

# **CRIMINAL, VICTIM, OR WORKER?**

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

**#NYHTIC**

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**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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OCTOBER 2014



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**#NYHTIC**

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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.

FOR MORE INFORMATION ABOUT REDUP'S  
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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 WebCrimis 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?

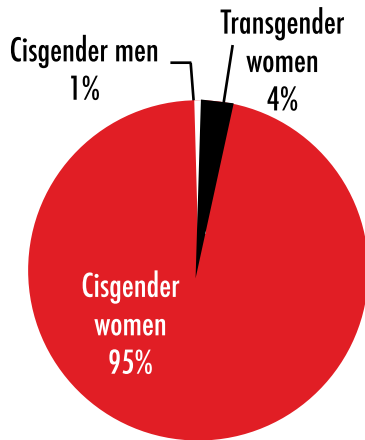


The HTIC has achieved a reduction in people with prostitution-related charges being incarcerated, but while defendants are in progress toward an ACD they have an open case. Open cases limit a person’s ability to obtain employment outside of the sex trade, receive public benefits, and maintain custody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

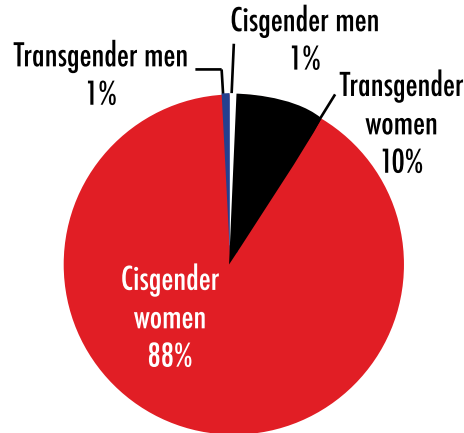
# DEFENDANT DEMOGRAPHICS

## 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.



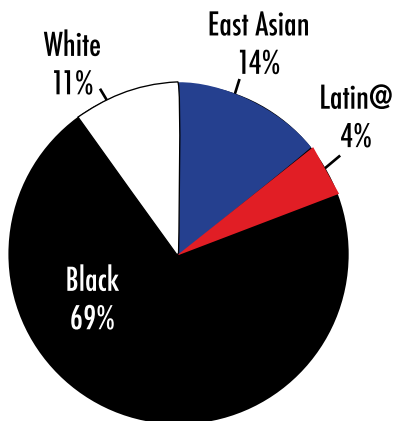
**BROOKLYN**



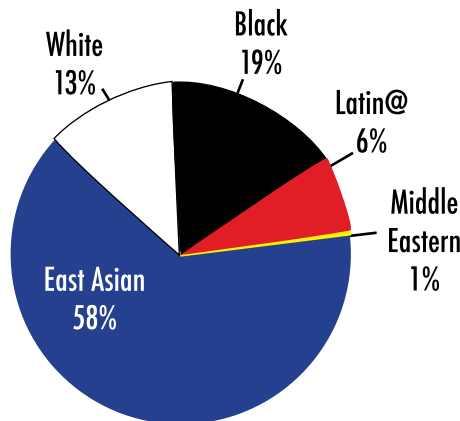
**QUEENS**

## 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.



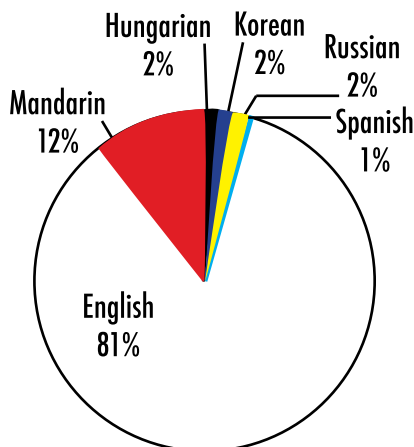
**BROOKLYN**



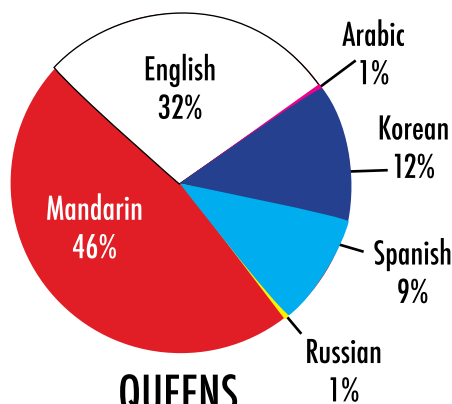
**QUEENS**

## 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.



**BROOKLYN**



**QUEENS**

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?



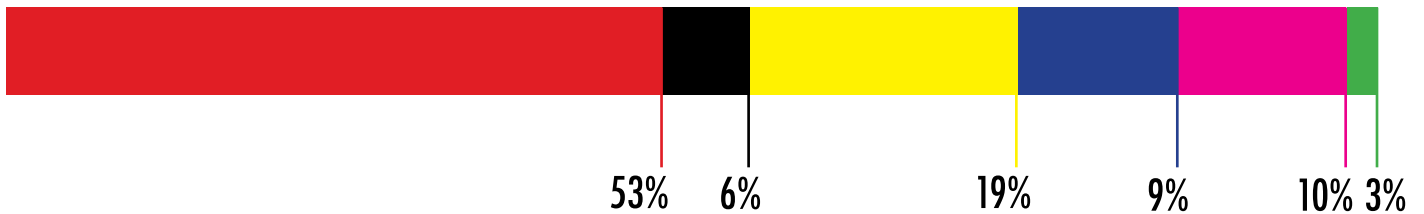
Are the high numbers of defendants in Queens who speak Mandarin and Korean the result of police seeking out potential victims in workplaces where they believe that trafficking of migrant Asian women is taking place?

# 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 astroglyde 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 WebCrimis 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)

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# **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 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 alternatives to incarceration programs.

This report documents what happens inside the Brooklyn and Queens HTICs, based on court observations that were conducted by staff and members of the sex worker-led Red Umbrella Project (RedUP) 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.

## **ABOUT RED UMBRELLA PROJECT**

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.

**FOR MORE INFORMATION ABOUT REDUP'S CREATIVE AND ADVOCACY WORK AND TO DOWNLOAD ADDITIONAL COPIES OF THIS REPORT: [REDUMBRELLAPROJECT.ORG](http://REDUMBRELLAPROJECT.ORG)**

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