

Urban Justice Center

Sex Workers' rights and Human Trafficking

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So-called prostitution diversion programs fail to break the cycle of criminalization they say they are meant to end, two new reports from the Yale Global Health Justice Partnership (GHJP) find.

[Released](#) this week, one report addresses the programs that have proliferated nationwide and the other focuses specifically on New York City's Human Trafficking Intervention Courts (HTICs). The New York City [research](#) draws on interviews with court participants and direct court observations, and was conducted by the GHJP and the Sex Workers Project, a New York City-based organization providing legal services and other support for sex workers and people who have been trafficked.

Announcing the rollout of HTICs in New York State in 2013, then-Chief Judge Jonathan Lippman said the courts goal was to intervene in the lives of trafficked human beings and to help them break the cycle of exploitation and arrest, adding that the courts would treat them as victims, not criminals.

But the report found that often isn't the case, and is virtually impossible given the courts design. As long as over-policing of the poor along lines of race and gender, coupled with criminalization of buying and selling sex, are the context in which these courts operate, researchers conclude, they cannot stop the revolving door of criminalization.

Eleven counties statewide now have HTICs, but the researchers focused on those in New York City, based in Manhattan, Queens, Brooklyn, and the Bronx, which serve people arrested for misdemeanor prostitution-related offenses. These include loitering for the purposes of prostitution, a charge [brought](#) overwhelmingly against Black and Latinx women; and unlicensed massage, a charge used in massage parlor raids, often [targeting](#) Asian women. The courts presume people charged with these offenses are potential trafficking victims. Yet, the study's researchers found the HTICs don't do any systematic screening to determine whether defendants are trafficked. Nor do they release data on how many HTIC defendants are re-arrested.

Nobody can actually account for what they are doing, and yet they claim these are evidence-based interventions, Alice Miller, co-director of the GHJP and lead contributor to both reports, told *The Appeal*. They don't actually know enough about what they are doing to say if they are succeeding or failing.

Another fundamental problem, the report explains, is that HTICs do not incorporate the goals of defendants whom they regard as victims but in many ways continue to treat as criminals. Public defenders and defendants told researchers that given the nature of the charges, judges often make assumptions about the defendants gender, sexuality, and past behavior. A corrections officer working at the HTIC, researchers said, told them that other court officers would habitually mock individual defendants and would refer to HTIC court dates as hoe day.

Jessica Pearanda, director of movement building at the Sex Workers Project and a lead contributor to the GHJP research on the courts, questioned their approach in an interview with *The Appeal*. She said the HTICs she studied had a sort of rescue mentality that anyone engaging in any kind of sex work had to be trafficked.

A spokesperson for the New York State Court System, which supervises the HTICs, said he needed more time to respond to the report. The Center for Court Innovation, which [collaborated](#) in their formation, did not respond to a call for comment by press time.

The reports researchers drew on earlier work conducted by the Red Umbrella Project, a Brooklyn-based group led by people in the sex trades, which observed the HTICs and [published](#) a report in 2014, revealing the disproportionate number of Black women in Brooklyn and Asian women in Queens appearing as defendants in the court.

Some sex workers object to the mandatory services required by HTICs. I didn't need to be treated for sex work, Red Umbrella Project community organizer Jenna Torres said during a City Council hearing on HTICs in 2015. That isn't an illness. She said she had to drop out of school to complete her service mandate, or risk being arrested again.

The arrest process itself can be dehumanizing and violent, the report reveals. I've had a police officer stick his finger in my pussy, one

HTIC defendant told researchers. I've had them lifting up my dress. I've had them [say], Oh you're just a bitch, you ain't nothing. You're the scum of the earth, why would you sell your body? Um, they never ask, Hey, are you being trafficked? No! They automatically think, Oh, this bitch really wants to sell her ass.

Rather than interrupt the cycle of arrests as intended, the report explains, HTICs rely on arrests to function. Judges don't dismiss HTIC defendants' prostitution cases; instead, they typically offer adjournments in contemplation of dismissal (ACDs), which keep defendants' cases open for six months after they complete court-mandated services. If someone is a trafficking victim, researchers asked, why should there be an ACD at all? Rather than keep defendants involved in the system, they recommend, these cases could be dismissed or sealed immediately.

Still, many defendants said the courts themselves have treated them with care and attentiveness, as researchers put it. Some public defenders said that the HTICs sometimes produce better outcomes for their clients than traditional courts, though not always. Service providers also noted the courts lacked consistency. It matters who is sitting on the bench, one service provider told researchers. It matters who is there from the DA's office. It matters what kind of defenses they get from the defense attorney. Things are not completely equal across the board. What happens in court is based on people's personal philosophies.

So do the courts work? It depends how you measure that, and often, the report argues, what defendants need isn't what's measured. Defendants interviewed by researchers said the HTICs' most useful function was helping them avoid jail time, though the mandated services weren't always what they needed. Counseling isn't gonna do shit, one defendant told them. Let's be real. Yeah, it helps with the emotional part, but if you want a prostitute to get off the streets and away from her pimp, you gotta give her money. Or help her financially. Because right now that's her only financial situation. That's her only means of survival.

For the courts to provide meaningful help, said Pearanda, defendants would need long-term support, divorced from the threat of criminal charges. Instead, some people working in the HTICs are co-opting the language of harm reduction, especially social service providers, presenting diversion as a tool to mitigate criminalization but it doesn't. It actually exacerbates it.

To improve New York City's HTICs as they stand, researchers recommend, judges should dismiss and seal charges immediately, and stop using the courts' claim of connecting victims to services to justify arrests. Instead, the city should create programs to offer pre-arrest and pre-arrest services. But even those changes aren't enough, they conclude. The gap between promise and delivery in the HTIC system is irreparable without the decriminalization of sex work, the report states.

Miller echoed that call. The way to fix [the courts] isn't to make the bureaucracy a better social worker, she told *The Appeal*. It's to get the criminal justice system out of managing people in the sex sector at all.

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