

CENTER
FOR
COURT
INNOVATION

BEST PRACTICES



RESPONDING
TO
HUMAN
TRAFFICKING

Lessons from an Experiment in the Bronx

<i>authors</i>	<i>year</i>	<i>acknowledgements</i>
Liberty Aldrich Director, Domestic Violence and Family Court Programs, Center for Court Innovation	2009	This report was supported by Grant No. SJI-08-N-143 awarded by the State Justice Institute. Thanks to Janice Munsterman for her interest in this work. We would also like to thank The Oak Foundation and the New York State Office of Court Administration.
Robyn Mazur Deputy Director, Domestic Violence and Family Court Programs, Center for Court Innovation		

RESPONDING TO HUMAN TRAFFICKING: LESSONS FROM AN EXPERIMENT IN THE BRONX

INTRODUCTION

Human trafficking cases present numerous challenges to every element of the criminal justice system—the police who investigate them, the attorneys who prosecute them, the judges who adjudicate them, and the service providers who work with victims. In recent days, a consensus has emerged that there is a need to improve training, enhance services, and promote inter-agency collaboration in order to improve how the justice system responds to trafficking. For example, New York State recently passed legislation to prosecute human traffickers more aggressively and to support victims more effectively.

In New York City, many victims of human trafficking are arrested and come before the court as defendants on prostitution-related charges. As a result, the court system is uniquely positioned to intervene with these victims. Recognizing this, the Center for Court Innovation sought to test whether it was possible to create a court screening tool capable of efficiently identifying victims of trafficking and engaging them in needed services.

With funding from the State Justice Institute, the Center launched a court-based screening initiative in the Bronx in 2009. This report details the implementation of this experiment and offers a set of lessons for other jurisdictions interested in improving their response to trafficking.

THE BRONX EXPERIMENT

The trafficking screening tool (Appendix A) was piloted as part of a larger Center for Court Innovation initiative in the Bronx. Bronx Community Solutions is a court-based alternative-to-incarceration project that works with over 15,000 defendants a year, including hundreds of individuals charged with prostitution. Screening and identification of eligible clients for Bronx Community Solutions is facilitated by Center staff stationed in court rooms throughout the Bronx County Criminal Division. These staffers are responsible for reviewing defendants' criminal complaints, rap sheets, and pre-trial reports to make recommendations to the court on appropriate sentenc-

ing alternatives. The idea behind the trafficking project was to create an additional screening component that could become part of the standard Bronx Community Solutions process.

To develop the new screening tool, the Center for Court Innovation reached out to trafficking service providers in New York. The first step was to gather the existing screening tools currently in use. The tools compiled by the various agencies were typically used during a social service agency intake process and, therefore, were long and unwieldy for a court-based setting. Some of the other tools asked questions that were very specific to a certain ethnic group that the agency was assisting (i.e., the tool used by the Asian Women's Center had questions that were particular to Asian victims of trafficking) that would not work in a more generalized court setting.

Next, the Center worked with a handful of providers, including Safe Horizon's Trafficking Project and the Urban Justice Center's Sex Workers Project to create a screening tool appropriate for use in a busy, urban criminal courthouse. Of particular importance was the need for brevity. Given the volume of cases in the Bronx, the tool had to be short enough to be administered quickly by professionals with a plethora of other work responsibilities.

The tool that emerged was designed to assess the trafficking victim's recruitment, migration, working conditions, documentation status, and ability to escape their current situation. The tool was intended to be short, open-ended and easily incorporated into Bronx Community Solutions' ongoing assessment questionnaire.

The Center created linkages with Safe Horizon and the Urban Justice Center to provide more detailed assessments of potential trafficking victims as well as intensive services.

The final step was for court-based resource coordinators from Bronx Community Solutions to test the new screening tool with defendants charged with prostitution. The trafficking tool included six open-ended questions and was incorporated into Bronx Community Solutions' general defendant assessment. It was tested during two separate trial periods of two weeks. During neither period were any trafficking victims identified using the tool.

Prostitution defendants proved reluctant to self-identify as trafficked—especially when their pimps were still being arrested for “promoting prostitution” and were not being charged under the new trafficking laws. This problem was not unique to the Bronx. As *The New York Times* reported, there have been just 18 arrests and one conviction for trafficking since the law took effect in November 2007; as of December 2009, there were only four trafficking cases pending in all of New York City (“Sex Trafficking Arrests are Few, Despite Laws,” *The New York Times*, December 4, 2009, A32).

LESSONS

The Center for Court Innovation is an agency dedicated to creating demonstration projects that test new approaches to the delivery of justice. It is committed to a process of trial and error that seeks to learn from failure as well as success in order to move towards a justice system that lives up to its highest ideals. In keeping with the Center's commitment to reflection and self-analysis, the Bronx experiment offers a number of potentially valuable lessons for criminal justice reformers.

Contrary to the Center's plans, the court-based screening tool that was piloted at Bronx Community Solutions did not result in any defendants being identified as potential trafficking victims. In the development stages of the project, the emphasis was on creating a tool that was succinct and easy to administer by court staff. After testing the tool over the course of several weeks, it became apparent that the instrument was flawed and that the court environment was an obstacle to open communication.

One clear problem was that the tool asked questions that were off-putting, and even intimidating, to many defendants. With the benefit of hindsight, the questions about immigration, recruitment, and escape from their current circumstances sent the wrong message. In the context of the Bronx criminal courthouse, the staff administering the tool did not have the time, space, or training necessary to create an atmosphere of comfort and trust with defendants charged with prostitution. The Bronx criminal courthouse is an intimidating place and getting arrested is a stressful event for anyone, to say nothing of vulnerable populations like victims of trafficking. Staff in the Bronx were unable to overcome these obstacles to open communication and the screening tool did not offer them any additional help.

Going forward, the Center has concluded that the formal instrument tested in the Bronx should be replaced by subtler strategies to elicit similar information. For instance, staff who have been provided with specialized training in working with victims of trafficking might be able to use less structured conversation, look for cultural cues that may indicate signs of trafficking, and use indirect questioning to make an assessment and possible referral for services.

In addition to the shortcomings of the identification tool and the court environment, a number of other factors complicated the identification of trafficking victims in the Bronx:

- o **Enforcement:** First and foremost, as has been widely reported, New York City police have made few arrests under the new trafficking law.
- o **Training:** As highlighted above, court-based staff were charged with implementing the tool, instead of specially trained social service providers with an expertise in sex trafficking.
- o **Confidentiality:** There was no agreement in place to keep the information elicited in the screening tool confidential, undermining the potential motivation of defendants to provide forthright answers.
- o **Incentives:** There was no "carrot" being offered by the prosecutor's office that would have made the defendants feel like their self-identification was going to result in a dismissal of their charges.

The tool's inability to elicit information combined with these other challenges hindered the identification process and ultimately hampered the ability to test the social service referral and assessment portion of the project. Possible solutions for testing in the future include using social service staff as the screeners, working with

prosecutors to dismiss cases when victims are identified (and letting defendant-victims know this information up front), and making the entire screening process more confidential.

The challenges raised during the implementation of this pilot project have led the Center to modify and enhance its screening project, re-focusing its efforts on developing a training for service providers to learn how to use verbal cues and a more subtle process to elicit difficult personal information from potential trafficking victims. These efforts will be greatly aided by funding the Center received from the Oak Foundation, which will be used to continue its work. The Center is convening and facilitating on-going multi-agency working groups. These working groups will not only address issues of screening, but will also tackle some of the harder issues that come with this identification process. The groups will work on the creation of new prosecution policies that would provide an incentive for trafficking victims to come forward as well as confidentiality protocols that will make victims feel more comfortable telling their story. That, with luck, will serve as a model to other courts that are interested in addressing the issue of trafficking in the future.

APPENDIX A

BRONX COMMUNITY SOLUTIONS' SCREENING TOOL TO IDENTIFY POTENTIAL TRAFFICKING VICTIMS

Note to Screener: If defendant answers "yes" to one of these questions, please stop the assessment. Do not make any notes. Consult your supervisor to refer defendant and her defense attorney to a trafficking service provider for further assessment and resources.

You've been arrested for a prostitution-related offense, so to figure out if you need some help, I'm going to ask you some questions about times when you had sex or did something else sexual (like exotic dance or massage) that you didn't really want to do.

- 1) Has someone ever physically hurt you or threatened to physically hurt you to make you have sex or do something sexual? *For example: someone you work for or someone you work with, boyfriend/husband/partner, family member or friend or pimp*
- 2) If you work for someone or have a pimp, are you afraid of him or her?
- 3) Is anyone keeping you from leaving or stopping the kind of thing for which you were arrested, or is anyone making you afraid to stop or leave?
- 4) If you're not a US citizen, has someone threatened to have you deported? Has anyone taken away your passport or other identification?
- 5) Has someone threatened to harm or hurt someone else if you did not have sex or do something sexual?
- 6) Has someone done anything else to get you to have sex or do something sexual?
For example: kept your money, lied to you, given you drugs, threatened to tell your family/friends?

Center for Court Innovation

The winner of the Peter F. Drucker Award for Non-profit Innovation, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how the justice system can solve difficult problems like addiction, quality-of-life crime, domestic violence, and child neglect. The Center functions as the New York State Unified Court System's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts, reentry courts and others.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping court reformers across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through original research, books and white paper and roundtable conversations that bring together leading academics and practitioners and by contributing to policy and professional journals. The Center also provides hands-on technical assistance, advising innovators throughout the country about program and technology design.

For more information, call 212 397 3050 or e-mail info@courtinnovation.org.

C E N T E R

F O R

C O U R T

I N N O V A T I O N

A Public/Private Partnership with the
New York State Unified Court System

Center for Court Innovation

520 Eighth Avenue, 18th Floor
New York, New York 10018
212 397 3050 Fax 212 397 0985
www.courtinnovation.org