

RESEARCH REPORT

Consequences of Policing Prostitution

An Analysis of Individuals Arrested and Prosecuted for Commercial Sex
in New York City

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Consequences of Policing Prostitution

In New York City, The Legal Aid Society's Exploitation Intervention Project (EIP) represents most people prosecuted for violating state prostitution laws. EIP also represents survivors of trafficking into prostitution facing other charges in the criminal legal system. A relatively new provision in New York law allows these survivors to vacate, or clear, charges from their criminal records if those charges were a result of having been trafficked. Urban Institute researchers gathered data from both groups of EIP clients to describe who is currently facing arrest in New York City for prostitution offenses and who has faced arrest and prosecution for prostitution in the past. Findings suggest a need to reevaluate the criminal legal response to people arrested for prostitution-related charges.

Introduction

Since 2011, The Legal Aid Society's Exploitation Intervention Project has represented thousands of individuals, mostly women, charged with prostitution-related offenses across all five New York City boroughs, both before and since the implementation of the human trafficking intervention courts (HTICs), a statewide prostitution diversion court initiative.¹ EIP provides direct representation and comprehensive services to people charged with prostitution-related offenses and survivors of trafficking facing prosecution for other offenses in New York City's criminal courts.

In addition to its advocacy in the HTICs, EIP seeks "vacatur," or clearing, of prostitution-related and other associated offenses from past and present clients' criminal records when it is understood that those offenses occurred as a result of human trafficking. EIP has been spearheading vacatur efforts for trafficking survivors across New York State and the rest of the country. To date, EIP has used New York's vacatur law to clear 1,255 criminal convictions for trafficking survivors.

From 2015 to 2016, EIP attorneys collected information on sociodemographic characteristics, victimization histories, and service needs from virtually all defendants charged with prostitution offenses in New York City. The Urban Institute research team analyzed the data collected from these 1,400 cases. The team also coded 51 case files for clients who obtained vacatur of past charges and interviewed 20 clients from that group. This report presents findings from the Urban Institute's analysis

and demonstrates how criminalization can affect people with trafficking histories and their educational, career, family, and health goals.

Key findings include the following:

- Ninety-one percent of people arrested for unlicensed massage were foreign nationals; 37 percent were undocumented. Fifty-nine percent of clients in this group were ages 40 and older.
- Thirty-five percent of EIP clients reported having been trafficked into sex work at least once, including 20 percent who reported that they were currently being trafficked.
- EIP clients who were most likely to report a history of sex trafficking victimization included non-Asian US citizens, those with less than a high school education, those with prior family court involvement, and those who reported they had been homeless in the past five years. Each of these characteristics was also significantly correlated with current trafficking victimization.
- The highest shares of clients needing services were those with a history of trafficking victimization, prior sexual or physical assault victimization, and involvement with family court.
- Most EIP clients interviewed reported being treated as criminals, not victims, by police and the courts. Many had last interacted with the criminal legal system before New York State introduced HTICs.
- All 20 vacatur clients interviewed were grateful for the opportunity to have prostitution charges cleared from their records and would encourage other trafficking survivors to do so. Though many considered the process beneficial, some were traumatized by revisiting their trafficking experiences, and several wished the process were quicker and easier.

Background and History

In 2007, the New York State Legislature amended the state's Penal Law to recognize human trafficking—both sex trafficking and labor trafficking—as a criminal act (NY State Law, Chapter 74). New York defines sex trafficking as any situation in which someone else profits from the prostitution of another through force, threats, withholding identifying documents, facilitated drug use, physical holds, or the repayment of debt. This mirrors the federal definition of human trafficking as labor induced through force, fraud, or coercion, or commercial sex acts induced through force, fraud, or coercion

and/or of a minor under the age of 18 (Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464).

Since 2007, New York State has enacted a wide range of additional legislation to combat human trafficking, focusing primarily on trafficking into commercial sex. In 2008, New York became the first state to enact a safe harbor law, which recognized youth under the age of 18 engaging in prostitution as “sexually exploited children” and created a presumption in favor of noncriminal proceedings in family court for youth under the age of 16 charged with prostitution offenses.² The state’s Trafficking Victims Protection and Justice Act (TVPJA) became law in 2015 and strengthened the 2007 legislation by enhancing penalties for trafficking offenses, creating additional crimes related to prostitution, and replacing the word “prostitute” with the phrase “person for prostitution” in the Penal Law.³

Most relevant to this report, New York State Criminal Procedure Law 440.10(1)(i) became effective in August 2010. This section gives criminal courts the ability to vacate prostitution convictions from someone’s criminal history record if the conviction was a result of the person having been a victim of sex trafficking under New York or federal law.

Central to the policy and practical application of these laws is the relationship between prostitution and sex trafficking. This relationship can often be conflated. Although not all prostitution is trafficking, certain people engaged in prostitution can be at high risk of being trafficked. In either case, people engaged in prostitution—trafficked or not—frequently interact with the criminal legal system because of their own arrest and prosecution.

The history of criminalizing prostitution is long, but its modern incarnation in New York City is inextricably intertwined with “broken windows policing,” which originated in the early 1990s (Kelling and Wilson 1982). Broken windows policing, also known as public order or quality-of-life policing, exemplifies the theory that crime will decrease if law enforcement eliminates visual and physical signs of crime, such as graffiti, panhandling, and street prostitution. In New York City and other metropolitan areas across the country, broken windows policing resulted in a high volume of arrests of people for low-level offenses. A key component was the targeting of “vice” crimes, such as prostitution. Those involved in the most visible, easily criminalized mode of the commercial sex industry—street prostitution—were frequently low-income women of color. In New York City and other cities around the country, this meant that broken windows policing of prostitution, like other low-level misdemeanors, resulted in the frequent and repetitive policing of people of color.

The criminalization of prostitution as a low-level crime evolved in the early 21st century as philosophies began to view prostitution as a crime inflicted upon a victim rather than a crime committed

by an offender against a community. This shift built on earlier advocacy efforts around violence against women that prioritized using the criminal legal process to punish perpetrators of domestic and sexual violence and provide justice to the predominantly female victims of these crimes (Fagan 1996). “Human trafficking” entered international and domestic consciousness and vocabulary in the late 1990s and early 2000s (Bernstein 2010). Although human trafficking includes exploitation in both sex and other forms of labor, policymakers immediately focused on sex trafficking and its perceived disproportionate impact on women and girls as victims, allowing them to borrow solutions from other forms of gender-based violence, including domestic and sexual violence (Gruber, Cohen, and Mogulescu, forthcoming). The antitrafficking movement’s solutions similarly took root in the criminal legal system and prioritized the punishment of trafficking perpetrators.

Despite the positioning of sex trafficking as a form of gendered violence and the corresponding dedication of significant resources, attention, and coverage, the criminalization of prostitution continues. One notable difference is that efforts at human trafficking intervention are now formalized within the criminal legal system and involve the arrest, prosecution, diversion, and/or incarceration of victims (Crank 2014). Even when key stakeholders recognize that the people arrested may also be victims, stakeholders use criminalization to address these victims’ needs. In New York State, this approach has played out in the widely lauded implementation of the HTICs.

In late 2013, then-New York State Chief Judge Jonathan Lippman announced the statewide HTIC initiative, which essentially created eight additional criminal diversion courts for individuals charged with prostitution-related offenses in counties across New York State. Queens, New York, and Nassau Counties already had diversion courts handling prostitution offenses. Lippman offered the HTICs as an “opportunity for judges, prosecutors, and defense lawyers to work together to link victims with the services they so desperately need” and coined a new category of “victim-defendants.” That term was never more specifically defined. Lippman went on to promise that the HTICs would be designed “to intervene in the lives of trafficked human beings and to help them to break the cycle of exploitation and arrest,” without emphasizing that this intervention would come through their own arrest and prosecution.⁴ The initiative launched with no design specifics, uniform procedures, protocols, or initial funding for the promised services and resources.

This report and its analysis of more than 1,400 individuals in New York City charged with prostitution, loitering for the purpose of engaging in prostitution, or practice of massage without a license—many of whom were prosecuted in the HTICs—constitute one of the first studies to systematically examine the backgrounds and outcomes of people criminalized for prostitution within a single jurisdiction. This jurisdictional case study lays out the impact of criminalization: victims of

trafficking are still being arrested, charged, and criminalized for prostitution despite being identified as victim-defendants or at-risk populations; and criminalization has long-lasting effects on an already vulnerable group of people. Further, the study establishes that contact with the criminal legal system through these means is not necessarily beneficial to victims and that victims of trafficking can frequently face harmful consequences as a result of arrest and incarceration. This analysis examines the characteristics and experiences of people arrested for prostitution offenses in New York City to better understand what these newly created categories and labels, such as victim-defendants or trafficking intervention court, mean and how discourse and language compare to practice and actuality.

Data and Methods

Current Snapshot

Data for this report were collected from February 2015 to March 2016 by EIP attorneys during their representation of 1,413 defendants charged with prostitution-related offenses in the Bronx (234), Brooklyn (446), Manhattan (282), and Queens (451).

In accordance with the Urban Institute's Institutional Review Board and EIP's protected attorney-client relationship, clients were informed that study participation would collect data to inform better legal practices, participation was voluntary, and participation did not affect their legal representation. A small share of clients (less than 2 percent) preferred to not respond to the questions. However, some questions had high nonresponse rates (around 50 percent) because of the nature of the questions and the environment (criminal court), in which some EIP team interaction with clients takes place. Criminal court, in many instances, does not provide enough time, space, or privacy to speak with clients about personal or sensitive matters. The percentages presented are for valid data only and are taken as a conservative representation of clients' life experiences. It is expected that missing responses for clients with lengthier or more complex defense discussions would, if completed, show even higher rates of trafficking and victimization.

Retrospective View

Urban researchers reviewed 51 vacatur motions EIP had filed as of January 2015 and systematically coded case files, discovery, affidavits, case narratives, arrest records, and other materials in the clients' files for the following information: demographics and background information, migration history, trafficking history and trafficker characteristics, services sought and mandated, current needs, and experiences through the vacatur filing process. Researchers initially coded for a mix of quantitative and qualitative information, then conducted a secondary coding to quantify narrative information provided within the case files.

EIP Vacatur Client Interviews

Throughout 2015, the research team interviewed 20 EIP vacatur clients. The EIP team asked clients to participate based on its knowledge of clients' availability, stability, and willingness to participate in the study (a convenience sample). The interviews were semistructured and focused on the clients' experiences with law enforcement, the court system, and the vacatur process; the impact of being criminalized for prostitution; and lastly, their hopes for the future.

Current Snapshot: 2015–16 Arrestee Data

Client Demographics

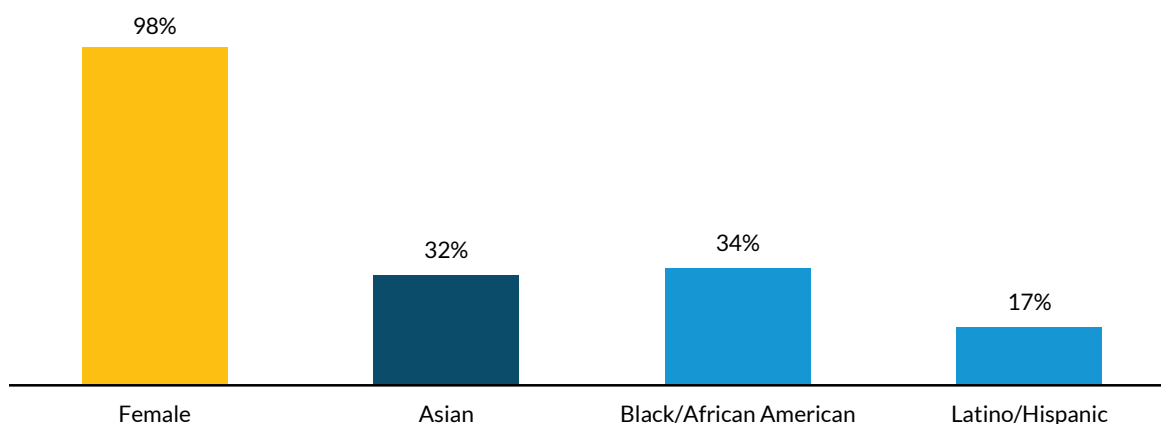
Across all boroughs, most EIP clients identified as cisgender female (93 percent) or transgender female (5 percent); a small percentage identified as male (2 percent). Figure 1 presents key demographic characteristics. Most clients considered their sexual orientation to be straight (87 percent) or bisexual (9 percent), and 9 in 10 said their sex assigned at birth was female (91 percent).

Clients' ages ranged from 16 to 63, with an average age of 33 and a median age of 30. Approximately one-third of clients were adolescents, age 25 or younger; a significant number (15 percent) of these adolescents were age 21 or younger. Almost half (46 percent) of EIP clients had not finished high school. Many clients (15 percent) shared that their formal education had ended before high school.

EIP clients are overwhelmingly people of color: approximately one-third each identified as black/African American (34 percent) and Asian (32 percent, mostly Chinese or Korean ethnicity), while a little less than one-third identified as Latino/Hispanic (17 percent) or white/Caucasian (11 percent).

FIGURE 1

Most Clients Were Female and Nonwhite



Source: EIP attorneys' interviews of clients.

Asian women who had migrated to the United States, regardless of immigration status, made up more than one-quarter (29 percent) of clients; two-thirds of these women were arrested in Queens. Most (87 percent) spoke Mandarin Chinese, while 12 percent spoke Korean. EIP attorneys anecdotally noted differences between the experiences of Asian migrant and US-born clients, so analyses throughout this report describe places where the two groups' experiences differed significantly. For example, Asian migrant clients were less likely to have a high school diploma or higher education (46 percent) than other EIP clients (56 percent).

More than one-third (38 percent) of EIP clients were not US citizens, and one-seventh (14 percent) indicated that they were undocumented.

Living Situation

Forty percent of EIP clients reported being recently homeless or in a temporary living situation: 32 percent reported homelessness/temporary housing in the past year, and another 8 percent within the past two to five years. Far fewer Asian migrant clients reported homelessness in the previous five years

(11 percent) than other EIP clients (51 percent). Across all clients, very few currently lived in a shelter (7 percent) or motel (2 percent) or on the streets (1 percent); few lived in subsidized housing (4 percent).

Arrest Charges and Criminal Court Involvement

The most complete information collected by EIP attorneys related to clients' current court cases. A majority (72 percent) of cases involved prostitution offenses as the top charge;⁵ in another 16 percent of cases, unlicensed massage was the top charge. Other top charges included possession of controlled substances (5 percent), criminal trespass (1 percent), larceny (1 percent), or assault (1 percent). After arraignment (a client's first court appearance), clients were assigned to an EIP attorney most often within three days.

An overwhelming majority (76 percent) of EIP cases were closed within three months of arraignment, with a disposition of "adjournment in contemplation of dismissal" (74 percent).⁶ Several cases (10 percent) were dismissed for other reasons. Accordingly, 84 percent of EIP cases were fully dismissed and will not appear on the clients' criminal histories moving forward.

When cases were not dismissed, they often were resolved with a conviction for a lesser offense, such as disorderly conduct (10 percent). The other cases resulted in convictions for prostitution-related or more serious offenses (6 percent). For cases resolved with a finding of guilt, sentences included "time served" (46 percent), jail up to 45 days (21 percent), conditional discharge (26 percent), and community service (3 percent). Table 1 shows the top charges by borough.

TABLE 1

Top Charges by Borough (percent)

| | Prostitution | Loitering for the purpose of prostitution | Unlicensed massage | Other |
|-----------|--------------|---|--------------------|-------|
| Bronx | 61 | 17 | 0 | 22 |
| Brooklyn | 57 | 20 | 5 | 18 |
| Queens | 61 | 1 | 35 | 4 |
| Manhattan | 76 | 0 | 18 | 6 |

Source: EIP attorneys' interviews of clients.

BOX 1

Unlicensed Massage and Asian Migrant Clients

Under New York State Education Law Sections 6512 and 6513, anyone who practices a profession in which a license is required without holding the requisite license is guilty of either a class E felony or a class A misdemeanor, depending on the allegations and subsection. Recently, there has been a sharp and marked increase in arrests under this “unauthorized practice of a profession” law, which most often applies to people offering massages without a license. In New York City, the total number of arrests of Asian-identified people under Sections 6512 and 6513 increased by over 1900 percent between 2012 and 2016 (from 31 to 631). Further, the total number of arrests of Asian-identified people charged with both unlicensed massage and prostitution increased by 2700 percent between 2012 and 2016 (from 12 to 336).^a

According to Urban Institute findings, the vast majority (91 percent) of EIP clients charged with unlicensed massage charges were not US citizens: specifically, 37 percent were undocumented. While Asian clients made up 95 percent of arrests for unlicensed massage charges, noncitizen Asian migrant women made up 87 percent of the arrests for unlicensed massage. The majority (59 percent) of clients in this group were age 40 and older.

Asian migrant women pushed through the criminal legal system face additional barriers due to language. The dramatic increase in arrests of Chinese and Korean women for unlicensed massage has specific consequences on immigration status, stability, and willingness to disclose possible victimization.

^a Data come from New York State Division of Criminal Justice Statistics arrest demographics from January 2012 to July 2015, with December 2015 projections based on January–July 2015 trends.

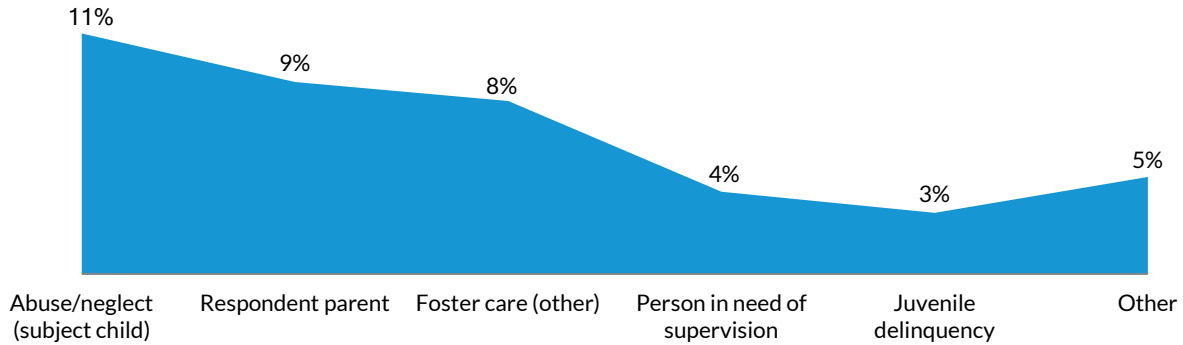
Prior Family Court Involvement

Nearly one-third of EIP clients reported having been involved in a case in family court once (23 percent) or more than once (8 percent). Very few (2 percent) of the Asian migrant clients reported prior family court involvement; these experiences were concentrated among non-Asian clients who were US citizens (43 percent).

Clients who said they had been involved with family court were less likely to have a GED or higher degree (48 percent, compared with 57 percent) and almost three times more likely to have been homeless in the past five years (68 percent, compared with 24 percent).

FIGURE 2

Types of Cases in Family Court



Source: EIP attorneys' interviews of clients.

Figure 2 depicts the reasons cited for prior family court involvement. Clients most commonly reported having a prior family court experience because of abuse or neglect they had suffered as a child or because they had been placed in foster care or evaluated as a “person in need of supervision.” In addition, 9 percent of clients had appeared as a parent, and 3 percent had appeared on a juvenile delinquency referral.

The likelihood of prior family court involvement differed by jurisdiction. Nearly half (48 percent) of EIP’s clients in the Bronx reported a family court history—most commonly for their own childhood abuse or neglect—compared with 35 percent in Brooklyn, 29 percent in Queens, and 24 percent in Manhattan.

Trafficking and Victimization History

Thirty-five percent of EIP clients reported having been trafficked into sex work at least once, including 20 percent who were currently being trafficked (see figure 3). Most clients disclosed their trafficking experiences to a member of the EIP team in the course of the representation; others disclosed their experiences to a service provider working with the team.

EIP clients who were most likely to report a history of sex trafficking victimization included

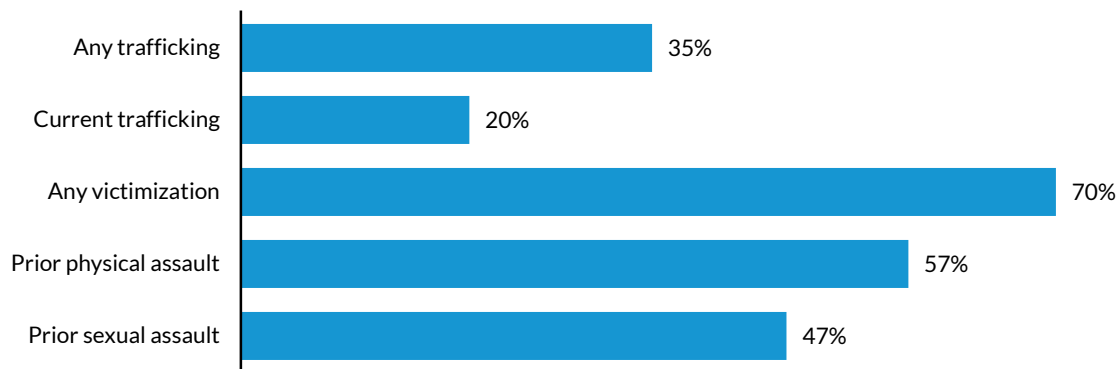
- non-Asian US citizens (44 percent, compared with 14 percent among Asian migrants);

- those with less than a high school education (45 percent, compared with 25 percent among those with a GED or higher education);
- those with prior family court involvement (59 percent, compared with 21 percent among those with no family court history); and
- those who reported homelessness in the past five years (54 percent, compared with 24 percent among those who were not homeless).

Each of these characteristics was also significantly correlated with current trafficking victimization.

In addition, 70 percent of EIP clients said they had experienced a prior physical (57 percent) or sexual (47 percent) assault; 53 percent of these clients reported being victimized multiple times.

FIGURE 3
EIP Clients Reported Extensive Prior Victimization



Source: EIP attorneys' interviews of clients.

Physical and sexual victimization were more commonly perpetrated by people the clients knew. Twice as many clients were physically assaulted by a known person (47 percent) as by a stranger (23 percent). Similarly, one in three was sexually victimized by someone they knew, compared with one in four by a stranger.

The victimization experiences reported by EIP clients differed by borough. Significantly more clients in the Bronx (60 percent) reported a history of sex trafficking than did clients in Brooklyn (36 percent), Queens (31 percent), and Manhattan (24 percent). Similarly, a higher share of clients in the Bronx reported experiencing a prior sexual assault (69 percent) or physical assault (81 percent),

compared with those in Brooklyn (48 percent and 58 percent), Queens (43 percent and 52 percent), and Manhattan (34 percent and 47 percent).

Disentangling the relationship between clients' victimization histories, trafficking experiences, and prostitution involvement was not empirically possible in the data collected. However, prior studies have linked childhood physical and sexual abuse with an increased likelihood of homelessness and prostitution (Kramer and Berg 2003). Additionally, people involved in the commercial sex industry have a higher risk of exposure to violence (Matthews 2015). Thus, the risk of criminalization and its collateral consequences force people to weigh the cost of system involvement with day-to-day efforts at safety and autonomy.

Relatedly, EIP clients who reported a history of being trafficked were more than twice as likely to report a prior sexual assault (75 percent) than those with no reported trafficking history (30 percent). They were also twice as likely to report prior physical assault (80 percent) than those with no reported trafficking history (42 percent).

Further, clients with prior trafficking victimization reported becoming involved in prostitution at a younger age. Eighty percent of those who reported a history of being trafficked also reported entering the commercial sex industry at age 21 or younger, compared with 37 percent of those who reported having no trafficking history.

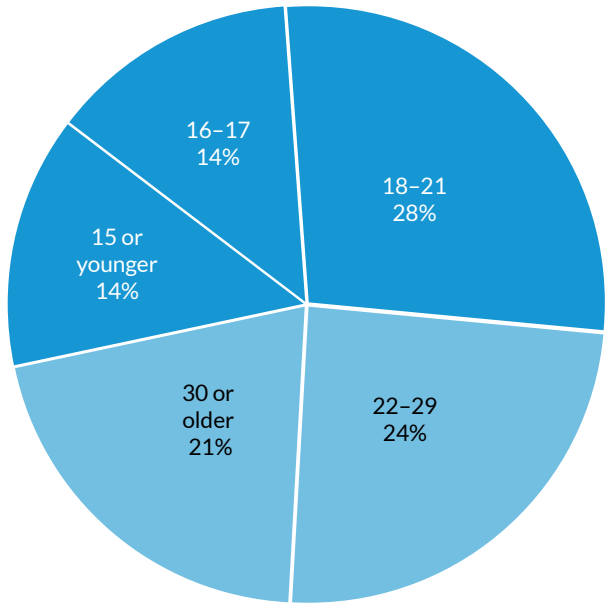
On average, most EIP clients (55 percent) reported first becoming involved in prostitution at or before age 21: 14 percent at age 15 or younger, another 14 percent at age 16 or 17, and 28 percent between the ages of 18 and 21 (see figure 4).

Prostitution involvement at age 21 or younger was also associated with clients' higher likelihood of prior family court involvement, homelessness in the past five years, and lack of a high school or higher education.

With respect to trafficking into either commercial sex or other labor, this study could not more fully assess the employment conditions experienced by the large number of EIP clients who were Asian women arrested in massage parlors. This represents an area for further exploration and development.

FIGURE 4

Most EIP Clients Entered Prostitution at Age 21 or Younger



Source: EIP attorneys' interviews of clients.

SERVICE NEEDS AND REFERRALS

Given the extensive prior victimization and trafficking experiences of EIP clients, coupled with their current system involvement, it was not surprising that they expressed numerous service needs. EIP attorneys asked their clients to identify up to three top service needs. More than three in four clients (78 percent) indicated a desire for at least one type of assistance, while two in five (40 percent) wanted two or more service types.

As shown in figure 5, the most commonly sought service types across all EIP clients were employment (43 percent), housing (28 percent), education (26 percent), and health care (15 percent). Clients clearly expressed the desire for services that would support their ability to achieve sustainable, independent living.

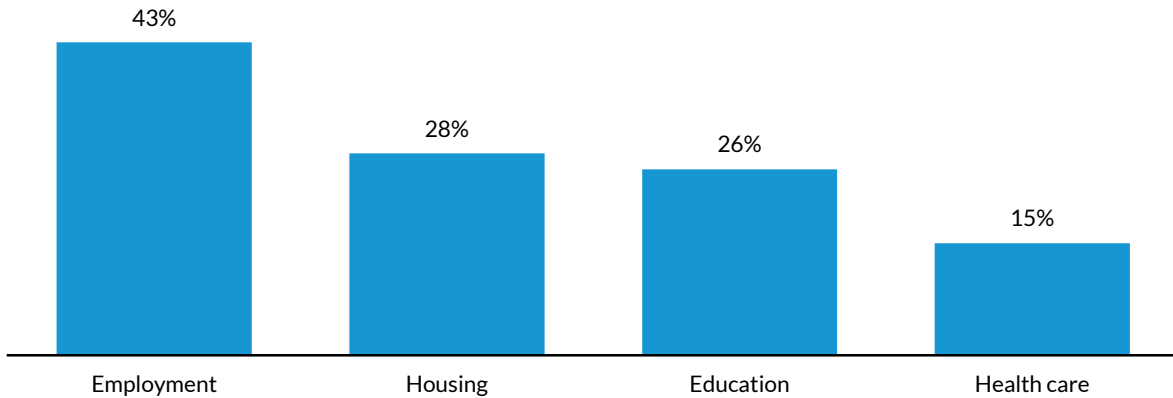
Notably, the highest shares of clients needing services were among those with a

- history of trafficking victimization (94 percent, compared with 65 percent of those with no trafficking history);
- prior sexual assault victimization (90 percent, compared with 74 percent of those with no sexual assault history);

- prior physical assault victimization (88 percent, compared with 72 percent of those with no physical assault history); and
- family court history (87 percent, compared with 70 percent of those with no family court history).

FIGURE 5

Clients' Top Service Needs Reflect Desire for Independent Living



Source: EIP attorneys' interviews of clients.

Asian migrant clients were significantly less likely to report needing services than US citizens (55 percent compared with 86 percent). Of particular note, Asian migrant clients were one-sixth as likely as US citizens to request housing assistance and more than one-half as likely as US citizens to request education assistance.

Interestingly, although the central feature of the HTICs is linking those arrested for prostitution to counseling services, only one EIP client indicated a desire for mental health assistance. Similarly small shares of clients indicated the need for substance abuse services (3 clients) or public assistance (45 clients).

The courts mandated that virtually every client (94 percent) be involved with a service provider. Typically, dismissal of clients' current charges depended on their compliance with these mandated service requirements.

The most common agencies to which EIP clients were referred were

- Womankind⁷ (12 percent),
- Bronx Community Solutions (11 percent),
- Brooklyn Justice Initiatives (11 percent),

- Women’s Independence, Safety and Empowerment (10 percent),
- Restore NYC (9 percent),
- Girls Educational and Mentoring Services (8 percent),
- Sexual Assault and Violence Intervention Program (7 percent),
- Garden of Hope (5 percent), and
- Sanctuary for Families (3 percent).

Some of these programs specifically work with female victims of trafficking and sexual violence, while others provide more general assistance to low-income and at-risk people. The ways in which the court mandates clients to different service providers depend on the borough HTIC. In the Bronx, for example, the service provider will make a recommendation to the court. Often the client’s age and preferred language determine which service provider the court orders to fulfill the mandate. Support service capacity, familiarity with the client, and defender-based advocacy also affect the court’s decision.

Although the primary function of EIP attorneys is to provide criminal defense representation on a pending charge, many clients maintained engagement with EIP after the disposition of their cases. One in three clients stayed in contact with the EIP team; for some, this contact eventually helped lead to vacatur of previous prostitution convictions or other critical legal services, providing a more solid foundation on which to move forward with their lives.

The highest rates of postdisposition EIP client engagement were evident among some of the most vulnerable clients, including those with prior family court involvement (44 percent stayed engaged), prior physical assault victimization (54 percent stayed engaged), prior sexual assault victimization (52 percent stayed engaged), prostitution involvement at or before age 21 (54 percent stayed engaged), and prior trafficking experiences (55 percent stayed engaged).

A Retrospective View: Post-conviction Advocacy for Trafficking Survivors

As of December 2016, EIP, often with a range of pro bono partners, had filed 102 motions to vacate prior criminal charges on behalf of 72 distinct clients. Of those 102 motions, 94 had the vacatur of the charges granted, 1 case was withdrawn, and 7 were awaiting a decision. Urban Institute researchers

analyzed the case files for 51 of these clients. All names and identifying information were withheld, including the actual pleading submitted to the court that, in many cases, contained clients' sworn affidavits establishing their trafficking experience. Although the goal was to facilitate the most detailed analysis with the most relevant material, in some cases, particular details or experiences were unavailable to the research team because they were not readily apparent from the case file or affidavit.

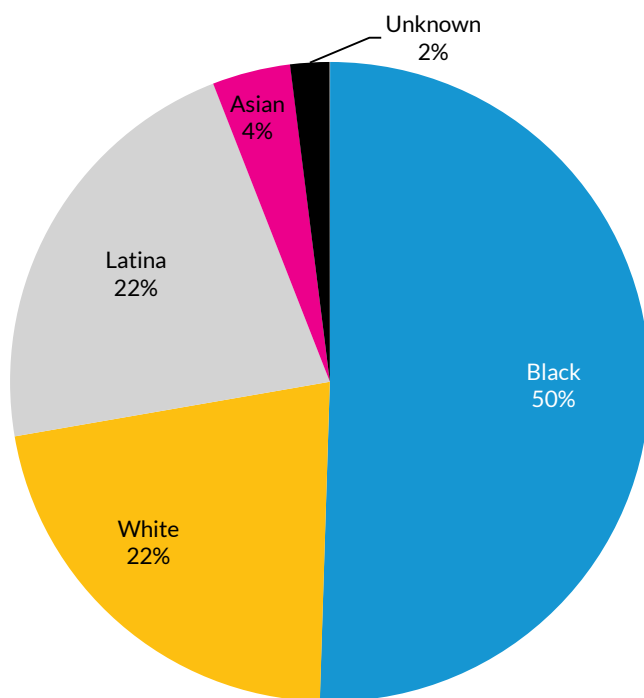
Demographic Information

AGE, GENDER, RACE AND ETHNICITY, AND CITIZENSHIP

The ages of vacatur clients ranged from 19 to 51, with an average age of 36 at time of case intake. All clients identified as female, with one client identifying as transgender female. The majority (78 percent) of clients identified as people of color; figure 6 presents the breakdown of race and ethnic identity.

FIGURE 6

Vacatur Clients Were Overwhelmingly Nonwhite



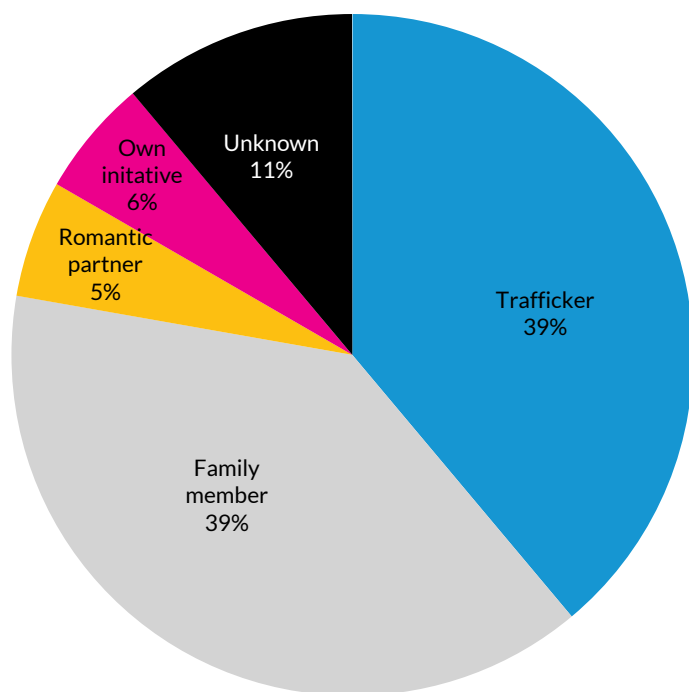
Source: Authors' analysis of 51 vacatur case files.

At time of intake, the majority (69 percent) of vacatur clients were US citizens, and 16 percent had already been granted a T-Visa.⁸ Ten percent were undocumented, 4 percent were lawful permanent residents, and 1 percent had been granted continued presence based on their trafficking experience. Eighteen clients (35 percent) had previously immigrated to the United States; five had entered without inspection (28 percent), and two had entered the country lawfully (11 percent). The other 11 clients' migration method is unknown. Clients had migrated to the United States with the assistance and facilitation of various people, including their traffickers and family members, or on their own. Figure 7 breaks down how noncitizen clients arrived in this country.

FIGURE 7

More Than Two-Thirds of Noncitizen Vacatur Clients Migrated to the United States with the Help of a Family Member or Trafficker

Migration facilitator



Source: Authors' analysis of 51 vacatur case files.

PRETRAFFICKING BACKGROUND

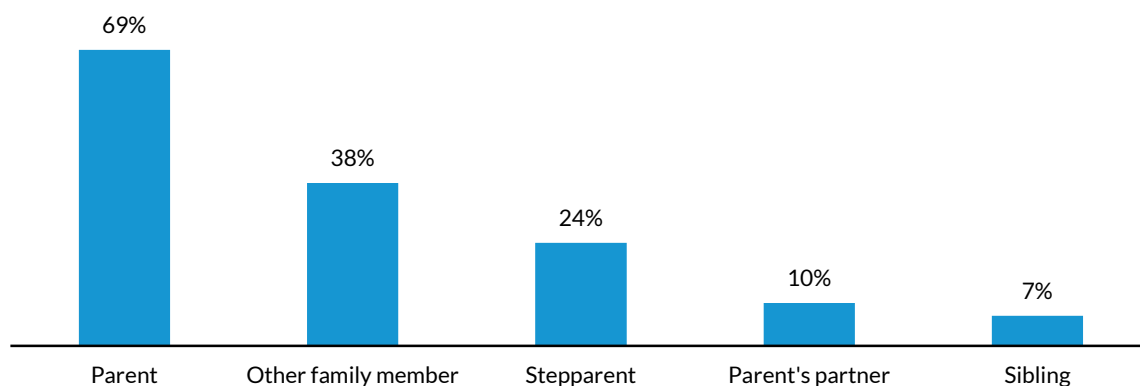
More than half of vacatur clients (29 clients, 57 percent) had experienced abuse in their childhood and adolescence at the hand of at least one family member. Of these clients, 72 percent (21 clients) experienced more than one type of abuse. Among the 29 clients who experienced abuse in their childhood and adolescence, 16 reported physical abuse and 16 reported sexual abuse. As shown in

figure 8, this abuse was most commonly perpetrated by clients' parents and by other members of their immediate, extended, and blended families. Almost half the clients who reported abuse had also experienced emotional abuse (14 clients, 48 percent). Six clients (21 percent) witnessed the abuse of family members, and 13 clients experienced neglect. Information was unknown for 16 clients (31 percent), and 6 clients (12 percent) did not report abuse growing up. Clients also experienced sexual assault at the hands of nonfamily members (17 clients, 33 percent).

FIGURE 8

Vacatur Clients Had Been Abused by Family Members

Abuse facilitator



Source: Authors' analysis of 51 vacatur case files.

Four vacatur clients (8 percent) had attempted suicide at some point before their trafficking experience. Fifteen clients (29 percent) had been involved in the child welfare system through foster care experiences, interaction with child protective authorities, or family court. Six clients (12 percent) had been involved with the juvenile justice system.

TRAFFICKING HISTORY

Forty of 51 clients reported an age of first involvement in prostitution; ages ranged from 8 to 34, with an average age of 17. Of clients who reported an age of first involvement, 98 percent reported being younger than 25 years old when they first got involved.

EIP clients seeking to vacate convictions from when they were over the age of 18 must demonstrate that their arrests resulted from involvement in prostitution by virtue of force, fraud, or coercion. In many submitted motions, EIP clients described how traffickers recruited them into or induced them to continue in prostitution and then further sustained that traumatic and coercive control.

During recruiting, traffickers commonly used initial kindness and the appearance of support and/or intimacy. Recruitment included isolating the client; limiting contact with family, friends, and the general public; and increasing dependency on the trafficker for emotional and financial support. Traffickers often exploited specific vulnerabilities they identified in those they control. For example, many EIP clients reported having shared their histories of family abuse or dysfunction with traffickers only to have them subsequently manipulate those experiences. As with most abusive relationships, traffickers used reward and punishment, often cycling between physical affection and physical harm to assert control. Threat of harm to the client or loved ones was also a common tactic, as was the imposition of very specific and seemingly arbitrary “rules.”

In addition to psychological coercion, many traffickers imposed economic control. Traffickers typically kept all the clients’ earnings. If the client sought to maintain some money, she did so secretly and with the risk of devastating consequences if discovered. The use of debt, though most commonly seen within the immigration context, also applied in cases in which traffickers demanded forced repayment for items such as food or shelter or for rule violations or items for which no repayment would ever be logically expected (i.e., costs imposed for speaking to another trafficker or for a specific number of sheets of toilet paper used). Traffickers demanded repayment to assert control, often building fees on top of fees, making it impossible for the client to ever satisfy the amount claimed to be owed. This type of bondage perpetuates and exploits a client’s cycle of poverty and dependence on the trafficker.

Almost one-third of vacatur clients (31 percent) had traffickers who promised them brighter futures, particularly promises of a romantic relationship or marriage, future riches, and a better life than the one they had been living. However, these promises ultimately turned out to be false. A majority (67 percent) of clients worked under strict rules as determined by their traffickers; the most common were

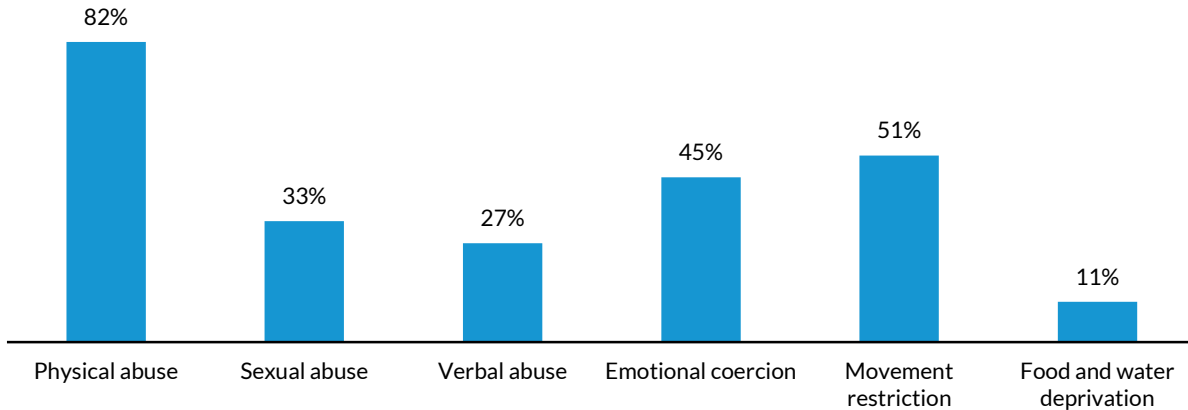
- cannot keep any of the money earned (62 percent);
- cannot look at, be seen with, or have contact with other traffickers (50 percent);
- cannot use real name, age, or form of identification (26 percent); and
- cannot walk on the same side of the street, level of the street, or proximity to the trafficker or another trafficker (26 percent).

The clients’ experiences with their traffickers were violent, abusive, and coercive. Clients experienced several forms of abuse, including physical, sexual, verbal, and emotional. Traffickers also controlled clients’ physical movements and deprived them of water and food. Figure 9 breaks down the most common forms of abuse.

FIGURE 9

Vacatur Clients Were Often Abused by Their Traffickers

Share of clients experiencing abuse by type



Source: Authors' analysis of 51 vacatur case files.

During their experiences, clients traveled throughout the New York City metropolitan area and beyond to other states and even other countries. Almost half (49 percent) of clients had traveled beyond New York City at some point with their trafficker; 68 percent of this group traveled to other states, and 16 percent traveled to other countries. Clients also experienced having their documents, such as passports and other forms of identification, confiscated or held by their trafficker (27 percent). More than one-quarter (27 percent) of clients reported using drugs during their experiences; of this group, nearly two-thirds reported being forced or induced to use drugs by their trafficker. The most commonly used drugs were cocaine, marijuana, and alcohol, along with ecstasy, methamphetamines, heroin, opium, Valium, and Quaaludes. In addition to the exploitation and abuse suffered at the hands of their traffickers (see figure 9), 21 clients (41 percent) experienced sexual or physical assault from people other than their traffickers, most commonly from purchasers of sex or other traffickers.

More than half (57 percent) of clients were told they owed a financial debt to their traffickers, which kept them in their trafficking experience. More than half (57 percent) of clients had to meet a quota set by their traffickers, and nearly a fifth (18 percent) had tattoos that represented a connection to their traffickers. One-quarter (25 percent) of clients had children fathered by their traffickers, while one-eighth (12 percent) reported becoming pregnant because of their traffickers but ultimately forced to abort, miscarry, or put up their child for adoption.

More than half (57 percent) of clients reported receiving threats from their traffickers. Most commonly, traffickers threatened to harm or kill them directly (45 percent) or their family members (41

percent). Four clients (14 percent) reported that their traffickers used a weapon to threaten and intimidate them. Traffickers also threatened to tell clients' families that they were working in prostitution (two clients, 7 percent) or to have their children taken away from them, either by notifying the child welfare system or taking the children themselves (two clients, 7 percent). Traffickers relied on both the stigma of sex work and its criminalization as tools of isolation and thus control. By threatening to tell clients' family members, clients felt less able to reach out for help in fear of the collateral consequences of their involvement in sex work. A trafficker's threat to involve family or criminal court in the client's life relies on the court system's inability to recognize complex relationships and to experience the client as believable because of her involvement in and, more pointedly, her criminal history of sex work.

TRAFFICKER'S ARREST

Almost one-third (31 percent) of clients' traffickers were arrested either during the clients' trafficking experiences or after. Of those who had traffickers who were arrested, 69 percent of arrests occurred during and 25 percent occurred after the trafficking experience; 6 percent of arrests were both during and after the trafficking experience. Thirteen percent of clients whose traffickers were arrested at some point kept in communication with their traffickers while they were in jail and later returned to them when they were released; 25 percent of these clients communicated with their traffickers during incarceration and another 25 percent returned to their traffickers once the period of incarceration ended. The impact of a trafficker's arrest was variable: some clients kept in communication with their traffickers and worked for their traffickers during or after arrest, while some worked for different traffickers or left their traffickers for good. Clients also reported never seeing their traffickers again after arrest. One client was arrested alongside her trafficker.

SEPARATING FROM TRAFFICKER

The most common way that clients' trafficking experiences ended was by leaving on their own initiative (24 percent). Clients also left their traffickers after help from various sources, including family members (3 percent), friends (8 percent), law enforcement or through the client's own arrest (8 percent), or clients that had purchased sex from them (12 percent). Two clients (4 percent) finally got away after their traffickers were arrested, and one (2 percent) convinced her trafficker to let her go. Another client (2 percent) was helped by the owner of the brothel where she worked, another's (2 percent) trafficker passed away, and other clients (2 percent) had traffickers who no longer wanted/used them. The method of separation for almost one-quarter (24 percent) of clients was unknown.

Conviction History

Thirty-three percent of vacatur clients had been arrested in Manhattan, 28 percent were arrested in Queens, 12 percent in the Bronx, 8 percent in Brooklyn, and 4 percent in other parts of the greater New York City metropolitan area. Clients were also arrested in other parts of New York State (6 percent) and other states (8 percent). Due to their trafficking, nearly 10 percent (5 of 51) of clients had also been arrested in other states that, like New York, offer post-conviction relief to trafficking survivors.

Clients had an average of 21 prostitution-related convictions on their records; the fewest was 1 conviction and the most was 147. One-quarter (25 percent) of clients were convicted of an additional, non-prostitution charge that was included in their vacatur motion. One client was charged with a more serious offense as a result of her trafficking situation, and in three other cases, clients were charged as accomplices and codefendants of their traffickers.

Post-conviction Challenges

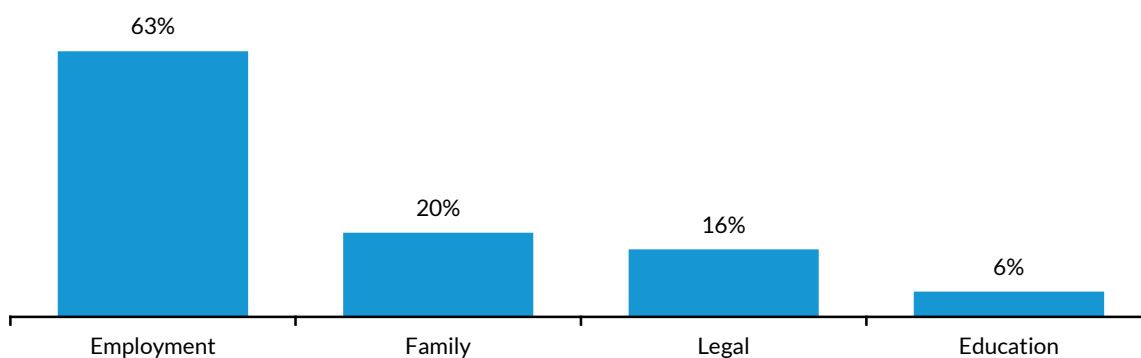
CHALLENGES

The majority of vacatur clients' case files reflected challenges in gaining and keeping employment because of their criminal records. Clients reported that their records affected legal issues, such as immigration status or family law, and stated concerns about their family knowing about their records or trying to prevent their family from finding out. Three clients reported specific challenges related to their criminal background impeding their education. Figure 10 shows the post-conviction challenges reported by clients.

FIGURE 10

Vacatur Clients Identified Multiple Post-conviction Challenges

Share of clients reporting



Source: Authors' analysis of 51 vacatur case files.

Aside from challenges related to their criminal records, vacatur clients generally reported poor mental health, especially related to their trauma and posttraumatic stress disorder (27 percent), unstable housing situations (6 percent), poor physical health (14 percent), and continuing drug dependencies (2 percent).

NEEDS

A majority (61 percent) of clients reported a primary need of full-time, stable employment. Twelve percent of clients reported needing stable housing, and 6 percent reported having mental health needs. Twelve percent also reported immigration-related needs. Other needs included education, such as GED attainment, literacy, and English as a second language; solutions for family and criminal court issues; benefits assistance; and domestic violence assistance.

SERVICES

Most clients (61 percent) had not been mandated by the court to receive services at the time of their arrest. This is because many were arrested and prosecuted before diversion programs existed—whether before the 2003 advent of the Queens court program, the subsequent Midtown Community Court diversion effort, or the 2013 statewide diversion courts. Of the 51 clients, 4 percent had their earliest trafficking-related conviction in the 1970s, 14 percent in the 1980s, 10 percent in the 1990s, 61 percent in the 2000s, and 10 percent in the 2010s. Those who did have mandatory services were made to engage with drug treatment or other programs as part of their court diversion. Some clients also pursued services voluntarily before filing for vacatur, such as educational credentials (24 percent), immigration assistance (14 percent), substance abuse treatment (6 percent), and mental health treatment (2 percent).

Vacatur Advocacy

To be eligible for vacatur, a client must have been arrested for, and subsequently convicted of, offenses that were a result of having been victims of human trafficking. Specifically, the convictions had to either be (1) a product of another using force, fraud, or coercion to induce them to engage in prostitution; or (2) imposed when they were under the age of 18 at the time of the prostitution arrest.

SERVICES

EIP attempted to address the wide array of client needs as part of its representation throughout the vacatur process. EIP referred clients to voluntary services, such as mental health services (27 percent),

family legal services (20 percent), and career assistance (16 percent). Other voluntary services included referrals for education, tattoo removal, and crisis and long-term housing, as well as provision of basic needs.

VACATUR PROCESS

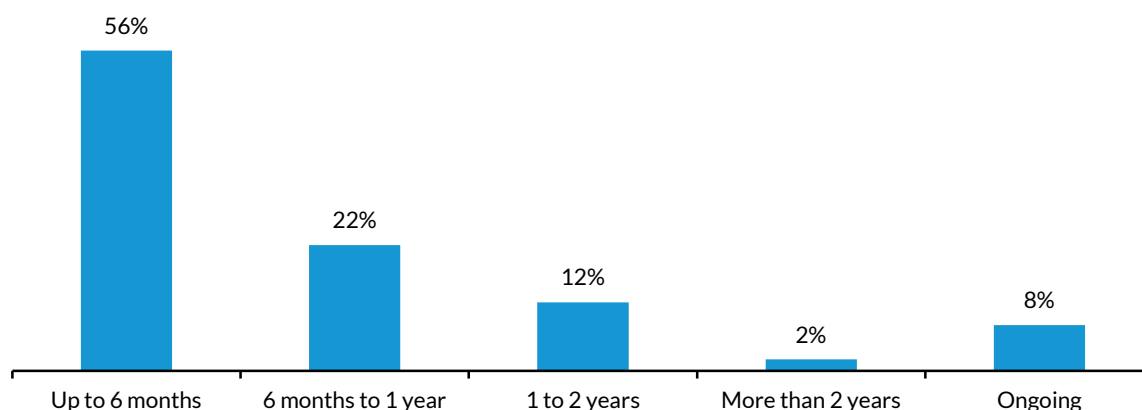
The length of time for clients to have their convictions fully vacated can vary. For the 51 clients, the shortest vacatur process took less than a month, and the longest took 27 months. As of December 2016, four cases were pending. Since many clients had charges in more than one county, the 51 clients combined had 74 total vacatur motions filed, with 39 percent filed in Manhattan, 31 percent in Queens, 14 percent in Bronx, 12 percent in Brooklyn, and 1 percent each in Rockland, Schenectady, and Westchester Counties. Figure 11 shows how long it took for each motion to be decided by the court after filing; most took six months or less.

Although New York State law does not require prosecutor consent for a judge to grant a motion and render a decision, EIP collaborates with local prosecutors' offices to resolve vacatur motions for trafficking survivors. It is helpful—to avoid clients having to attend hearings or testify in court—to obtain the prosecutor's consent, stipulation, or nonopposition to the motion. Sometimes, as part of that, prosecutors wish to interview EIP clients before they make their decisions. At the time of the data review for this report, prosecutors had consented to, stipulated to, or joined EIP motions in 100 percent of cases.

FIGURE 11

Most Vacatur Processes Took Six Months or Less

Distribution of timelines



Source: Authors' analysis of 51 vacatur case files.

EIP Vacatur Client Interview Findings

The research team conducted semistructured interviews with 20 EIP vacatur clients to better understand the challenges facing people who have been arrested and charged with prostitution offenses, especially those who have been trafficked.

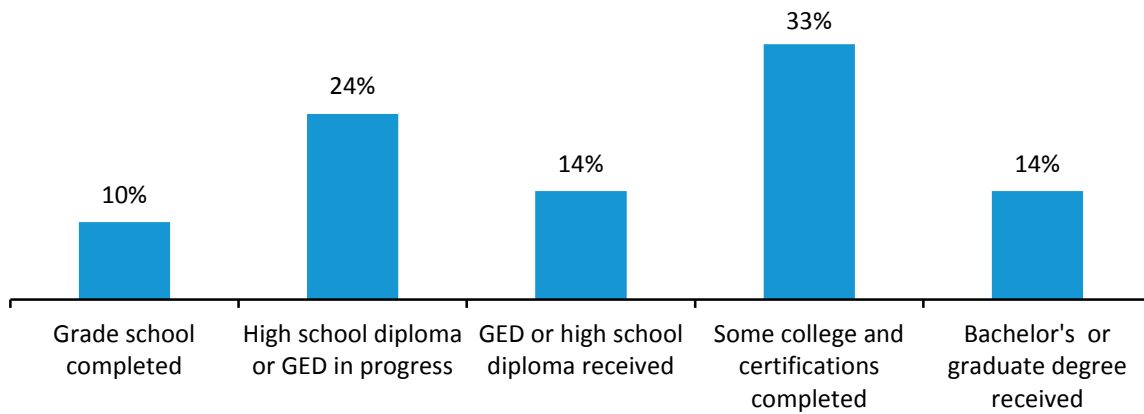
Of the 20 EIP clients interviewed, 2 moved to vacate charges less than one year after the convictions were imposed. In another case, 40 years had passed since the client had been prosecuted and convicted in criminal court. On average, clients' criminal convictions occurred 13.8 years before the vacatur motion was filed. Critically, since approximately half the EIP clients interviewed for this study were arrested in the 1970s, 1980s, and 1990s, they could not precisely recall details surrounding their interactions with the criminal legal system (e.g., arrest charges and sentencing). Additionally, because many of the interviewees' legal system interactions occurred before the passage of New York State's human trafficking law (2007), and the advent of EIP (2010) and the HTICs (2013), their experiences with law enforcement, public defenders, prosecutors, and judges varied greatly.

Demographic Information

At the time of the interviews, the 20 clients were between the ages of 19 and 60, with an average age of 38.2. More than half identified as black (60 percent), 15 percent as mixed race, 10 percent as Latina, and 10 percent as white. One person did not know her race. Everyone identified as female, with one client identifying as transgender female. All but one client identified as heterosexual (95 percent); the one client identified as lesbian. The majority were born and raised in New York City (45 percent), followed by outside the United States (30 percent) and in New York State (20 percent); one person was born in another US state. Sixty-five percent were raised in New York City, 20 percent grew up in another US state, 15 percent grew up outside the United States, 10 percent were raised in New York State, and 10 percent grew up in the tri-state area (New York, New Jersey and Connecticut). Figure 12 illustrates the highest level of education attained by the sample of clients.

FIGURE 12

Many Interviewees Had at Least a High School Education



Source: Authors' interviews of 20 vacatur clients.

Note: GED = general equivalency diploma.

The majority (60 percent) of clients had children. At the time of the interview, most clients were single (45 percent), 25 percent were in a relationship, and 25 percent were married. One person was separated from her partner.

Experience with the Criminal Legal System

ARREST BACKGROUND

According to the clients interviewed for this study,⁹ the number of convictions ranged from 2 to more than 100. The average number of arrests was 23. The average age of the clients' first prostitution arrest was 17.8. All the women had at least one arrest within the five boroughs of New York City, and five of them had arrests outside New York City. Almost all (80 percent) of the clients were sentenced to jail time, half (50 percent) were sentenced to community service, approximately a third (30 percent) were sentenced to a diversion program, and another third (30 percent) were sentenced to pay fines. In addition to prostitution-related arrests, clients were arrested for crimes such as disorderly conduct, drug possession, trespassing, weapon possession, and jumping the turnstile. Twenty percent stated that their non-prostitution arrests were related to being trafficked, but they did not go into further details about the circumstances.

Nearly half (45 percent) of the clients were arrested for prostitution when they were under the age of 18. Traffickers often instruct the people they exploit into sex work to lie about their age to the police.

Many of the women interviewed described this rule and explained that the repercussions would be greater for both them and the traffickers if they revealed that they were underage. Traffickers often told the women that the police would call their families, from whom the youth ran away, or child welfare, an agency that the young women tried to avoid being pulled into given past negative experiences or based on the negative experiences of their friends or family members.

Although almost all the clients stated that they had lied about their age to the police and while being processed through the court system, a small handful of women tried to tell the police, defense attorney, and/or judge their true age but were not immediately believed. Others stated that they eventually told their real age to avoid jail and/or prison time.

Interviewer: What about when you were 14, 15? Did you go through family court?

Interviewee: No. Always as an adult because when I was around that age, I had an alias so I used a different name, different age, birthday, social...

Interviewer: So even though there was a [person in need of supervision] warrant out on you and your fingerprints and they could've found out what your real age was, they didn't.

Interviewee: No, it wasn't until my third arrest in the Bronx, one of the officers arrested me and said, "You going to end up staying here or we're going to send you upstate if you don't give us your real name." I was like, "This is too much."—29-year-old multiracial female

One sentiment was made very clear in the interviews: no matter the client's age at the time of arrest, almost none claimed to have been treated as a victim by the police or the courts. It was always made clear to them, whether explicitly or implicitly, that they were criminals breaking the law. That said, given the small number of clients interviewed, further research with a larger sample size is required to determine if the passing of New York State's human trafficking law and the creation of the HTICs changed the treatment of those arrested on prostitution charges in New York.

Experience with Law Enforcement

POSITIVE POLICE ENCOUNTERS

When asked about their experiences with law enforcement, the clients reported that their interactions with the police varied and often depended on the officer's personality. Some women described positive encounters with at least one officer.

Well actually, they used to talk to me very nicely, and like, "Why are you doing this" and "Why are you out here" and, you know. I was, believe it or not, kind of shocked, so it was kind of hard for me to kind of explain how I ended up there.—51-year-old black female

Another young woman remembered her first arresting officer and the concern he expressed regarding her situation.

The first time I was arrested, actually the first time I wasn't arrested, they took me home to my mom. The officer was nice. He was just like, "Listen, I've been to the school that you go and it's a pretty bad school. I probably understand why you're going through what you're going through." [He kept] trying to talk to me. Basically, gave me mentor advice. And, of course, I didn't listen.— 19-year-old black female

NEUTRAL POLICE ENCOUNTERS

Other clients described their interactions with law enforcement as neither good nor bad—just routine. These women often encountered the same officers day in and day out.

You know, it was so repetitive, and it was, you go out, and, you know, you see the car coming ... and then you'd run and hope not to get caught. And then you would go down to central booking ... and then you would sit in there until your name got called. And then the big bullpen, you know. Like I don't know what you mean by experience. It was sort of just numb, you know. ... And if you just didn't cause any trouble, they didn't cause any trouble. They weren't really abusive. Everybody just kind of had this, like, blank look on their face.— 54-year-old white female

[Cops are] driving around in circles, looking at the same girls every day.— 19-year-old black female

One woman who was arrested more than a dozen times in the 1970s described how it was hard to blame law enforcement for enforcing the law since she was breaking it; thus, she would not fight the charges when she was arrested.

Honestly, I didn't have a problem with them. I know obviously what I was doing wasn't a good thing. It wasn't right. And obviously it was against the law. But I didn't feel any kind of way negative, I mean I just understood they were doing what they was supposed to be doing. I mean, I never was mistreated.— 51-year-old black female

NEGATIVE POLICE ENCOUNTERS

Although some women described positive and neutral encounters with law enforcement, most clients described overwhelmingly negative experiences, which consisted of verbal abuse, intimidation, humiliation, sexual harassment, and profiling.

Verbal abuse and intimidation. The verbal abuse and intimidation from police was often what clients remembered the most vividly from their encounters with law enforcement. The verbal abuse ranged from slurs to derogatory comments or, as illustrated in the following quote, an unwillingness to communicate in the person's native language, despite being able to do so.

Now that I understand a little more English, at that time I didn't speak any English at all. The only thing I was able to say were the prices of the services I was offering. When they arrested me, they asked me what my name was. They asked me where I lived, who I was living with, and I couldn't answer anything. And when I tried to speak Spanish, they refused to speak Spanish. Now that I remember, it's been a long time, it's 17 years ago. I remember one of the police officers saying, "No Spanish, English, English." He treated me in the worst way. I think in the charges, they put I charged \$200, when it wasn't like that. It was horrible.—34-year-old Latina transgender female

As the following woman describes, officers used humiliation as a tactic to ensure cooperation from the women they arrested for prostitution.

You know, parading me in the hotel with the handcuffs. They're like, I can't explain it, it was like a show, was like a parade, you know there was like fun. They were laughing and it was fun, it was fun for them, it was a good night.—44-year-old black Caribbean female

One transgender woman described the verbal harassment and abusive treatment she received at the time of her first arrest and during subsequent arrests.

Interviewee: The undercover police are horribly strong. When they brought me to take the photo, they took my wig off, they said, "This is your hair? No. Take it off." They threw it over there. "Stand there, come here." It was horrible. Then a Spanish-speaking police came over, but he was very nasty. He said, "Your breasts, what are they? Are they yours?" I said no. [He said], "Take all of that out."

Interviewer: So the subsequent arrests after the first arrest, was it similar to the first one?

Interviewee: The same. They laughed at [me], they said, "You are gay." They always laughed amongst themselves. Whispering about [me]. "Look at that thing trying to be a woman. That's disgusting."—34-year-old Latina transgender female

Propositioned by police. A few clients reported that they were propositioned by officers or had officers as regular buyers. This created an even larger power dynamic between the officers and the women, who were often left not knowing who to trust and feeling like their options were severely limited if they did not go along with what the officer was asking of them.

He started off as a client. One day he picked me up, but it was in a cab. He told the cab driver that since it was raining, "I'm not going to make her walk, just drop her off." He gave the cab driver the money. But where the cab dropped him off seemed a little funny to me. It was a precinct. He said, "I will be seeing you again." So the next night he came around in his actual uniform and arrested me.—19-year-old black female

Another client explained that when she was arrested by female officers, it felt safer to her.

Female cops that arrest us were a hell of a lot nicer than the male cops because [the males] always wanted something, either sex, information, or ended up being a client.—29-year-old multiracial female

Arrest quotas and profiling. One issue that several clients mentioned was repeated arrests by the same officers. As the following young woman explains, if the police know who you are and what you have been arrested for in the past, there is very little stopping them from making an arrest, even when witnesses are stating something otherwise.

Interviewee: I was going to the store, like just to go to the store, and they arrested me for prostitution. Just because they knew me. So they locked me up. And I was literally in pajamas and bed slippers. Police suck.

Interviewer: And they didn't have any evidence.

Interviewee: Nope.

Interviewer: And they didn't need evidence?

Interviewee: Nope. They could just say what I was doing. That's it. And arrest me. They arrested me one time when I was with my cousin. And I just was like, I just wanna go home, so I pled.

Literally I was with an actual cousin, we was meeting for dinner, just to see how I was, how I was doing. And she walked out, and I went to smoke a cigarette. And because the police officer knew me, and she was inside to the bathroom, I got arrested. Even though she came down to the court and told them everything, they still charged me.

Interviewer: Was it the same officers that were repeatedly arresting you?

Interviewee: They always do that, though, because they have to meet their quota. So when they know you from arresting you previously, they lock you up.—24-year-old black female

Several clients also reported being profiled for loitering with the intent to engage in prostitution. They often felt powerless to fight the charges since many of them had previous arrests for prostitution. One client described how the police did not disguise the fact that they make arrests based on a person's history. Rather, police acknowledged this explicitly.

So [the cop] calls my mother again and he says, "If I see her again, I promise I'm going to lock her up." I'm not doing anything. Just because you see me on a certain neighborhood, your first is to think, "Oh, okay, I know what she's doing." Like I really tried to get away from it, and when I did, I felt like the cops just kept bringing it back to me.—19-year-old black female

Lack of a victim-centered approach. Engaging a victim-centered approach requires outside providers and law enforcement alike to treat people who have been or might be trafficked as victims, which includes listening to the person and prioritizing her needs. That said, almost all clients reported being treated like a criminal and a lack of interest on behalf of the arresting officers to identify any victimization they may have been experiencing.

Clients reported seeking help from police when they were victimized or facing violence, only to be ridiculed or disbelieved because they were known to be involved in prostitution.

I actually walked into the precinct myself to make a report to tell them, "Listen, I'm getting beat, this is happening, I just want to go back home." The cop laughed at my face like this is the life you chose. So, of course, I'm like, "Oh wow, nobody's even going to listen to me, that's fine."—19-year-old black female

Several had been arrested and prosecuted before New York State enacted a human trafficking law and before the HTICs were operational. Several clients said that if anyone involved in their arrest had asked the right questions or connected them to the right people, then they might have been more receptive to cooperating with the police.

Just maybe like, like even if they get arrested, I was even telling them before, maybe to look into it more. See if these people keep coming back, maybe instead of just throwing them in jail, maybe make them see not a psychiatrist but like a social worker, and maybe they can give them the information.—32-year-old multiracial female

Experience with the Courts (Prosecutors, Defense Attorneys, and Judges)

The women interviewed for this study had a wide range of experiences with law enforcement that often depended on the personalities of the officers with whom they interacted and the situations in which they encountered the police. The clients reported similar experiences with the people with whom they interacted in the court system, namely judges, prosecutors, and defense attorneys. As reported earlier, approximately half the EIP clients had been processed through the criminal justice system in the 1970s, 1980s, and 1990s, and almost all had interacted with the courts before the establishment of the HTICs.

POSITIVE AND NEUTRAL COURT INTERACTIONS

The clients were generally more positive or neutral when describing their encounters with court system actors. Their contact with judges tended to be more favorable than their interactions with prosecutors and defense attorneys. For the most part, clients felt that the judges were fair and more inclined to try to understand the women's circumstances and, in turn, provide alternatives to incarceration. One woman stated how the judge tried to get her to open up about her situation, but she was too frightened of the consequences.

The judge asked, "Is someone telling you to say this? You can be honest." And I was scared. So I just said guilty.—27-year-old black female

Another woman, who was arrested more than 100 times for prostitution-related offenses in the 1980s and 1990s, likened her court experiences to an assembly line: there was very little variation to the routine.

In the beginning of the years, it was an assembly line, like a conveyor belt. You say you were guilty for loitering for the purpose of prostitution and then time served. Sometimes you were inside of the booking center, the courthouse for two to three days, at the most four days, at that time you got in front of the judge, it was time served. And then I think at the later part of the

years they started giving fines, so it was time served and then you would get a fine. I think I went to Rikers Island twice for a fine that I did not pay.—51-year-old black female

Several had trouble recalling their interactions with the court system because they were not particularly memorable, compared with the high levels of trauma clients were experiencing daily.

It was more, you're living your life through a daze. It's almost like you're dreaming. You're not really awake, you're high, you're under the substance. There was nothing that stood out unless it was traumatic, because I was going through trauma. So it had to be more traumatic for me to take notice.—34-year-old Haitian female

NEGATIVE COURT INTERACTIONS

Although many clients cited having had positive or neutral court encounters, several women did recall having particularly negative experiences with prosecutors and defense attorneys. One recurring theme in the interviews was that up until the recent creation of HTICs, prosecutors would often describe the women as hardened criminals and lost causes. Very rarely would they look at any mitigating factors when arguing the case in front of the judge.

It was horrible! 'Cause the judge would just make this face when he would see the charges or whatever and then the district attorney would just sit there and it was like everyone was placing judgment and not knowing your situation. It's not as if it's something that you want to do, it's more something that you have to do.—29-year-old multiracial female

Another woman echoed this sentiment, stating that it was typically after they were processed through the system that prosecutors and judges acknowledged their victimization.

Anybody that's trafficked isn't looked at as a victim. They're a criminal until after the aftermath. That's when they find out that we're really victims and not criminals.—32-year-old multiracial female

The majority of clients also stated that their defense attorneys did not explain the long-term consequences of pleading guilty to prostitution charges. Most interactions with their defense attorneys consisted of being asked if they wanted to go home that day and, if so, they should plead guilty.

Interviewer: Did your defense attorney ever explain to you about pleading guilty to prostitution, how that would impact you in the future?

Interviewee: No, never.

Interviewer: Do you think if they did explain that a little bit more, you would've—

Interviewee: I would've said not guilty, I wouldn't have said guilty, because I was kind of coerced into saying [it]. They told me, if you say guilty, you'll do 30 days and that's it. And you know, you're like, I just want to get it over with. I'm tired of coming back and forth to court. I'll say guilty. Whatever you say, you tell me to say guilty, I'll say guilty and do my 30 days and this is the last [that] I'll see [of it]. Not really knowing that in the long run, it's really fucking my life over.
—28-year-old-black female

Another woman made clear how attorneys never sufficiently explained the long-term consequences of the case disposition.

They, you know how they go. They go, oh you know, plead guilty and this would be this and after six months this will be clear off your record. But sometimes, [after] six months, it don't clear off your record—it just sits there. And they don't explain that. They need to explain more in depth of how what the charges is and how it affects you on your rap sheet.—29-year-old black female (16)

Although most of the clients described their interactions with judges as fair, a couple of women stated that the judge said disparaging comments to them and, as illustrated in the following quote, passed judgment about their situation based on their charges.

When I came in[to the courtroom], the judge said, "Well, she's not even dress[ed] provocatively." I mean, I don't know if he was being sarcastic. Very well could have been. But he said to my lawyer that my lawyer needs to speak on my behalf because I don't know what I'm saying.—24-year-old Latina and black female

Several indicated that the experience in court was confusing and that they did not understand what was happening.

Lots of times, you—when they charged you or arrested you, you didn't understand what was going on. Or I didn't understand. It wasn't explained. And it was a lot of legal talk. You know, it was just not easy to understand what they were telling you, whether you were being charged with something and why. And you know, you just know that they were pulling you in because you were at a place that they didn't want you to be, that you wasn't supposed to be.—60-year-old black female

SENTENCING

Few clients elaborated on the sentences they received once they were convicted, other than to state that they were fined, jailed, received community service, or mandated to attend a diversion program. That said, one woman eloquently discussed how the time spent doing community service was a reprieve from the daily abuse and trauma she experienced at the hands of her trafficker. Although she is not advocating for women to be sentenced to community service for prostitution-related crimes, her words provide a glimpse into the impact that long-term abuse can have on a person.

I think, um, in the later years, like right before I stopped, before I was able to get out of the situation, they had [me] doing community service. Now when they started doing community service, you had to come back and work in the courthouse down in the basement filling envelopes. So I don't know whatever it was, you had to put it in the envelopes and seal them you know, stuff like that. Um, that was the first time that I remembered doing anything, I mean it was for their own gain, it was free labor, just like slave labor, but you know, for me, I was glad because at least for a week I didn't have to go on the streets. So I didn't care if I had to stuff envelopes.

...

It was a break for me, and it gave me time to think, because before I got into this situation, I had left high school and went to college. And because I had been gang raped, I had had so much

freaking trauma from growing up with a mother who was very abusive and very mean, that I had emotionally and mentally just checked out of life. I was just walking dead, but during that process when I was able to go somewhere and remember what a piece of paper actually looked like, and what writing looked like, it all started to come back and that is when I was like you know, it was just so good to be in that situation. But it didn't last long.—51-year-old black female

Some women spent years, if not decades, cycling in and out of the criminal legal system, with few opportunities provided for intervention and assistance. As the findings in the next section describe, few clients believed that anyone would ever actually help them; others felt that it was too dangerous to accept help given their circumstances.

Intervention

Past studies have reported that a victim of domestic violence, sexual assault, or other type of victimization and abuse rarely seeks help (McCart, Smith, and Sawyer 2010). This is no different for victims of human trafficking. Many of the women interviewed for this study stated that no one in their lives at the time they were being trafficked could be trusted to help them or who offered to help. The few clients who did reach out for help did not always receive the help they needed or any help at all. For many of the women, the first time they asked for assistance was when they contacted EIP regarding their past convictions.

CLIENTS NOT RECEIVING OR SEEKING HELP AT ANY POINT BEFORE VACATUR

Many of the clients stated that despite wanting to leave the commercial sex industry, they had no one in their lives at that time who they felt could or wanted to help them. In some cases, this was because they did not have the familial, community, or educational support to reach out for assistance.

At that time, I was just discovering my teen years, so I pretty much like ... School wasn't an option. I couldn't get along with anybody so I didn't feel like I could talk to anybody. The staff was like I get paid regardless so just do you.—19-year-old black female

In other cases, it was because clients believed that their past convictions would prevent them from being hired or being offered help to get back on their feet.

I felt I had no escape, I had no choice, this was it. I had been arrested so many times. So no one's ever going to hire me. At that time, I didn't have a diploma. I had nowhere to live. If I didn't do [prostitution], I would have no way to get money for me to have somewhere to live. At that point, I'd burnt my bridges with my family because of what I was in, the lifestyle I was in.—32-year-old multiracial female

One woman who was arrested only twice for a prostitution-related offense more than nine years ago described how the help she would have liked back then was available to her only now, almost a decade later.

I really wanted to come out of the life and if there was programs at the time, my life would have been so different now, so that I wouldn't be going through a lot of the things I had to go through because of the arrest. There was nobody to help me, there was no programs, they didn't give you a chance ...Nobody sat down and talked to me, you know. The social worker, she explained to me what the violation was about. She explained to me what I had to do, what community service, but there was no really ... nobody that really went that extra mile. Nobody that really cared. So it's strange, later after the arrest, I'm finding people who cared about what happened to me nine years ago. It's interesting.—44-year-old Caribbean female

Finally, another client expressed how she believes she would have disclosed her trafficking to the police and asked for assistance if a female officer had been around after she was arrested.

I would've told them the torment that I was going through, how I was trapped. I would've said something if— even if a female police officer was there, but there was no female police around, or no social worker was ever around.—60-year-old black female

CLIENTS UNLIKELY TO HAVE ACCEPTED HELP IF OFFERED

Although some clients wished they had been offered help or had someone in their lives from whom they could seek help, other women reported that they would not have accepted help at that time in their lives even if they had been offered it. They stated that they were not at a point in their lives where they were ready to leave the life, even though many of them were being abused daily.

Interviewer: Was there anything they could have done, or even the court or law enforcement, to help you get ready? Or did you feel like it had to come from yourself?

Interviewee: One, I'm the type of learner that I have to be—I'm hardheaded, you know, I have to get it together, like, for myself. So, I feel like all the help they give me, I had to be ready for it. Two, it has to make sense. It has to be like okay is this the right choice? But when [name of organization] came, I had already opened my arms because I already was tired of it. Meaning, like, before the programs were there, I was already tired of doing what he said to do.—29-year-old black female

CLIENTS THAT WERE OFFERED HELP BUT DID NOT ACCEPT IT BECAUSE OF THEIR SITUATIONS AT THE TIME

Several clients reported that they were afraid to accept help from anyone since their traffickers always knew where to find them and, as described by the following woman, they did not want to endanger anyone else's life.

Interviewer: And so, they mandated you to [name of program]? And you had to complete a certain amount of classes?

Interviewee: Hours, community service, they actually helped me do my GED, to study for it, and they offered me a job, shelter, everything like that. But my pimp knew where it was. So it really didn't make no sense.

Interviewer: So you were afraid that if you stayed there, that something would happen to you.

Interviewee: Yeah, plus they had other girls there who had kids and who were trying to you know fix themselves because they had a program here and living situations upstairs. So I didn't want to put anybody else at risk. 'Cause initially they told me, do your community service and you're not supposed to let anybody know where it's at. But if you have a pimp, you have to do that. That's just it.—29-year-old multiracial female

Another woman who was trafficked in the early 1990s stated that if anyone had tried to give her information on resources and services, she would not have accepted it because her trafficker would go through all her possessions when she came home.

I think that it would have made a difference at this stage in my life, but back then I don't think I would have said something. I was brainwashed. But it is relative, it could have been that I was beat up or cold from making the quota and I could have talked. But no one would have asked a question—it would have been good to have an option. The exploiter goes through everything you have. You don't want to have possession of a [referral] card.—35-year-old female

As the above quote mentioned, possessing information on where to seek help and services created a high level of risk for the women that would most likely result in abuse if discovered by their traffickers. As the following woman stated, for many people, protection from harm is required for them to share their experiences with anyone, whether it be law enforcement or a counselor.

Unless they're about to give you a safe situation, like a safe alternative, right after you gain a release, and sometimes [your trafficker] could be right in court, waiting for you to pay the bond, the bail, and everything like that. So it depends on the situation. If there's a way to pull you out of there completely, like away, and in another state, then that would be great.—29-year-old multiracial female

Eventually all the women interviewed sought help from, at a minimum, The Legal Aid Society. However, all the women faced substantial barriers to stability before seeking help. The next section covers the numerous challenges the women endured to gaining stability and success in their lives.

Barriers to Stability and Success

This is why a lot of women don't change because you've already been subjected to a horrific fucking life, and here you are trying to turn it all around against all fucking odds, and then you think you have jumped through all the hoops, and grab[bed] onto all the rings, and you get to that last part, and you have [hit] a complete brick wall.

—51-year-old black female

Extensive research and media reports have found that having a criminal record creates what can often be insurmountable barriers to gaining stability.¹⁰ These barriers include access to legal employment, housing, basic needs, legal status, and medical, drug addiction, and mental health care. This study, however, is one of the first to explore the impact of criminalization on survivors of trafficking convicted of prostitution-related crimes. Although the following section provides insight into the challenges the clients faced as they tried to gain stability in their lives, there is still a lot to learn about these barriers.

EMPLOYMENT BARRIERS

Finding gainful, legal employment was by far the largest hurdle that the women interviewed for this study faced. Some applied for jobs knowing that they would likely be denied after the background check was conducted, whereas others chose to apply only for jobs that did not require background checks.

I had to strategize finding places that won't ask questions—they don't pay as well. If you check the box yes, [you are] not getting a call back. I got one job right after my internship—I didn't have to fill out an application so no box to check. However, one year into working there, they said the insurance company would require background checks. So, it was time to leave.—35-year-old female

Another employment barrier several women faced was trying to explain the gap in their employment history. This gap could be a couple of years or a decade or two.

[My] trafficking experience resulted in [an] employment gap that was unexplainable. [My employer's] assistant or somebody asked me about my Social Security number or tax return. So I have like this big void from 16 or 17 to 27. And that was the first time I thought I'm going to be in trouble. Like, is that going to get me in trouble? Are they going to ask where's my tax return for these last couple of years?—54-year-old white female

Many sought careers that required obtaining a license, whether for a job in security, a position working with children, or a job as a health home aide, and many of these women reported experiencing issues either acquiring the license or a job once they obtained the license. The following woman had to go in front of a judge to get her security license.

The company was like, we're gonna basically fire you because you lied on [the] application and, you know, the time came for you to get your license and it just came back. So I had to go in front of a judge and the company was there for me to get my license. I tried to tell the company what happened, but they didn't care, they didn't hire me back or try to give me a chance to find out what I'm going through. But the judge, he gave me my chance, and he gave me my license. Even though I lied, I told him what happened and what age I was. And he gave me my security guard license. And I still have it currently to this day. I had to fight for it.—32-year-old black female

Another woman who applied for a job to be a school bus matron was immediately taken to be fingerprinted and did not feel like she had an opportunity to ask questions or explain her situation.

They take you down there so you can't say no I don't want to be fingerprinted. But this was a job as a school bus matron. I didn't even think that it would be a question. They let me work until the fingerprint results came back and then they said "Oh no, we have to let you go, we got your fingerprints back." I spoke to a lady at the board of education who I guess had the fingerprints in her possession. Oh, she was so judgmental: "We can't hire you because your fingerprints came back. Don't you know what it's for? It's for prostitution." And I just dropped the phone.—60-year-old black female

Some women reported having to disclose personal information about their past convictions to an employer in order to be hired for a job. These women found the experience humiliating, retraumatizing, and, more important, irrelevant to the job.

Outside of fast food jobs, there's none that I could land. I went from my first job working in McDonalds to going to Burger King to trying to do security. Not able to get employment because of my lengthy record and because it was prostitution charges, to going to the home health care and then having to start my appeals, applying for a [certificate of relief] ... I had to write a letter to the president of the company that I was going to work for, explaining all the situations and that was personal information that I don't feel like I have to disclose. But just for the sake of employment, I did it anyway. And after losing my job, trying to find a job after that was detrimental because I was out of work, homeless two years because no one would hire me because of my record.—29-year-old multiracial female

One 28-year-old woman stated that she chose not to pursue a career in nursing because she believed that there was no way she could explain some of her past charges to her employer and it was not worth the trouble to try.

Because the charges outright say "promotion of prostitution." What am I gonna explain? Oh this is something from when I was younger and I'm over it? No. No one's gonna wanna hire a prostitute. It's like you're tainted. Oh no. Especially in dealing with, you know, the nursing home. No!—28-year-old black female

EDUCATION BARRIERS

Clients reported facing several challenges to obtaining an education and becoming licensed to work once they obtained the proper education, namely in nursing, social work, and physical therapy. For some, pursuing an education for a career in a field that would require a background check was not worth the time and money if it led only to rejection.

I was interested in physical therapy. So I was reading all the requirements, and I think it said that in order to obtain your license, you have to [go through a] background check and you won't be able to get your license and be certified if you're background check is not clear, something like that. I didn't bother to get that degree at all.—60-year-old black female

Meanwhile, other clients decided to pursue an education to work in a field they felt passionate about and, in some cases, even pursued master's degrees to help solidify their qualifications and commitment to work in the field only to be denied the required license to practice or a job after graduation. One woman interviewed for this study received two master's degrees in hospitality and business, yet, because her one prior prostitution conviction prevented her from obtaining a job in her field, she was working as a health home aide for \$15 an hour. The following woman received her degree in social work, and as she described in vivid detail below, she was told that she could either go in front of the licensing board and explain her past convictions or come back once her convictions were cleared from her record.

I have my degree, I graduated on the twenty-something of June, but in order to get your license in the counseling field, to be a licensed counselor, you have to go through the background check. And they ask you questions [regarding any criminal record] before you take the test for your licensing. And I said to them, "Why didn't you all ask me the question before I paid you the \$400?" Because once you pay the \$400, you can't get it back. I've been rejected for the test at least three times. And they're telling me, if I'm not able to, you know, give them what they want—they wanna know what the charges were—if I'm not able to give them what they want, then I'm not gonna get the money back....

Now, everything I worked for, going up against the agency that won't even allow me to take the test, for the grades that I paid so much money for, so I can be licensed, because they want to know the gory details of my past. Which I don't think they had a right to know, because you know according to them as long as you have not committed a felony or you haven't done any harm to anyone or any child ... the only person that I hurt was me. And I was a victim of the pain that I put myself through, that I wasn't even conscious that I was doing anyway. So it's like you wanted to open up my past, it's like I'm being stripped again. I told her, it's like being raped all over again.—51-year-old black female

HOUSING BARRIERS

Barriers to obtaining housing were not cited as a major issue by clients because many women stated that either they lived with someone else who was on the lease or they were able to find places to live that did not require a background check. However, several did report experiencing bouts of

homelessness while in and after leaving the life. One concern that was raised that did affect a handful of women was racking up bad credit, or no credit at all, during the course of their life. In some cases, as the following woman explained, the trafficker would use the victim's name and Social Security number to open up credit cards or other accounts that were ultimately never paid. As a result, finding stable housing was difficult.

When you're in the lifestyle, they tend to use your name which means they use your social, which means they fuck up your credit and your credit is a complete screw up. Like my credit is completely screwed because he made me get a card in my name. Which I don't know why they gave it to me 'cause I was underage.—29-year-old multiracial female

FAMILY BARRIERS

Familial support is often crucial to coping with trauma and moving on to maintain stability. Some women's family members knew about their past and were unsupportive. This led to strained, or in some cases fractured, relationships with parents, sibling, partners, and children. However, more clients reported not telling their families about their victimization; as a result, they lived in constant fear of their family members, particularly their children, finding out and how they would react.

I was always afraid. Like my son, he's the only child I have, and I was just always afraid that one day I go to heaven and some way, he finds out about this, and you know, I'm not able to explain it to him.—60-year-old black female

MENTAL HEALTH BARRIERS

I'm so tired of being a ghost. I'm so tired of hiding, I'm so tired of worrying.

—51-year-old black female

Many women carry stigma and shame because of their past trafficking experiences, and their criminal record constantly brings up and exacerbates those feelings. Many of the clients had experienced polyvictimization starting at a young age and have had to live with the trauma for so long with no access to therapy, which often paralyzed them. Many reported the inability to trust many people, or in some cases anybody at all, which led to the disintegration of or lack of personal relationships.

Living with a secret is very hard. Overcoming domestic violence, sexual assault, etc. A lot to grapple with every day. It was problematic in developing relationships. Don't let people get too close to find out. I have never seen a therapist. I don't have the money for therapy or health insurance.—35-year-old female

One woman, who graduated with a master's degree in social work, described how she was denied a job working at a women's prison despite having the necessary qualifications because of her criminal record. This rejection greatly affected her self-esteem and pride.

Interviewee: It went back 27 years. And then what devastated me the most is when the sheriff who did the fingerprints called me, he started me to strip me of my dignity. 'Cause he had my record in front of him, and he [said] I think you lied. I said excuse me? He says well on here, you said you [you didn't have any felonies], I said I don't have any, if you have my records in front of you, do you see any felonies on my record? He said no, but that's not the issue, the issue is the amount of arrests that you have for this charge. I said what charge is it? You know what it is. I said no, you tell me, since you feel you have the right to judge me right now. So, then he says, well, it's for prostitution charges. I said you really sure the extent of those charges, huh? You really think that a person could be a successful prostitute and get arrested a hundred times? So he was like, well that's not the point, miss, the point is we can't let you work here because we think that you will be a bad influence on the population. ... I'm in graduate school, and you think I would be a negative influence on the population?

Interviewer: Yeah, no, and again he, did he ever ask you what the nature of those charges were, like you know how it ended up being that way? It sounds like he just made assumptions.

Interviewee: No! All he wanted to do was strip me of my dignity, make me feel like I got caught in a lie.—51-year-old black female

Despite the numerous barriers they have faced, all the clients searched for solutions to gaining stability in their lives. One of the main challenges to stability was their criminal record, which led them to seek assistance vacating their trafficking-related convictions.

Vacatur Process

Clients connected with EIP and the vacatur process in a number of ways. The most common was through an attorney, service provider, or court program referral. EIP has done extensive outreach about vacatur to community-based organizations that serve victims of trafficking and focus on reentry. EIP also has trained judges across New York State, prosecutors, law enforcement agencies, and hundreds of attorneys (in both civil and criminal practice). Other clients shared that they saw information about post-conviction relief posted somewhere, possibly in court, while others learned of EIP's services when trying to get a copy of their criminal record and/or searching online about how to officially clear their criminal records.

VACATUR PROCESS

Clients reported that the vacatur process was generally straightforward and that the EIP team did an excellent job explaining the process to them from the very beginning and keeping them informed throughout. However, several women stated that despite all the assistance and support they received from the EIP staff and other pro bono attorneys assigned to their cases, having to retell their stories, often several times to different people, was retraumatizing. It was particularly difficult for the clients who were trafficked decades earlier since many of them had suppressed those memories and were not necessarily prepared for the feelings and emotions that came over them after discussing in minute detail what had happened to them long ago.

And in order for me to get in touch with that, it brings up an incredible amount of fear and shame and whatever. So I don't like—I'm just glad it's over kind of thing. I feel a huge amount of gratefulness. Unbelievable. Just like overwhelming amount. And I'm glad that it's over. ... It was really difficult about going back in my past with my parents. And talking about stuff like that. And what happened is, I would go on a Friday, and it would be exposing all this stuff and thinking about all this stuff. And after doing that for eight or nine months, I would come home and then I would just kind of be in this state of, um, I don't know what. I would kind of just be blank over the weekend.—54-year-old white female

Several clients mentioned that patience and hard work were the keys to a successful vacatur process. Although the length of time to successfully vacate the charges differed by person, and more specifically by county, it took at least several months and sometimes more than a year to have the court order vacatur of their records.

Some other girls, they might not have patience. If they don't have the patience, it's not gonna happen. You have to have the patience, you have to believe in yourself. Because I put in a lot of footwork too, it's not like I just left it all to [attorney] and just said, oh you guys are supposed to do everything because you're my lawyer. No, it doesn't work like that.—31-year-old multiracial female

Part of the hesitancy in going through with the vacatur process was the fear of being identified by those outside the legal team. One woman was specifically concerned about her trafficker discovering that she was talking to lawyers about her past experiences.

I was always concerned about my identity and the confidentiality of the process. I was afraid of them piecing it together. I was afraid that the accuser would find out, and I was scared for my safety.—35-year-old female

A couple of women reported that their charges still came up on background checks even though they had received official notification that the charges had been vacated. In many instances, this was because of a lag in clearing the record from the various administrative databases or a data entry error when inputting the vacatur.

Then I wanna go like, where are you running these fingerprints at? This is not supposed to come up. Every time it comes up, I'm like, it's not supposed to come [up]. I did not waste my time and [attorney] did not waste her time and we did not waste our time to go through all of this process of meeting and getting everything done for this thing to still be popping up and holding me back from furthering my future career and whatnot. It's really a bummer.—28-year-old black female

Despite these challenges, everyone interviewed for this study was grateful for the opportunity to vacate their past convictions from their records and the hands-on support EIP offered, and they were willing to do whatever it took to clear their criminal records.

But that's the thing, it took a long time in my life for me to realize what I wanted to do and there's nothing else I want to do now except be a nurse. And I can't, just the thought of losing that, it was just heart-wrenching to me. So I would go through whatever I had to go through to get it.—45 year-old white female

IMPACT OF VACATUR

My mantra now is give people what they don't expect. They expect you to fail. They expect that you know that you're stupid and you're uneducated because being a home health aide, you don't need a GED, so a lot of people think I'm stupid ... I don't have any education, and I don't have to prove anything to anybody, you know? Let your work be your autograph. Even though you don't actually sign your name, they come and they say, "You did this?" Let them just look at your work and say, "I know who did this. One person works like this."

—44-year-old black Caribbean female

The vast majority of clients reported positive outcomes from having gone through the vacatur process. First and foremost, many women were connected to services that helped them with needs including housing, career program/assistance, mental health therapy, immigration relief, tattoo removal, and holistic, comprehensive programming. Many of the women also reported finally being able to find secure and stable employment and to go back to school to complete a GED, bachelor's degree, or master's degree. In addition to having several of their needs met, the women made a number of personal gains that resulted in a more positive outlook on their lives and futures.

Almost all the clients reported a significant boost in their self-esteem once the charges were officially vacated from their records.

And the other thing is just [that I] got rid of [my record]—it's so significant in how I feel about myself. That I'm like not embarrassed any more, do you know what I mean? I find myself standing up for myself more. Just a really different feeling about who I am and that kind of thing. It's kind of hard to describe, but it's a real inner thing.—54-year-old white female

Many women also stated that they felt a tremendous sense of relief and were a lot more hopeful about their futures. They no longer had to carry the shame and stigma of their past with them.

I feel like somebody took 10 tons off my shoulders. I feel like a gorilla has been on my back all this time. I used to go to sleep and think about, well what about my future, I'm getting older now, will I ever be able to put this behind me and feel like—because it's the only thing I've ever done in my life to break the law.—60-year-old black female

I realized that other people have violations that come [off] of their record but not this one—loitering with the intent of prostitution, it's going to follow me for the rest of my life. So it felt like prayers answered. And I feel much more hopeful than I used to feel.—44-year-old black Caribbean female

Free. Like I have a second time at life.—32-year-old black female

All 20 women reported that they would absolutely recommend the vacatur process to other people who they know have similar pasts.

Let me say that I'm really happy that they started looking at this differently, from a different point of view. It's not me being a criminal but more so being a victim. I mean we all have a choice, but sometimes our choices are taken away by other people and circumstances. There's people out there can help you though, you know? And I would definitely recommend the program to people.—45-year-old white female

The major challenge they foresaw in their recommendation to others was that many people do not want to revisit their past and share such painful experiences with others.

Although the clients reported that overall their lives had improved, and for some the improvement was significant, others stated that they were still struggling, mainly with gaining stability in their lives.

I have my moments and I'm just like, damn, can I stick it out? But then I'm just like—I feel like [my daughter's] life is better now. My life and her life. Even though I'm still struggling to pay my bills, and I'm still struggling to put food on the table, and I'm still struggling with this whole, you know. I'm just like, it'll get better. I keep telling myself that, right? It'll get way better than it was before.—24-year-old black female

One woman reported feeling that despite all that she managed to achieve in life, including two master's degrees, she will never be able to get ahead even after her convictions have been vacated.

I'm scared to apply for certain things. I'm scared. You know, I just want to do anything that I wanted to because I have ... I think that I have just served my time in every way. I've lived in poverty for a long time. I did seven years of college, and it doesn't mean anything to anybody, it seems.—44-year-old black female

VACATUR IMPROVEMENTS

Clients recommended a handful of improvements to the vacatur process. Some recommendations were beyond the control of EIP, such as speeding up the process. However, attorneys should take into account other suggestions, such as lessening the emotional impact by not requiring their clients to provide such detailed information about their lives and providing more in-house services. Several women also recommended involving survivors who had been granted vacatur to assist new clients with their cases. This could include providing emotional support and helping them better understand the procedures.

More survivors should be involved in the process—maybe as consultant or mentor—help tailoring the process and being a mentor. It's so important to talk to someone who knows your experience. Dealing with disingenuous people who take on these issues is hard—survivors can tell if someone is not in it for the right reasons.—35-year-old female

To summarize, the women interviewed for this study who went through the vacatur process with EIP felt that they had been offered a second chance at life and were grateful. They just wished everyone who was arrested on a prostitution-related charge was provided the same opportunity.

I feel that people should have a second chance at whatever it is. Everybody's not perfect and that's how I feel. If somebody had been rehabilitated from the situation, then why not give them that second chance. It's not like they continue. They are providing themselves to you, showing that they are doing something better for themselves. Why not give them a second chance and go for it.—32-year-old black female

Recommendations

This analysis of people facing arrest and prosecution for prostitution offenses in New York City and trafficking survivors who faced arrest and prosecution in the past allows for careful consideration of the criminal legal system's approach to prostitution and trafficking. Certain additional, and significant, questions emerge—such as who is swept into the criminal legal system through antiprostitution and antitrafficking efforts, how do those people fare once involved in the system, and what can be done after people have faced criminalization in light of permanent and devastating collateral consequences?

The following recommendations address reform or intervention at each of these critical points.

Cease prostitution arrests and prevent trafficked people from facing arrest on other charges.

- Approaches to combating trafficking must take into account vulnerabilities that encourage exploitation. Trafficking prevention, therefore, necessarily starts with economic and gender

justice and involves preventing homelessness, family violence, child abuse, and all sexual abuse and assault.

- Entrenching antitrafficking efforts in the policing of prostitution is harmful. Prostitution arrests hurt people who are experiencing trafficking, people who have experienced trafficking in the past, and people who are at risk for exploitation and abuse.
- The criminalization of prostitution and, more generally, negative interactions with the police discourage the reporting of, and therefore investigation of and response to, violence and exploitation.

Create meaningful off-ramps and appropriate and proportional responses for people involved in the criminal legal system.

- Court-based prostitution diversion programs must result in the complete dismissal of charges, as if they never happened, so participants can immediately move forward unburdened by negative consequences of an arrest or conviction record. This means full dismissal provisions rather than conditional sealing, waiting periods, or reduced charges.
- Court diversion programs must also take into account the specific needs of impacted people and be responsive and proportional. Programs must allow for connections to employment and housing services, but not be overly burdensome or impossible to complete or subject participants to unnecessary and harmful lengthy court supervision or control.
- Attorneys and judges must not impose further stigma, embarrassment, or danger on those facing criminal charges on prostitution offenses through language, comments, or imposing assumptions or judgment.

Ensure that state and federal vacatur processes allow trafficking survivors to clear criminal charges from their records.

- Every state and the federal government should have a strong legal framework allowing survivors to vacate arrests and convictions from their records. Where these laws do not exist, legislatures must implement them quickly and comprehensively. Where laws already exist, it is critical that survivors be aware that they may be eligible for the remedy. Lawyers and direct service providers must be trained on the vacatur process to ensure that survivors can access relief.

- Vacatur remedies for trafficking survivors, while critical, can be burdensome to pursue. Policymakers and lawmakers should work to streamline vacatur processes and create provisions that reduce barriers to relief.
- Survivor consultants or peer-mentors should be incorporated as organizations and agencies provide post-conviction representation.

Expand research and data collection on trafficking victims and vacatur processes.

The study's limited scope and data prevented in-depth further analysis of several key points. To provide a comprehensive picture, further data and research is required in the following areas.

- Changes in treatment by criminal justice actors (e.g., law enforcement, judges, and prosecutors) of those arrested for prostitution offenses since the inception of the HTICs.
- Arrest and prosecution data of Asian migrant clients for New York State Education Law Sections 6512 and 6513, in addition to long-term outcomes of these clients, to determine the impact of criminalization on this population and the effectiveness of diversion programming.
- Longitudinal research on clients who are convicted of prostitution-related offenses and receive different sentences (e.g., diversion program, community service, fine, and jail time) to measure the long-term impact these sentences have on clients' lives.
- In-depth research on how collateral consequences, particularly employment barriers, affect clients' long-term stability. This could include tracking clients over time as they seek employment, housing, and counseling to determine exactly where and from whom they are facing challenges so better policies can be drafted and implemented to help prevent instability and vulnerability.

Notes

1. See Mueller (2012) for a nonexhaustive list of prostitution-related diversion and treatment courts.
2. 2008 N.Y. Sess. Laws ch. 569 (A. 5258–C).
3. 2015 N.Y. Sess. Laws ch. 368, (eff. Jan. 19, 2016).
4. See “Announcement of New York’s Human Trafficking Intervention Initiative,” Center for Court Innovation, accessed January 17, 2017, <http://www.courtinnovation.org/research/announcement-new-yorks-human-trafficking-intervention-initiative>.
5. In this report, “prostitution offenses” means either Prostitution, NY Penal Law § 230.00, or Loitering for the Purpose of Engaging in a Prostitution Offense, NY Penal Law § 240.37.
6. An adjournment in contemplation of dismissal results in all charges being fully dismissed within a specified period after entry (C.P.L. § 170.55). Under New York law, the recipient is in the same position as if the case never happened, and all fingerprint and photographic records, court files, and police documents are destroyed (C.P.L. § 160.50). Further, and perhaps most critically, people who receive an adjournment in contemplation of dismissal are not deemed to have been convicted or found guilty of any charges.
7. Formerly the New York Asian Women’s Center.
8. A T-Visa, or T-1 nonimmigrant visa, provides four-year legal immigration status, work authorization, and the opportunity to apply for lawful permanent residence for immigrants who have proven that they are (1) victims of a severe form of trafficking, (2) physically present in the United States on account of trafficking, (3) cooperating or have cooperated with law enforcement in the investigation of the trafficking, and (4) likely to suffer extreme hardship if removed (deported). See TVPA, 22 U.S.C. § 7105 (2015); 8 U.S.C. § 1101(T) (2014).
9. Because the clients interviewed for this study were anonymous to the researchers, there was no way to confirm the exact number of convictions and the sentences handed down.
10. See the American Bar Association’s National Inventory of Collateral Consequences of Convictions for a full, in-depth account of the thousands of economic, social, and other challenges people with criminal records face.

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