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MICHIGAN'S FIRST HUMAN TRAFFICKING COURT

ELIZABETH CAMPBELL*

Federal law identifies adults compelled to engage in commercial sexual activity as victims of a severe form of trafficking,¹ commonly known as human trafficking.² The media, politicians, government agencies, and non-profits increasingly focus on human trafficking as a gross injustice. Nevertheless, individuals compelled to engage in commercial sex acts are arrested, charged, and convicted every day in local courts.³ Most of these individuals will only be

* Clinical Assistant Professor of Law, University of Michigan Law School. I am grateful to my colleagues, Bridgette Carr and Suellen Scarnecchia, for their guidance regarding the Court, and their assistance in writing this article. I want to thank Julia Toce for her assistance. My thanks to the partners in the Washtenaw County Human Trafficking Court—the Honorable Judge Charles Pope, the Honorable Magistrate Nelson, and Toni Malone.

1. 22 U.S.C. § 7102(13)–(14) (2012). Throughout this article, I rely on federal definitions as established in the Trafficking Victims Protection Act (TVPA). The TVPA identifies a “victim of trafficking” and a “victim of a severe form of trafficking.” *Id.* A victim of a severe form of trafficking has been subjected to “severe forms of trafficking in persons,” which is “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” *Id.* § 7102(8). Victims of trafficking include those who have been subjected to a severe form of trafficking in persons, and those who have been subjected to sex trafficking, which is “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” *Id.* § 7102(9). By definition, adults compelled to perform commercial sex acts have been subjected to a severe form of trafficking in persons and sex trafficking. Consistent with the TVPA, my use of the term sex trafficking encompasses commercial sex acts with or without the presence of force, fraud, or coercion. *See id.*

2. *Id.* § 7102(8). When I use the term “human trafficking,” I am referring to the definition of severe forms of trafficking in persons, which includes both compelled sex acts but also other types of labor trafficking. Labor trafficking is “(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” *Id.*

3. *See* Kate Mogulescu, *The Public Defender as Anti-Trafficking Advocate, an Unlikely Role: How Current New York City Arrest and Prosecution Policies Systematically Criminalize Victims of Sex Trafficking*, 15 CUNY L. REV. 471, 474 (2012) (“Despite a robust anti-trafficking discourse, these notions have not permeated the spheres of urban policing and local criminal courts. Instead, many victims of sex trafficking are arrested and prosecuted for conduct that they

recognized and treated as prostitutes and criminals. This is because, despite the rhetoric regarding human trafficking, most states continue to criminalize prostitution broadly; and many do not train law enforcement, probation officers, prosecutors, or judges on human trafficking. For these victims, the government, public, and media focus on assisting victims of human trafficking is a myth.

When governments fail to enact legislation that effectively protects victims of human trafficking from criminalization, an alternative path is to use existing legal systems and community resources to improve how we respond to and assist victims. One example of this alternate path is the Washtenaw County Human Trafficking Court (“the Court”), which launched in Michigan in 2014.⁴ The Court aims to identify adult victims of sex trafficking, divert them from jail, and instead offer them services via probation.⁵ While courts in Michigan have diversion programs responding to prostitution,⁶ this is the first time a Michigan court has addressed the issue of commercial sexual activity in the context of sex trafficking.

In this article, I will describe how the Court was developed. Specifically, I will detail the catalyst for the Court, how the initial idea was conceived, the team players, and the goals and structure of the Court. I will close by identifying some of the lessons learned after a year of operation.

I. THE CATALYST

The Human Trafficking Clinic at the University of Michigan Law School (“the Clinic”) represents victims of human trafficking regardless of age, gender, form of victimization, or nationality. The Clinic provides comprehensive legal services to our clients; thus, we practice in a variety of substantive areas, including immigration, family, public benefits, tax, post-adjudication criminal relief (expunction), and victim rights.⁷ As a result of our

are compelled to engage in.”). *See also* HUMAN RIGHTS COMM., UNITED NATIONS, CONCLUDING OBSERVATIONS ON THE FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA 7 (2014), <http://www.refworld.org/docid/5374afcd4.html> [<http://perma.cc/2VYV-Y3YZ>].

4. Stateside Staff, *New Court Takes Special Approach to Human Trafficking*, MICH. RADIO (Apr. 13, 2015), <http://michiganradio.org/post/new-court-takes-special-approach-humantrafficking#stream/0> [<http://perma.cc/TM4X-J8K4>].

5. *Id.*

6. Amber Hunt, *A Fresh Start: A Wayne County Rehabilitation Program is Giving Women Caught in a Cycle of Drugs and Prostitution a Way Out*, DETROIT FREE PRESS (Mar. 16, 2007), <http://www.freep.com/article/20061220/NEWS02/103160002/A-FRESH-START—A-Wayne-County-rehabilitation-program-is-giving-women-caught-in-a-cycle-of-drugs-and-prostitution-a-way-out> [<http://perma.cc/PB9X-3KSC>].

7. *Human Trafficking Clinic*, U. OF MICH. L. SCH., <http://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/humantraffickingclinic.aspx> [<http://perma.cc/S7R3-9FS2>] (last visited Aug. 23, 2015).

work with victims of human trafficking, we have seen the devastating impact of criminalization of victims.⁸ Never was this more apparent than with one client in particular—Cassandra.⁹

At nineteen years of age, Cassandra was a single mother struggling to care for her family. When Ken, a man she met through mutual friends, proposed that they do business with each other, she felt she had no other option. Ken said he would advertise Cassandra on commercial sex websites and transport her to “dates.”¹⁰ Ken said they would split the profits. Simultaneously, Cassandra and Ken began a romantic relationship. Ken was charming and kind. Cassandra kept her share of the profits from the first date; however, after that first date, Ken kept all the money. He told her he would keep the money for both of them in order to take care of their needs.

A few months into their relationship, Ken assaulted Cassandra for the first time. Cassandra was frightened but was also in love with Ken and still striving to care for her family. Ken asked for forgiveness, and Cassandra forgave him, hoping it would not happen again. Unfortunately, throughout their relationship, Ken continued to beat Cassandra and call her names, telling her that he kept the money to pay for “their” needs. Ken would assault and berate Cassandra if she suggested she stop taking dates. He would remind her that law enforcement was likely to arrest her because she was “a prostitute.” He would later apologize and tell her that the commercial sexual activity was necessary for them to build their family. He told her they would one day own a home, have kids, and co-own a small business. This continued for six years.

Just before escaping, Cassandra was arrested and charged with “Transporting person for prostitution,” a felony with a potential sentence of twenty years’ imprisonment.¹¹ After her arrest, Cassandra was immediately detained and not asked any questions about the circumstances surrounding her involvement in commercial sex. She was released on bail, and Ken was there to pick her up. The morning of her pretrial, Ken assaulted her. When she regained consciousness, she grabbed her daughter and immediately went to the local emergency room. She called the court clerk to explain that she would be late due to a visit to the emergency room. She was released from the hospital

8. 22 U.S.C. § 7102(13)–(14) (2012). Throughout the article, I use the term “victim” to refer to those subjected to forms of trafficking. I do this to maintain consistency with the TVPA and not to indicate or assert that all individuals subjected to forms of trafficking identify as victims. *Id.* Some identify as survivors, some as victims, and others do not want to be identified relative to their experiences with trafficking.

9. All names are pseudonyms, and the client has provided permission for use of her information.

10. *Language as an Indicator of Pimp Controlled Sexual Exploitation*, ONE BY ONE PROJECT, <http://www.onebyoneproject.org/language-as-an-indicator.html> [<http://perma.cc/XB8X-2TY7>] (last visited Aug. 23, 2015). “Date” is commonly used to refer to the commercial sex act.

11. MICH. COMP. LAWS § 750.459 (2015).

and immediately went to the pretrial. She met with the public defender and within moments she was offered a plea deal. Fearful of a twenty-year sentence, she pled to a misdemeanor charge of prostitution. This was only hours after being assaulted. She did not return to the apartment she shared with Ken and instead fled to a relative's home. Within the next few days, she called the National Human Trafficking Resource Center.¹² Fearing for her safety, she cut all ties with everyone except her family and filed a personal protection order against Ken.

The Clinic began working with Cassandra after she had pled but before she had been sentenced. One of our top priorities was to minimize the impact of her guilty plea. We were able to persuade the probation and prosecutor's offices to agree to a "delayed sentence" for Cassandra, which would allow her to avoid jail time if she was compliant with probation for one year.¹³ This required the Clinic to engage in extensive advocacy and education because the probation officer and prosecutor both assumed that Cassandra was willingly engaging in commercial sex. Neither of them had been trained to recognize human trafficking. As a result, Cassandra was still being treated as a criminal despite the fact that she had been compelled to perform the act for which she was arrested. It was clear that the criminal legal system did not have mechanisms or tools to recognize a victim of a severe form of trafficking. Unfortunately, this was not the first time that Cassandra had been convicted of a crime because of an act that Ken compelled her to perform. Nearly three years later, the Clinic is still working to clear Cassandra's record.

What if someone within the criminal legal system had talked to Cassandra about why she was engaging in commercial sex? What if someone had conducted an assessment regarding trauma, exploitation, or domestic violence? How might things have been different for Cassandra if law enforcement and trial courts had been trained on the realities of commercial sex and exploitation? If Cassandra's situation had been recognized the first time she was arrested, might she have had the resources and support to escape Ken years earlier?

These were the questions that guided the Clinic in seeking modifications to the existing criminal legal system that would allow for the capacity, skills, and motivation to identify and serve victims of trafficking within the commercial sex context. It was clear that reform of Michigan criminal law as it relates to

12. *Mission*, NAT'L HUM. TRAFFICKING RESOURCE CTR., <http://traffickingresourcecenter.org/mission> [<http://perma.cc/QT6M-NQ4H>] (last visited Aug. 15, 2015) ("The National Human Trafficking Resource Center (NHTRC) is a national anti-trafficking hotline and resource center serving victims and survivors of human trafficking and the anti-trafficking community in the United States. The toll-free hotline is available to answer calls from anywhere in the country, 24 hours a day, 7 days a week, every day of the year in more than 200 languages.").

13. MICH. COMP. LAWS § 771.1.

adults was highly unlikely, given that the political will did not exist to amend Michigan law to be consistent with federal law by defining all commercial sex acts performed by minors as a severe form of trafficking.¹⁴ Without legislative reform, a community-based response that worked within existing laws and systems was the next best option. For approximately a year, the Clinic researched other models around the country, which included programs through the public defender's office and diversion programs through the court system. I conducted site visits in other states, shadowed local public defenders, and interviewed local service providers that were already providing case management, counseling, or addiction treatment to those engaged in commercial sex.¹⁵ Throughout this time, I did not propose solutions but rather asked others to comment on the interaction between the criminal legal system and sex trafficking. It was clear that there was no one-size-fits-all solution because so much relied on the resources, strengths, weaknesses, and attitudes of each local system.

With this knowledge and with still no clear concept of what would work in our county, a meeting of key stakeholders, including county judges and law enforcement, was convened.¹⁶ I argued that there was a problem in our response to commercial sexual activity, and the group discussed how our county could better respond to commercial sex in our communities. I highlighted a few well-known local cases in which individuals arrested for prostitution had been compelled to perform the underlying commercial sex act, making them a victim of a severe form of trafficking. These cases had been eye-opening for many of the stakeholders, and it took little persuasion for them to come to a shared conclusion—there are individuals in our local communities

14. 22 U.S.C. § 7102(8) (2012). Under federal law, a person under the age of eighteen who is recruited, harbored, transported, provided, or obtained for the purpose of a commercial sex act is a victim of a severe form of human trafficking. There need not be any force, fraud, or coercion. *Id.* At the time when the Court was still being developed, Michigan criminalized as prostitution persons over the age of sixteen, engaging in commercial sex. MICH. COMP. LAWS § 750.448 (“A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime punishable as provided in section 451.”). As of January 2015, a provision has been added creating a presumption that sixteen- and seventeen-year-olds engaged in commercial sex are victims; however, a prosecutor can overcome that presumption, leading to a minor being convicted of prostitution. *Id.* § 750.451(6).

15. Many thanks to Kate Mogulescu of The Legal Aid Society's Trafficking Victims Advocacy Project in New York, NY; the Center for Court Innovation in New York, NY; RENEW in Ann Arbor, MI; Home of New Vision in Ann Arbor, MI; the Washtenaw County Public Defender's Office; and the Washtenaw County Project Outreach Team for taking the time to share your experiences and insights.

16. CURTIS CTR. PROGRAM EVALUATION GRP., UNIV. OF MICH. SCH. OF SOC. WORK, WASHTENAW COUNTY HUMAN TRAFFICKING COURT: PILOT YEAR EVALUATION REPORT 16 (Nov. 2014) (on file with the Human Trafficking Clinic, University of Michigan Law School).

who are engaged in commercial sex as a result of exploitation and/or are very vulnerable to exploitation. It was further agreed that local courts were repeatedly seeing the same individuals arrested for prostitution and related crimes, and that it was worthwhile to explore alternatives to the current system.¹⁷

The group then identified other attempts by our local courts to adapt and serve vulnerable populations. Predominately, stakeholders mentioned problem-solving courts, and the history that both the State of Michigan and Washtenaw County had of developing and maintaining problem-solving court programs.¹⁸ The judges emphasized the growing political, public, and financial support of problem-solving courts. They identified that the crucial characteristic of these problem-solving courts is that they provide individualized and holistic supportive services for defendants as opposed to incarceration. The Clinic consistently advocated that not prosecuting victims of a severe form of trafficking should be one of the primary goals of whatever model was chosen or developed. The judges believed that a problem-solving court model that diverted adult victims of sex trafficking from jail would garner the most political and public support as well as offer the most positive impact for the community and sex trafficking victims.

The first step was to select one of the judges to preside over the Court. In Michigan, the first level trial courts are called district courts, and Washtenaw County has multiple district courts.¹⁹ Because Washtenaw County contains multiple jurisdictions, the program would require both a specific district judge and a system for transferring cases to the selected judge's court. Because Washtenaw County was the home to many countywide problem-solving courts, there was already a local administrative order allowing for the transfer of jurisdiction between district courts.²⁰ In selecting a judge, the considerations included the capacity of that district court to take on a new program as well as the judge's familiarity with adjudicating commercial sex cases, willingness to

17. *Id.* at 15–16. Between 2000 and 2013, 62.6% of inmates were booked two or more times at the Washtenaw County Jail for prostitution or related charges.

18. *See 15th District Court: Specialty Courts*, CITY OF ANN ARBOR, MICH., <http://www.a2.gov.org/departments/15D/Pages/Specialty-Courts-.aspx> [<http://perma.cc/9EPD-9UHL>] (last visited Aug. 24, 2015); *see also* MICH. SUPREME COURT, MICHIGAN'S PROBLEM-SOLVING COURTS: SOLVING PROBLEMS SAVING LIVES (2015), <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/PSCAnnualReport.pdf> [<http://perma.cc/D9NE-QDG7>] (last visited Aug. 24, 2015).

19. MICH. COMP. LAWS § 600.8101 (establishing district courts); *Michigan Trial Courts*, MICH. CTS., <http://courts.mi.gov/courts/trialcourts/Pages/default.aspx> [<http://perma.cc/D32E-86P2>] (last visited Aug. 24, 2015); *Courts in Washtenaw County*, WASHTENAW COUNTY, <http://www.ewashtenaw.org/government/courts> [<http://perma.cc/3AQE-T9YP>] (last visited Aug. 24, 2015).

20. *Concurrent Jurisdiction Plan*, WASHTENAW COUNTY TRIAL CT., http://washtenawtrialcourt.org/general/lao/2004-02D_concurrent_juris_plan_pdf [<http://perma.cc/AR9X-48TQ>].

learn about sex trafficking, and experience in working with problem-solving court models.

The next step was to identify a funding source for the Court. The planning team noted that it was unlikely we could amend state or county-state corrections budgets for alternative or specialty programs, thus the group did not anticipate diverting costs from the county jail into the program. The group began by considering how the problem-solving program might be self-sustaining. To that end, we considered developing a John School.²¹ Washtenaw County had previously held a John School for those arrested for purchasing sex. If reinstated, attendees of the John School would pay fees, which would support the costs associated with serving those in the problem-solving court. While this seemed like a viable option for a portion of the needed funds, it was clear it would be insufficient to fund a problem-solving court program. As a result, it was clear to the planning group that the program would be relying on either grant funds or private dollars.

During the discussions for developing the program, the State Court Administrative Office of Michigan (SCAO) solicited proposals for funding through the Court Performance Innovation Fund (CPIF).²² A proposal was submitted for a problem-solving court model that would divert from jail adult victims of trafficking (specifically as it relates to commercial sex), but it was modified to identify victims of a severe form of trafficking who should not be prosecuted. Additional goals included reducing recidivism and shifting the view that all those engaging in commercial sex are there by choice. The proposal included a plan for the Clinic to train law enforcement, court personnel, prosecutors, and defense attorneys on human trafficking and the Court,²³ collect data related to sex trafficking in Washtenaw County, and develop a model that could be utilized by other Michigan courts. In October 2013, the SCAO granted a CPIF award to start the Washtenaw County Human

21. Heather C. Gregorio, *More Than "Johns," Less Than Traffickers: In Search of Just and Proportional Sanctions for Buyers of Sex With Trafficking Victims*, 90 N.Y.U. L. REV. 626, 642 (2015). A John School is an educational program for purchasers of sex. The general objective is to educate purchasers on the harmful consequences of commercial sex in the hopes of reducing demand.

22. Press Release, Mich. Supreme Court Office of Pub. Info., Encouraging Courts to Innovate, Improve Service Is Goal of New Grant Program (July 8, 2013), http://courts.mi.gov/news-events/press_releases/documents/cpif-grant-program.pdf#search=%22CPIF%22 [http://perma.cc/2FJY-VUG3].

23. Stateside Staff, *supra* note 4. Although the Court is not intended to address severe forms of trafficking in persons outside of the commercial sex context, otherwise known as labor trafficking, the planning team agreed that any training on behalf of the Court should address all forms of severe trafficking in persons.

Trafficking Court.²⁴ The first few months focused on identifying partners and developing the model. The Court became operational in early 2014.

II. THE TEAM

The Human Trafficking Court team includes the judge, magistrate, probation officers, coordinator/case manager, peer supports, and service provider. The Court has a dedicated docket presided over by the same judge (“the Judge”), and the other court staff (probation officers and the magistrate) support the Judge in the same way they do for all cases.

The coordinator/case manager position (“the Coordinator”) was created solely to serve the Court. As a pilot program, the Court started small and thus only required a part-time Coordinator. The position requires a versatility of skills, including the ability to develop a trauma-informed problem-solving court model; assess for trauma, chemical dependency, and mental health needs; coordinate the mental health and substance treatment services provided to participants; facilitate relationships between the Judge and participants; and provide case management services to the participants. The Court employed a licensed social worker who had worked within the Washtenaw County system for years and previously provided case management services to participants in the local sobriety court.

The Court also decided to utilize peer support specialists. A peer support specialist “is an individual with a lived experience and journey in receiving public mental health services and supports.”²⁵ At the time of the CPIF application, peer supports were not envisioned as a part of the model. However, immediately upon being hired, the Coordinator identified this as absolutely necessary to the model. Peers associated with the Court support participants by meeting with them individually; modeling engagement in the 12-step community; transporting them to interviews, counseling appointments, 12-step meetings, and court dates; and facilitating group therapy.²⁶ The Court peers are expected to complete training provided by the Michigan Department of Community Mental Health and become certified Peer Support Specialists.

The Court subcontracted with one specific agency for the provision of chemical dependency and trauma-informed counseling. It is necessary to identify a primary service provider in order to maintain a consistent and

24. Press Release, Mich. Supreme Court Office of Pub. Info., Court Performance Innovation Grant Recipients Named; Projects Include Human Trafficking Court, Peacemaking Court, Smart Phone Apps, Social Media (Oct. 31, 2013), http://courts.mi.gov/News-Events/press_releases/Documents/CPIF%20news%20release.pdf#search=%22CPIF%22 [<http://perma.cc/7PNV-K78M>].

25. *Peer Recovery Services and Supports*, MICH. DEP’T OF HEALTH AND HUM. SERVS., http://www.michigan.gov/mdch/0,4612,7-132-2941_4871_4877_48561-84396--,00.html [<http://perma.cc/7CND-ST63>] (last visited Aug. 24, 2015).

26. See CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 31.

intimate team for the participants. The agency was selected because, although it serves both men and women, it specializes in serving women who have experienced trauma. The agency follows a Recovery Oriented System of Care (ROSC) model.²⁷ The agency identified a specific staff person responsible for coordinating services for all Court participants. This staff person coordinates directly with the Coordinator and provides updates to the Judge regarding each participant's progress with services.

Additionally, the Court has non-contractual partnerships with other service providers that are already committed to providing services to this population. This includes the Human Trafficking Clinic, which offers free legal services to Court participants. The Clinic is not considered a part of the Court team, in that we do not regularly communicate with anyone from the Court after receiving the referral, unless a participant specifically requests it. This is so as to maintain client confidentiality.²⁸ Thus, while the Clinic consults on best practices in identifying and serving victims of a severe form of human trafficking, the Clinic is not involved in the day-to-day operations of Court activity. Engagement with the Clinic is entirely voluntary for Court participants.²⁹

III. THE STRUCTURE

Because there was not a similar court, it was necessary to develop the structure, expectations, and mission for the Court.³⁰ Because of the Coordinator's familiarity and relationship with other problem-solving courts in Washtenaw County, the Coordinator was permitted to review the materials from other programs and modify for the Court. The Court started without a mission statement and did not develop one until the end of 2014. After consultation with the Coordinator, the Judge, and the Clinic, the mission statement reflects the Court's goals to reduce the incidence of human trafficking, identify victims and vulnerable individuals engaged in commercial sex, and provide victims with holistic, trauma-informed services.³¹

The first step in meeting the goals of the Court is to identify eligible participants. Commercial sex can be charged under a variety of names—

27. "A ROSC is a coordinated network of community-based services and supports that is person-centered and builds on the strengths and resiliencies of individuals, families, and communities to achieve abstinence and improved health, wellness, and quality of life for those with or at risk of alcohol and drug problems." MELANIE WHITTER ET AL., RECOVERY-ORIENTED SYSTEMS OF CARE (ROSC) RESOURCE GUIDE 2 (Sept. 2010), http://www.samhsa.gov/sites/default/files/rosc_resource_guide_book.pdf [<http://perma.cc/UW7X-LBBR>].

28. See CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 31.

29. See *id.* at 32 (stating that participants are "offered" a consultation with the Clinic).

30. Given the youth of the Court, many of the structures are constantly being re-examined and tweaked. This is simply a description of the structure of the Court during its pilot year.

31. See CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 18–19.

prostitution, accosting and soliciting, pandering, disorderly conduct, public indecency. Furthermore, during the initial planning meetings the district judges noted that, in their experiences, prostitution is often connected to other illegal activity; and thus it is common for victims of sex trafficking to be arrested for other illegal activity (for example, drug paraphernalia or curfew violation).³² Because the intent of the Court is to respond to sex trafficking broadly, it is not possible to rely solely on a particular charge in order to identify eligible participants. As a result, the Court has broad eligibility requirements—any person arrested for prostitution and related crimes is eligible for the Court.³³ This means that some participants come to the attention of the Coordinator because of the criminal charge, and others are referred to the Coordinator because of a known involvement with commercial sex. This knowledge usually originates with an arresting officer, probation agent, judge, criminal defense attorney, or service provider who informs the Coordinator of the potential participant. It is also the case that a participant can be referred after the arrest, including those already on probation.

Once referred, the Coordinator meets with the potential participant, ideally within forty-eight hours. At this meeting, the Coordinator provides the potential participant with a written description of the Court that details the probationary requirements, available services, and members of the Court team.³⁴ The Coordinator also begins assessing whether the potential participant currently is or has been the victim of a severe form of trafficking. This assessment was developed by the Clinic.³⁵ The Clinic reviewed many existing assessments but found that none were fitting for an intervention into the criminal legal system. The assessment is considered an ongoing process such that the question of whether a person has been subjected to a severe form of trafficking in persons can change as more is learned about the participant.³⁶ This practice recognizes that many victims of a severe form of trafficking are not able to disclose the details related to force, fraud, or coercion at the time of the assessment due to safety and/or trauma.³⁷ Many require time in the

32. See Gretchen Clark Hammond & Mandy McGlone, *Entry, Progression, Exit, and Service Provision for Survivors of Sex Trafficking: Implications for Effective Interventions*, 1 GLOBAL SOC. WELFARE 157, 161–62 (2014), <http://link.springer.com/article/10.1007/s40609-014-0010-0/fulltext.html> [<http://perma.cc/7LSS-PNDS>] (noting the prevalence of addiction for those subjected to sex trafficking).

33. CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 2–3 (identifying that one of the goals of the Court was to “assess all individuals arrested for prostitution and related crimes in Washtenaw County for human trafficking, substance abuse, and mental health.”).

34. See *id.* at 19.

35. See *id.* at 3.

36. See Stateside Staff, *supra* note 4.

37. SUZANNAH PHILLIPS ET AL., CUNY SCH. OF LAW, CLEARING THE SLATE: SEEKING EFFECTIVE REMEDIES FOR CRIMINALIZED TRAFFICKING VICTIMS 14 (2014),

program to establish trust and safety with the Court team in order to disclose such details.

Nevertheless, it is necessary to start the assessment process right away if there is to be sufficient time for the Clinic to advocate that a person who was compelled to perform the underlying commercial sex act should not be prosecuted. The Clinic asks that we be notified as soon as the Coordinator has reason to believe that the participant was a victim of a severe form of trafficking at the time of the offense. If the case has not yet resulted in a conviction, the Clinic, after consultation with the victim's criminal defense attorney, meets with the victim in order to discuss his or her goals and the options for advocating that a prosecution not be further pursued. The Clinic will ask for the victim's permission to disclose his or her experiences for the purpose of advocating with the relevant prosecutor.³⁸

There are factors that may make a potential participant ineligible. One, minors with juvenile delinquency charges are not under the jurisdiction of the district courts but rather the exclusive jurisdiction of the family courts.³⁹ Two, Michigan district courts adjudicate only misdemeanor cases, and thus the Court cannot adjudicate a felony charge.⁴⁰ However, if the prosecutor is willing to reduce the felony to a misdemeanor, then the participant is eligible. Three, under Michigan law, violent offenders are not eligible for problem-solving criminal courts.⁴¹ Finally, if the potential participant suffers from a severe mental health diagnosis, the Court may not have the needed services. Thankfully, Washtenaw County has a mental health problem-solving court, and the Coordinator can often refer to or partner with them for such a participant.⁴²

Once deemed eligible, the participant is sentenced to probation after either pleading to or being found guilty of the charge. All fines and fees, except for those deemed mandatory by Michigan statute, are waived.⁴³ Participants are eligible for a deferment of those mandatory fees and/or a payment plan.

cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf [http://perma.cc/Z5JH-LH SL].

38. The Clinic will continue to represent the client regardless of whether the charge is dismissed. If the charge is dismissed, the Clinic will try to identify other services and resources as requested by the client.

39. MICH. COMP. LAWS § 712A.2 (2015).

40. *Id.* § 600.8311. While district courts do have jurisdiction over preliminary examinations in felony cases, final adjudication is done not in the district court, but the circuit court.

41. *Id.* § 600.1060 (defining violent offender); *id.* §§ 600.1064(1), 600.1093(1), 600.1203 (establishing that violent offenders are ineligible for certain problem-solving courts).

42. CITY OF ANN ARBOR, MICH., *supra* note 18.

43. *See* CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 28; *see* MICH. COMP. LAWS § 769.1(j) (establishing minimum costs for misdemeanors and felonies); *id.* § 780.905 (establishing minimum fees to the Crime Victims Rights Services).

Immediately after being sentenced into the Court, the service provider completes a comprehensive intake assessment that covers mental health, chemical dependency, and trauma. After the intake is complete, the participant and service provider develop an individualized plan that addresses trauma, addiction, independence, and stability. The plan identifies frequency, treatment modalities, and goals. All participants are offered individual and group therapy.⁴⁴ This plan serves as the basis for the probation requirements, and the participant is immediately connected to various services.⁴⁵ The Court funds the services; however, the Court coordinates with community mental health and Medicaid to ensure economical use of resources. For most participants, the immediate need is chemical dependency and/or mental health treatment.⁴⁶

Additional probation requirements include regular meetings with the Coordinator, engagement with the local recovery community, review hearings with the Judge, employment or school enrollment, and periodic drug and alcohol testing. Because the Court requires the ability to attend so many meetings, participants are provided with three months of free public transportation. The Coordinator provides case management services, including assisting participants in applying for public benefits, securing valid identification, applying for employment or educational opportunities, and identifying stable housing.

The Court operates in three phases. As the participant successfully completes the requirements of each phase, there is gradually less oversight by the Court and increased independence for the participant.⁴⁷ Additionally, the participant and therapist review the individual plan and make changes where necessary. Participants are recognized when they complete a phase and are sanctioned for failure to comply with their plan. Sanctions are minimal assuming the participant remains engaged with the Court.⁴⁸

Completion of the program takes approximately eighteen to twenty-four months and culminates in a formal graduation. In order to graduate from the Court and be released from probation, a participant must have paid all mandatory fines and fees, and have been sober and sanction-free for ninety days immediately prior to graduation.⁴⁹ Unfortunately, most Court participants in the first year were not eligible for a deferred judgment.⁵⁰ A deferred

44. CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 29.

45. *See id.* at 28–29.

46. *See* Hammond & McGlone, *supra* note 32, at 161–62 (noting the prevalence of addiction, mental illness, and deteriorating health for those subjected to sex trafficking).

47. *See* CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 20.

48. *See id.* at 28.

49. *See id.* at 20.

50. During the development stage of the Court, I initially advocated that all participants be sentenced under a deferred judgment only to be informed by prosecutors of the limitations of deferred judgments.

judgment permits a court to erase the underlying conviction from their records after successfully completing probation. Michigan statute only permits deferred judgments in specific instances; and, until January 2015, human trafficking victimization was not considered a basis for a deferral,⁵¹ thus only a small portion of Court participants during the first year were eligible.⁵² Graduates are invited and encouraged to remain engaged with the Court, if desired.

Finally, a crucial part of the Court structure is the training of local judges, probation officers, attorneys, and law enforcement. The Court provided a great opportunity for the Clinic to train local professionals on human trafficking broadly and the Court specifically. In the course of a year, approximately ten trainings were completed.⁵³ Many attendees had never been trained on human trafficking. After each training, at least one attendee approached me expressing regret that they could remember interactions where they knew that something was not right; and that the person they were meant to be arresting, charging, or monitoring was in fact very vulnerable. Each time was an opportunity to not only explain how the Court could work in such a situation, but also how a call directly to the Clinic or the National Human Trafficking Resource Center Hotline would be appropriate. It also provided an opportunity to discuss demand by enforcing criminal laws addressing the purchasing of sex (johns) and the facilitation of commercial sex (traffickers or pimps).

IV. LESSONS LEARNED

During the Court's short tenure, much has been learned about how to pilot a new criminal legal project; the experiences of those arrested for commercial sexual activity; how systems respond to commercial sex; and the services most meaningful to Court participants. In order to pilot a program of this kind, you must first garner the support of allies and identify a champion. By engaging in conversations with service providers and defense attorneys, I gained valuable insight on the complexities around serving the target population; and the

51. MICH. COMP. LAWS § 750.451(c) (2015). As of January 2015, deferred judgments are available to victims of human trafficking under very limited circumstances. The individual cannot have previously been convicted of a prostitution offense, the current charge must be a prostitution offense, and the commercial sex must be a "direct result" of human trafficking.

52. *See id.* §§ 762.14, 762.11 (regarding first-time offenders under the age of twenty-one); *id.* § 333.7411 (regarding first-time controlled substance offenders); *id.* § 769.4(a) (regarding first-time domestic violence offenders); *id.* § 750.350(a) (regarding first-time parental-kidnapping offenders); *id.* § 750.430 (regarding health professionals practicing under the influence); *id.* § 436.1703 (regarding minors in possession of alcohol); *id.* § 600.1076(6) (regarding successful completion of drug treatment court); *id.* § 600.1209(6) (regarding successful completion of veterans treatment court); *id.* § 600.1098(5) (regarding successful completion of mental health court).

53. *See* CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 40.

obstacles associated with working with judges, law enforcement, and prosecutors. Furthermore, these allies assisted me in identifying the judge who would initially introduce us to the other judges and echo our concerns about the existing system. This judge had a history of adapting trial courts to serve vulnerable parties, including those arrested. This was the judge who actually convened the initial stakeholder meeting with the Clinic to discuss our concerns and ideas. Although another judge was selected to preside over the Court, the program would not have started without the advice and efforts of our initial champion.

The other early lesson learned related to the name of the Court. The Court was not named until after receiving the CPIF award. Prior to becoming operational, the Judge, the Coordinator, and I discussed the name several times. There was strong concern that using “sex” in the title would reduce public support. I expressed concern that “human trafficking” includes forced labor, and the Court was aimed at sex trafficking. Despite these concerns, “human trafficking” was selected because of its practical value—it is the term most familiar to the general public, other professionals, and potential funding sources. However, shortly after becoming operational, the participants voiced concern about the name. The participants were concerned about the stigma associated with human trafficking and requested that the name of the program be the Washtenaw County Women’s Court. The Judge briefly agreed. The problem with this title was that the Court is open to men and women, and sex trafficking impacts both men and women. To entitle the program the Washtenaw County Women’s Court would send the wrong message both about whom the program served, and who is impacted by human trafficking.⁵⁴ As a result, the name returned to the Washtenaw County Human Trafficking Court. To allow for privacy in their day-to-day activities, the 12-step attendance sheets that participants have signed simply read “Probationary Program.” The participants’ concerns will be revisited in focus groups being conducted by an outside evaluator.⁵⁵

The Court was started with the shared assumption that many people arrested for prostitution and related crimes have experienced trauma either during or prior to their engagement in commercial sex. This assumption has turned out to be correct, at least as it relates to Court participants. To date, all

54. The name remains imperfect as human trafficking includes severe forms of trafficking in persons outside of the commercial sex context, otherwise known as labor trafficking, which the Court does not serve.

55. See Univ. of Mich. Sch. of Soc. Work, *Program Evaluation Group*, U. OF MICH., <http://ssw.umich.edu/offices/curtis-center/program-evaluation> [<http://perma.cc/N8ZM-ZL4T>] (last visited Aug. 25, 2015). The Vivian A. and James L. Curtis School of Social Work Research and Training Center at the University of Michigan School of Social Work is conducting a two-year evaluation on the effectiveness of the Washtenaw County Human Trafficking Court.

of the Court participants have been victims of some form of trauma (domestic violence, childhood sexual abuse, exploitation), and approximately half have been victims of a severe form of trafficking at some point in their lives.⁵⁶ In other words, some participants were compelled to engage in commercial sex but later returned to or remained in commercial sex without the immediate presence of force, fraud, or coercion. Frequently, traffickers either encouraged an addiction as a form of coercion or an addiction developed as a survival mechanism.⁵⁷ In the absence of accessible and affordable treatment, some continue to feed their addictions by engaging in commercial sex. For victims of a severe form of trafficking, the mental health impacts of their past traumas are unlikely to prevent a conviction when the underlying commercial sex act was not compelled.⁵⁸ However, it can and does inform the participant's plan. Also, the Coordinator can utilize past victimization to advocate with prosecutors to reduce felony charges to misdemeanor charges.

The Judge and the Coordinator identify a supportive community and access to affordable treatment as the greatest benefits of the Court. Many participants had long desired to engage in treatment. However, they either could not afford to enter treatment, or the bureaucratic hoops and length of time that it took to get treatment funded by Medicaid made it nearly impossible. Within days of meeting the Coordinator, participants are engaged in services.⁵⁹ Participants have also commented that being a part of a community of people who have had similar experiences and faced similar obstacles is a strength of the Court.⁶⁰ Court participants are only required to attend a weekly group therapy session together. Nevertheless, they have chosen to attend 12-step meetings together, drive one another to interviews or classes, and socialize as a group. The Coordinator has observed that the participants have bonded and are seeking to support one another.⁶¹

The legal community and the general public have received the Court very positively. The Court has been featured in local news; and, in meeting with engaged community members, there is interest in replicating the model

56. Stateside Staff, *supra* note 4; see CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 24.

57. Hammond & McGlone, *supra* note 32, at 161, 165.

58. See Betsy J. Grey, *Neuroscience, PTSD, and Sentencing Mitigation*, 34 CARDOZO L. REV. 53, 54–55 (2012) (noting that in the case of military service, where the link between PTSD and criminal acts are the most accepted, “[l]awyers and scholars have called for use of PTSD related to military service both as a defense to criminal charges and as an argument for reducing the sentences of convicted military veterans. Courts are generally more hospitable to military veteran PTSD claims at sentencing than as a defense at trial.”).

59. See Stateside Staff, *supra* note 4.

60. *Id.*

61. See CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 34.

elsewhere.⁶² Despite this positive reception, the Court is still working to identify a reliable funding source. The CPIF award was intended only for a pilot year; and since that time, the Court has been working to build relationships with private foundations and government agencies. Currently, there are not government grant programs specifically designed to intervene in the criminal legal system as it relates to commercial sex. However, there is funding for criminal legal interventions as it relates to mental health and chemical dependency.⁶³ Given the number of participants during the first year who were assessed for chemical dependency, the Court instituted the necessary practices to qualify as a “drug treatment court” under Michigan law.⁶⁴ In addition, the Court is looking into starting an associated non-profit so that community members and foundations have greater flexibility in supporting the Court.⁶⁵

Conclusions cannot be drawn after only one year, but there is still promise that the Court can benefit both the community and the participants. As it relates to the community, the Court is potentially a cost-saving measure.⁶⁶ As it

62. Jo Mathis, *County Launches Specialty Court for Victims of Human Trafficking*, WASHTENAW COUNTY LEGAL NEWS (Aug. 7, 2014), <http://www.legalnews.com/washtenaw/1393020/> [<http://perma.cc/LQ83-NQPD>]; Rebecca Kruth, *Human Trafficking Court Helps Keep Victims Out of Jail*, MICH. RADIO (Apr. 2, 2015), <http://michiganradio.org/post/human-trafficking-court-helps-keep-victims-out-jail> [<http://perma.cc/BLX2-Q5P5>].

63. See GAINS Center for Behavioral Health and Justice Transformation, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., <http://gainscenter.samhsa.gov/> [<http://perma.cc/9U47-HTD2>] (last updated Aug. 20, 2015) (listing several grant programs administered by SAMSHA aimed at funding drug and mental health courts); *Drug Court Discretionary Grant Program*, BUREAU OF JUST. ASSISTANCE, http://www.bja.gov/ProgramDetails.aspx?Program_ID=58#horizontalTab1 [<http://perma.cc/E8H7-A3LR>] (last visited Aug. 25, 2015); *Justice and Mental Health Collaboration Program (JMHC)*, BUREAU OF JUST. ASSISTANCE, http://www.bja.gov/ProgramDetails.aspx?Program_ID=66 [<http://perma.cc/L2AJ-95E8>] (last visited Aug. 25, 2015); *Grants and Funding*, MICH. CTS., <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Pages/Grants-and-Funding.aspx> [<http://perma.cc/B8CT-T8RM>] (last visited Aug. 25, 2015) (listing several Michigan grant programs for drug and mental health courts).

64. MICH. COMP. LAWS § 600.1060(c) (2015).

65. See THE RESTORE FOUNDATION, <http://therestorefoundation.org/> [<http://perma.cc/U7P9-MSTH>] (last visited Oct. 5, 2015). Other problem-solving courts in Michigan have established associated non-profits in order to support the efforts of the relevant court.

66. See Kruth, *supra* note 62. A prostitution misdemeanor conviction is punishable by up to one year of imprisonment. See MICH. COMP. LAWS § 750.451. One day in the Washtenaw County Jail costs \$129. WASHTENAW CTY. OFFICE OF CMTY. AND ECON. DEV. (OCED), NONPROFIT HUMAN SERVICE FUNDING IN WASHTENAW COUNTY: AN ANALYSIS OF ECONOMIC RETURN ON INVESTMENT FOR TAXPAYERS (3d ed. Dec. 2013), <http://www.uwashtenaw.org/sites/default/files/Data%20Portal%20Docs/Washtenaw%20County%20Non-Profit%20Investment%20Report%202013.pdf> [<http://perma.cc/JFW2-ULMJ>]. The cost of the Court for two years is approximately \$5,300 per participant. This is the equivalent of only thirty-eight days in the jail.

relates to the participants, most significantly, they report increased self-sufficiency. Every three months participants complete the Arizona Self-Sufficiency Matrix, which requires them to rate their self-sufficiency on a scale of one (insufficient) to five (sufficient) in ten areas (for a total of seventy points). Participants actively engaged with the Court reported an average 17.17-point increase in self-sufficiency.⁶⁷ Although it is too early to formally evaluate recidivism, none of the active participants have been re-arrested for commercial sexual activity, and there have been no reports of engagement in commercial sex after entering the Court. Finally, the Court will soon have its first graduate, and the graduate intends to remain with the Court as a Peer Support Specialist. This is a testament to the positive experiences participants can and do have with the Court.

Despite these successes, there are significant challenges that remain. There are still gaps in services, such as the availability of affordable housing, and access to job training and GED programming. The task of educating the public and professionals is ongoing in order to reduce the stigma attached to sex trafficking. Furthermore, the Court does not yet formally address the demand for or facilitation of commercial sex. Finally, and most challenging, is the reality that the Court is an imperfect solution to a complex problem. Even with the Court in place, there are times that those compelled to perform the underlying commercial sex act (or victims of a severe form of trafficking) are being convicted of prostitution and related crimes. This is because the severe form of trafficking in persons is not identified until after the case has already reached a disposition.⁶⁸ Criminal cases often move swiftly, resulting in a plea at pretrial.⁶⁹

Thus, a victim of a severe form of trafficking must disclose details of force, fraud, or coercion at the first or second meeting with the Coordinator, which is very challenging for many victims.⁷⁰ Thus, the Court is an imperfect solution to the identified problem. Nevertheless, it is an improvement on the previous system because, even in those cases where identification does not

The Court has the potential to prevent additional costs if it successfully reduces recidivism. CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 5.

67. See CURTIS CTR. PROGRAM EVALUATION GRP., *supra* note 16, at 26.

68. See MICH. COMP. LAWS § 750.451. Although it has not happened yet, it is also possible that a victim of a severe form of human trafficking could be prosecuted as a result of a prosecutor's unwillingness to drop the charges.

69. See Cynthia Alkon, *The U.S. Supreme Court's Failure to Fix Plea Bargaining: The Impact of Lafler and Frye*, 41 HASTINGS CONST. L.Q. 561, 562 (2014) (noting that "ninety-four percent to ninety-seven percent of criminal cases are resolved by guilty pleas and not through trials."); SUZANNAH PHILLIPS ET AL., *supra* note 37, at 18 ("In 2012, 51% of cases in New York City, the vast majority of which are misdemeanor cases including prostitution, were resolved by plea bargains at the initial court appearance.").

70. See SUZANNAH PHILLIPS ET AL., *supra* note 37, at 18.

occur until after conviction, the victim of a severe form of trafficking is diverted from jail. Furthermore, all sex trafficking victims are diverted from jail, and provided with treatment and services.

V. CONCLUSION

The Trafficking Victims Protection Act (TVPA) was passed with the intent to “combat trafficking in persons . . . and to protect their victims.”⁷¹ Fifteen years later and these words remain meaningless to many victims. To promote the protection of victims of trafficking within the context of our existing legal regime, we must challenge our assumptions, develop new responses, and be prepared for mistakes. The Washtenaw County Human Trafficking Court is an attempt at changing an entrenched criminal legal system that supports the long-held belief that all those who engage in commercial sex are willing participants. This is an incredibly challenging task, but a necessary one, if we, as a society, intend to live up to our statements about the injustices of human trafficking.

71. 22 U.S.C. § 7101(a) (2012).