

# Community Courts, Specialized Dockets, and Other Approaches to Address Sex Trafficking

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 of labor trafficking, 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.

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 the legal standard for sex trafficking<sup>1</sup>, 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. Following are several examples of ways in which courts can better respond to victims of sex trafficking.

## **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 low-level crimes as opportunities to offer help to

defendants 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 community-based service providers, domestic violence agencies, a nonprofit defender organization, and the prosecutor’s office, decided to focus on the underlying victimization faced by many women and transgender defendants entering the criminal justice system. Such partnerships required intentional curating.

The Midtown Community Court recognized that the same women were cycling through the system again and again, unable to escape “the life” of prostitution. A multitude of issues, such as coercive control by abusers, trauma, substance abuse, economic powerlessness, and immigration status, among other challenges, kept these women from leaving a pimp, trafficker, or “the life.” Importantly, the court recognized that many adult victims entered into prostitution as minors and were still being arrested as adults.

During the fall of 2013, the Midtown Community Court saw approximately 80 prostitution cases. Since the inception of the prostitution diversion docket, the court has found that over 80 percent of women arrested for prostitution have histories of victimization and trauma—including domestic violence, sexual assault, childhood sexual abuse, or physical assaults.<sup>2</sup> 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 the court 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).<sup>3</sup>

The practice of using an in-depth assessment allows a judge to make a more informed and nuanced decision about an appropriate alternative sanction. At 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, but it also allows Midtown Community Court and STEPS staff to engage in goal-oriented case management and aftercare planning. 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 who presides over the Midtown Community Court still responds consistently to noncompliance for defendants that have been identified as victims; the response is simply tailored to the goal of reducing the use of incarceration. 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 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. 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.

#### **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 traditional courts.<sup>4</sup> Following are several specific ways in which courts can adapt their compliance practices to fit the needs of sex trafficking victims.

- 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.
- 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 seeks to improve perceptions of fairness in the justice system by encouraging judges, attorneys and other court staff to treat defendants, victims and the public with dignity and respect. Research indicates that community courts have been particularly successful at this—and that improved perceptions of fairness lead to improved compliance with court orders (and the law generally). 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.
- 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, 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.

### **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, 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 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 was 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. One staff position that 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 in Wilmington 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.

### **Queens, New York**

In Queens, New York, the 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. Since its inception, the Human Trafficking Intervention Court has addressed over 1,800 cases—many of which benefited from these partnerships. Because this court initially operated without any additional resources or funding, it was not until a subsequent judge overseeing the court was appointed to the drug and mental health courts that a variety of services became available for those defendants arrested on prostitution charges. To this end, the court later applied for and received funding from the Office on Violence Against Women to coordinate a response focused on female and transgender defendants in mental health court, drug court, and the Human Trafficking Intervention Court.

*Judge Toko Serita, Queens Human Trafficking Intervention Court: “A specialized court response to prostitution and related issues, such as mental health and substance use, allows judges and stakeholders to see defendants through the lens of possible trauma and/or trafficking, respond appropriately, and offer services that help victims regain a sense of safety and hopefully begin to build the tools to leave ‘the life’ and avoid future recidivism.”*

This coordinated approach builds on the 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 Human Trafficking Intervention 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.

One important component of the Queens collaboration among these several specialized courts is that the presiding 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. 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 are already 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:

- A 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 creates linkages among 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 existing networks to expand service options available to victims of trafficking.

- The team in Queens has built partnerships with community agencies by providing trainings on trauma, sex trafficking, domestic violence, and sexual assault for mental health and substance abuse providers. 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.

### **The Role of the Court in a Prosecutor-Led Response**

In order to respond to prostitution in Portland, the Multnomah County prosecutor’s office gave one neighborhood-based prosecutor jurisdiction over all prostitution-related crimes. This neighborhood-based prosecutor developed a new approach. Rather than view women arrested for prostitution in Portland as criminals, the prosecutor’s office began to view them as victims—and to 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 among a variety of agencies has been 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.

### 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.
- Next, implementing an evidence-based assessment that helps identify defendants’ experience of trauma is important in linking individuals with appropriate services/mandates.<sup>5</sup>
- 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.

Cases involving victims of trafficking are difficult for any criminal court to handle. The good news is that jurisdictions from New York to Oregon have shown that new thinking can make a difference, improving access to services and helping hundreds of victims avoid re-arrest and find safety.

### Author

Katie Crank, Center for Court Innovation

### Sources

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3. For more information on comprehensive assessments for women and transgender individuals arrested for prostitution, please see Chapter 5, “Identifying and Responding to Sex Trafficking: A Guide for Courts.”
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.
5. For more information on risk and needs assessments, see Chapter 5, “Identifying and Responding to Sex Trafficking: A Guide for Courts.”