

Section 2: Community Courts, Specialized Dockets, and Other Approaches to Address Sex Trafficking

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I. Introduction

Sex trafficking requires a response attuned to the needs of victims. In recent years, staff in many community courts and specialized dockets have been developing an expertise in identifying trafficking victims and responding to their needs by connecting them to social services and other supports. Unlike victims in the labor trafficking realm, whose work may not be in and of itself illegal, victims of sex trafficking are often induced to engage in illegal activities and therefore are more likely to be arrested and treated as criminals. Following are several examples of ways in which courts can better respond to victims of sex trafficking.

Community Courts

Community courts' tailored approach, based on a problem-solving and community-focused orientation, provides one example of a response that could be adapted to other settings. Staff in community courts may be the first to identify trafficking among those arrested for low-level offenses, such as prostitution or shoplifting. Community courts have also been found to reduce recidivism, cut the use of jail, increase the use of alternative sanctions, and save money.¹ Many of these results can also be obtained in a traditional criminal court by adapting community court practices, and can easily apply to sex trafficking cases, which often come into court as prostitution cases. Such practices include: (1) the use of in-depth assessment tools to identify social service needs; (2) monitoring and enforcing court orders, most often for alternative sanctions; (3) using specially designed case processing systems; (4) emphasizing procedural justice, especially through a judge's interaction with defendants; and (5) relying more often on alternatives to incarceration, such as community service or social services.² These strategies will be discussed in more detail below through examining practices at the Midtown Community Court.

Dan Cipullo, Director of the Criminal Division, D.C. Superior Court: "Our community courts in the District of Columbia have become such an important part of our problem-solving approach for low-level offenders. An impact evaluation of the East of River

¹ Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013). A Comprehensive Evaluation of the Red Hook Community Justice Center. Williamsburg VA: National Center for State Courts.

² Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013). A Comprehensive Evaluation of the Red Hook Community Justice Center. Williamsburg VA: National Center for State Courts.

Community Court found that it helped to reduce recidivism, and since that study we expanded our community courts citywide.”

Domestic Violence Courts

Similarly, specialized courts or dockets that focus on domestic violence are instructive in terms of strategies to identify and better respond to those who have been victimized by pimps or traffickers. Domestic violence courts emphasize the need for a coordinated community response to promote safety for victims and accountability for offenders. Often, domestic violence agencies in a community may already have partnerships with the court through a domestic violence docket; these partnerships can form the foundation for collaboration between the court and the community when addressing prostitution and trafficking. Additionally, domestic violence courts, along with other specialized court models, emphasize specific training for judges and other dedicated court staff on the dynamics of domestic and sexual violence. Similarly, a court wishing to improve its response to prostitution and sex trafficking could benefit from specialized training on the dynamics of prostitution, which share many elements of the power and control present in domestic violence.

Issue Overlap

Recently, stakeholders in some criminal courts have begun to recognize the inherent overlap between domestic violence, prostitution, and other common issues, such as substance abuse and mental health. For instance, participants in drug courts or mental health courts—particularly female or transgender defendants— may be affected by domestic violence, sexual assault, prostitution, or trauma. Recognizing this overlap, two court models, one in Queens, New York and the other in New Castle County, Delaware, address a multitude of issues when responding to prostitution and trafficking. Below, the details of these two court models are provided and strategies for implementing elements of their response are discussed.

Prosecutor-Led Initiatives

Further, some communities’ responses to prostitution have been prosecutor-led, rather than initiated by the court itself. One jurisdiction, in Multnomah County, Oregon, found success by dedicating one prosecutor to handling prostitution cases, and by recognizing women arrested for prostitution as victims rather than criminals. This model, which is led by a neighborhood prosecutor in Portland, emphasizes collaboration with law enforcement and social service agencies, while also noting the underlying element of coercive control that is common in cases of domestic violence and prostitution. The model focuses on early identification of victimization, and rather than rely on jail sentences, the most common offer for prostituted women is probation with the condition that the defendant attend free social services, including counseling, case

management, a mentoring program with survivors of prostitution/trafficking, and substance abuse treatment.

The importance of relationships with local law enforcement and social service agencies cannot be overstated; these partner agencies help identify victims, and participate in case conferences to review the status of open cases. Domestic violence agencies are among the important partners in the community. The implications and strategies in this prosecutor-led response in Multnomah County will be discussed in detail below.

Interventions across Models

One common query from jurisdictions interested in improving their response to trafficking is whether or not the level of services or intervention differs based on whether or not a defendant/victim fits the federal or state definition of a “trafficking victim.” The answer is no.

Underlying all of the below examples is an assumption that each defendant with prostitution or related charges should be offered the same degree of service; even if a defendant does not meet a legal standard for trafficking victimization, she or he has still potentially experienced trauma. Further, a common goal is to help prevent defendants from cycling through the justice system, and the approaches described below may help victim-defendants find safe pathways out of the sex trade, potentially avoiding future re-arrests and jail time.

II. Community Courts as Vehicles for addressing Prostitution/Trafficking Cases

Community courts, with their complementary goals of reducing crime and incarceration while improving public trust in justice, differ from traditional criminal courts in that they see defendants’ low-level crimes as opportunities to receive help rather than as isolated incidents best treated with a short-term jail sentence.

Midtown Community Court

One community court, called the Midtown Community Court, is near Times Square in Manhattan. Before its inception, prostitution was a major issue in the court’s catchment area. The court, through partnerships with local community-based service providers, a nonprofit defender organization, the prosecutor’s office, and the judge, decided to focus on the underlying victimization faced by many women and transgender defendants entering the criminal justice system.

Such partnerships, though common in a community court setting, required intentional curating. In many communities, the potential for partnerships exists, or is already developed for other purposes (such as in the realm of domestic violence), but a

concerted effort may be required to address prostitution cases, in which the victim is often seen as a criminal by the justice system. Practitioners at the Midtown Community Court recognized that many times, the same women cycled through the system, remaining in prostitution, or “the life.”

A multitude of issues, such as coercive control, trauma, substance abuse, economic powerlessness, or immigration status, among other challenges, kept these women from leaving a pimp, trafficker, or “the life.” Importantly, court practitioners recognized that many adult victims entered into prostitution as minors and were still being arrested as adults.

The Midtown Community Court found that over 80 percent of women arrested for prostitution were currently experiencing victimization or had past experience with victimization/trauma – including domestic violence, sexual assault, childhood sexual abuse, or physical assaults.³ In the hope of helping these women increase their safety and support systems, and possibly exit “the life,” the court built partnerships and a comprehensive assessment that would help identify needs and respond with appropriate referrals and sanctions.

Judge Felicia Mennin, Midtown Community Court: "Collaboration between the judge, district attorney's office, and defense bar is crucial in prostitution cases. A partnership approach, which relies heavily on the engagement of social service agencies and their trauma-focused practices, allows me to make more informed decisions and, in many cases, seems to help people find safety or leave 'the life' instead of appearing before the court time and time again."

To identify the myriad needs of women arrested for prostitution, staff at Midtown Community Court developed a comprehensive psychosocial assessment, which focuses on criminogenic needs as well as past and/or current victimization. The assessment, as well as the services that follow, is trauma-informed, meaning that a centerpiece of the interaction with a defendant is to establish rapport, help develop a sense of safety, and listen for symptoms of trauma, including re-experiencing, avoidance, or arousal (i.e., hypervigilance or exaggerated startle response). For more information on comprehensive assessments for women and transgender individuals arrested for prostitution, please see Chapter 5 of this journal, “Identifying and Responding to Sex Trafficking: A Guide for Courts.” The practice of using an in-depth assessment fits with the National Center for State Courts’ identification of community court practices that

³ Schweig, S., D. Malangone, and M. Goodman (2012), “Prostitution Diversion Programs,” Center for Court Innovation, New York, NY, available at www.courtinnovation.org.

can be applied to other settings⁴; such assessments allow a judge to make a more informed and nuanced decision about an appropriate alternative sanction.

In the Midtown Community Court, the most common mandate involves participation in an on-site evidence-based, psychoeducational program known as WISE – Women’s Independence, Safety and Empowerment. Through a partnership with a local domestic violence agency (STEPS to End Family Violence), a combination of group and individual sessions address topics such as safety, trauma reactions, healthy coping, relationships, financial literacy, and other important concerns, such as human trafficking, legal, employment, and housing issues. Offered as either a five- or 10-session program, WISE not only provides a safe space for women to support each other’s experiences with prostitution, but it also allows Midtown Community Court and STEPS staff to engage in goal-oriented case management and aftercare planning with participants. Adaptations of WISE, including a Spanish-speaking curriculum as well as a group for transgender women, have been added since the program’s inception. Further, partnerships with community domestic violence agencies serving Mandarin- and Korean-speaking victims have allowed defendants to receive assessment, counseling, and other services in their own language.

Importantly, the specially trained judge in Midtown Community Court still responds consistently to noncompliance for these defendants that have been identified as victims; the response is simply tailored to the goal of reducing the use of incarceration as a response to prostitution (and other low-level, quality-of-life crimes). The judge takes into account the common barriers that prostituted women face in leaving “the life”—similar to those who are addicted to substances, women may suffer setbacks, such as re-arrest, before successfully achieving safety or leaving “the life.” The judge’s response is aided by the presence of a dedicated prosecutor and defense attorney; these stakeholders, who also have specialized training, collaborate with the judge to help ensure that trafficking victims are not convicted of crimes for which they are not culpable. The judge often uses graduated sanctions, such as mandating additional services or increasing the frequency of court visits, to encourage compliance, rather than sentencing a defendant to jail. Women arrested for prostitution also meet with Midtown Community Court staff and partners regularly, so that non-compliance can be identified early and responded to quickly.

⁴ Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013). A Comprehensive Evaluation of the Red Hook Community Justice Center. Williamsburg VA: National Center for State Courts.

Applications in Other Settings

This emphasis on compliance is applicable to other criminal court settings; consistency, accountability, and the provision of services tailored to the offense are all fairly universal goals. Indeed, the National Center for State Courts identified the clear and rigorous monitoring in community courts as a practice that could be successfully adapted by other traditional courts.⁵ Following are several specific ways in which courts can adapt their compliance practices to fit the needs of sex trafficking victims.

- The importance of accountability can be paired with encouragement for women and transgender individuals to seek services; mainstream courts could adapt the practice used in Midtown Community Court of responding swiftly to noncompliance, and emphasizing social services and frequent court appearances, if necessary, rather than jail. This reliance on alternative sanctions is another community court practice that the National Center for State Courts identified as ripe for adoption by mainstream courts.
- Relatedly, the National Center for State Courts emphasized that procedural justice in community courts is a practice that is readily applicable to traditional courts. Procedural justice, which may already be emphasized in some traditional criminal courts, focuses on the interaction between the judge and the defendant, and often involves the defendant's perception of fairness in the justice system process. Prostitution and trafficking cases are no exception to this common practice in community courts, and judges in mainstream courts should be mindful of the level of respect afforded defendants who may be victims of traumatic experiences, including sex trafficking.
- Further, the National Center for State Courts identified the use of information technology as an effective case monitoring tool. Specially designed systems can include detailed information on an individual's treatment needs, compliance, treatment progress, and clinical recommendations. This information is then easily shared among stakeholders during collaborative meetings, such as case conferences, which are used to review an individual's progress and recommended strategies in advance of compliance hearings.

The support system created at the Midtown Community Court is one that can be developed in other urban, suburban, or rural courts. The emphasis on collaboration between court and community stakeholders, such as public defenders, prosecutors,

⁵ Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013). A Comprehensive Evaluation of the Red Hook Community Justice Center. Williamsburg VA: National Center for State Courts.

domestic violence agencies, and other social service providers, is key in identifying and responding to prostitution and trafficking cases. Further, the development of a mandate that is tailored to the experiences of prostituted women and transgender individuals (such as WISE) is crucial for courts wishing to adapt their response to victims of trafficking.

III. Specialized Dockets as a Vehicle for addressing Prostitution/Trafficking Cases

For many jurisdictions, specialized dockets may be more familiar than community courts; models such as drug courts, mental health courts, and domestic violence courts might already exist in the community. Such specialized dockets can serve as important intercept points for defendants who have experienced trauma and, in some cases, trafficking. Two specialized court models – one in New Castle County, Delaware, and the other in Queens, New York – provide examples of how existing dockets can play a crucial role in identifying and responding to trafficking cases.

New Castle County, Delaware

In Wilmington (New Castle County), Delaware, court staff and stakeholders recognized an opportunity for collaboration between their felony mental health court and a pilot misdemeanor court focused on defendants who were victims of trauma and violence, and in many cases, had a history of prostitution. Stakeholders saw the inherent overlap between women with mental health diagnoses who appeared in the felony-level court, and those with trauma histories who were part of the Trauma-Informed Probation (misdemeanor-level) court. Further, an existing coalition of stakeholders spent a year researching best practices in responding to prostitution cases, and the information that this group gleaned contributed to a fruitful collaboration between the felony and misdemeanor-level problem-solving courts. One of the assumptions fueling this collaboration is that a failure by the court to adequately address the trauma of female defendants can lead to inappropriate treatment referrals, and might ultimately increase the risk of recidivism. There are several key components of the specialized court adaptation in Delaware, known as the Victim Advocacy and Safety Enhancement project, from which other courts might benefit.

First, one staff position that is common in specialized dockets, and greatly aided the project in Wilmington, is that of a coordinator (sometimes called a Resource Coordinator or Case Coordinator). The coordinator in Delaware focuses on the implementation of a screening tool tailored to trauma and prostitution issues; identifies and coordinates services and trauma-informed care for defendants; and arranges training for judges on the needs of justice-involved women who are victims of sexual abuse, domestic violence, and pimp-controlled prostitution/trafficking.

Further, the project in Wilmington added the services of a victim advocate, similar to Midtown Community Court's model in Manhattan. In Wilmington, the victim advocate focuses on screening for victimization and conducting a needs assessment for defendants; provides education to survivors; conducts advocacy in court; engages in prevention efforts and safety planning with survivors; and collaborates with existing treatment and service providers so as to make appropriate referrals.

Several pre-existing practices in the mental health court in Wilmington contributed to the successful collaboration on behalf of victimized women with prostitution histories. First, robust case conferences set the stage for court stakeholders, treatment providers, and other community agencies (such as domestic violence agencies) to engage in similar case reviews on behalf of the women identified for the Victim Advocacy and Safety Enhancement project.

Another strength that helped stakeholders in Wilmington adapt their existing problem-solving court model was the wide variety of social services at the court's disposal, as well as an established coalition of agencies willing to address trauma, domestic violence, sexual assault, and prostitution among justice-involved women.

Commissioner Mary McDonough, New Castle County, Delaware: "Each woman deserves to be treated with respect and dignity, regardless of her background in prostitution. The reality is that most, if not all, of these adult defendants began as children victims of abuse (often sexual abuse) and have continued to be victims of abuse and violence as adults. We try to focus on their underlying treatment needs, such as substance abuse and mental health, including trauma counseling along with the practical needs of housing, ID cards, jobs, etc. to help them get out of the so-called "Life". Rarely, if ever, do we even use the terms "sex worker" or "prostitute" in court as it is clear those terms make the women uncomfortable given the stigma attached to them. The sad reality is that the amount of trauma in these women's lives, first as children and now as adults, is simply overwhelming. I expect that one of the first steps to healing from this trauma is for each woman to realize that she really does deserve to be treated better; she deserves to be treated with respect and dignity."

Adapting the Model

The Wilmington model is instructive in a number of ways for other courts wishing to adapt their existing specialized dockets.

- First, court stakeholders had to work to implement identification practices for potential victims of prostitution/trafficking, especially since prostitution charges were not common in the jurisdiction (staff had to begin looking for related arrest

histories, such as for “loitering”). Beyond identification, stakeholders had to adapt existing screening forms to specifically address issues related to prostitution and other victimization/trauma. Not only did such assessments need to be adapted in the court setting, but treatment providers in the community, through training and collaboration with the court, adapted their intake/assessment tools to include such questions.

- Additionally, stakeholders in Wilmington focused on training judges, court staff and stakeholders on the overlap between prostitution, trafficking, domestic violence, sexual assault, and trauma. Such trainings also included information on the effectiveness of lower levels of care – challenging the assumption in some settings that longer mandates always equal better outcomes. Training for these stakeholders also helped to spark conversation about additional methods for identification and assessment, including working with front-end partners (law enforcement, defense counsel, etc.) on identification, as well as studying and adapting evidence-based assessment tools. Finally, trainings included methods for effectively engaging women with prostitution/trauma histories who are mandated to treatment in the community. Of course, as part of the model, an evidence-based treatment that is specific to prostitution/trafficking victims should be developed and utilized as part of a mandate for eligible defendants.

Each of the above strategies could be implemented by a traditional court, depending on available resources and building on existing partnerships. The next example, from Queens County, New York, will provide further information on how traditional specialized dockets can be adapted to address the issues of prostitution and trafficking.

Queens, New York

In Queens, New York, several specialty dockets, including a drug court, mental health court, and domestic violence court—all handling misdemeanor cases—existed at the time of implementation of a new specialized response to prostitution and trafficking. Additionally, a prostitution diversion court (now known as the Human Trafficking Intervention Court) was developed in Queens by a judge who saw that many of the same defendants cycled through the system again and again; he developed initial partnerships with community-based service providers to address the underlying needs of these women arrested for prostitution. Building on these existing specialty courts, and recognizing the overlap between mental health, substance abuse, domestic violence, sexual assault, and prostitution, the court applied for and received funding to coordinate a response focused on female and transgender defendants in mental health court, drug court, and the prostitution diversion court.

This coordinated approach builds on the already existing resources that are available to defendants in each of these specialized courts. The coordinator for the project screens all women and transgender defendants in the drug court and mental health court, and screens defendants referred by the judge or prosecutor in the prostitution diversion court, for underlying issues of past or present trauma. Similar to the Midtown Community Court model, this initial assessment is focused on identifying trauma, domestic violence, and sexual assault so that defendants can receive appropriate interventions that address these issues, rather than continue to cycle through the system or be rearrested.

One important component of the Queens collaboration among these several specialized courts is that the current judge oversees each of the three dockets. Because the judge is specially trained in issues of trauma, prostitution/sex trafficking, domestic violence, and sexual assault, she is able to respond to defendants in a more informed way, recognizing the need for tailored services and mandates. Building on the initial partnerships with community agencies formed by the previous judge in the prostitution diversion court, this collaboration between the three specialized courts has been able to expand existing partnerships with service providers. Similar to the Midtown Community Court model, a dedicated prosecutor and defense attorney work closely with the judge to help ensure that mandates are appropriate and do not re-victimize defendants who may be victims of trafficking or trauma.

Adapting the Model

Several strategies employed by the judge and staff in the Queens project can be adapted in other jurisdictions wishing to address sex trafficking through existing problem-solving courts.

- The most notable new resource aiding the collaboration in Queens is a Women's Services Coordinator position; having a court-based individual who screens female and transgender defendants for trauma and victimization, and who provides linkages between providers, is critical. Other jurisdictions, however, might consider ways that existing staff – such as a resource coordinator in a specialty court – might be able to engage in similar tasks. Further, jurisdictions that have developed a coordinated community response through their domestic violence court may be able to build on that existing network in order to expand service options available to victims of trafficking.
- One of the main strategies for building partnerships with community agencies in Queens has been the focus on providing trainings on trauma, sex trafficking, domestic violence, and sexual assault for mental health and substance abuse

providers partnered with the court. While these agencies have expertise in their respective fields, training them in issues related to trauma and sex trafficking expands the capacity of the court to respond appropriately to women and transgender individuals who have been identified as needing services specific to their experiences of prostitution.

The adaptation of these specialized dockets in Queens serves as an example of how courts can leverage existing resources and partnerships to better respond to the needs of prostituted women and transgender individuals.

IV. The Role of the Court in a Prosecutor-Led Response

Building on the variety of ways in which a court could respond to human trafficking, another model is a prosecutor-led response. Using Portland, Oregon's Multnomah County as an example, this section will address how a court can play a role in such a model.

In Portland, prostitution was a major concern in the community. In order to respond to this concern, the prosecutor's office gave one neighborhood-based prosecutor jurisdiction over all prostitution-related crimes. This neighborhood-based prosecutor developed a new approach to women arrested for prostitution; he recognized their experiences as similar to those of domestic violence victims, in which force and coercion often play a major role. Thus, rather than view women arrested for prostitution in Portland as criminals, the prosecutor's office began to view them as victims and build a collaborative response with that approach in mind.

Importantly, the approach in Portland mirrors the goals of a community court, in that the prosecutor works with the court to create alternatives to the business-as-usual approach of sentencing defendants to short-term jail. Instead, women are offered probation with the condition that they engage in free services at a local community-based service provider. This service provider offers interventions specific to the experience of prostitution, including a survivor-led mentor program, but also provides a comprehensive set of related services, such as mental health counseling, drug treatment, case management, and referrals for other basic needs such as educational and housing services.

Carey Cogswell, clinical supervisor for community-based treatment provider New Options for Women in Portland: "The collaboration is why this works. Without it, the women would not participate in or have access to these services. These women need an interdisciplinary team of people that know how to engage them and that can work together effectively."

Though this approach is prosecutor-led, the court plays a crucial role through its ability to monitor women who are offered probation. With a goal of helping participants stay safe from pimp control and adhere to treatment, judges have the power to revoke defendants' probation, and further, can re-sentence defendants for up to a year in jail, with the possibility of early release if they agree to further treatment. The hope is that by continuing to make rehabilitative options available, and by responding swiftly to noncompliance, victims will be helped in the goal of not returning to "the life."

Developing close collaboration between a variety of agencies was one of the keys to the success of the model in Portland. Because the dedicated prosecutor in this project is based at a local police precinct, he was able to partner closely with officers, detectives, and federal agents to address trafficking victims. Further, the prosecutor works closely with law enforcement to identify and return women to court who have gone back to "the life." Additionally, the prosecutor works with the County Sheriff's Office, which oversees the local jail and helps to monitor all jail correspondence, making sure that victims are not being intimidated or threatened.

The prosecutor's office paid particular attention to developing relationships with service providers in the community, who now meet weekly with the police and the prosecutor to review progress reports and probation status. Building on these relationships, the prosecutor's office has also begun to partner with local domestic violence agencies; since domestic violence organizations often have existing expertise in victimization, power, and control issues, this is an important aspect of a robust collaboration with community partners.

Whether pursuing a court-based or a prosecutor-based response to prostitution and trafficking, the lessons from Multnomah County are applicable; the victim-centered approach, close collaboration with law enforcement and community partners, and treatment that is specific to the experience of prostitution and sex trafficking are all relevant to jurisdictions seeking to improve their approach to this issue.

V. Conclusion

Though each community profiled in this article takes a different approach to addressing sex trafficking and prostitution, some common tenets for addressing this issue are apparent.

- First, identifying victims of trafficking, whether through an existing specialty docket or through other avenues, is an important first step – possibly addressed through a dedicated staff person (in an existing or newly created position).

- Next, implementing an evidence-based assessment that helps identify defendants' experience of trauma is important in linking individuals with appropriate services/mandates.⁶
- Further, building partnerships with existing community agencies and treatment providers – whether their expertise is in domestic violence, sexual assault, mental health, or substance abuse – can help ensure that defendants who have been prostituted or trafficked receive appropriate interventions.
- Mandating defendants arrested for prostitution into treatment that addresses trauma and trafficking, rather than using jail time, has proven to be an important strategy in each of the jurisdictions described in this article.
- Finally, the role of the court (whether a model is court-led or prosecutor-led) is especially important in terms of both crafting appropriate mandates and closely monitoring defendants.

For more information or help developing a response to sex trafficking in your jurisdiction, contact us at info@courtinnovation.org or by visiting www.htcourts.org.

⁶ For more information on risk and needs assessments, see Chapter 5 of this journal, "Identifying and Responding to Sex Trafficking: A Guide for Courts."