our experience representing victims of human trafficking prosecuted as defendants in criminal

court, we believed that this represented a critical step in bringing to light the complex and difficult experiences many of our clients face. Rather than simply continuing to criminalize, it is essential to connect this client group to appropriate and supportive services, and we welcome all efforts to move closer to that important goal.

We have struggled over the last two years to build a practice in these courts that approximates their promise, and have made significant achievements. Together with the outstanding service provider community committed to working with HTIC clients, and each local District Attorney's Office, we have moved a long way toward better service provision and case outcomes for those prosecuted in the HTICs.

In 2008, 14% of closed prostitution cases in New York State were resolved with an Adjournment in Contemplation of Dismissal¹ or (ACD).² 2014 saw that number increase to 47%.³ Notably, in the five New York City counties, in the 11 months following the HTIC rollout, 52% of prostitution and loitering for prostitution cases were resolved with an ACD, a percentage that continues to increase with each passing month.⁴ Clients represented by the Exploitation Intervention Project at LAS fare even better. For example, from February 1, 2014 through January 30, 2015, the EIP team represented 1288 clients in 1695 criminal cases involving prostitution charges. Of those cases, 70% resulted in an ultimate dismissal and no criminal record for project clients.

However, there are several issues which must be addressed when evaluating the effectiveness of the HTICs. In particular unchanged arrest practices, the impact of bail and

¹ C.P.L. § 170.55.

² *N.Y. Div. of Crim. Just. Servs. Computerized Oracle File*, (July 21, 2015) [hereinafter "DCJS 2015"].

³ *Id.*

⁴ *Id.*

pretrial detention, the continued lack of resources, and the need to improve procedures for minors prosecuted in the courts warrant further consideration and response.

A. Arrest Practices Remain Unchanged

The Human Trafficking Intervention Court Initiative is a criminal justice based approach. Sadly, ongoing arrest practices continue to expose our clients to repeated arrest and prosecution. These arrest practices continue unchanged, despite the widespread recognition of trafficking and the connection to those arrested for prostitution. Often, when we explain the court initiative to stakeholders in other jurisdictions, there is understandable confusion as to how an initiative to assist victims of trafficking can be premised on their own arrest and prosecution. As many in the room are aware, there is deep philosophical and ideological division around prostitution and trafficking. While that debate clearly falls outside the scope of this hearing, it is worth noting that all sides and perspectives reach consensus on one crucial point – people engaging in prostitution should not be arrested and prosecuted for that conduct. Why, then, we continue to welcome a seemingly endless stream of prostitution cases into the courts defies reason.

As an illustration, between 2006 and 2012, there were an average of 2,410 arrests each year throughout New York State for Penal Law § 230.00, Prostitution. In 2013, the year of the HTIC rollout, there were 2,482 arrests statewide.⁵ Further, since the HTICs have been in operation, there has been a dramatic increase in the number of clients arrested at massage parlors and charged with violating New York State's Education Law §§ 6512 and 6513 which criminalize the unauthorized practice of massage and the unauthorized use of a professional title, cases that are typically sent to the HTICs. In 2012, LAS represented 23 people citywide on these charges. This number increased to 89 by 2013 and 145 in 2014. In the first six months of this year, we have already represented 100 clients facing prosecution for these charges. The

⁵ *Id.*

overwhelming majority of these clients are non-English speaking, undocumented Asian nationals living in Queens.

It has been argued that it is important to continue to make arrests for prostitution offenses, even though, as here, those arrested are likely victims of trafficking, because these arrests may be the only point of contact for a population that is otherwise difficult to reach. However, this analysis is flawed for two reasons: (1) vulnerable populations do, in fact, come into contact with other institutions and agencies in places where intervention could occur, and (2) once the arrest process is set in motion, it is difficult to reverse, and even more difficult to undo the overwhelming harm that can result.

If the HTIC Initiative is to be a success, we must recognize that utilizing our criminal courts as an intervention site also brings with it some troubling consequences and work to counteract those harms. Exposure to the criminal justice system presents specific dangers for this population, especially where an individual's ability to comply with court mandates dictates whether they may avoid incarceration or a criminal conviction on their record. If individuals, even those believed to be victims of trafficking or vulnerable or at risk of trafficking, do not comply with imposed mandates, they face prosecution, incarceration, and criminalization. For many, even a metrocard to get to a mandated service provider presents a huge obstacle.

Because these are mandates imposed in criminal court, even though intended to help, non-compliance is met with traditional criminal court responses – incarceration, a less favorable disposition, or a warrant issued for failure to appear or comply with the court's mandate. This is so even though the reasons for non-compliance may be the precise issue the intervention court purports to address. The nature of this quandary can work to trap precisely those we have identified as worthy of help and intervention in an unending cycle of criminalization.

B. Bail and Pre-trial Detention

This Council is already well versed in the problems with the cash bail system in New York City. An additional point to consider, however, is how the imposition of cash bail often works to impede the HTICs' problem-solving goals. Arraigning judges continue to set small amounts of cash bail on individuals arrested for prostitution charges. Unable to post even these small amounts, clients remain incarcerated as they await their appearance in the HTIC. As recently as last month, our team saw clients detained post-arraignment on as little as \$50 bail. Thankfully, most clients are released once they appear in the HTIC, but the days incarcerated awaiting appearance should be of primary concern.

For this client group, and many others represented by the Criminal Practice at LAS, incarceration for even a few days can cause devastating consequences. Overwhelmingly, individuals arrested for prostitution offenses have been victims of extensive interpersonal violence, whether at the hands of traffickers, purchasers of sex, or the police. This group faces additional trauma, and potential violence, when incarcerated. Additionally, like so many, if our clients have secured shelter placement or other temporary housing, they risk losing that housing with every night spent incarcerated. Ultimately, any period of incarceration can be destabilizing, and dangerous, for HTIC defendants. Even short incarceration further enhances their vulnerability to additional exploitation and abuse.

LAS applauds the Council's efforts to address this issue through systemic change. It is crucial that we rectify the problems that exist in New York City's bail system. As we work to usher in new reforms, more can be done to stem the unconscionable practice of detaining HTIC defendants. Judges who set bail conditions like this must be accountable for the devastating impact on individuals and families across the City. No one should be detained awaiting a court

appearance because they do not have \$50 cash to post. This is particularly so for the defendants the HTICs were created to serve.

C. Resources

As we have emphasized many times in the past, individuals arrested for prostitution-related, and other, offenses in New York City have extensive needs that remain unmet. Lack of shelter, medical care, benefits, and mental health support continues to create instability in their lives and render them vulnerable to exploitation. The Council recognized this earlier this year when it provided \$750,000 for services in the HTICs in the FY2016 budget.⁶ We are grateful to the Council for recognizing the need and for significantly enhancing the reach of the service providers that work in the HTICs with this funding.

However, a lack of appropriate supportive housing remains one of the biggest barriers to providing services to survivors of trafficking.⁷ Commonly, “housing of any type is often unavailable.”⁸ Trafficking survivors, unlike victims of domestic violence, are not given priority for New York City Housing Authority housing.⁹ This impacts survivors of all ages, and drastically limits service providers’ ability to successfully engage with victims of trafficking or those at high risk for being trafficked. Without stable housing, survivors are unable to gain

⁶ See Press Release, The Council of The City of New York (June 22, 2015), <http://council.nyc.gov/html/pr/062215budget.shtml>.

⁷ Noy Thrupkaew, *A Misguided Moral Crusade*, NEW YORK TIMES, September 23, 2012 at SR14 (“Nearly 90 percent of the minors profiled in a John Jay College study indicated they wanted to leave ‘the life’ — but cited access to stable housing as one of the biggest obstacles. In New York City alone, almost 4,000 homeless youths lack stable housing, yet there are barely more than 100 long-term shelter beds to serve them.”); see also Gregory Maney, Tineka Brown, et al., *Meeting the Service Needs of Human Trafficking Survivors in the New York City Metropolitan Area*, Hofstra University (2011)(available at <http://lifewaynetwork.org/wp-content/uploads/2011/11/Hofstra-University-LifeWay-Network-Report-2011.pdf>).

⁸ Id. at 14.

⁹ See New York City Housing Authority Public Housing Priority Code, available at <http://www1.nyc.gov/assets/nycha/downloads/pdf/eligibility-priority-codes.pdf>.

safety or build independence.¹⁰ The need for both emergency/crisis housing and dedicated long-term supportive housing is clear and well-understood by all who serve this population.

For commercially sexually exploited youth, essential services, such as emergency supportive housing and short term residential crisis intervention, do not exist. The lack of services in New York City for these vulnerable youth is startling. Programs like Girls Educational & Mentoring Services (“GEMS”), which provides residential services for young women from the age of 16 to 24, has only 9 beds – and is almost always full to capacity. There are no residential services in New York City for trafficked transgender girls or boys, or for that matter, no non-residential programs specifically to address the needs of sexually exploited transgender girls or boys.

The lack of available services remains a huge obstacle to truly addressing the needs of this at risk population. Additionally, HTIC defendants seeking basic public assistance, like others, must navigate complicated application systems, frequent denials, and onerous requirements.

The HTICs have not, and cannot offer solutions to this problem. A court initiative cannot mandate, or even contemplate, the creation of any additional beds or shelter options for trafficking survivors or lessen the bureaucratic executive agency obstacles that impede our ability to provide housing to this population. This must come from efforts outside the judicial system, and is a critical need.

D. Procedure for Minors in the HTICs

The question of how 16 and 17 year-olds arrested for prostitution offenses should be handled in the HTICs, and in criminal courts generally, has been the subject of extensive debate and examination. New York State and federal law identify this group as sexually exploited youth or victims of a severe form of sex trafficking. The logical extension is that these young

¹⁰ Id.

people should not be prosecuted in criminal court. However, because the age of criminal responsibility in New York State has not been raised yet, their prosecution as adults continues.

As a result, the New York State legislature has attempted to rectify the problem via the passage of additional criminal procedure sections. These sections work to bridge the gap between the original Safe Harbor for Exploited Youth Act of 2008¹¹ and criminal practice in the State. Until recently, it was unclear how the Safe Harbor Act affected minors considered adults arrested for prostitution offenses. In 2014, months after the HTIC rollout, the legislature clarified that a criminal court judge could also utilize some of the Safe Harbor provisions in an adult criminal prostitution case involving a 16 or 17 year olds.¹² The legislature further provided additional dispositional alternatives that include a dismissal of the criminal charges in the interest of justice and a mandate that if the defendant is found guilty, either by plea or at trial, s/he be adjudicated a youthful offender.¹³

In practice, the HTICs have struggled to implement and interpret this provision. This has produced mixed results, with a handful of cases dismissed in the interest of justice, some cases resolved by joint family and criminal court supervision, and some cases resolved by traditional criminal court process. While the law is a step in the right direction, the process for providing services to young people arrested for prostitution offenses needs to be simplified and streamlined. It must be made clear, for example, that when a young person with an HTIC case is involved in a contemporaneous Family Court proceeding that will allow them to access Safe Harbor services, the dismissal provision of the new law is automatically applied. Otherwise, we risk entangling these young people in a confusing web of court appearances in separate courts that does not serve the purpose of providing them what they need.

¹¹ Soc. Serv. Law § 447-a & b.

¹² C.P.L. §§ 170.30 & 170.80.

¹³ *Id.*

Conclusion

Our experience representing clients in the newly created Human Trafficking Intervention Courts over the last two years leads us to conclude that many clients achieve better case outcomes and a connection to committed service providers when their cases are referred to the courts. However, before declaring the courts an unbridled success, there are still significant shortcomings with respect to an ongoing high volume of arrests, an overreliance on cash bail and pretrial detention, a lack of resources, and a lack of a simple procedure to handle young people who have overlapping HTIC and Family Court cases. These issues must be addressed, and remain part of our discussion of the issue of human trafficking, as we move forward.



Testimony of New York Asian Women's Center
Before the New York City Council
Committee on Women's Issues
Committee on Courts and Legal Services
September 18th 2015

Good morning, Chairperson Cumbo, Chairperson Lancman and distinguished members of the Committee. My name is Yasmeen Hamza. I am the Director of Client Services at New York Asian Women's Center (NYAWC). Thank you for giving us the opportunity to speak today.

As you may already know, NYAWC is a pan-Asian American focused agency, providing social and legal services to survivors of domestic violence, sexual assault and human trafficking. We have represented Asian survivors throughout New York City for 33 years.

2015 marks the tenth year of NYAWC providing services to survivors of human trafficking through our program called Project Free.

We commend the Human Trafficking Intervention Courts' efforts in recognizing the revised perspective of trafficked individuals as vulnerable to abuse and exploitation. This shift in perspective has allowed for NYAWC's Asian Women Empowerment Program, or "AWE," to develop under Project Free in 2011. The AWE program was created as a safe space for clients to build trust after their human trafficking experience and allows NYAWC to work with clients in a holistic way. Our counselors introduce themselves to clients at the courts, help clarify or voice concerns, and provide information regarding our services. They support oftentimes traumatized clients and help them navigate the court and other systems.

Social service providers serve an important point of connection to not just a counselor who can speak their language, but also one who continually trains in trauma informed and culturally appropriate practice. The court allows for the beginning of a sense of community where people might have faced or are facing psychological or physical isolation.

We do also have some recommendations for the continuing development of these courts.

First, a large number of Mandarin speaking women are being arrested for prostitution-related charges. There continues to be a disproportionate amount of Mandarin speaking women that have been arrested and have gone through especially the AP8 at the Queens Criminal Court. As such, we think arrest patterns should be more critically analyzed and evaluated.

Second, these increased arrests are also resulting in increased traumatizations and a widening gap in trust and disclosure. This impacts our work in creating a safe space for survivors and encouraging the disclosure of any trauma; they are still traumatized by the initial arrest and subsequent confusion of being processed through the criminal justice system.

Third, we recommend streamlining or standardizing the overall process so that each court can expect a certain number of sessions for defendants. We hope this would lead to less confusion from clients about what is expected of them. That being said, the AP8 at the Queens Criminal Court has been a great example of a collaborative effort where the court staff have shown a tremendous team effort in supporting clients and providing them with service options.

Finally, we further recommend not just increased language access but also focused training to produce more informed and culturally appropriate court interpreters. Our counselors have experienced instances where court interpreters have made side or inappropriate comments in the midst of their interpretation that has further triggered or traumatized clients.

NYAWC urges the New York City Council and this Committee to consider our recommendations in order to provide clients with clarity of their circumstances, increased access to resources and tools that will begin to open the doors to other employment options; increase access to immigration legal services; and bolster evaluation capacity to continually ensure the quality and relevancy of our service provision methods.

We thank you for listening to us and for calling this oversight hearing today.

My name is Jenna Torres and I am a native New Yorker and a product of its foster system. I'm currently a community organizer at the Red Umbrella Project, working to building power with cis and trans women who are impacted by the criminalization of sex work in New York City.

As a child, I was in foster care, trying to transition out on my own. I had the first of my three babies when I was thirteen. My foster mother would provide for my children with the money she got from the state, but not for me. I appealed to the foster agency, but I was denied. So I took care of myself.

From the age of 15 years old, whenever I needed clothes, school uniforms, and school supplies, I engaged in sex work. I engaged in sex work to keep my phone on, to have a way to reach child care provider. I engaged in sex work to pay for basic things, like bus fare for when school was out and for my personal care items.

Prior to my arrest in August of 2013 I had never been in trouble with the law. In addition to being a teen mother, I was going to school and I was working part time after school, but I was only making \$7.25 an hour

When I graduated from high school, things became even harder. I still didn't have the basic essentials I needed and I wasn't able to get a job during the summer. I turned to the only thing I knew to make ends meet - sex work.

The day I was supposed to pick up my college schedule, I was arrested for prostitution. I never agreed to the things they charged me of, but they arrested me anyway. After 23 hours in jail, I finally saw a lawyer. She prompted me to take a plea, so that I could get my six session of "treatment" and an adjournment for the contemplation of dismissal. I was 17 years old at the time. While in holdings, I was unable to use the bathroom because of the unsanitary conditions. Shortly after released, I was admitted to the hospital for 5 days because of resulting health problems.

Later, my mandate was changed to 10 sessions and an immediate ACD, instead of having to wait six months after completing the sessions to have my charge cleared. The whole process almost ended my journey to college before it even began.

I had missed my final opportunity to register for classes. I went to the school - I begged and pleaded to start on time. But to get back into school, I was forced to disclose my hospital record stay, as well as my arrest papers. The students working in the student council building now knew I had been arrested for prostitution. I also received a very long and uncomfortable "talk" by the school board about how I got to this place and how could I maintain what I have going on with attending school. I had to divulge very personal, embarrassing, and sensitive information in order to save my school semester.

After all of the trouble I had to endure to get myself into college, I would still struggle with managing everything with these mandated sessions to attend. All the college has available for all week classes in Staten Island, after which I would travel all the way to Harlem for sessions and go to court dates. I live in Brooklyn, a mother in foster care trying to make it on her own without financial help.

The court-mandated sessions didn't help me. All the sessions did was occupy the time I really needed for more important tasks like school and my children. They hampered my ability to create a better environment for myself and my children so I wouldn't have to rely on sex work.

I didn't need to be treated for sex work, that isn't an illness. As a teen mother, we are expected to fail and I wasn't going to be that. I was going to be educated and financially responsible for my children. But that was impossible trying to be everywhere at once. If I went to school and not do the programs, they would arrest me. They would put a warrant out for me and then arrest me with my kids watching or with my college peers watching. If I went to the programs and not school, I would fail. So I dropped out of school - the one thing could have helped me in the long run.

All I ever wanted to do is show everyone that teen mothers can be successful. Without an alternative, I made choices that I needed to do in order to take care of myself. It shouldn't have taken me getting arrested or physically and emotionally violated by the police and courts to hear my needs.

The treatment programs the courts provided were not a good fit for me. They didn't give me what I needed, either. They gave me options that had didn't fit my situation.

It wasn't until after I was finished with the programs and the court that the damage was really done. I had to drop out of school. I have an unnecessary debt from attending a trade school in order to meet the requirements to stay enrolled in my education initiatives program, and I had to postpone my journey out of foster care. I was living off part time work at Payless, still barely meeting the needs of my children and myself.

However, thanks to Legal Aid Society, I was referred to Red Umbrella Project for voluntary job assistance and training. Red Umbrella Project centers people like me and our needs in a way that other programs ignore. The ways that Red Umbrella Project differs from most programs is that they offer the things that we really need like real job assistance, housing resources, leadership opportunities, and health resources. Their attention to each member is very personalized and have a great understanding of all sizes doesn't fit one model. But mostly importantly, we take care of each other as a community, not just as clients.

Testimony by New York Legal Assistance Group (NYLAG)
before the New York City Council
Committees on Courts and Legal Services and Women's Issues:

Oversight – Effectiveness of Human Trafficking Intervention Courts

September 18, 2015

Chairs Cumbo and Lancman, Councilmembers, and staff, thank you for the opportunity to submit testimony regarding the effectiveness of the City's human trafficking intervention courts (HTIC). The New York Legal Assistance Group (NYLAG) is a nonprofit civil legal services office dedicated to providing free legal services to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure or eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence and trafficking victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, veterans, and others in need of free civil legal services.

My name is Lisa Rivera and I am the Associate Director of the Matrimonial & Family Law Unit. NYLAG's Matrimonial & Family Law Unit prioritizes its services for victims of domestic violence. We assist victims of physical, emotional and financial abuse obtain orders of protection, child custody and visitation, divorce, VAWA, U & T immigration applications and other legal remedies to allow them to escape their abusers. Other areas of practice include providing enhanced advocacy in criminal matters where there are issues of domestic violence and trafficking.

It is the intersection between domestic violence and trafficking that leads us to testify here today. NYLAG's expertise in domestic violence is based in a trauma informed approach which serves trafficking victims as well. The forms of civil legal relief needed to address both forms of violence can be the same – and are in critical need. Our goal today is to address the need for civil legal services for trafficking victims in the HTIC and to ensure that Courts, both family and criminal, are trained to see trafficking victims for what they are – victims, not criminals.

The HTIC is an important and innovative program that shifts the paradigm of how we view persons who are trafficked. Instead of treating persons trafficked as criminals, the HTIC's goal is to bring justice and compassion to those who are forced to become a part of the commercial sex trade. Specifically, the HTIC provides alternative programs and sentences that do not result in a criminal record, which allow defendants to avoid the crippling stigma created by a criminal history. NYLAG strongly supports the Council's designation of critical funding specifically for the provision of services to victims of human trafficking in the HTIC, and enjoys partnerships

with all of the organizations providing services there. Nevertheless, the findings contained in the Red Umbrella Project report reveal some of the unmet needs of those it is trying to protect.

One such need is long term counseling and support for those that wish to break free from the life or from their trafficker with whom, in many cases, they have a family. It is essential that the HTIC provide meaningful and thorough screenings and appropriate referrals for social services, but also for civil legal services that can adequately address the litigant's ongoing practical needs so that she can remain in counseling. The HTIC can be a place where victims are given the wraparound services they need to ensure they are not forced to go back to an abusive situation.

NYLAG sees clients whose cases have been heard in the HTIC; they need wraparound services in order to sustain themselves outside of the trafficking relationship that has trapped them. Specifically, her trafficker may have custody of her children, or threaten to take custody, have greater financial resources, and outwardly appear more stable. By contrast, the victim may appear less stable due to a lack of financial independence, stable housing, and the effects of trauma, which make it much more difficult to confront these harsh realities. Furthermore, in Family Court these victims are often viewed as criminals and not suitable caregivers for their children despite the dynamics that caused them to enter and remain in the commercial sex trade. Family Court personnel and judges would benefit from training to better recognize these complex issues and adopt the paradigm of the HTIC – that many of these women are victims in need of services, not criminals.

NYLAG provides holistic services to assist the client not only in helping to obtain custody or access to her children, but also economic independence by securing much needed child support awards, job and job training referrals, housing assistance, and long term counseling. Victims may receive some of these referrals from the Court, but like domestic violence victims they need a coordinated wraparound approach.

One client NYLAG has seen who came from the HTIC was Maria, who was arrested well over 30 times in 11 years. When she did choose to leave her trafficker, her biggest assets were her defense attorneys in trafficking court, who not only provided her with high quality representation, but also presented her with an array of resources that included long-term counseling that respected her agency. But when her trafficker/ abuser, the father of her son threatened her and took their son, her defense attorney in the HTIC referred her to a family law attorney at NYLAG, who not only provided a variety of civil legal services, including representation on her child custody and order of protection cases, but also kept her connected with much needed social service support.

Maria had no safety net when she decided to break free from her trafficker. A resident of Manhattan, she was sent to a Suffolk County DV shelter, making it nearly impossible for her to attend court hearings, meet with her criminal and civil attorneys and visit with her son when he was not in her care. In addition, she was met with ACS caseworkers with open hostility and threats of neglect filing despite recounting the years of domestic violence she endured at her trafficker's hands. It was her counselor, together with her attorneys, who were able to get her transferred to a DV shelter closer to the city and help her apply for benefits.

Fortunately, NYLAG was able to successfully represent her on her family offense and custody case against her trafficker, despite the fact that when Maria worked, her trafficker stayed home with their child, which resulted in the court viewing him as the primary caretaker. He was also viewed as the more stable parent, claiming to have stepped away from “the life.” Maria, on the other hand, still suffered from severe trauma, lacked stable housing, and continued to participate in the commercial sex trade (albeit now on her own terms). Therefore, despite the horrific physical abuse perpetrated by her trafficker and threats of future violence, the family court allowed their son to remain with him. Notably, in the eleven years that Maria was trafficked, her trafficker was never arrested for his crimes against her. In fact, it took the advocate and attorney to get Maria to a place where she could meet with the DA. He was finally arrested, which along with NYLAG’s advocacy, finally contributed to the court’s decision to transfer custody to our client.

Maria’s case highlights the needs for coordinated and comprehensive efforts between the courts, criminal defense attorneys and civil legal service providers. It was only through a combination of all her service providers that she was able to achieve safety and the opportunity to rebuild her life on her own terms with her son at her side. The HTIC can pave the way toward a coordinated approach.

Thank you for the opportunity to testify today on this important topic. I welcome the opportunity to continue this discussion.

Respectfully submitted,

Lisa Rivera, Esq.
Associate Director, Matrimonial & Family Law Unit



**The New York City Council
Committee on Women's Issues and the Committee on Courts & Legal Services**

Hearing RE: Oversight Hearing: Effectiveness of Human Trafficking Intervention Courts.

**Testimony of the Sex Workers Project
Urban Justice Center**

**40 Rector St., 9th Floor
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T: 646-602-5694
jpenaranda@urbanjustice.org**

Friday, September 18, 2015 at 10:00 am.

Good Morning, Committee on Women's Issues and the Committee on Courts & Legal Services.

The Sex Workers Project at the Urban Justice Center appreciates the opportunity to speak today about the effectiveness of the Human Trafficking Intervention Courts. My name is Jessica Peñaranda and I am the Special Projects Coordinator at the Sex Workers Project, the first and longest-running program in the nation dedicated to providing direct legal and social services to sex workers and survivors of human trafficking for the past 14 years. In addition to being a direct service provider we also provide training, technical assistance, local, national, and international policy advocacy and specialized initiatives to meet the needs of some of the most marginalized communities. Some of these include:

1. Long Term Trauma Therapy program
2. LGBT Trafficking Clinic program
3. LGBT Rapid Response Queens Court Support program
4. Outreach Program: Responding to Marginalized sex worker and human trafficking communities throughout New York City
5. Post-Conviction Relief program
6. Advocacy services around Barriers to Employment
7. Crime Victim Case Management
8. Sex Worker Advocacy and assistance with exiting the industry such as vocational and educational counseling services
9. Special Projects: Response to Criminal Justice Response Models to Sex Worker and Human Trafficking communities that include Pre-diversion and Human Trafficking Intervention Courts

10. National Policy Advocacy
11. Human Rights Documentation Program
12. Media Advocacy Program

We are committed to working to create policies and programs which promote human rights and confront the conditions in which trafficking flourishes. The Sex Workers Project serves a marginalized community that few others reach. Together, we are working to create a world that is safe for sex workers and where human trafficking does not exist.

As one of the only service providers to lead the first human trafficking outreach and screening program in the criminal courts over seven years ago, we are uniquely positioned to comment on the shift of approaches with individuals arrested for prostitution. While we support the basic tenants of the courts as a way to reduce the harm and risk of exploitation of sex workers and trafficking victims, our extensive experience with people involved in sex work informs our strong belief that arresting individuals is not the most effective manner in which to approach this aim. We have found that individuals engage with sex work along a spectrum of choice, circumstance, and coercion, and that criminalization in fact intensifies many of the most grievous harms found at the different intersections of all these forms of involvement.

Our clients consistently report that the trauma of arrest and lingering stigma of a criminal record have complicated their lives further, rather than addressing root causes of how they got trapped in restrictive circumstance or became vulnerable to violence in the first place. Meanwhile, decriminalization has been proven to result in better outcomes for both sex workers and survivors of human trafficking, for example in promoting health and human rights of sex workers, their families, and communities.¹ We believe that moving the focus from penalization to the reinforcement of social safety nets, with an emphasis on access to adequate housing, a living wage, and freedom from discrimination and violence, as well as voluntary access to long-term care available to individuals as they are ready to engage in these services will provide the most meaningful outcomes for the marginalized individuals most at risk of exploitation, whom we are all united in our mission to assist.

This past year I have worked with individuals that were mandated to our program each for 4-6 weeks of mandated social services. In all of the sessions I had with these clients, the constant theme that came up was the impact the arrest had on their lives. Whether it was being mistreated by officers, ridiculed, told by undercover arresting officers “if it wasn’t for us finding you, you would be dead” amongst many other comments and ill treatment. Due to their arrest and the ensuing stigma and shame, clients were further isolated from their support systems, including family and loved ones and many preferred to lie and hide the fact that they were arrested. One of my clients reported that she felt that this caused more harm than good to her life. While she was thankful to be receiving services instead of jail time, she struggled with finding a job when scheduled for sessions instead of being able to use her time for job search and interviews as she desired. Rather than feeling the most pressing needs in her life could be addressed as the courts have been designed to do. Her level of stress, anxiety, and hardship increased as a result of her pending case. In many of the cases I worked on, multiple clients

¹ Open Society Foundations, Ten Reasons to Decriminalize Sex Work, April 2015
<https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>

reported feeling their arrests, open case and mandated services hung over their heads as a threat that devastated their self-esteem, isolating them from community supports and distracting them from meeting the day to day responsibilities of their lives.

We urge the city council to take into account the real impact of re-victimization that occurs as a result of being arrested and diverted to the Human Trafficking Intervention Courts. As social service providers providing services through these mandates it is counterproductive to end up providing counseling and support that revolve around the victimization they experience at the hands of the police.

As part of the City Council's oversight endeavor we recommend the following:

1. We recommend that an outside neutral organization, such as a university that has experience in oversight of criminal justice systems through research and evaluation, be charged with the task of assessing the impact and success metrics of this criminal justice intervention. These methods can include the overall treatment of HTIC defendants from arrest through arraignment to the end of social service mandates.
2. Given the increased arrest rates of certain immigrant communities entering the Human Trafficking Intervention courts in various boroughs of New York City, we recommend that funding support access to immigration attorneys that will be made available for every undocumented individual coming through the specialized courts in every borough. In addition, to having culturally competent, trauma-informed trained interpretation and accessible language in all of the courts.
3. We recommend that the city council fund the creation of a dedicated advisory council or task force that includes survivors of human trafficking, sex workers and sex worker organizing groups, social service providers, defense attorneys, Judges, District Attorneys, the NYPD, City Council officials and other stakeholders that play a role in the functioning of the Human Trafficking Intervention courts. This inclusive group can be tasked with providing recommendations, guidelines, best practices, and metrics on the overall function of the courts, in particular the treatment and level of engagement of individuals directly impacted. Additionally, it provides a much needed opportunity to affirm the self-determination of individuals who have repeatedly been denied control of disempowering circumstance. Currently arrested individuals are simply recipients of court intervention, rather than agents in the transformation of their lives. We believe that it is always a best practice to include the voices of those that are directly impacted as they have the greatest insights into the complexity of their experiences and the interventions which will be most effective in addressing them. Including the vision and expertise of impacted communities including trafficking survivors and sex workers would truly create a much needed roadmap that is committed to eradicating human trafficking, and will best evaluate if the courts are a tool that meets that goal.
4. We recommend that the city council initiative money also be earmarked for voluntary services beyond court mandated services and that it supports a referral system that is inclusive of the varied needs of individuals entering the court. Funding for housing,

educational training, employment services, long term counseling, and basic social safety needs would go a long way to help meet the needs of individuals that are arrested and ultimately address the root causes of vulnerability to exploitation.

We are pleased to see City Council members opening this new dialogue with an emphasis on needed oversight of the court. Thank you for the opportunity to bring you our comments and recommendations and we look forward to continuing this dialogue together.



moving victims of violence from crisis to confidence

Testimony of
Michael Polenberg, Vice President, Government Affairs
Safe Horizon, Inc.

Oversight: Effectiveness of Human Trafficking Intervention Courts

Committee on Courts and Legal Services
Hon. Rory Lancman, Chair

Committee on Women's Issues
Hon. Laurie Cumbo, Chair

New York City Council

September 18, 2015

Introduction

Thank you, Chairman Lancman and Chairwoman Cumbos and members of the Committees for the opportunity to testify before you today on Safe Horizon's perspective on the needs of human trafficking survivors in New York City. My name is Michael Polenberg and I am Vice President for Government Affairs for Safe Horizon, the nation's leading victim assistance organization and New York City's largest provider of services to victims of crime and abuse, their families and communities. Safe Horizon creates hope and opportunities for hundreds of thousands of New Yorkers each year whose lives are touched by violence.

Safe Horizon has decades of experience providing a wide range of services to survivors of human trafficking. We work with men and women, children and adults, who are foreign-born and domestic survivors of labor and sex trafficking. We provide these services primarily through our Anti-Trafficking Program (ATP), our Streetwork Project and our Child Advocacy Centers (CACs). We offer case management, legal services, outreach, shelter, and other critical services to meet the diverse needs of our clients. Our clients' experiences differ, of course, but certain core services have proven to be enormously helpful to many of those we serve, and I would like to share one of them with you today in the context of reviewing the efficacy of the Human Trafficking Intervention Courts. I will note that we are neither a partner nor typically a referral source for these courts, though we do interact and provide services separately to individuals who may cycle through them.

Increase Shelter Capacity for Homeless Youth

After many years of instability and budget dances regarding the viability of shelter beds for homeless youth, funding for these beds has finally been baselined and expanded under the new Administration. Why do beds for homeless youth matter in a discussion about the efficacy of the Human Trafficking Intervention Courts? And why do we sometimes refer to the expansion of beds for homeless youth as an “anti-trafficking initiative”?

What we repeatedly hear from the homeless youth in Safe Horizon’s Streetwork Project (which includes an overnight shelter, two drop-in centers and an overnight street outreach program) is that a driving force for young people to engage in survival sex is the lack of safe place to sleep at night. Estimates vary between 2,500 and 4,000 young people in New York City each year engage in these activities. One study of a large shelter in New York City found that “almost 50 percent of youth had traded sex because they had no place to stay and would not have done so if they had alternative options for shelter.”

The young people who stay in our 24-bed overnight shelter in Harlem each night continue to struggle with poverty, racism, and homophobia, not to mention substance abuse and mental health issues. But when they are in our shelter – or those operated by our colleagues in the homeless youth continuum – they are safe. Neither the beds they sleep in nor the meals they eat are contingent on exploitative and demeaning transactions. Instead, we offer counseling and case management, and we link our clients to housing, services, and treatment. Our overnight shelter uses a harm-reduction model and non-judgmental approach with our clients, understanding that many have been abused, exploited and discriminated against for far too long.

Unfortunately, with such limited stays in shelter (typically 30 days) and still not nearly enough shelter beds to meet the demand (nearly 4,000 homeless youth and just over 450 crisis and transitional independent living beds), far too many young people continue to feel that their only hope of finding a place to sleep or a bite to eat is through sex work.

Until we take additional steps to ensure that every homeless youth has a safe and supportive place to sleep each night, far too many young people will find themselves vulnerable to exploitation and engaging in survival sex to meet basic needs. We urge the Mayor to build on his early investments and continue to expand shelter bed capacity for homeless youth until every young person has a safe place to sleep. We believe firmly that such an investment will help reduce the number of individuals who are arrested on prostitution-related charges and end up in court. According to the Urban Institute, “many youth engaged in survival sex experience frequent arrest for various ‘quality-of-life’ and misdemeanor crimes, creating further instability and perpetuating the need to engage in survival sex.”

We also strongly urge the Mayor to continue to fight for more supportive housing and other permanent housing opportunities for homeless youth to help end the cycle of homelessness – and associated vulnerability – once and for all.

Thank you again for allowing us to testify here today, and I’d be happy to answer any questions you may have.

My name is Audacia Ray, and I'm the Founder and Executive Director of the Red Umbrella Project. We are a five year old nonprofit based in downtown Brooklyn that does community organizing, advocacy and peer support with people involved with and impacted by the sex trades. We are a peer-led organization, which means that all staff and members of the organization have personal experience in the sex trades.

I'd like to start by thanking the City Council for making space for this conversation to happen. I'm very grateful that so many people are actively engaged in thinking and taking action on the ways to improve services for people in the sex trades, especially those who have been coerced and forced into the sex trades, and thinking about ways to best allocate resources to go directly to those most impacted.

Last October, Red Umbrella Project published a report titled *Criminal, Victim, or Worker? The Effects of the Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses*. The report is an observational study of the Brooklyn and Queens Human Trafficking Intervention Courts (HTICs), conducted by community members. Since the report's release, our community organizers and members have been conducting weekly outreach and peer support for women who are going through the HTICs in Brooklyn. We have also been gathering stories of the experiences people in the sex trade have in the criminal justice system. My testimony today will be based on our report, what we have learned this past year, and also the experiences of our sister organization Persist Health Project, a peer-led organization that has provided people from the HTICs with care coordination, crisis management, and peer counseling.

This past year, we have worked together with Persist to build a small, yet successful job assistance program, provided for people with experience in the HTICs and led by others in the sex trades. The ability to understand, listen, and encourage these women could never be replicated in a setting without peers who have survived and thrived as leaders and mentors. Together with our sister organization Persist Health Project, we developed this program in response to requests from court-involved women, who stated their needs clearly and shared with us that they were not getting what they needed from other service providers.

We did this work jointly with a budget of \$150,000 for our entire organization. We did this work because it was our community members who needed it. We did this work because we were, and are, uniquely positioned to know the needs of sex workers and trafficking survivors, because we ourselves are sex workers and trafficking survivors. And while doing this work, we saw women whom the system was failing, particularly Black women and trans women of color. Funding programming that actively supports defendants in pursuing economic stability for themselves and their families, as well as stable housing, is key to establishing any kind of success for the defendants.

It is impossible to divorce the role of police profiling of trans and cis women of color, especially Black women, from any discussion of what is happening in the Human Trafficking Intervention Courts. During the period of study in 2014, in Brooklyn we observed that Black women are present in the Court and face prostitution-related charges at a disproportionately high rate. Black defendants in the Brooklyn HTIC faced 69% of all charges we observed, 94% of which faced the charge of loitering for the purposes of prostitution. This is a high rate of police profiling for the charge of loitering for the purposes of prostitution, a charge that is based on a woman's race/ethnicity, gender presentation, outfit, location, and social behavior on the street. In the Queens court, we observed that trans women, particularly translatinas, made up 10% of

people in the courts, more than twice the rate that trans women appeared in the Brooklyn court. So before I continue, I need to say that Black lives matter and trans lives matter.

Perhaps the most important conclusion we made in last year's report, as well as our collective work, is that arrest and court involvement do not end women's victimization and do not address economic justice. Though there is significant analysis to the effect that a variety of traumas drive people into the sex trades, and trauma is very much a part of the experiences of the people that Red Umbrella Project works with, economic insecurity - lack of access to employment outside of the sex industry, lack of stable housing, and lack of access to non-judgmental health care and social services - are the concrete factors that cause people to enter the sex trades. The current set of mandated services on offer do nothing to address economic concerns. Instead, as one service provider working for a service organization that provides mandated counseling told us: "Women who go through the HTICs are coerced into counseling, and defendants experience this as punishment. Counseling that is not voluntary is antithetical to the social work model, and yet this is what the courts are mandating."

We must prioritize funding social services that focus on economic empowerment through job training assistance and educational opportunities (including scholarships, mentoring, and training), and make free trauma-informed therapy fully voluntary and not court-mandated. The question of "What defines success?" also looms over these programs. We request the creation of an oversight committee external to the social service providers that is led by people who have been processed through the Human Trafficking Intervention Courts, and that 10% of the new funding be set aside for this work. Within social service provision, communities who are being served are regularly consulted about the level of care and services that they receive. We see this amongst programs that serve HIV positive folks, homeless folks, and drug users, along with other populations. Why are people in the sex trades not given meaningful opportunities to speak about their needs, other than with their individual social workers? What is controversial about the notion that sex workers should be centered and involved in determining the kinds of services we receive and the way funding is allocated? People in the sex trades are the experts on our experiences, we are the experts of our own trauma, we are the experts of our needs: both in the sex trades and within the court system that is supposed to assist us.

In 1994, San Francisco Board of Supervisors chartered the San Francisco Task Force on Prostitution through a resolution introduced by Supervisor Terence Hallinan, which brought together social service organizations, researchers, and sex workers to examine sex work in San Francisco, as well as the city's current social and legal responses. The Taskforce also recommended social and legal reforms, which would best respond to the City's needs, while using City resources more efficiently. To this day, there is meaningful involvement of sex workers and trafficking survivors in conversations about policy and programming that impacts them in San Francisco. There is even a subcommittee of the Mayor's Taskforce on Human Trafficking for sex workers, some of whom are also service providers and provide cultural competency trainings for people in the criminal courts. Models exist for oversight that center the voices of people in the sex trades. As New York continues to set the standard for diversion programs nationally with the Human Trafficking Intervention Courts, it is our duty to those that the courts serve to listen to what people in the NYC sex trades have to say about the social services they are being provided.

I am thankful for this opportunity to share what we have learned, with the hope that the voices of Red Umbrella Project members and other court-impacted women can inform your

decision making moving forward and assist the providers in the Human Trafficking Intervention Courts in providing people in the sex trades with the necessary resources to survive and thrive.

In consideration for the fact that these are longer term goals that will take time to be implemented, here are some recommendations that can be implemented immediately and will protect the rights and support the well-being of the women currently going through the HTICs:

- **Ensure that court interpreters are available, sensitive to the situations of the defendants, and held accountable for accurately representing the words of the defendant and other people in the courtroom who are speaking on-the-record.** While the right to have interpreter services is guaranteed by New York law, this law does not provide a source for recourse if the right is denied or infringed upon in the HTICs. Such recourse must be made possible by the courts. During our study we observed that in Brooklyn 19% and in Queens 67% of defendants required the services of an interpreter to communicate in court. Many of these defendants encountered insufficient interpreter services in court and over-taxed service providers. In particular, Mandarin speakers make up 46% of the total defendants in Queens. Mandarin-speaking defendants in Queens who obtained an ACD in court most commonly took three and a half to six months to do so, compared to the overall most common length of time for Queens defendants to obtain an ACD: two to three months. We often observed Mandarin speakers having their time in the system prolonged because service providers did not have the capacity to accommodate them.
- **Separate the Domestic Violence and Human Trafficking Intervention court parts in any court where these parts meet at the same time and in the same courtroom.** If the Court wants to consider defendants to be victims, it needs to take steps to ensure that people who are survivors of trauma are made safe in the court environment. Though there are lots of factors beyond the Court's control that make the environment stressful and possibly triggering for survivors, no survivor should have to come unexpectedly face to face with her abuser in this context.
- **Affirm names and gender identities of defendants.** Transgender women are often misgendered and not called by their preferred names in court. Judges and court staff must ask for the preferred name and gender pronoun of all defendants, make a note of the defendant's answer in their case file, and affirm the defendant's identity. This practice would affirm the dignity of defendants in a very stressful environment.

Stories from Red Umbrella Project Members

“A statement from Stacy, a Black cis woman:

I was arrested while going to the deli to get food for my family in my rapidly gentrifying neighborhood on Broadway and Chauncey St. in Brooklyn. It was presumed I was a street based sex worker because I was going to the store at 2am on a Fri/Sat night and I am an African American female. I was arrested only 2 blocks from my home. Despite my telling the police over and over again I was not a street based worker but a local resident married with children just out picking up food I'd ordered, I was arrested for prostitution and jailed for 17 hours.

Despite my husband being in attendance with family at my arraignment to verify I did live nearby and was picking up food for my family, proof I'd ordered the food from the deli BEFORE leaving my house AND the lack of evidence proving solicitation in any form (no audio and/or visual) I was offered 6 sessions in order to be eligible for an ACD. I was told take the deal or I'd face jail time based on my 15 year old history of prostitution arrests as a minor, when I was a victim of human trafficking as defined under Federal Law. When I requested a trial I was told I would lose based on the same history and would face jail time. I was advised to take the sessions to avoid having a new charge on my record, I was in a no win situation.

Although I completed the counseling sessions and received an ACD immediately the sessions were not helpful in any meaningful way other than my discussing the daily nuances of my life weekly.

They were an invasion of my life and time, especially considering I was not offered job training, financial aid application/tuition/grant assistance for college, housing assistance, or any other meaningful services.

Although I do appreciate the efforts the court has made to recognize the Human Trafficking Issue in NYC I do not appreciate the racial profiling and arrests of innocent residents and the one size fits all approach at intervention. Every single situation and life is different.”

“A statement from Allysa, a Black trans woman:

The streets aren't safe for trans woman. The police will just arrest you, if you're trading or not.

My whole experience of being arrested in New York City was awful. Being arrested as a trans woman is a really terrible experience.

They roughed me up when they searched me. They put me in men's jail with other trans women, where we were all subjected to more violence.

In my court process, the judge would not call me by my pronoun or by my name.

Then the courts offered me a program to talk about my “issues.” Retraumatized me and then sent me back out into the world, like they had helped me. It's violence. It's violence against me and other trans women.

To remedy this violence, provide us with job assistance. Give trans women employment. Give us a program run by us for us and also understand trading is a way of life for some people. Give us schooling, give us ways to support ourselves.

Trans women are not safe in this system. We deserve better.”

“A story from Lauren, a white cis woman from Brooklyn:

I worked full time in a 9 to 5, and I also used sex work to support myself. I worked with an agency that provided me with a safe and clean working environment. I felt respected and safe with both my clients and the agency I worked with.

I was arrested in a sting setup by vice police. they busted into my hotel room and yelled, “Get on the bed, stupid!” I feared for my life. I called for help. Only when I screamed for help did they say THEY were police.

In all my work as an escort, I have never felt so scared. I have never felt so at risk of bodily harm. The police pushed me for information, claiming it would help my case if I told them who I worked for.

I spent the night in jail. The correction officers forgot to feed us. They threatened to keep us locked up, even after our names were called for court. They ignored our requests for sanitary napkins. Cockroaches crawled on my body while I lay awake on the hard benches.

I was mandated to five counseling sessions. I was doing sex work because of my financial need, and these sessions are time for me - time that I could be spending working to make money for my rent.

I do not need counseling for sex work, I need it now for the trauma caused by my arrest. If I am a victim of anything, it’s the courts. I am not forced to do anything I do not wish to do, except be arrested and attend coercive counseling services.

If we are all seen as “trafficking victims,” don’t treat us as criminals. Provide us with job assistance for those who wish to leave the trade. Provide voluntary counseling services for those who want them.

Listen to the stories of those who are in this industry in order to form policies that will help keep *everyone* safe and well.”

“A statement from Sasha, a white trans woman:

I got locked up for no reason in Georgia. As a trans woman, being placed in jail with the male population, that put me directly in harm's way.

While I was there, some of the male inmates tried to force me to engage in sex with them. I had to fight to be removed from male population and because I fought in self defense, I also received an additional charge.

The judge didn't even give me a chance to explain myself and sentenced me to another 15 days. As a result, I had no power when I got and eventually lost my apartment.

So many of these programs in the Human Trafficking Intervention Court aren't even available to transgender women. And the programs that are open to trans people are not always for us.

What we need is more jobs open to trans people. I want there to be jobs where I can help people and work with others.

The night I was arrested in Georgia, I wasn't even working. I was walking to the store. I was targeted because I was different.

Oftentimes, trans women are profiled to be sex workers even when they have never engaged in sex work. Here in New York City, the police harassed me based on what I'm wearing, particularly in the Village.

The police have said, "If I see you back on the block, we will put you in jail." They accuse me of loitering. I left, I didn't want to get arrested.

I believe the way to improve this system is to find out what people want to do. What kinds of trade and school people want. What kinds of work they want to do. Ask us what we want and help us to get it. Listen to what we need."

"A statement from Amber, a Black trans woman:

I've been a sex worker on and off for the past 25 years. During the time, I've been in and out of jail so many times I've lost count.

After I got a record in North Carolina, jobs were nonexistent to me. No one wanted to hire me with a record. And being a trans woman, no one wanted to hire me based on how I looked.

So I went back to sex work. Doing more of the same. I was so tired of the merry go round, so I moved to New York City, hoping there would be more services for women like me.

I experienced a lot of the same discrimination here. I expected better of New York City.

After my stroke, I had to change my appearance from feminine to more masculine. And my look was always an issue with getting jobs, which was only made worse by having a record.

Now I still see my transfeminine friends experience what I have been through as a trans woman - the same violence and police harassment, the same issue with arrest and having records.

I thought when I moved here from North Carolina it would be better. I understand the fear and dealing with the police. In the courts, people should understand that there is a certain mentality that folks have about transgender people.

If there could be voluntary programs that help people with jobs and give people different options that feels productive and helpful, odds are - you would take it, wouldn't you? I would."

"Hi, my name is Sarah Patterson, I'm the former Executive Director of Persist Health Project and the current Deputy Director of Red Umbrella Project. Our organizations have recently merged and joined forces to serve our members better.

Last summer, we at Persist began the process of working with women in the courts. We saw a need for trans and cis women to have a peer space to talk about their experiences trading sex. We talked with women about how if they wanted, we could work to find jobs outside of the sex trade that were meaningful and stable. Red Umbrella Project provided the court outreach and we began working together. Out of our discussions, our joint job assistance program was born.

Women spoke of a lack of services and resources for them in the courts. How mandated counseling wasn't helping them. How they felt traumatized and victimized by the court process. How there were no jobs for people like us.

We did this work with almost no budget. We did this work because it was our community members who needed it. We used our networks, our friends and allies. We did this work because we were, and are, uniquely positioned to know the needs of sex workers and trafficking survivors, because we ourselves are sex workers and trafficking survivors.

Other service providers in the court system told me how unique our approach was, which was nice to hear, but disappointing to learn. Why were there so many services being funded that weren't giving women what they needed?

One service provider told me the following: "As a former employee in the courts, I am so grateful for your peer-based work. I have learned so much from your model.


Your ability to understand, listen, and encourage could never be replicated in a setting without peers who have survived and thrived as leaders and mentors. Thank you for taking the work you do further by working so hard to put the people who are into positions of employment and leadership, so they can fight for themselves and each other from a place of strength."

A second provider told me: "Services that aren't voluntary, especially social work counseling, aren't really services at all. They don't serve people. For my clients, a mandate from the court feels like a punishment. If counseling is punishment, what are people being punished for?"

We will not stand by while our community is traumatized and victimized by a system that doesn't include our voices. We will not be punished for surviving, for making it work, for a world where women face sexism, poverty, transphobia, and violence. We will not be told that we

don't know our own experiences, or don't understand what's happening to us. The stories women have told today speak for themselves. Let those in the sex trade tell you what we need. Stop the violence of coercive counseling and give us jobs and housing."

Ethical and Human Rights Issues in Coercive Interventions With Sex Workers

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Stéphanie Wahab^{1,2} and Meg Panichelli²

Introduction

Sex work reemerged as a spotlight issue within feminist arenas in the 1960s. The interest in “prostitution” reform during the 1960s came about in much the same way it had in the past, that is, it rode on the coattails of other social movements (Hobson, 1987). As the civil rights movement led a heightened awareness of all human rights, individuals began to protest governmental interference in private sexual acts. Civil libertarian lawyers and feminist activists contested prostitution laws and social injustices against sex workers.

The relationship between some strands of feminism and sex work is often polarized and rocky at best. In fact, the contemporary feminist debates on sex work, which began in the 1960s related to pornography and prostitution, have often been referred to as the *feminist sex wars* (Hollibaugh, 2000; Lerum, 1998; Sloan & Wahab, 2000; Zatz, 1997). On one side of the debate are sex workers and feminists who emphasize the importance of sex workers’ rights and understand sex work as potentially liberating and empowering. On the other side are those who believe sex work is exploitive, casting sex workers as coerced victims.

Whether social workers think that sex work is a form of violence, legitimate work, or something much more complicated that cannot be reduced to the rhetoric of the feminist sex wars, it is time to seriously grapple with the ethical considerations involved with social work practice focused on people in the sex industry.

Social workers should be deeply troubled by social work interventions that target individuals for arrest as a means of providing services. Specifically, we call attention to social work collaborations with law enforcement that target or end in the arrest of sex workers. While specific events in Arizona during the week of May 16, 2013, sparked the writing of this editorial, the issues discussed below bring into question ethical social work practice with sex workers including practice with oppressed and marginalized individuals and groups. Specifically, we challenge the assumption that arresting (or participating

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in the arrest of) people “for their own good” constitutes good or ethical social work practice. Rather, we believe that targeting people for arrest under the guise of helping them violates numerous ethical standards as well as the humanity of people engaged in the sex industry. We are also concerned that this approach constitutes an act of structural violence against individuals who already frequently report negative, discriminatory, and often violent encounters with law enforcement including people with precarious migratory or citizenship status, poor, youth, transgender, and people of color. Structural violence is a form of violence perpetuated by institutions and systems that harms people such as racism, classism, sexism, heterosexism, and ableism, nationalism, and adultism (Galtung, 1969).

During the week of May 16, 2013,¹ Project Reaching Out to the Sexually Exploited (ROSE)—a collaboration between the Phoenix Police Department, Arizona State University (ASU) School of Social Work, and a number of local service organizations, conducted raids during two 12-hr periods targeting workers within the sex industry for arrest. Sex workers deemed eligible for services were offered, as an alternative to criminal charges, a 6-month prostitution diversion program. In order to access the program, the arrestee must have no prior arrests for sex work, no outstanding warrants, and cannot be found in possession of any drugs at the time of arrest. These requirements alone make a significant number of individuals targeted for arrest ineligible for services consequently placing them in a position where they face prosecution and jail time. It is here that the ethical and human rights questions begin to emerge.

Prostitution Diversion Programs

While a full discussion (and critique) of prostitution diversion programs extends beyond the scope of the issue we raise in this editorial, it is worth mentioning that there is little empirical evidence that prostitution diversion programs “help” sex workers or reduce rates of prostitution (Quinn, 2006). Shdaimah and Wiechelt (2012) point out that, while diversion programs are often hailed as progressive alternatives to traditional criminal justice approaches to certain crimes, many legal scholars have questioned and critiqued diversion programs on the basis of equity and procedural concern (Orr et al., 2009), efficacy (Bolt, 2010), and constitutional concerns such as double jeopardy (i.e., when prosecution on the original prostitution charge is enacted and a conviction with punishment occurs as a result of an individual being unable to meet the program requirements) and lack of authority (*Brown vs. State of Maryland*, 2009). Specific critiques and problems with prostitution diversion programs argue that they tend to “encourage special interest control of criminal courts, foster undesirable police and judicial practices, and fail to meaningfully address societal problems, specifically the criminalization of prostitution” (Quinn, 2006, p. 145). Special interest control of prostitution diversion programs include, but are not limited to, politicians, police officers, business people, district attorneys, and social workers interested in suppressing sex work for religious, moral, social, and political reasons. These particular stakeholders stand to benefit from prostitution diversion programs, as they may be viewed as resolving a social problem, “tough on crime” and/or saviors of those incapable of helping or saving themselves. Social workers and social service organization stand to benefit from such programs through jobs, grants, funding, and yes . . . publications.

While prostitution diversion programs with social work involvement are not unique to Phoenix (Wahab, 2005, 2006), this is the first highly publicized instance, we are aware of, where social workers and a School of Social Work advocated for targeting sex workers through law enforcement (City of Phoenix, 2013: KTVK, 2013a; 2013b).

Ethical Principles: Human Rights and Social Justice

We now turn to the heart of our outrage. Programs like Project ROSE cause harm “under the cover of kindness” (Margolin, 1997). Despite claims made in 2012 after a similar sting that “clients received options for safe housing, crisis mental health counseling, medical services, options for

detox and drug treatment, food, clothes and their initial interview for the Diversion Program provided by Catholic Charities, and most significantly, the opportunity to change their life” (<http://phoenix.gov/police/R.O.S.E.ii.html>), targeting people for arrest in order to offer services is a grave form of coercion that violates numerous social work ethical standards across the National Association of Social Workers (NASW) Code of Ethics (Standards 1 and 6), Council on Social Work Education (CSWE) Educational Policy and Accreditation Standards (Policies 2.1.2 and 2.1.5), and the International Federation of Social Work (IFSW) Ethical Principles (Principles 4.1 [1 and 2] and 4.2 [3–5]). Furthermore, providing social supports and services through criminal courts, even if on a voluntary basis, assumes that participants in these programs should be under surveillance by the criminal justice system.

Under CSWE Ethical Standard # 1 and IFSW’s Ethical Principle #4 (Human Rights and Human Dignity), interventions like Project ROSE violate standards of informed consent and individuals’ rights to full participation. Since individuals are not consenting to being targeted by massive police (in this case 125 officers) sting operations (to be offered services or conversely jail time) where is the informed consent? In addition, if targeted sex workers (and people profiled as sex workers) reject the “offer” to enter the diversion program and/or if they fail to successfully complete a diversion program (their statistics report that successful completion of the program ranges between 24.7% (Project ROSE II) and 32.6% (Project ROSE I),³ they face criminal prosecution. In addition, the only services offered to escape prosecution are through a particular diversion program further limiting the options for support and assistance (Wahab, 2005, 2006).

In Arizona, people arrested under antiprostitution statutes face a mandatory minimum sentence on their first charge and felony charges after the third arrest. Sex workers with precarious migratory and citizenship status face deportation. Best Practices and Policy Project (2013) report that Marcia Powell, a woman serving a 27-month sentence in Arizona for solicitation of prostitution, died in May 2009 after being left in a prison holding cage in the blazing sun without water. Not only would Marcia have been ineligible to receive services through Project ROSE had she been targeted by the sting, but she would have likely faced a prison sentence due to several prior arrests for prostitution. Ultimately, however, Marcia died in the “safety” of the Arizona prison system because she was a sex worker incarcerated for her own good.

Furthermore, we argue that social work participation in the creation and facilitation of police sting operations, including those designed from a stance of innocence (Rossiter, 2001), to “offer services” violates IFSW’s Ethical Principle #4 (Social Justice), CSWE’s Educational Policy 2.1.5 (Advance Human Rights and Social and Economic Justice), and NASW’s ethical standards concerned with Social and Political Action (6.04). This is especially problematic as there is no body of rigorous empirical evidence that indicates that prostitution diversion programs facilitate social justice for those enrolled in the programs. If an apprehended sex worker rejects the offer of diversion, or is denied entry into the diversion program, how is the project “ensuring that all people have equal access to the resource” (National Association of Social Workers, 2008)?

Finally, if we accept that many people who work in sex work do so because they are poor and/or have limited options for alternative employment (though this is certainly not the case for all those engaged in trading sexual services), how are social workers “[d]istributing resources equitably” or “[c]hallenging unjust policies and practices” (International Federation of Social Work, 2012) when they are advocating for and assisting in the arrest of sex workers who are mostly poor, people of color, and often identify as transgender? For some of the sex workers caught up in these sweeps, Project ROSE with its additional 125 officers hastens the path toward a felony charge.

Structural Violence Against Minoritized Individuals and Groups

It is well documented that the most marginalized of sex workers are the ones who are most targeted by the intersections of oppression within the social, medical, and legal systems (e.g., see any of the

following literature on the prison industrial complex, state violence, and marginalization of sex workers: Brooks, 2007; Davis & Brooks, 1999; INCITE!, 2011; Stanley & Smith, 2011; Stern, 2012). We also know that “the stigma and criminalization surrounding sex work do not befall everyone equally” (A SISTAH IN STRUGGLE & Kirby, 2011). Numerous scholars, activists, and news sources provide proof that sex workers working on the streets are the most targeted for arrest. Consequently, some have argued for an anticriminalization movement among sex work rights advocates (Koyama, 2011) that would more effectively target the oppression that enforces criminalization and the targeting of sex workers because of their actual or perceived social identities.

to those of us who are street-based, immigrants, youth, transgender, etc. this agenda appears to be based on the naïve premise that people engaging in prostitution are targeted by the state because the legislature passed laws to criminalize prostitution. Those of us who live under pervasive surveillance and criminalization know that the cause and effect run the other way around: we are just targeted and criminalized for who we are, and the laws are passed by the legislature to justify it and make it more efficient. (Koyama, 2011)

Social work collaborations that encourage and support the targeting of marginalized and oppressed individuals must be questioned, if not stopped. Collaborations like the one between ASU’s School of Social Work and the Phoenix Police Department, despite proclamations of good intentions, perpetuate racism, classism, sexism, transphobia, and xenophobia; all forms of social injustice and human rights violations that social workers are bound to by numerous ethical standards to work against.

It is no wonder that some sex workers fear social workers as much if not more than the police, as we are legitimately seen as the service gatekeepers as well as the ones who take their children away (Weiner, 1996). Social work has a long history of engagement and practice with sex workers, which reinforces notions of social workers as agents of social and moral control (Wahab, 2002). While many social workers have worked hard through policy and practice arenas over the years to repair and reconfigure social work’s relationship (characterized by mistrust, disempowerment, social, and moral control) to the sex industry, social work efforts geared toward arresting sex workers “for their own good” violate the ethical codes while enacting structural violence in the name of helping. Whether you believe that sex work = sex trafficking or whether you believe that there is no universal sex work experience and that sex workers can make their own decisions about what they need and when they need it, Schools of Social Work and social work in general should not be in the business of arresting people for their own good. If we believe that arresting people in order to coerce them into “treatment” and services is our only option for engagement, then we need to critically examine our relationships with sex workers and sex worker groups. The challenges social workers face in “reaching” sex workers with our offers of help speak to the serious limitations of our approaches and attitudes toward sex workers rather than problems inherent to sex work and sex workers.

Finally, we need only to look at the history of social work to learn and relearn important lessons from the profession about paternalism and gender bias in the name of intervening on behalf of others “for their own good.” The paternalistic viewpoint (saving people, coercing into treatment, etc.) has been repeated throughout the profession with various marginalized groups. Friendly visitors in the earlier days of social work intervened with the “poor” perhaps because of altruism, but also because we thought poverty was a result of individual shortcomings. Also, social workers removed children from indigenous communities because we misunderstood parenting practices that were not the same as a white culture. We must remember that any attempt toward competent social work practice should be multidimensional along individual, community, and systems change, and we see no evidence of Project ROSE engaged in macro-level work. Let us learn from our historical mistakes, rather than repeat them.

Notes

1. Three other similar sweeps have been conducted in September 2011, April and October 2012.
2. While the title of this article states "by not arresting prostitutes," another news report both shows a woman in handcuffs and has Phoenix Police Officer James Homes stating that they are arrested. See <http://www.azfamily.com/home/Project-Rose-targets-Valley-sex-trafficking-207979971.html>. Sex workers caught up in the stings have also reported to sex workers' rights groups that they were indeed arrested.
3. These statistics come from a personal communication with Dr. Dominique Roe-Sepowitz on July 19, 2013.

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CRIMINAL, VICTIM, OR **WORKER?**

**THE EFFECTS OF NEW YORK'S
HUMAN TRAFFICKING INTERVENTION
COURTS ON ADULTS CHARGED WITH
PROSTITUTION-RELATED OFFENSES**



A SEX WORKER-LED OBSERVATIONAL REPORT
ON THE FIRST YEAR OF THE COURT PROJECT

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RED UMBRELLA PROJECT (REDUP)

is a peer-led organization based in Brooklyn, New York, which amplifies the voices of people in the sex trades to take greater control of our lives and livelihoods through sustained and structured peer-mentoring initiatives, multimedia storytelling platforms, and public advocacy. We run workshops in writing, theatre, media, public speaking, and advocacy. We also work to develop leadership and community organizing initiatives to support the development of skills, confidence, and political analysis among our members so that we can better navigate social and economic justice issues.

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DESIGN AND INTENTIONS OF THE COURTS

New York's Human Trafficking Intervention Courts (HTICs), the nation's first statewide human trafficking intervention within a justice system, were launched in September 2013. The State of New York Unified Court System announced the goal of the Courts in a press release: "to promote a just and compassionate resolution to cases involving those charged with prostitution — treating these defendants as trafficking victims, likely to be in dire need of medical treatment and other critical services." The project is based on two similar court programs in New York City: the Midtown Community Court program that was established in 1993 in Manhattan, and the Queens Criminal Court program for teens arrested on prostitution charges that began operating in the mid-2000s. During October 2013 there was a rollout of eleven Human Trafficking Intervention Courts throughout the state. The HTICs mandate people charged with prostitution-related misdemeanors, including survivors of trafficking as well as people who trade sex by choice and circumstance, to participate in programming offered by local nonprofits as well as programs run by the courts themselves. Completion of a program makes a defendant eligible to get their charge sealed and dismissed if they are not rearrested for any offense during the six months following the adjournment for contemplation of dismissal (ACD) granted by the court.

MOTIVATION AND INTENTIONS FOR THIS REPORT

The impetus for this report came about as staff and members of Red Umbrella Project (RedUP), a peer-led, Brooklyn-based organization that amplifies the voices of people in the sex trades, monitored media coverage of the HTICs in fall 2013. We wanted to know more than the media was reporting about the courts, so we set out to do this research ourselves. This report documents what happens inside the Brooklyn and Queens HTICs, based on court observations that were conducted by RedUP staff and members in open court from December 2013 until August 2014.

Reports on sex workers by researchers specializing in criminal justice are common, but as sex workers we believe that it is important for us to turn the tables and report on the criminal justice system and its impact on our community. The system that has long treated us as criminals is now trying to make a shift toward treating all people with prostitution arrests as victims once they enter the court system, but the arrests continue. Though based on an intention to help people who are in exploitative situations or working in the sex industry when they would prefer to be doing another job, the blanket assumption that all people in the sex trades are victims does us a grave injustice. The victim narrative grays the line between consent and coercion, making it more difficult for people in the sex trades who are victimized – by clients, pimps, police, and courts – to seek justice and move forward with our lives in ways that we determine.

FINDINGS AND RECOMMENDATIONS

ARREST AND COURT INVOLVEMENT DO NOT END VICTIMIZATION AND DO NOT ADDRESS ECONOMIC JUSTICE.

The implementation of the Human Trafficking Intervention Courts is based on the idea that a large number of defendants are not criminals, but victims of exploitation. But no other charge, whether it be domestic violence, kidnapping, labor exploitation, or sexual assault, calls for the person being exploited to be arrested. Arrest and court involvement do not solve the economic injustices that many people in the sex trades face: lack of access to employment outside of the sex industry, lack of stable housing, and lack of access to non-judgmental healthcare. Decreasing the incarceration of people charged with prostitution, as the HTICs are trying to achieve, is a good step forward. However, as long as people who are in the sex trades by coercion, economic circumstance, or choice are “rescued” through arrest and mandated services, they will continue to be re-victimized by the police and the courts.

RECOMMENDATION:



The NYPD must stop harassing and arresting people who trade sex and people who trade sex and people they profile as trading sex.

IN BROOKLYN, BLACK PEOPLE ARE PRESENT IN THE HTIC AND FACE PROSTITUTION-RELATED CHARGES AT A DISPROPORTIONATELY HIGH RATE.

Black defendants in the Brooklyn HTIC faced 69% of all charges, 94% of loitering for the purpose of engaging in a prostitution offense charges, and were 88% of the defendants who faced three or more charges.

RECOMMENDATIONS:



Based on the precedent set by *Floyd, et al. v. City of New York, et al.* ruling that the stop-and-frisk NYPD practice violates the Fourth and Fourteenth Amendments because stops are not based on "reasonable suspicion" and were being conducted in a racially disparate manner, advocates and criminal justice officials alike must take a closer look at whether the charge of loitering for the purposes of engaging in a prostitution offense (PL 240.37) is constitutional and if the law can be made compatible with the ethical and mechanical changes in the Human Trafficking Intervention Courts.



The Brooklyn District Attorney must end the practice of using one hand to pardon through granting ACDs in court and the other to re-victimize through the police targeting and arresting women they have previously arrested for prostitution on the charge of loitering for the purposes of prostitution.

INTERPRETER SERVICES ARE INSUFFICIENT.

In Brooklyn 19% and in Queens 67% of defendants required the services of an interpreter to communicate in court. Many of these defendants encountered insufficient interpreter services in court and over-taxed service providers. In particular, Mandarin speakers make up 46% of the total defendants in Queens. Mandarin-speaking defendants in Queens who obtained an ACD in court most commonly took five to six months to do so, compared to the overall most common length of time for Queens defendants to obtain an ACD: two to four months. We often observed Mandarin speakers having their time in the system prolonged because service providers did not have the capacity to accommodate them.

RECOMMENDATION:







Human Trafficking Intervention Courts must ensure that court interpreters are available, sensitive to the situations of the defendants, and held accountable for accurately representing the words of the defendant and other people in the courtroom who are speaking on-the-record. While the right to have interpreter services is guaranteed by New York law, this law does not provide a source for recourse if the right is denied or infringed upon in the HTICs. Such recourse must be made possible by the courts.

THERE ARE NO PUBLICLY ESTABLISHED STANDARDS FOR THE SOCIAL SERVICES THAT ARE MANDATED FOR DEFENDANTS.

The services in which defendants are court mandated to participate are determined by the judge and the capacity of the service providers. From on-the-record discussions of services and conversations with individual service providers, we gathered that many service providers focus on providing one-on-one trauma-based psychotherapy to defendants, while others provide group therapy, art therapy, life skills workshops, and yoga. These services may be a helpful part of healing for those who identify a desire for these services, but short-term mandated assistance does not address the pervasive problems that defendants face.

RECOMMENDATIONS:

-  The HTICs and programs that are mandated for defendants must be held accountable to the communities they purport to serve and there must be standards established for the services and types of services that are mandated.
-  Greater examination of the actual benefits of the mandated programs as perceived by the defendants, not by the courts and managers of the programs, is essential to evaluate the usefulness of the programs.
-  Services mandated for defendants must be culturally competent and available in the language that the defendant feels most comfortable communicating in, and the availability of these programs must not hinder or slow defendants' access to justice.
-  Peer advocacy and support from people with experience in the sex trades to people who are being processed through the courts could create a more supportive environment and a better understanding of what is happening in the courtroom.

REPORT SCOPE, LIMITATIONS, AND NEXT STEPS

Our focus for this report is on what happens in the HTICs and the relationship between the court system and criminal justice outcomes for people arrested for prostitution offenses. This report and the work that contributed to it represent the first phase of RedUP's work engaging with the criminal justice system. Next, we plan to use our findings and recommendations to start conversations with stakeholders in the court system about ways to better support people in the sex trades and to advocate to decrease some of the harms we have identified in association with the HTICs. We also plan to build on what our court observation team has learned and established to create a program, Court Advocacy for Those who Trade Sex (CATTS), in which we do structured outreach, support, and organizing with folks who are involved in the courts and impacted by policing of prostitution. This organizing work will be guided by and in service of people impacted by the HTICs, and we will build on the skills and programs of the RedUP staff and members in media and storytelling to craft a creative advocacy response to the HTICs.

INSIDE THE BROOKLYN AND QUEENS HUMAN TRAFFICKING INTERVENTION COURTS

This report is based on court observations that were conducted in the AP8 courtrooms in the Kings Criminal Court (referred to throughout the report as the Brooklyn court) and the Queens Criminal Court, the sessions of which are open to the public. Red Umbrella Project (RedUP) staff and members, who are current and former sex workers, did observations and documentation from December 2013 until August 2014. Our dataset is from observations that took place from March to August, during which we observed and tracked the progress of 181 defendants in the Queens court and 183 defendants in the Brooklyn court. We crosschecked information about cases we saw in court with publicly available records on WebCrims and the Department of Corrections websites. Our goal was to better understand the court system and embed the perspective of sex worker observers, some of whom have experience in the criminal justice system, in the process of documentation and accountability for these courts. Though we highlight key questions in each section that will be broadly applicable to similar courts, we also encourage observation and documentation of other court systems to discover their unique functions and impacts.

CASE PROFILES

Liu, an East Asian woman who was most comfortable speaking Korean, was arrested in Queens for prostitution after a previous prostitution arrest and ACD. She accepted the DA's offer of five sessions, and the judge warned her that after this case, if she is rearrested she will not get the chance to pursue an ACD again.

Ming, who was arrested for prostitution in Queens and spoke Mandarin through an interpreter in court, was offered five sessions to pursue an ACD, but rejected the offer. The judge gave her an adjournment so she could take some time to reconsider. At her second court date, which took place two weeks later, the DA offered her the opportunity to plead to disorderly conduct, which the judge accepted and she took.

Nina, a Black woman arrested for prostitution, had been in the court

HOW DEFENDANTS MAKE THEIR WAY THROUGH THE HUMAN TRAFFICKING INTERVENTION COURTS

ARREST: Arrests take place in both indoor and outdoor sex workplaces. The most common charges are prostitution (PL 240.37), a class B misdemeanor, and loitering for the purposes of engaging in a prostitution offense (PL 240.37), a violation on first offense and a class B misdemeanor on subsequent arrests.

FIRST COURT DATE: Most court appearances are set for two to five weeks after the date of arrest, and defendants are not typically incarcerated during this time. After the defendant is called in court, the prosecuting lawyer from the District Attorney's (DA) office makes an offer so the defendant can pursue an adjournment for contemplation of dismissal (ACD) by participating in a mandated program.

THE DEFENDANT'S OPTIONS:

- **ACCEPT THE OFFER OF MANDATED SESSIONS AND PURSUE AN ACD.**

Accepting this option is not an admission of guilt. The HTICs encourage defendants to take this option: in Queens 94% of defendants we observed pursued an ACD and in Brooklyn 97% did so during our study period.

- **PLEA TO A LESSER CHARGE OR PLEAD GUILTY.**

In Queens, the DA offered seven defendants a plea to disorderly conduct, which is a violation and not a crime, and therefore does not go on a defendant's criminal record. These defendants received time served and paid a \$120 surcharge. In Brooklyn, two defendants pled guilty to misdemeanor prostitution and received 30 day sentences.

- **REJECT THE OFFER OF MANDATED SERVICES.**

Some defendants do not want to accept the offer to attend the mandated sessions. The judges encourage them to reconsider, often by setting a follow-up court date. We observed one person in each borough reject all offers.

- **PURSUE A TRIAL.** A public trial by a jury of one's peers is the right of any person charged with a crime. We observed one Brooklyn defendant attempt to pursue a trial during our study period.

system with an open case for two years by the time we saw her in court in Brooklyn. Her case predates the formal establishment of the HTICs. She has been steadfast in refusing to accept the option of attending services. The judge adjourned her case to a later date, telling her to consider taking the sessions.

Ciara, a Black woman who was arrested in Brooklyn on a charge of loitering for the purposes of engaging in a prostitution offense, was the only defendant we saw pursue a trial. During her arrest she was brutalized by the police, and she documented the resulting bruises in pictures. Over the six months Ciara was in the court system, she made appearances at two court dates, and a date was set for her trial but then it was postponed to a date three months later. Ultimately, after the judge was absent from court the day of her trial due to illness, the charges were dropped.

ACCEPTING THE MANDATE: Defendants who accept the offer of sessions are assigned by the judge and lawyers to a nonprofit service provider or a program run by the DA's office. Matches between defendant and program are made mostly based on which program has the capacity and provides the language competency the defendant requires. The defendant receives contact information for their assigned provider and the start date of their first session before they leave court, as well as a follow-up court date to report back on their progress.

ATTENDING SESSIONS AND MAKING PROGRESS: Sessions are expected to be completed at a rate of one per week. If the defendant has been showing up to sessions, a date will be set for the ACD at the next court date. For the defendants who were granted ACDs during our study period, in Queens it typically took between two and four months and in Brooklyn it typically took between one and a half and three months.

NOT MAKING PROGRESS: If the defendant has not been attending their sessions or has been rearrested, the judge may increase the number of mandated sessions or transfer them to a different program. However, of the 19 defendants in Brooklyn who were transferred to a different program, only two obtained ACDs. In Queens, of the eight defendants transferred to a second program, two obtained ACDs. If the defendant does not show up to court the judge typically issues a warrant, though sometimes exceptions are made if the defendant has been in touch with their lawyer or service provider, in which case they are assigned another court date.

OBTAINING AN ACD: When the defendant has completed their mandated sessions, the judge grants an adjournment for contemplation of dismissal (ACD). Of the defendants we observed obtaining an ACD in court, defendants in Brooklyn generally took one and a half to three months to do so and defendants in Queens took two to four months to do so. If the defendant is not rearrested on any charge for six months after the ACD is granted, the charge is sealed and dismissed. If a person is rearrested for any offense in the six months before the charge is sealed the process starts over.

KEY QUESTIONS

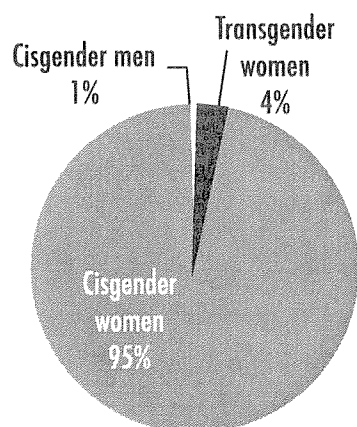


The HTICs have put forth the idea that health and social services are a necessity for people arrested on prostitution-related offenses. However, is “success” in engaging in social services, especially therapy, really measurable by program completion and ACD rates?

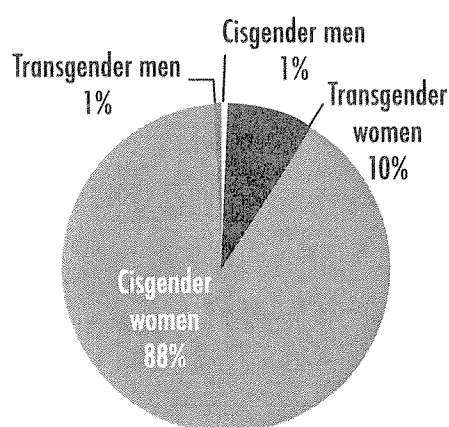


The HTIC has achieved a reduction in people with prostitution-related charges being incarcerated, but while defendants are in progress toward an ACD they have an open case. Open cases limit a person’s ability to obtain employment outside of the sex trade, receive public benefits, and maintain custody of children. Is this a desirable outcome?

DEFENDANT DEMOGRAPHICS



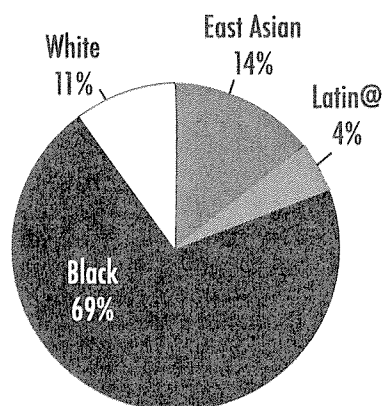
BROOKLYN



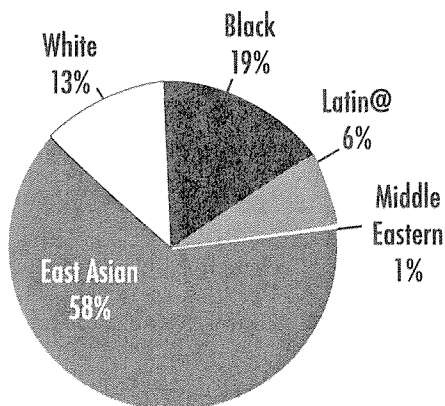
QUEENS

PERCEIVED GENDER

In Brooklyn 99% and in Queens 98% of defendants we observed in the HTICs are women. However, the Queens Court sees more than twice as many transgender women (10%) than the Brooklyn Court (4%). Of the trans women defendants in the Queens Court, 81% were Latina.



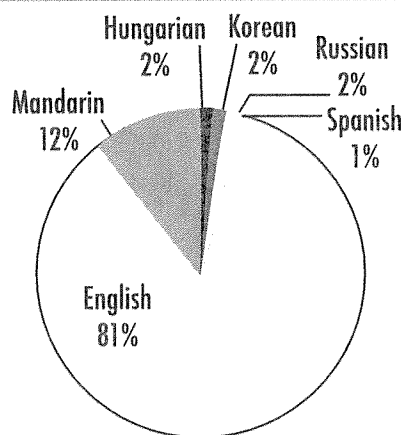
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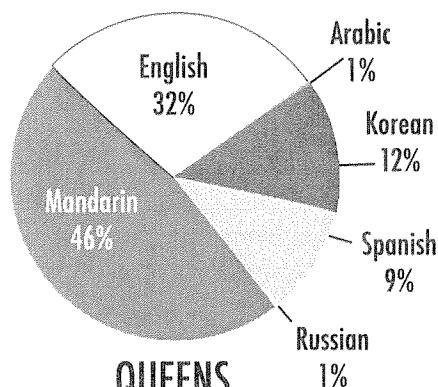
QUEENS

PERCEIVED RACE

The two courts we observed had a different population that made up the majority of the defendants. In the Brooklyn HTIC during our study period, 69% of defendants were Black, while in Queens 58% of the defendants were of East Asian descent.



BROOKLYN



QUEENS

LANGUAGE

In Brooklyn 81% of defendants were comfortable using English as their primary language, while 19% of defendants used an interpreter to communicate in court. In Queens, however, 67% of defendants needed an interpreter, with 46% of the total defendants speaking Mandarin.

Please see the methodology section in the appendix for an explanation of our observations and "perceived" gender and race.

KEY QUESTIONS



Is the fact that there are more than twice the number of trans women defendants in the Queens HTIC than in the Brooklyn HTIC the result of police profiling of translatinas in Jackson Heights? (as documented in Make the Road New York's 2012 report *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*)



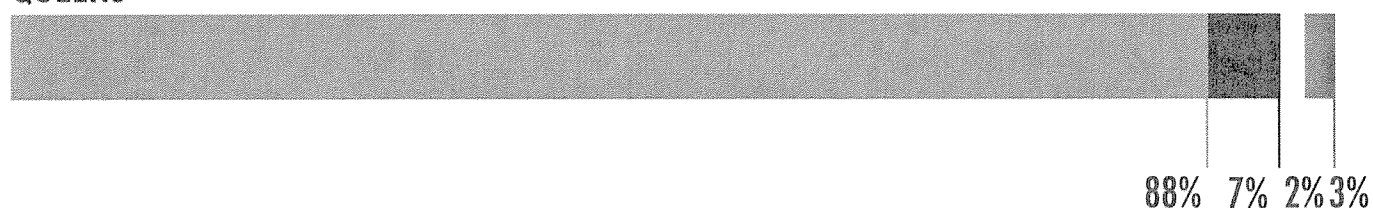
Are the high numbers of Black defendants in Brooklyn and East Asian defendants in Queens the result of police doing racial profiling and targeting these communities?



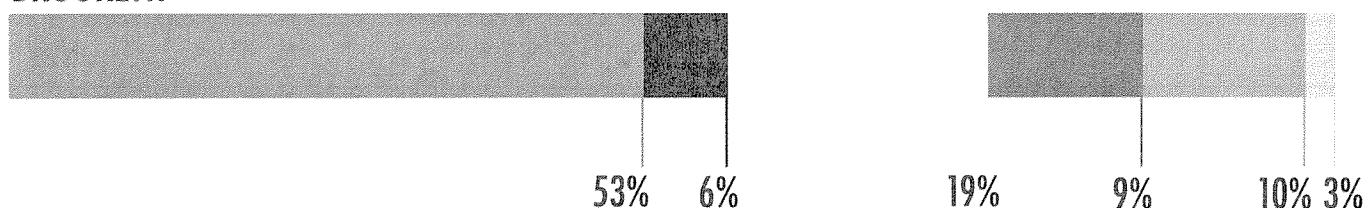
Are the high numbers of defendants in Queens who speak Mandarin and Korean the result of police seeking out potential victims in workplaces where they believe that trafficking of migrant Asian women is taking place?

CHARGES DEFENDANTS FACE

QUEENS



BROOKLYN



- PROSTITUTION
- PROSTITUTION, TWO COUNTS
- LOITERING FOR THE PURPOSES OF ENGAGING IN A PROSTITUTION OFFENSE
- PROSTITUTION AND LOITERING FOR THE PURPOSES OF ENGAGING IN A PROSTITUTION OFFENSE
- THREE OR MORE PROSTITUTION-RELATED CHARGES AND/OR THREE OR MORE COUNTS OF A CHARGE
- OTHER PROSTITUTION RELATED CHARGES

The most common charge in both HTICs we observed was prostitution, with 88% of Queens defendants and 53% of Brooklyn defendants facing this charge. In Brooklyn, 19% of defendants in the HTIC were facing the charge of loitering for the purposes of prostitution – of those defendants, 94% were Black. In Brooklyn 56% of defendants faced charges in addition to the prostitution-related charges that brought them into the HTIC, and 96% of those defendants were Black.

When initially encountering someone they have previously arrested for prostitution or someone in the company of others who have been arrested, police officers do not know if that person has a case that has been dismissed and sealed. Therefore, receiving an ACD does not protect someone who is no longer doing sex work from being rearrested for a loitering for the purposes of prostitution charge if they spend time in public space in a neighborhood where they have previously been arrested, or near an area that the police have identified as a stroll where people trade sex.

KEY QUESTIONS



Are NYPD officers in Brooklyn encouraged to profile and harass Black women with the intent of making loitering for the purposes of prostitution arrests?



How does the structural racism of the patterns of arrest and criminal charges create barriers for Black women who may want to exit the sex industry?



The HTICs perceive their work as connecting defendants to needed services, but do defendants perceive this connection or do they believe they are being punished?



Is arrest the best means to identify victims and get people in the sex trades into services?

CASE PROFILES

Paula, a Black woman from Brooklyn, was charged with four counts of loitering for the purposes of prostitution. Because of the number of offenses the DA's office wanted any offer, including a mandate to a program, to be conditional on Paula pleading guilty to all four charges. Paula was not interested in doing this. The judge pushed back at the DA, stating that the amount of evidence combined for all four charges was insufficient to require a guilty plea. Paula was able to get a mandate to a program without guilty pleas.

Breanna is a Black woman who was arrested in Brooklyn in October 2013 on a prostitution charge and received an ACD in court in May 2014. Fifteen days later she was rearrested for loitering for the purposes of prostitution. This arrest sent her back to square one, and this time around the judge mandated her to ten sessions in a program. She was still in progress toward an ACD when our observations ended in August.

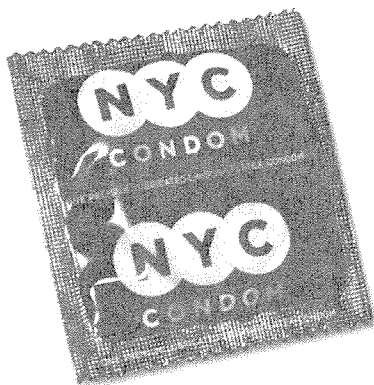
Freya, prior to the HTICs being established, went through the Misdemeanor Brooklyn Treatment Court (substance abuse treatment as an alternative to incarceration program) and misdemeanor drug possession (AP5) courts for 16 months, during which time she was re-arrested and failed to show up for a few court dates. When her case was transferred to the Brooklyn HTIC, it took two months for her to complete the mandated program and obtain an ACD.

SPOTLIGHT ON A CHARGE:

LOITERING FOR THE PURPOSES OF ENGAGING IN A PROSTITUTION OFFENSE (PL 240.37)

New York state criminal code contains more than a dozen different prostitution-related offenses, including a variety of misdemeanors and felonies. Loitering for the purposes of engaging in a prostitution offense (240.37) is the only charge that is a violation on first offense and then a misdemeanor on subsequent offenses. NYPD officers document their reasoning for these arrests in supporting deposition forms.

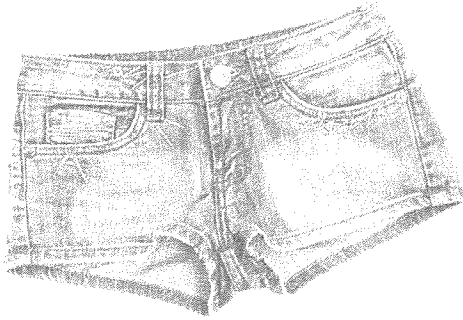
**BASIS OF
CONCLUSION THAT
DEFENDANT WAS
LOITERING FOR
THE PURPOSE OF
PROSTITUTION**



- OFFICER HAS PROFESSIONAL TRAINING AS A POLICE OFFICER IN THE DETECTION OF INDIVIDUALS LOITERING FOR THE PURPOSE OF PROSTITUTION.
- OFFICER HAS PREVIOUSLY MADE ARRESTS FOR LOITERING FOR THE PURPOSE OF PROSTITUTION.
- THE LOCATION OF ARREST IS NOT A BUS STOP, NOR AN OPEN COMMERCIAL ESTABLISHMENT, NOR A HOUSE OF WORSHIP.
- THE ABOVE AREA IS EITHER A COMMERCIAL LOCATION OR AN INDUSTRIAL LOCATION.
- THERE WAS SEXUAL TYPE DEBRIS NEARBY (CONDOM WRAPPERS, USED CONDOMS).
- OFFICER IS AWARE THAT THE NYPD HAS MADE NUMEROUS ARRESTS 240.37, 230.00 AND/OR 230.03 AT THE ABOVE LOCATIONS.
- OFFICER IS AWARE THAT THE LOCATION IS FREQUENTED BY PEOPLE ENGAGING IN PROMOTING PROSTITUTION, PATRONIZING A PROSTITUTE, AND/OR LOITERING FOR THE PURPOSE OF PROSTITUTION.
- OFFICER IS AWARE THE DEFENDANT HAS PREVIOUSLY BEEN (ARRESTED FOR, CONVICTED OF, OR BOTH) VIOLATING PROSTITUTION LAWS.

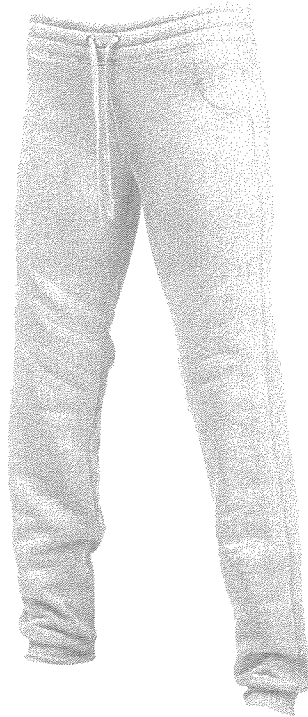
NYPD OFFICERS DOCUMENT OUTFITS AS EVIDENCE

*"Black sleeveless top,
very short pants with butt
cheeks exposed"*



"Short blue skirt/dress"

*"Tight pink cut off shirt,
revealing midsection, and low
hanging sweat pants"*



"Wearing short dress"

DEFENDANT BEHAVIOR

- REMAIN TO WANDER ABOUT IN A PUBLIC PLACE FOR A PERIOD OF _____ MINUTES, DURING WHICH DEFENDANT REPEATEDLY BECKONED TO PASSER-BY AND STOPPED _____ PASSER-BY, ENGAGING IN CONVERSATION WITH PASSER-BY
- STOP ONLY MALE PASSERS-BY AND DEFENDANT DID NOT BECKON SO OR CONVERSE WITH FEMALE PASSERS-BY WHO PASSED BY DURING THE SAME PERIOD, THUS STOPPING ONLY PASSERS-BY OF ONE GENDER
- NONE OF THE VEHICLES STOPPED WERE TAXIS, LIVERY CABS, OR EMERGENCY VEHICLES
- STANDING IN THE MIDDLE OF THE ROAD WHILE BECKONING TO MOTORISTS
- DRESSED IN PROVOCATIVE OR REVEALING CLOTHING, SPECIFICALLY (DESCRIBE)
- STANDING WITH OTHER INDIVIDUALS WHOM I AM AWARE HAVE PREVIOUSLY BEEN ARRESTED FOR PROSTITUTION-RELATED ACTIVITIES

PROPERTY AT TIME OF ARREST

"Clutch bag, lipgloss, condoms, cigarettes, 3 lighters"
"Magnum condoms"
"One bottle of astroglide lube and 19 condoms"

STATEMENTS MADE BY DEFENDANTS

*"Shit, I just got out of a program for this in
Manhattan."*
"I just started again a month ago."

CASE PROFILES

In the Brooklyn HTIC, Russian-speaking Irina was not provided with interpreter services for her final court date, during which she was granted an ACD. As a result, Irina did not receive an explanation as to the condition of the ACD, namely that the charge would be dismissed and sealed in six months only if she avoided re-arrest.

In Queens, when the judge asked Mandarin speaker June how she was doing, the interpreter translated her response as, "Very good." The judge, responding to June's body language, said to the interpreter, "She didn't say that. Please translate what she said." The interpreter then relayed that June was upset because she said she's not guilty and didn't want to do the mandated sessions that had been offered to her. The judge explained that the court doesn't want to force her to do anything she doesn't want to do, the program is voluntary, and taking mandated sessions and progressing toward an ACD

DEFENDANT PROGRESS TOWARD AN ACD: FACTORS AND BARRIERS

COURT-INVOLVED MONTHS: Of the defendants who were granted ACDs in court during our study period and whose dates of court involvement were verifiable, in Queens the defendants who obtained ACDs most commonly did so in two to four months, while in Brooklyn defendants most commonly took one and a half to three months to do so. In Brooklyn defendants were typically required to attend six mandated sessions while in Queens, defendants were required to attend five. In both HTICs it was the judge's expectation that defendants complete one session per week. Defendants completing the programs in one and a half months stayed on this planned course, while defendants who took longer either had challenges in their schedule or did not show up weekly for other reasons.

LANGUAGE: In both boroughs the charges for Mandarin speaking defendants have a slower resolution, most commonly spending five to six months obtaining their ACDs. This is likely due to the glut of Mandarin-speaking defendants and the lack of language-appropriate services. As of the beginning of August, the two organizations that provide services to Mandarin speakers, Restore NYC and the New York Asian Women's Center, were backlogged so that the court has been setting adjournment dates for November for these defendants. Several defendants also

had problems in the courts themselves when the interpreter services have been insufficient.

IMMIGRATION STATUS: Immigration status was not one of the data points we collected in a systematic way, but immigration issues came up repeatedly, especially in the Queens court. Lawyers representing defendants with pending immigration issues often requested, upon the defendant's receipt of an ACD, that the typical six month waiting period for the case be reduced to lessen the harms that having a simultaneous open immigration case could bring. The judge often granted these requests, shortening the waiting period by half or granting an immediate dismissal and seal.

MANDATED PROGRAMS: In Brooklyn defendants are required to complete six sessions and in Queens defendants are required to complete five sessions of a mandated program in order to be granted an ACD in court. In Brooklyn, the program that accepted the most defendants mandated to their services was the Brooklyn Justice Initiative, which is a program of the Center for Court Innovation and is located in the same building as the court. Twenty percent of the defendants mandated to Brooklyn Justice Initiative during the study period were granted ACDs in court.

Restore NYC received the highest volume of referrals in Queens, as they are the program with the most capacity to provide services to defendants whose primary language is Mandarin. But Restore also had the lowest rate for Queens programs of mandated defendants receiving ACDs, at 28%. As of the end of our

is not an admission of guilt. June took the offer of the sessions.

Julia, a defendant in the Queens HTIC, was granted an ACD in court and then the judge agreed to seal the case in sixty days instead of six months because the defendant was planning to enroll in a GED program. The defense attorney also stated that Julia was concerned that having a prostitution charge on her record would be a barrier to obtaining employment, since after the ACD is granted in court, the prostitution charge appears on a person's record until the charge is sealed.

Qing, a Mandarin speaking woman arrested in Queens, was granted an ACD in court after completing five sessions of a mandated program. Since Qing is an immigrant with an expiring visa and an upcoming immigration hearing and hopes to apply for a green card, her lawyer requested an early seal and dismissal for her charge. The judge granted a seal and dismissal for her charge to take place 30 days from the date of the ACD being granted in court.

KEY QUESTIONS



Are the Human Trafficking Intervention Courts an effective venue for implementation of services?



What the roles of the different service providers within the HTICs and how do the implementation and impacts of their services differ?



Is the practice of increasing the number of mandated sessions, whether because of a re-arrest or because the judge or service providers determine that the defendant may benefit from more support, an effective way to help a defendant obtain an ACD?

observations in early August, the court was adjourning dates for defendants mandated to Restore into early November because of the backlog, greatly increasing the time that these defendants spend involved with the court and with an open case.

ACDS AND RE-ARREST: Our court observations and data cross-checking with WebCrims and the Department of Corrections provided us with a picture of the rate at which defendants were receiving ACDs in court. However, the limitations of the observational study and our lack of access to individual defendant criminal records made it impossible to know how many people are re-arrested during the six months between the ACD being granted in court and their charges being sealed and dismissed. However, during the course of defendants participating in mandated sessions, some were re-arrested. The judges typically increased the number of sessions the defendants were mandated to complete, usually to seven to ten sessions total.

CONCLUSION

New York's Human Trafficking Intervention Courts and the judges in leadership have taken an important step in questioning whether people arrested on prostitution offenses are really criminals. However, while leaders in the criminal justice system have made a leap to considering that people they previously thought of as criminals may actually be victims, this is an incomplete picture of the sex trade. Forced labor of all kinds is reprehensible and contributes to deep economic injustices in our society. Women, people of color, immigrants, LGBTQ people, people with addictions, people with disabilities, and people who live at the intersections of these identities are the most susceptible to labor exploitation because of the discrimination and stigma they face as they try to make livings and support their families. The sex trade is an often sexist, racist, transphobic industry – but the policing of people in the sex trades is all of these things, too. Sex work provides economic opportunities for people who may have difficulty finding other forms of employment or for whom informal employment is ideal. The extent to which people chose to work in the sex industry is debatable, as is the idea that job choice more broadly exists under capitalism.

Sex work is work. Like other forms of work, it is undesirable work for many. Unlike other forms of work, the main form of regulation of the sex trade in the United States is through the policing of its workers. The combination of policing and regarding people in the sex trades as victims produces a complicated dynamic: the criminal justice system doesn't differentiate between forced laborers and workers who may be exploited but for whom the job is palatable. The path through the criminal justice system—from arrests by the NYPD, to experiences in the HTICs, to mandated social services—may serve as an intervention for some defendants, but it does not lead to greater economic and

personal empowerment for sex workers on the whole. Instead, this cycle of criminalization, particularly for those who do not complete the mandated services, can make exit from the sex trade more difficult for those who want to do so. There are no simple solutions to supporting health, labor rights, and economic justice for people in the sex trades within criminalization. However collaboration with, organizing by, and listening to people in the sex trades is an essential part of discovering and implementing policies and services that can support people in the sex trades in getting what we need.

APPENDIX

STUDY METHODOLOGY

Our report data is based on court observations that were conducted by Red Umbrella Project (RedUP) staff and members from December 2013 until August 2014. From December through February our Community Organizer Emma Catherine did initial observations to understand the basic process of the courts and observe how the Queens and Brooklyn courts differ. Our quantitative dataset is from observations that took place from March 2014 to August 2014, during which we observed and tracked the progress of 181 defendants in the Queens court and 183 defendants in the Brooklyn court. After the initial round of observations from December 2013 to February 2014, in early 2014 we decided on and standardized the data to record (categories found below) in our observations for observations conducted from March 7, 2014 to August 8, 2014. On June 25, 2014 we stopped adding new defendants into our study because based on early analysis, they would be unlikely to complete the process by August 8, 2014, the date we concluded observations in the Courts, and this would skew the results. From June 25 to August 8, court observers continued to document all defendants coming through the court, but we only included data on the progress. Court observers collected the following data for each defendant:

- Name as listed on the AP8 court calendar posted outside the courtroom on the day court was held, name as corrected in the court room by the defendant or their lawyer (especially for trans women defendants who presented identification with legal, but not current, names at arrest and East Asian defendants, who often had their names misspelled by the NYPD or court).
- Dates defendant was present in court and scheduled to be in court.
- Prostitution charge and additional criminal charges.
- Perceived race – for the purposes of this study our observers documented their perceptions of the defendant’s race in four racial categories of people most often coming through the

courts in the most significant numbers: Black, East Asian, Latin@ (Latin@ is for the purposes of this study the term used for people of Central and South American descent inclusive of all genders), and white (including foreign-born people of European descent). Self-determination and self-identification are the only means to know someone's race and each observer perceives race slightly differently, so observational data was fit to correspond to the perceptions of the criminal justice system.

- Perceived gender – for the purposes of this study, we identified the gender of defendants based on their names, gender presentation, and interactions with the judge and court officers around gender identity. We most often observed cisgender women and transgender women, though there were several people we perceived as cisgender men and one transgender man.
- Mandated program(s) and number of sessions defendant was assigned to, and monitoring of sessions completed over additional court dates.
- Primary language spoken and interpreter services received.
- Additional narrative notes about the courtroom interactions and case as discussed on-the-record.

After hand-written notes were taken in court (the courts ban the use of electronic devices), two core staff members and an intern entered them into a spreadsheet organized by these different criteria. This access was strictly limited to preserve the anonymity of defendants: while the observations were done in open court and are a matter of public record, we were dedicated to doing no additional harm. We then cross-checked the data with online databases at WebCrims and the New York City Department of Corrections. These online databases list the criminal charges a defendant is facing, which was helpful because charges are rarely stated for the record in court. In the final dataset, we replaced names with numbers and then deleted all names from our servers. Handwritten notes with names and other identifying information were collected by RedUP staff and destroyed. Names used in the report are fictional.

From March to August we did two rounds of recruitment for member volunteers whom Emma trained as observers in one-on-one meetings, group trainings led by peers, and by observing court alongside a more experienced observer. These members were selected because they were peers: people with experience trading sex or being profiled as trading sex. They were a diverse group: white, Black, East Asian, and Latin@; 27 cisgender men and women and transgender women; people who have

traded sex indoors and outdoors with various degrees of autonomy or coercion; people with experience within the criminal justice system; English, Mandarin, and Spanish speakers.

It was key for our study to document defendants' progress in the programs that were mandated for them, determine their completion rates, and identify barriers to completing the program and receiving an ACD. However there were some barriers to collecting consistent data. Firstly, because of the large number of aliases employed by many people in the sex trades or given to people being coerced or trafficked, and because of inconsistent court records, it was sometimes difficult to fully account for all of a defendant's criminal charges and histories participating in mandated programs. Tracking NYSID numbers, unique identifiers assigned to an individual by the New York State Division of Criminal Justice Services and accessible publicly when a case is open, and birthdates provides some amount of verification in cross-referencing court observations with court records. Secondly, a defendant may complete their program and have their case sealed and dismissed, only to get new charges later on. In some cases, their original charges will be re-opened by the District Attorney's office, only to be resealed upon their completing a new mandate and regaining an ACD. Thus it can never be fully determined whether or not a defendant's program completion will be their last and it is not within the scope of our study to evaluate the rate of recidivism.

During the process of collecting observational data our members also built relationships with stakeholders and service providers in the court system, including representatives from Legal Aid Society, Brooklyn Justice Initiative, Sylvia Rivera Law Project, Community Healthcare Network, and GEMS. Colleagues from these organizations were immensely important in helping us decipher the court systems and understand their process, as were our colleagues at the Sex Workers Project. During the summer months, our work was greatly aided by Martin Elio Covarrubias, an intern we shared with the Sylvia Rivera Law Project (SRLP) who helped us conduct the observations and manage the data entry, in addition to doing court observations in Manhattan and the Bronx for a related SRLP project on the accessibility of alternative to incarceration programs for trans, intersex, and gender non-conforming people.

JUDGES

In Queens, the presiding judge is Judge Toko Serita, while in Brooklyn the presiding judge is Judge John Hecht. Judge Serita has been developing strategies for the court to intervene in prostitution-related charges since she took over the court from Judge Fernando Camacho in 2009. Toko Serita is a New York City Criminal Court judge who was appointed by Mayor Michael Bloomberg in 2005. She is currently the presiding judge of the Human Trafficking Intervention Court (HTIC), the Queens Misdemeanor Treatment Court (a drug treatment court), and the Queens Mental Health Recovery Court.

Judge John Hecht was appointed in 2011 as a judge in the Kings Criminal Court and has overseen the Human Trafficking Intervention Court in Brooklyn since October 2013. He has been involved with organizing justice efforts around trafficking since he was principal court attorney to Judge Barry Kamins in 2010. Judge Hecht is also a former supervisor and staff attorney for the Legal Aid Society's Criminal Defense Division.

PROGRAMS THAT PROVIDE SERVICES FOR MANDATED DEFENDANTS

BROOKLYN JUSTICE INITIATIVE, a program of Center for Court Innovation in Brooklyn, provides services primarily in English

ENDING PROSTITUTION IN COMMUNITIES (EPIC), a program of the Brooklyn District Attorney's Office, provides services primarily in English

GIRLS EDUCATION AND MENTORING SERVICES (GEMS), provides services in English to defendants in Queens and then began providing services to Brooklyn defendants late in our study period

HIDDEN VICTIMS PROJECT, a program that accepted a small number of mandated defendants in both Queens and Brooklyn

COMMUNITY HEALTHCARE NETWORK (CHN), provides services for Spanish speakers, especially translatinas, in Queens

NEW YORK ASIAN WOMEN'S CENTER (NYAWC), provides services in Queens and more recently Brooklyn for East Asian women who speak English, Korean, or Mandarin

RESTORE NYC, provides services in Mandarin and English for defendants in Queens. They provide housing for some program participants and are a faith-based organization.

SEXUAL ASSAULT AND VIOLENCE INTERVENTION PROGRAM (SAVI), provide services in Queens to mostly Spanish-speaking women

OTHER NEW YORK HUMAN TRAFFICKING INTERVENTION COURTS

1. MIDTOWN COMMUNITY COURT (MANHATTAN)
2. BRONX CRIMINAL COURT
3. RICHMOND CRIMINAL COURT (STATEN ISLAND)
4. MONROE CRIMINAL COURT (ROCHESTER)
5. ERIE CRIMINAL COURT (BUFFALO)
6. NASSAU CRIMINAL COURT (HEMPSTEAD)
7. ONONDAGA CRIMINAL COURT (SYRACUSE)
8. SUFFOLK CRIMINAL COURT (CENTRAL ISLIP)
9. WESTCHESTER CRIMINAL COURT (YONKERS)

ACKNOWLEDGMENTS

THE FOLLOWING PEOPLE REVIEWED THE FIRST DRAFT OF THE REPORT AND GAVE VALUABLE FEEDBACK:

Dr. Melissa Ditmore (independent scholar and RedUP Board of Directors member), Dr. Samantha Majic (Assistant Professor, John Jay College and RedUP Board of Directors member), Dr. Gregory Mitchell (Assistant Professor, Williams College), Dr. Jo Rees (Assistant Professor, Long Island University), Sienna Baskin, JD (Sex Workers Project), Kitty Austin (RedUP Board of Directors member)

We are grateful to colleagues at Legal Aid Society, Sex Workers Project, Brooklyn Justice Initiative, Sylvia Rivera Law Project, and Community Healthcare Network, who provided insight and helped us understand what we were seeing in court.

**Testimony of Toko Serita, Acting Supreme Court Justice
Queens Criminal Court, Human Trafficking Intervention Court
Before the
New York City Council Committees on
Courts and Legal Services
And on Women's Issues
Relating to
The Effectiveness of the Human Trafficking Intervention Courts**

September 18, 2015

Good morning. My name is Toko Serita and I preside over the Queens Human Trafficking Intervention Court in Queens Criminal Court. I am also the statewide chair of the Human Trafficking Working Group, a committee composed of the trafficking intervention court judges throughout NYS in collaboration with the Office of Policy & Planning, headed by Judge Sherry Klein-Heitler. On behalf of the Unified Court System, Chief Judge Jonathan Lippman and Chief Administrative Judge Lawrence Marks, I want to thank Speaker Mark-Viverito, Chairpersons Lancman & Cumbo, as well as members of the Committees on the Courts and Legal Services and on Women's Issues for the opportunity to testify on the Effectiveness of the Human Trafficking Intervention Courts.

The Queens HTIC is the oldest court in this state to deal with victims of sex trafficking. It was formed in 2004 by Judge Fernando Camacho, and I have presided over the court since 2008. In 2012, the court's name was changed to the Human Trafficking Intervention Court to recognize that this was not merely a diversion court for "wayward" prostitutes, but that we were dealing with victims of sex trafficking who were nevertheless being arrested and processed through the justice system as criminal defendants. Because of its success in working with trafficking victims, this court served as the model for a new initiative in 2013 when Chief Judge Jonathan Lippman established a statewide network of trafficking intervention courts, adding 8 new courts. In addition to the 3 already in existence, these courts now handle 94% of all the prostitution and loitering cases in New York State.

The HTICs were formed in response to the continuing problem we face in the criminal justice system – that the current laws for prostitution and loitering serve to victimize defendants who we are coming to realize more and more, are already victims of human

trafficking. We have a criminal justice system that continues to arrest the victims of the commercial sex trade while arresting traffickers and buyers of sex in far lower numbers. Although these courts are an imperfect solution to a problem that is beyond the judiciary's scope, we have been able to work within the constraints of the existing laws to fundamentally change the treatment of these victims in criminal court, to resolve their cases with non-criminal dispositions, and to connect them to a variety of services through their engagement in various programs as part of their court mandate.

When I use the term victims, I do so deliberately. In Queens, for example, the majority of the defendants are women of color – some are young, as in the case of black and Latina domestic victims of trafficking, and some are older, Korean or Chinese women, as well as a number of transgender Latina defendants. They are all poor, disenfranchised, vulnerable and powerless, highlighting the intersection of race, sex and class in the exploitation of those forced into the commercial sex trade. About 35% of the defendants are black, 35% Asian, and about 15% Latina, comprising 85 % of the defendants in my court. These cases involve low-level prostitution arrests from massage parlors, or pimp-controlled prostitution involving women on the streets or from the internet. Most of them are unemployed, without access to resources, education, or family support. They are runaways or in foster homes; often times they are victims of sexual abuse; they are, as a group, very much disconnected from the dominant society. Because of circumstances such as poverty, homelessness, undocumented status, lack of education, language, or other forms of deprivation, these women at high risk of trafficking and are extremely vulnerable to exploitation by others.

Utilizing a dynamic and collaborative model, our HTICs work with the DA's Offices, the Defense bar and several anti-trafficking service provider organizations to connect defendants to a variety of services which are specifically geared to the population that we serve. In Queens, our success has also been due in part to the unflagging support of the Queens DA's Office, whose stellar leadership under ADA Kim Affronti serves as a model for prosecutors throughout the state. Many of the organizations we collaborate with are specially trained service providers with extensive experience working with trafficking victims. As a result, we are able to provide individually tailored, culturally appropriate services that are responsive to the needs of the defendants. Not only are many of these women traumatized by the violence and coercion faced at the hands of their traffickers, but they are also victims of domestic violence, sexual assault, or multi-abuse trauma, often requiring counseling, medical services and mental health or substance abuse treatment. They are also in serious need of housing, employment or educational opportunities. Because the needs of these women are so varied and complex, and because there is such tremendous difficulty identifying victims of trafficking, the courts provide the same services to all defendants who come before the court.

Given the breadth and diversity of this great city we live in, our effectiveness draws in large part from the wide array of service providers with whom we work to address the needs of young trafficking victims, foreign-born Asian and Latina defendants, as well as LGBT and transgender women. Some of these organizations that work in Queens include Mount Sinai's SAVI Program, GEMS, Restore, New York Asian Women's Center, Sanctuary for Families, Community Healthcare Network, and the Hidden Victims Project, to name a few. We continue to find new and innovative ways of approaching the problem of human trafficking, and we have

been fortunate to engage in partnerships with governmental agencies such as the Office to Combat Domestic Violence and the Mayor's Office on Criminal Justice.

As I've stated before, the success of these trafficking intervention courts rely largely upon the service providers, without whom we would be unable to function effectively. For this reason I am very thankful to the City Council and the Speaker for awarding 750k to these organizations so that they may continue to serve victims of trafficking and those exploited in the commercial sex trade. This is only the beginning of the work that needs to be done – and I look forward to the challenge of continuing to work with all of you to end this scourge of this modern day slavery.

TESTIMONY OF
ASSISTANT DISTRICT ATTORNEY
KIM AFFRONTI,
DEPUTY CHIEF, CRIMINAL COURT BUREAU
QUEENS COUNTY DISTRICT ATTORNEY'S OFFICE
BEFORE THE
NEW YORK CITY COUNCIL
COMMITTEES ON COURTS AND LEGAL SERVICES
AND ON WOMEN'S ISSUES
RELATING TO
THE EFFECTIVENESS OF
HUMAN TRAFFICKING INTERVENTION COURTS

September 18, 2015

Good morning. My name is Kim Affronti. I have been a prosecutor since 1986 and currently serve as Deputy Chief of the Criminal Court Bureau in the Queens County District Attorney's Office. On behalf of Queens County District Attorney Richard Brown, I want to thank Chairpersons Lancman and Cumbo, Speaker Mark-Viverito as well as the members of the Committees on Courts and Legal Services and on Women's Issues for the opportunity to testify today on the critically important topic of human trafficking.

In 2004, the Queens County District Attorney's Office, in collaboration with the Judge Fernando Camacho, set up in our local criminal court, a part to deal with underage sex trafficking cases. This court part, which eventually became the Human Trafficking Intervention Court, is presided over by Judge Toko Serita. I have been the prosecutor assigned to this part since its inception.

This part originally targeted young American women under the age of 22 but within two years expanded to include males and females of any age charged with these offenses regardless of the language spoken. (More than 100 languages are spoken in Queens County - the most diverse county in the nation.) The volume of cases in the part has grown substantially in recent years. At present, in addition to prostitution and loitering for prostitution misdemeanor cases, the part also handles cases involving misdemeanor unlicensed massage under section 65 of the Education law.

The Human Trafficking Intervention Court is premised on the recognition that many of the individuals arrested for misdemeanor prostitution offenses may, in fact, be victims of sex trafficking in need of treatment and services. The goal of the Human Trafficking Intervention Part is to provide access to a variety of such programs and services targeted to human trafficking victims. Those who successfully complete

the individualized program created for them receive a favorable disposition of their case. The programs and services offered may include, among other things, psychological counseling, alcohol or substance abuse treatment, medical care, legal assistance, financial assistance, job training, education, and housing. Like Drug Court, Mental Health Court and other specialized problem-solving courts, defense counsel, prosecutors and judges work collaboratively to assist the participants in getting the help they need in order to leave their exploiter and to lead productive lives.

Our experience with the court has been very positive and we were delighted when the Chief Judge, using the Queens program as a model, expanded these specialized court parts throughout the State. Since 2004, close to 5000 men and women have benefitted from the services provided by the Queens Human Trafficking Intervention Part.

Eligibility for participation in the Queens Human Trafficking Intervention Part is a two step process. First, as the prosecutor dedicated to this part, I do a paper screening of the case and the accused's entire criminal history to insure that those participating in the part do not pose a threat to public safety and are not themselves involved in promoting prostitution or trafficking. Those who are eligible are referred to appropriate treatment providers for screening.

The second step is a needs assessment conducted by the service provider. A variety of treatment providers serve the court. The treatment providers send representatives to the courtroom on Fridays who can meet with paper-eligible defendants who are interested in taking advantage of the court's services. The providers make an assessment of the nature and scope of services needed. The various programs we work with offer a range of services which can meet the varied needs of the participants depending on their age, the language they speak, their gender or gender identity or other special needs.

Among the programs we currently work with are GEMS (Girls Educational and Mentoring Services), SAVI (Sexual Assault Violence Intervention), RESTORE, New York Asian Women's Center, Garden of Hope, Korean American Family Services, Brooklyn Justice Initiative, Community Healthcare Network and Hidden Victims Project. A typical program may run from 5 to 20 sessions over a period of months. An exciting new initiative - the Pro Bono Project - was launched in July of 2014 by the Mayor's Office to Combat Domestic Violence and Sanctuary for Families. The initiative provides foreign-born defendants with pro bono legal representation on immigration law matters including assistance in applying for T-Visas or to have criminal convictions relating to trafficking vacated. And Human Trafficking Intervention Court participants have the ability to access a wide range of civil legal and social services provided through OCDV's Family Justice Center in Queens.

Some participants who complete the program find it difficult to change their lives and are subsequently rearrested. Recognizing that, like drug addiction, relapse may be part of the process, the Queens Human Trafficking Intervention Program often will give such individuals another opportunity to work with and receive the support of the Part's programs and providers.

It should be noted that there is no requirement that an individual cooperate with law enforcement or assist in the prosecution of his or her exploiter in order to be eligible for the Queens Human Trafficking Intervention Part. The Part's goals are focused exclusively on providing services and support to the person who has been exploited. Indeed, our office's efforts to vigorously investigate and prosecute sex traffickers under our State's trafficking laws are housed in a separate division - our Investigations Division - which develops its cases from independent evidence.

Let me just make a number of brief observations based on my experience with the many hundreds of people who have passed through the court since 2004.

While many individuals have taken advantage of the Part's services, few have admitted to being the victims of human trafficking. It may take many months or even years before a victim of commercial sexual exploitation will recognize or accept his or her victimization or reveal the true story of how he or she came to be involved in prostitution. Others never do.

The vast majority of 16 to 22 year old participants in the Queens Human Trafficking Intervention Part fall within the category of runaway or homeless youth. In addition, as the most diverse county in the nation and the home of New York City's two major airports, we see many Asian defendants over the age of 22 who are working off "debts" incurred for their travel to the United States.

For many of the runaway and homeless youth, their story began with an abusive home. They ran away and when they arrived here, found themselves without food or shelter or the skills to obtain employment. Some were befriended by a stranger who invited them to stay at their home when they were turned away from an overcrowded shelter. They were treated well at the beginning and may even have come to view their new friend as a lover. But after a brief period of time, the "friend" made clear that the food and shelter that they had been given represented a debt that would now be paid for by repeated acts of prostitution with all monies received paid to the exploiter.

Other runaway or homeless youth believed that they were going to be working as models or dancers or in other jobs, but were soon informed that they were to be performing sex acts. Leaving was not an option.

Exploiters intentionally prey on runaway and homeless youth. They wait outside of bus, train or subway stations, shelters, group homes, fast food restaurants and other known places where homeless youth are known to congregate. Traffickers send recruiters into shelters looking for vulnerable individuals and offering food, shelter, a place to shower and other amenities.

The Queens Human Trafficking Intervention Part offers these young men and women a chance to get out of “the life” and obtain the support and assistance they need to start over. Some of the graduates of the program have gone on to high school or college, others have obtained jobs. We are very proud of all that they have achieved and know what courage and determination it has taken.

We are extremely grateful to the Speaker and the City Council for the recent \$750,000 in City Council funding for the providers servicing the Human Trafficking Courts in New York City and are sure that every dollar of this funding will be put to good use. Over the past few years, one of the main obstacles we have faced in assisting the program’s participants and making sure they have successful outcomes is that there were not enough services available to address all of their many needs. We appreciate the prompt and generous response that the City Council has made to help insure that those in need of assistance receive it.

The City Council funding will assist with critically important services for participants in Human Trafficking Intervention Court. These include free or affordable civil legal assistance that will enable them to address immigration issues or secure basic identification documents necessary to apply for government assistance, health care, educational programs or employment opportunities. The Pro Bono Project and the availability of access to Family Justice Center services are also an enormous help in this area. In addition, sex trafficking victims who have been subjected to compelled prostitution over a period of years have

extremely serious health and mental health needs that must be addressed. Many are also in need of alcohol or substance abuse services. The funding the City Council is providing will expand these vital services.

We also hope that City Agencies, New York State and Private Sector sources can be encouraged to coordinate their efforts and enhance and supplement the expanded services which the City Council will fund in areas of particular need. Most critical is increased availability of short term and long term housing. As we have noted, it is the unavailability of safe, affordable housing for runaway and homeless youth that is one of the main reasons they may be vulnerable to commercial sexual exploitation in the first place. If we cannot offer them both short term crisis housing where they will be safe from their exploiters and at least a path to long term affordable housing, it may be extremely difficult to enable them to turn their lives around.

The welcome expansion of human trafficking intervention parts will only increase the volume of people seeking help and therefore, the need for these services. As noted, since 2013, that volume has increased substantially in Queens and particularly we have seen increases in the number of Asian American women (more than 30% between 2012 and 2014), overwhelmingly Chinese and Korean, and transgender individuals in the court. In light of these changes, in coming years we may need increased access to programs that can meet the needs of these populations both for language appropriate services and for culturally sensitive services.

As noted above, a separate part of our office - the Special Proceedings Bureau in our Investigations Division - is actively involved in the investigation and prosecution of sex traffickers and those who advance or profit from commercial sexual exploitation. New York State's human trafficking law, which took effect in November of 2007, provides important new tools to prosecutors to bring those who exploit

and enslave vulnerable victims to justice. Since the enactment of the law, Queens prosecutors have brought 13 successful prosecutions for sex trafficking resulting in conviction and sentences of state prison time. There are currently 26 pending sex trafficking cases. Additional defendants have been convicted under other statutes including promoting prostitution, kidnapping, assault and rape.

In the sex trafficking cases which have resulted in conviction, the majority of sex trafficking victims were underage runaways as young as 13 or 14 years old. Many of them were advertised on Craigslist and Backpage.com. Some were subjected to physical violence including beatings, branding and choking as well as threats of death to compel them to engage in acts of prostitution. We are hopeful that recent changes to the trafficking laws passed by the State Legislature will strengthen the tools that prosecutors have available to investigate and prosecute traffickers successfully for these most serious crimes.

Finally, I would note that our office also seeks to address the problem of commercial sexual exploitation by working with the NYPD to use the nuisance abatement law and other civil remedies to shut down motels and other premises used for prostitution.

Thank you again for the opportunity to testify this morning. And, of course, I am available to answer any questions that you may have.

**Written Comments of The Bronx Defenders
New York City Council
Joint Hearing of the Committee on Courts and Legal Services and the Committee on
Women's Issues
September 18, 2015**

My name is Avery McNeil and I am a staff attorney at The Bronx Defenders and I am our coordinator for the Human Traffic Intervention Court. Thank you to the committees for this opportunity to discuss the effectiveness of the intervention court in the Bronx and make recommendations for crucial reforms.

As Coordinator for our office's work in the Human Trafficking Intervention Part, I represent the majority of our clients who are charged with prostitution and loitering for purposes of prostitution. If the goals of the part are only to connect sex workers to services, to prevent them from being branded for life with stigmatizing criminal convictions, and to treat them with compassion not exhibited for our clients in other courtrooms, then the human trafficking intervention court is working. However, for all the progress we are seeing in the Bronx, this system assumes that a positive way to connect sex workers with services and break the cycle of trafficking is to arrest sex workers. This assumption is false and grossly discounts the trauma of an arrest.

Even where the current system works perfectly, all of our clients have been humiliated by the process. They've been pulled off the street in handcuffs. They've been be shoved in the back of a paddy wagon. They've been forced to ride around handcuffed for hours. When they get to the precinct, they are packed into cells and subjected to harassment, and threat of physical and sexual violence. Transgender women are trapped in cells with men. They are transported from the precinct to central bookings in the courthouse chained to other arrestees. At the precinct, they are printed, photographed and processed, and clients have reported being propositioned for sex in exchange for a Desk Appearance Ticket and the chance to go straight home.

Those who do not get a DAT are bused to central bookings, where they again wait in large holding pens with other arrestees. They endure the embarrassment of a communal toilet which is open to the cell. The wait to meet an attorney and to see a judge means that these clients have often spent at least a night in bookings away from their children, jobs, school and other responsibilities, further contributing to their trauma and destabilizing their lives. For transgender women that means a night in a holding pen with men, or if they are "lucky," a night in an isolated cage, segregated from other arrestees. One transgender client of mine told me that

she would take any offer, but she would not come back to court to fight her case if it meant being transported in a prisoner van, chained to men who heckled and pawed at her.

The humiliation for this vulnerable population continues when they are brought out before the judge. Handcuffed, they enter the courtroom to the stares and snickers of the officers and the audience. They are sized up, and subjected to not-so-whispered comments on their appearance. For transgender clients, their birth name and not their preferred name is used by the court staff.

Clients are forced to endure this is the gauntlet of humiliation, harassment, and potential exploitation to get "help." Crucial changes should be implemented immediately in order for us to avoid being complicit in the exploitation of this vulnerable population. We propose:

- 1) The resources that are being poured into arresting, processing, and booking these clients should be reallocated to community based programming, which provide counseling, job training, and affordable housing.
- 2) A pre-arraignment diversion program should be created so that clients can be connected with services before being processed through the system. Programs like this are being piloted for adolescents.
- 3) A mandatory desk appearance ticket (DAT) policy should be implemented immediately for all people charged with these offenses, regardless of criminal record or warrant history, allowing all clients to leave from the precinct and eliminate the dangers and humiliation of a night in central bookings.



**Testimony of Lori L. Cohen, Esq.,
Director, Anti-Trafficking Initiative at Sanctuary
for Families before the NYC City Council
Committee on Courts and Legal Services and
the Committee on Women's Issues**

Good Morning. I am honored to present before the very distinguished Committees on Courts and Legal Services, and on Women's Issues. My name is Lori Cohen and I am the Director of the Anti-Trafficking Initiative at Sanctuary for Families, New York's leading service provider and advocate for survivors of domestic violence, sex trafficking and related forms of gender violence. Last year, Sanctuary served over 10,000 clients with a range of services including shelter; counseling for adults and children; economic empowerment programs; and legal advice and representation. Our immigration legal program files more immigration applications on behalf of victims of gender-based violence and sex trafficking than any other entity in the country.

The critical services that Sanctuary for Families provides would not be possible without the support of the City Council. The annual funding that we receive from the Council goes directly to support legal, clinical and other support services for domestic violence survivors and their families, free of charge, throughout all five boroughs. Although she could not be here today, on behalf of our Executive Director Judy Harris Kluger, I want to thank Speaker Mark-Viverito, Chair Cumbo, Chair Lancman and all the members of the City Council for partnering in the fight against domestic violence and holding this hearing today on such an important issue.

Sanctuary for Families' Anti-Trafficking Initiative was developed in response to an alarming trend that we observed among clients who had been referred to us as "domestic violence victims," but whose trafficking had been undiscovered. These clients, suffering from

horrific physical, sexual and psychological abuse, had also been sold for sex by their intimate partners to dozens, and in far too many cases, hundreds or even thousands of buyers. The trafficking victims suffered from many of the same vulnerabilities, and under the same exploitation of power and control as a more “typical” domestic violence victim. However, the trafficked clients faced the additional shame and stigma of prostitution, and feared that they would be denied assistance, arrested or even deported if anyone discovered that they had been sold for sex. In other cases, clients did not dwell on the legal distinctions between being raped by their intimate partner or having that partner sell them to strangers to be raped—both were abusive and both were abhorrent.

Sanctuary recognizes the commonalities between domestic violence and sex trafficking, and has structured our intake process to identify both early on—the sooner a victim is identified, the more quickly she can access supportive services and legal counsel. And, while not explicitly created as a means to assist law enforcement, the early identification of trafficking victims and provision of supportive services have resulted in a substantially greater number of survivors willing to participate in the investigation and arrest of their traffickers, and helping to end the exploitation of others. Through our clients, Sanctuary recognized that the legal system can play a key role in halting the cycle of abuse that exists equally in domestic violence and sex trafficking, and we welcomed the visionary approach developed by Chief Judge Jonathan Lippman and the New York State judiciary toward the establishment of the Human Trafficking Intervention Courts.

Now, as the statewide implementation’s two-year anniversary approaches, it is a privilege to share observations of Sanctuary’s clinical and legal staff, and of the defendants we have served.

A. The Role of Sanctuary for Families in the Human Trafficking Intervention Courts

1. Queens Trafficking Intervention Pro bono Project (Q-TIPP)

Last summer, Sanctuary launched the nation's first pro bono project to provide free immigration legal consultations to foreign-born defendants who appear in the Queens Trafficking Court on prostitution-related offenses. In a unique partnership between the Mayor's Office to Combat Domestic Violence, the private bar and the non-profit community, attorneys from seven of New York's preeminent law firms, trained and supervised by Sanctuary legal staff, meet with immigrant defendants at the Queens Family Justice Center to assess their eligibility for immigration relief, and to provide information and advice about immigration matters.

When the Queens Trafficking Intervention Pro bono Project (Q-TIPP) was initiated, Sanctuary staff instructed the volunteer attorneys to keep expectations modest—based on the commonly-shared wisdom at the time, given the control that traffickers exerted over their victims, few foreign defendants would voluntarily disclose a history of trafficking. However, the hope remained that defendants might utilize that information at a future date, should the trafficker's grip loosen. Sanctuary prides itself on setting realistic goals for our pro bono attorneys-but for once, we were delighted to find that our volunteer lawyers turned the common wisdom on its head

To date, 80 volunteer attorneys have **interviewed 155 individuals, all women, including transwomen**, nearly three-quarters of whom are born in China. While we had anticipated that almost no defendants would disclose that they had been trafficked in an initial interview, nearly 25% immediately volunteered that they had been prostituted through force, fraud or coercion. A far greater percentage of defendants suffered from the indicia of trafficking, such as debt bondage, confiscation of documents for "safe keeping," and/or lack of freedom of movement. And, in what is yet another manifestation of the convergence between domestic

violence and sex trafficking, most disclosed a history of gender-based violence, with severe domestic violence cited as a “push factor” in their decision to flee their home countries for the United States. Using the United Nations definition of trafficking, which minimally requires sexual exploitation carried out through an abuse of power or a position of vulnerability, the vast majority of the defendants screened would be designated trafficking victims.

2. Brooklyn

Encouraged by the identifications made by in Queens, Sanctuary sought to expand our work in Brooklyn, where approximately three quarters of the immigrant defendants charged with prostitution offenses are also Chinese women in massage parlors. Sanctuary hired a Mandarin speaking case manager to assist our social worker in providing information and counseling defendants mandated for services. Additionally, because of funding limitations, Sanctuary recruited a Mandarin speaking attorney on a part-time, temporary basis to provide legal advice. Helping this leanly-staffed team is a hand-picked group of law students from Brooklyn and Columbia Law Schools.

Brooklyn screenings commenced just under one year ago, and only started operating at more complete levels in the past six months. However, the early outcomes are astonishing. Of the 47 defendants interviewed through Sanctuary’s Brooklyn project, **fully 45%** of them have disclosed trafficking. Equally notable, when defendants learned that Sanctuary had a Mandarin-speaking attorney and case manager, they began asking to speak with our staff while still in the courtroom. Others have begun referring friends to our Brooklyn team for assistance—Chinese women who are not even defendants, but who are trapped in the erotic massage parlor industry and want help escaping their abuse.

What is leading to such a dramatic shift in disclosures among Brooklyn defendants? The answer is clear: there is a dire need for services staffed by linguistically and culturally competent

legal and social service providers. We believe that the picture emerging in Brooklyn—of Asian women trapped in a cycle of debt bondage, threats and coercive control—will not only enable us to help these defendants obtain the legal protections and services they so urgently need, but also to illuminate the exploitative nature of the Asian erotic massage parlor industry throughout New York City, and result in the arrests of the true criminals: the brothel and massage parlor owners, and the clients who fuel the industry.

Current staffing limitations prevent Sanctuary from expanding our immigrant screening program to other boroughs, although we have been receiving referrals from identified victims in both Manhattan and the Bronx. It is our hope that, with support of the City Council, this coming year will allow for expansion into all boroughs.

B. The Unmet Needs of Defendants in the Human Trafficking Intervention Courts

As Sanctuary's Executive Director, Judge Judy Kluger, testified before City Council earlier this year, the needs of trafficking victims are still unmet because of a critical lack of resources. This August, Senator Kristen Gillibrand convened a meeting at the Queens Borough President's Office to hear from survivors, representatives of city and state government and service providers as to the scope of the problem.

1. Shelter

Topping the list was the severe shortage of shelter beds for victims of sex trafficking in New York City. A 2012 study by the Polaris Project found that there were just 36 beds in New York City dedicated exclusively to victims of trafficking, including 14 beds reserved for minors. Available bed space is grossly insufficient to meet the needs of the hundreds of trafficking victims in our city. While Senator Gillibrand left with a clear request for shelter assistance, we would respectfully ask City Council to call upon both federal and state government to make available resources so that a trafficked person need not be forced to remain in prostitution or

freeze on the street. New York City should prioritize the creation of emergency and long-term shelter options for victims of sex trafficking, including women with children, transgender individuals and men.

2. Access to Services for Mandarin Speakers

At Sanctuary for Families, we are fortunate to have the only dedicated Mandarin-speaking law fellow assisting with the significant immigration legal needs of Chinese immigrant defendants in the Queens, and one part-time Mandarin-speaking attorney temporarily hired to assist the backlog of Brooklyn defendants. Given, however, the dozens of Mandarin speaking defendants with legal needs who we meet each month, and the request for assistance with Mandarin-speaking defendants in Manhattan and the Bronx, one legal fellow and one temporary part-time attorney are simply not enough. Most recently, Sanctuary has been contacted by defendants who reside in New York City but were arrested elsewhere in New York State—their relocation to an unknown and unfamiliar area, often surrounded by non-Mandarin speakers—is itself a hallmark of trafficking that is not yet acknowledged in much of the state. Chinese defendants also urgently need access to social workers who can provide trauma informed counseling in a linguistically and culturally competent manner.

C. The Funds Approved by the Council Will Directly Benefit Victims in Need

In recognition of the growing crisis and in response to hearings held earlier this year, the City Council authorized \$750,000 in urgently-needed funds for the provision of lifesaving services to defendants in New York City's Human Trafficking Intervention Courts. These funds will help to ensure that trafficking victims and those at risk of trafficking have timely access to the services so essential to their safety, recovery, and future success.

We thank the Council for recognizing the needs the HTIC's have and the commitment made to provide additional and expanded services. We commend Speaker Mark-Viverito,

Council Member Cumbo, Council Member Lancman and the entire City Council for their commitment to assisting sex trafficking victims in New York City. We thank you for your leadership, vision and support.

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I represent: THE BRONX DEFENDERS

Address: 360 E 161st St, Bronx, NY 10451

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Name: Ivana Turk

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I represent: Mayor's office of Criminal

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I represent: GEM

Address: 201 W 148 ST NYC

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Name: Yasmeeen Hamza (PLEASE PRINT)

Address: 32 Broadway 10th Flr NY, NY 10004

I represent: New York Asian Women's Center

Address: _____

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I represent: QUEENS COUNTY DISTRICT
Address: ATTORNEY

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Name: Ryan Wall, Esq. Katherine Mulken, Esq.

Address: 111 Livingston Street

I represent: The Legal Aid Society
Address: _____

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I represent: SANCTUARY FOR FAMILIES

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Name: Jessica Pentaranda

Address: 40 Rector St, 9th Fl NY, NY 10006

I represent: The Sex Workers Project - Urban Justice Center

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I represent: Safe Horizon

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