

TESTIMONY

The Council of the City of New York Committee on Women's Issues and the
Committee on Public Safety

“Oversight: Combating Sex Trafficking in NYC: Examining Law Enforcement Efforts – Prevention and Prosecution”

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My name is Kate Mogulescu, and I am a Staff Attorney with the Legal Aid Society's Criminal Defense Practice. I run a specialized unit within that practice called the Trafficking Victims Legal Defense & Advocacy Project, dedicated to identifying and advocating for victims of sex trafficking caught in the criminal justice system. Joining me is Katherine Mullen, of the Legal Aid Society's Juvenile Rights Practice.

The Legal Aid Society ("LAS") is the nation's largest and oldest provider of legal services to poor families and individuals. Last year we represented clients in over 300,000 cases and legal matters. Legal Aid's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. A significant number of those children are the victims of commercial sexual exploitation. Our Criminal Practice serves as the primary defender of indigent people prosecuted in the State court system. Our perspective comes from our daily contacts with clients and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies, including the New York Police Department ("NYPD"), Department of Probation, Administration for Children's Services/Division of Youth and Family Justice ("ACS/DYFJ"), New York State Office of Children and Family Services, and the various District Attorney's Offices. In addition to representing many thousands of people each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

We appreciate the opportunity to provide testimony on the important issue of preventing and prosecuting sex trafficking in New York City. Through our work in Criminal & Family Court, we have become too acutely aware that many victims of sex

trafficking are, in fact, arrested and prosecuted for conduct in which they are compelled to engage. Current criminal justice practice fails to adequately identify these victims, and offer any meaningful intervention. Thus, as victims cycle in and out of the criminal justice system, the devastating impact is a re-victimization, that only exacerbates the danger, isolation and marginalization of their experience. We applaud the Council for tackling this important subject, and are hopeful that with the correct oversight, and allocation of resources, we can formulate a better response to this issue that affects so many. We look forward to the valuable contributions that we are sure the Council will make in this area of vital concern to our City's children and adults.

1. Victims of Sex Trafficking Continue to Be Criminalized, and Further Victimized, By Current Arrest & Prosecution Policy.

Last year, over 2,700 people were arrested and prosecuted in New York City Criminal Courts for engaging in prostitution-related activity.¹ Overwhelmingly, those arrested are victims of ongoing trafficking and exploitation, and meet all of the legal criteria for sex trafficking under either New York or federal law.² This victimized group is comprised of both non-citizens and domestically trafficked young people who experience extreme abuse, subjugation and exploitation. The inability of the criminal justice system to adequately identify and address the issues of those forcibly trafficked has devastating consequences not only on the individuals involved but also on their communities.

¹ Source: DCJS, Computerized Criminal History Oracle file (as of 1/20/11).

² See, e.g., Nicholas Kristof, *What About American Girls Sold on the Streets?* N. Y. Times, April 24, 2011, at 10; see also Hon. Jonathan Lippman, *Foreword to Lawyer's Manual on Human Trafficking*, New York State Judicial Committee on Women in the Courts, xxiii, xxiii (Jill Laurie Goodman & Dorchon Leidholdt eds., 2011), available at <http://www.nycourts.gov/ip/womeninthecourts/LMHT.pdf> ("[M]any adult or child victims of human trafficking are arrested and brought to court as defendants on prostitution-related charges."); see also New York State Assembly Memo for Bill, A7670, available at http://assembly.state.ny.us/leg/?default_fld=&bn=A07670&term=2009&Memo=Y ("Victims of sex trafficking who are forced into prostitution are frequently arrested for prostitution-related offenses").

Human trafficking has become a policy priority nationally and in New York State, and in the last few years, the New York State Legislature has passed a number of measures intended to protect and support trafficking victims. New York instituted its anti-trafficking statute back in 2007,³ which was praised for providing a useful tool to combat trafficking. In addition, the universally lauded Safe Harbor Act for Exploited Youth explicitly defined anyone under the age of 18 arrested for prostitution activity as an “exploited youth,” and mandated the provision of supportive services for these young people.⁴

Despite these reforms and the robust legislative framework, however, little has changed for those being victimized. To the contrary, the criminal justice system in New York City continues to systematically criminalize victims of trafficking. For example, despite the fact that those under 18 engaging in prostitution are clearly defined as victims of a severe form of sex trafficking by federal law,⁵ and defined as “sexually exploited” children by New York law,⁶ and despite the escalated penalties associated with trafficking or promoting prostitution of those under 18,⁷ 63 minors under the age of 18 were arrested for prostitution activity and prosecuted as adults in criminal court in 2010.⁸

Last year, the legislature instituted a formal procedure for victims to vacate and expunge criminal convictions obtained as a result of prostitution activity while trafficked.⁹ This legislation represents an important step – as it recognizes, acknowledges, and attempts to rectify the fact that survivors of sex trafficking are criminalized under current practice.

³ P.L. § 230.34.

⁴ Soc. Servs. L. § 447-a. See, e.g., Editorial, *A Victory for Exploited Children*, N. Y. Times, Sept. 26, 2008, at A20.

⁵ 22 U.S.C. § 7101 (2006).

^{6,6} Soc. Servs. L. § 447-a.

⁷ See, e.g., P.L. §§ 230.32, 230.20 & 230.35.

⁸ Source: DCJS, Computerized Criminal History Oracle file (as of 1/20/2011).

⁹ C.P.L. § 440.10(i) (2009) (effective Aug. 13, 2010).

However, very little is being done to prevent the criminalization from occurring in the first place.

In response, LAS has developed a specialized pilot project that focuses on its representation of those individuals charged with prostitution. The Trafficking Victims Legal Defense & Advocacy Project (“TVLDAP”) began in March and represents the first effort by a public defender office to address the problem of systemic criminalization of victims of trafficking and exploitation. The project uses an interdisciplinary team of attorney and social worker to screen each case and connect clients to important services. The project further seeks to slow the pace of the criminal court process to allow time for clients to be adequately assessed, and build closer relationships with the project team. The project works closely with several service providers in New York City, and nationwide, to ensure this marginalized client group has options for assistance and support.

However, LAS cannot solve this problem alone. Indeed, by the time those arrested become clients of our Criminal and Juvenile Practices, much of the damage has already been done. Of the 139 individuals the project has represented since its inception in March, over 40 have disclosed trafficking histories, which include control by pimp-traffickers, and we have identified another 35 as being at extremely high risk for trafficking.

Among the clients represented by the project thus far are:

- A fifteen year old girl, who left her family home in New Jersey, and was listed on the National Center for Exploited and Missing Children Registry. When arrested by the police, she reported as 18 years old, as instructed by the pimp who she had been working for since she first arrived in NYC, the pimp who had approached her at Port Authority and bought her something to eat within a few minutes after she got off a bus in the terminal. The police took no steps to ascertain her true identity, or

age, or investigate if she was, in fact, a missing child. Instead, she was processed through the criminal court system as an adult;

- A Chinese national, who after paying an exorbitant fee to be smuggled into the U.S., arrived at the airport, had her only identification documents removed by her trafficker, was driven for days to a remote location, which she soon learned to be a brothel where she was made to engage in sexual conduct with numerous customers. She escaped from this location, only to have her traffickers threaten to kill every member of her family both in the U.S. and China if her family did not pay \$70,000 as penalty for her escape. Alone in New York, with no work authorization and unable to speak English, she was lured to another brothel with the promise of easy money she could use to pay her escape fee. She was arrested there by NYPD in August.

- A twenty-four year old woman, who entered prostitution at the age of 15 when she ran away from her foster home, and has been exploited by a series of pimps in the years since. This woman has been arrested four times in the last two months, and the officers from Midtown North precinct have told her that she will continue to be arrested, every time they see her, whether or not she is doing anything criminal. They continue in this manner in spite of the fact that at the time of her most recent arrest, she had a black eye, and bruises all over her, as a result of the violent behavior of her pimp. When they noticed this, the police response was to joke, in front of her, that she had probably had a “bad date.”

Unfortunately, these cases are not unique, and our list includes several more clients with significant trauma histories, who face brutal exploitation and abuse at the hands of traffickers, yet continue to face arrest. The devastating impact of all of this cannot be understated. Many victims struggle with lengthy criminal records as a result of their involvement with the criminal justice system. These records plague them, even after they have escaped a trafficker, and act as a bar for many forms of housing, employment and other options. Furthermore, the experience of arrest and prosecution is itself sufficiently traumatic.

People arrested for prostitution endure particularly inappropriate conduct from the police officers who arrest them. This can range from inappropriate comments or language, and conditions of confinement, to being made to remain naked or unclothed in front of

various officers for extended periods of time, to being propositioned by officers, or asked to perform sex acts in exchange for avoiding arrest.

The treatment of those arrested for prostitution is not much better once they enter the criminal court system. For those who are arrested numerous times for prostitution, a population at high-risk for trafficking and exploitation, prosecutors routinely seek incarceration. Even where there is a specific suspicion that a criminal defendant may in fact be trafficked, prosecutors employ a heavy handed approach to attempt to compel cooperation with their investigations rather than work to connect the victim to services.

Although victim cooperation with law enforcement is one important part of a strategy to prevent and prosecute sex trafficking, this cannot be our only goal. A singular focus on cooperation with law enforcement, and an unwillingness to provide services or refrain from criminalizing unless a victim does cooperate, is irreconcilable with the reality many victims confront. Many victims face a significant safety risk if they provide information to law enforcement, a risk that is not eliminated even when a trafficker is arrested or incarcerated. Similarly, many victims have had negative experiences with law enforcement, and this presents severe barriers toward building the trust necessary to cooperate in an investigation. Many victims are unaware that their experience meets the legal criteria for sex trafficking, as their only experience with law enforcement has been their own arrest for prostitution activity.

Current arrest and prosecution practice also provide traffickers with a powerful tool to continue exploiting those under their control. Numerous clients report being warned by their trafficker that, because they have a prostitution arrest history, they will never be able

to obtain legal employment, and should they consider reporting being trafficked, they would likely not be believed because they are merely a prostitute. Victims' experience in the criminal justice system only serves to reinforce this as they hear police officers talk about them in the same manner, and then find the sentiment echoed in the courtroom.

Traffickers use victims' criminal histories as grounds for bringing proceedings against them in Family Court, and as a consistent threat for clients who are undocumented immigrants. When one of our clients recently left her trafficker, he immediately went to Family Court to seek custody of the daughter they had in common. The basis for his claim that she was an unfit mother was the series of prostitution convictions she had on her record – while she was being forced to work for him.

Traffickers know that prostitution convictions present specific immigration consequences for those seeking status here in the U.S. and use the threat of notifying immigration authorities as a way to compel compliance. Traffickers take advantage of their victims' isolation, and deceive them into thinking they lack any legal protections and that reporting will result in arrest, deportation, and even abuse by authorities.¹⁰ Once a victim has a prostitution conviction on their record, it simply provides more ammunition for the coercion exercised by the trafficker.

New York City needs to address this with a more sensible arrest and more sensitive prosecution policy, that does not cast such a wide net, ensnare victims and fail to adequately investigate whether those arrested are in fact victims of exploitation and

¹⁰ Weiner, Neil A., "Measuring Human Trafficking: Lessons from New York City." Final report for U.S. Department of Justice, grant number 2005-IJ-CX-0053. Washington, DC: National Institute of Justice, 2008. NCJRS, NCJ 224391, 5-6.

trafficking. In addition to reducing the tragic human costs of the current policy, such a policy would prove to be more cost-effective, and allow for much needed dollars to be reallocated to services for those in need.

2. Law Enforcement Must Adapt Its Strategy to Truly Address the Issue of Sex Trafficking

NYPD's current arrest policy is at odds with the goal of appropriately investigating and prosecuting sex trafficking. The priority given to the pursuit of low-level offenses in current policing strategy works against any efforts to investigate and arrest sex traffickers, and merely encourages a high volume of arrests for prostitution offenses without regard to the impact of those arrests.

In addition, we believe that one of the biggest obstacles to meaningful prevention and prosecution of sex trafficking is a lack of mandatory training for all NYPD officers. While NYPD has a dedicated unit within its Major Case Squad that investigates cases of sex trafficking city-wide, the majority of prostitution arrests are not made by this unit. Instead, VICE squads, anti-crime, cabaret, and other units unfamiliar with the reality of sex trafficking make the majority of arrests for prostitution activity citywide.

In Manhattan, the officers making these arrests are not even required to speak to a prosecutor after making the arrest before the case is sent to criminal court. Unlike other types of crimes, where an officer either speaks to or meets with a prosecutor as part of the arrest process, these arrests proceed entirely by affidavit, meaning an officer merely has to check off boxes on a pre-printed form to complete the processing of a prostitution arrest. This ensures that there is no oversight, no screening, and no debriefing of prostitution arrests that could potentially lead to identification and investigation of sex trafficking.

While these officers are truly the eyes and ears in the ongoing effort to deal with sex trafficking, the majority have not received any training on sex trafficking from the department itself. Indeed, an officer from the Midtown South Precinct, responsible for more than 250 prostitution arrests in his career, testified in court recently that he had received no training on sex trafficking from the NYPD. Despite having arrested a 17 year old girl for prostitution, this officer, a member of the police force for 10 years, could not define sex trafficking, was unaware that New York had an anti-trafficking law, and had never been trained on the risk of commercial sexual exploitation of minors.¹¹

Without a trained police force, sensitive to the risk of exploitation and trafficking that many involved in prostitution face, New York City's arrest policy will continue to mistake victim for offender. NYPD must be held accountable in this regard. There must be oversight as to what specific training is conducted on sex trafficking for all members of the department, and a closer monitoring of prostitution arrest policy.

3. Increased Resources & Services for Victims of Sex Trafficking & Commercial Sexual Exploitation

The term sexually exploited child is defined as any person under the age of eighteen who has been subject to sexual exploitation because he or she is the victim of the crime of sex trafficking; engages in any act of prostitution; is the victim of the crime of compelling prostitution; participates in sexual performance; or loiters for the purpose of engaging in a prostitution offense.¹² We see, on a daily basis, commercially sexually exploited children in all areas of our Juvenile Practice. Our clients who have been sexually exploited rarely

¹¹ Testimony given June 21, 2011, in New York County Criminal Court, *People v. I.G.* (Sealed).

¹² See Social Services Law §447-a, Penal Law §230.34, Penal Law §230.00, Penal Law §230.33, Article 263 of the Penal Law; and Penal Law §240.37

present as youth being charged with committing acts of prostitution in delinquency proceedings. While they are sometimes charged in delinquency proceedings with committing other criminal acts, they are more frequently the subject children of PINS¹³ proceedings and neglect/abuse proceedings.

The Safe Harbor Act, which amended several sections of New York law, including Family Court Act Articles 3 and 7, and Social Services Law, was enacted to help combat the sex trafficking of minor children in New York. The number of youth victimized by the sex trade is on the rise, involving younger and younger children. New York State has recognized that arresting, prosecuting and incarcerating victimized youth is ineffective, and serves to re-traumatize the youth, and to increase their feelings of low self-esteem. This makes recovery more difficult. Federal and international law recognize that sexually exploited youth are the victims of crime, and should be treated as such. The Safe Harbor Act is a step towards that goal, and calls for residential services, crisis intervention, and law enforcement training. Sadly, due to a lack of money and resources, many of the services have yet to be made available to the sexually exploited youth of New York.

Identifying the child victims of commercial exploitation can be challenging. Children and youth who are being sexually exploited do not view themselves as victims. To a sexually exploited girl, her pimp is both boyfriend and head of the family. Through false promises of love and rewards combined with cycles of violence and degradation, youth come to believe that being sexually exploited is all they are good for, and what they deserve. They come to see their pimp as their protector, and feel that no outsider could ever understand. For boys and transgender youth, their experiences of sexual exploitation can be

¹³ See Family Court Act Article 7, Proceedings Concerning Whether a Person is in Need of Supervision

equally isolating. Unfortunately, this is frequently reinforced by their experiences in the child welfare system. In addition to training people who work with youth in the child welfare and juvenile justice systems, training should be provided to educators, law enforcement, and medical professionals – anyone who may unknowingly be in a position to provide intervention and assistance to a sexually exploited youth.

While trainings about the commercial sexual exploitation of children given to child welfare personnel, court staff, probation officers and lawyers for children can go a long way to solving the problem of identification, the lack of available victim services remains a huge obstacle to assisting this vulnerable population. Identification without intervention is meaningless. The intervention could be as simple as listening in a non-judgmental way and offering the opportunity for further discussions, or as complex as finding a safe place to stay, medical attention and supportive services, and guidance through a complicated legal proceeding. Although the Safe Harbor Act articulated a panoply of necessary services, from a short-term safe house to long-term residential care, New York has so far failed to provide funding, and there is a dearth of services for sexually exploited youth.

That is not to say, however, that sexually exploited youth are completely without services. The GEMS (Girls Educational and Mentoring Services) program, which provides services and support to commercially sexually exploited and domestically trafficked girls and young women from victim to survivor and survivor to leader, is an internationally recognized model of survivor-led service provision. It provides holistic case management, trauma-based therapy and clinical support for girls and young women, ages 12 through 24. GEMS has two residential components with a limited number of beds: a Transitional Independent Living Program for youth between 16 and 21; and Imani House, a supportive

housing program for individuals from 18 – 23 years of age. Finding appropriate supportive housing for youth between the ages of 12 and 16 so that they can attend programming provided by GEMS, New Beginnings, St. Luke's – Roosevelt Hospital Center, or Safe Horizons, remains a challenge. Finding appropriate supportive housing, especially for youth under sixteen, is one of the biggest barriers to providing services to sexually exploited youth.

Sadly, youth are often recruited into prostitution by pimps who are well aware of the vulnerable population that resides in group homes, runaway and homeless youth shelters, and the Children's Center, the facility that houses children in the care of ACS, who are awaiting placement. Pimps know where these facilities are located, and prey on the youth as they come and go, or use girls to recruit other girls from within the facilities. The agencies that run these facilities are aware of the problem and making efforts to address it, but there needs to be not only extensive training of staff, but the development of prevention programming for the youth who are served. The fact remains that there is no safe, secure, and supportive short-term placement for child victims of sexual exploitation. Finding long term residential care is also difficult. Gateways, a program run by JCCA on their Pleasantville campus, provides long-term residential services to sexually exploited young women. The fact that there is a waiting list for an available bed is demonstrative of the great need for residential services. We understand that ACS is also working with JCCA to develop therapeutic foster homes for sexually exploited youth, but they are not yet available.

These problems persist when dealing with older victims of sex trafficking as well. All of the work we seek to do with survivors of trafficking falls short when we are unable to

find a safe and appropriate housing option for someone who has escaped their trafficker.

Dedicated long-term supportive housing must be available for older survivors as well, and it must be available to those survivors who are undocumented but beginning the process of applying for status in the United States as a result of having been trafficked.

Without these housing options, young people attempting to leave pimp control face a higher risk of returning to their trafficker.¹⁴ Similarly for foreign nationals trafficked in the United States, housing options that support a culturally sensitive, language appropriate, trauma-informed approach are imperative to assist victims in finding safety and stability.¹⁵ As in many other jurisdictions, advocates in New York struggle to find sufficient appropriate and protective shelter options, a situation which impedes victim safety and strong investigations.¹⁶ Increased resources, especially in the form of housing options, must be dedicated to victims.

While there have been great strides made in terms of understanding the commercial sexual exploitation of youth, and recognizing that these youth are victims who deserve services, the ability to provide appropriate services in a safe and supportive environment has not been achieved. There continues to be a need for training, residential and community based services. Until then, this vulnerable population remains at risk.

¹⁴ See, e.g., Linda A. Smith et al., Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children* 70 (May 2009), available at [http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009\(without_cover\).pdf](http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009(without_cover).pdf);

¹⁵ Clawson, Heather, et al., "Human Trafficking Into and Within the United States: A Review of the Literature." (August 2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf>.

¹⁶ Id., at 26.

Conclusion

Although New York has emerged as a leader in the anti-trafficking movement, and developed innovative legislative tools to combat human trafficking, more needs to be done to make it truly so. Current arrest and prosecution policies fail to accomplish the goals of investigating and deterring sex traffickers, while hurting those most at risk for trafficking and abuse. A critical lack of funding for sexually exploited youth continues to hamper our efforts to meaningfully engage with this population.

New York City must address this phenomenon with a significant shift in strategy, that includes specific training for law enforcement, reevaluates arrest and prosecution policy, and dedicates specific and sufficient resources, in order to reverse this trend and prevent the re-victimization of victims of trafficking in the criminal and family justice system. We thank you for this opportunity to testify. Please feel free to contact us if you have any questions.