Treatment with a Side of Stigma: The Influence of Sex Work Stigma on the Chicago Prostitution and Trafficking Intervention Court

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TREATMENT WITH A SIDE OF STIGMA: 
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TRAFFICKING INTERVENTION COURT

I. INTRODUCTION

Specialized diversion programs have existed all over the country for a number of years in order to address high rates of recidivism that are common for certain types of defendants or crimes.1 Diversion programs are often referred to as “problem-solving courts” because they center on rehabilitation and treatment of the underlying motivation for committing the crime as opposed to punishment of the crime.2 Most problem-solving courts are dedicated to drug-related offenses.3 By offering therapeutic and social services to defendants as opposed to punishments, problem-solving courts seek to incentivize defendants to make life changes that will ultimately deter them from committing further crimes.4 Problem-solving courts are resource-intensive as they often require the collaboration of the judicial system, law enforcement, and social service providers in order to maintain a productive program.5

In the past twenty years, prostitution has been a focus of diversion programs across the United States.6 Prostitution is a crime that many

2. Id.; see also Corey Shdaimah, Taking a Stand in a Not-So-Perfect World: What’s a Critical Supporter of Problem-Solving Courts to Do, 10 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 89, 90 (2010). The Chicago Prostitution and Trafficking Intervention Court (Program) is considered a specialized deferred prosecution program rather than a problem-solving court because the Program is not certified as a problem-solving court as is required by the Illinois Supreme Court. The implementers of the Program are not required to comply with the standards of the problem-solving courts issued by the Illinois Supreme Court because the Program is not certified. Interview with Lawrence Fox, retired judge and Director of Specialty Courts, in Chicago, Ill. (Jan. 29, 2018). For more information about problem-solving courts in Illinois, see Problem-Solving Courts, ILL. COURTS, http://www.illinoiscourts.gov/Probation/Problem-Solving_Courts/Problem-Solving_Courts.asp (last visited Apr. 21, 2019).
3. Shdaimah, supra note 2, at 89.
5. Shdaimah, supra note 2, at 90–91.
consider a lifestyle, which defendants need to transition out of in order for the commission of the crimes to cease.\textsuperscript{7} Re-offense is thought to be characteristic of prostitution because “it is the nature of the business.”\textsuperscript{8} Prostitution diversion courts combine criminal adjudication with welfare practices, such as treatment and probation, in an effort to provide defendants with the tools to transition out of the lifestyle.\textsuperscript{9} To help defendants “leave the life,” prostitution diversion courts seek to address the reasons why many defendants commit the offense in the first place.\textsuperscript{10} These reasons can include coercion, substance abuse, or a lack of finances needed to afford basic necessities.\textsuperscript{11}

Yet, the reason prostitution is considered a lifestyle is because sex work stigma is weaved through the fabric of the laws that criminalize prostitution.\textsuperscript{12} Prostitution is criminalized because it is viewed as a morally reprehensible action that negatively impacts the community.\textsuperscript{13} Although today’s legal discussions about prostitution typically classify sex workers as victims of coercion and exploitation, the criminalization of sex workers persists in an effort to eradicate prostitution.\textsuperscript{14} The impact of sex work stigma on the justice system is particularly appar-

\textsuperscript{7} See, e.g., Amy Garwood, \textit{A Safe Haven from the Streets: Christian Community Health Center Offers Rehabilitation Program for Prostitutes}, 14 ILL. PRIMARY HEALTH CARE ASS’N HEALTH SOURCE, June 2011, at 4 (“These women are also seeking to transition from the sex trade lifestyle.”); Press Release, Anita Alvarez, State’s Attorney, Cook County Officials Unveil New Prostitution and Trafficking Intervention Court (May 29, 2015), http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Prostitution%20Court/prostitution%20court%20press%20rel%205.29.2015FINAL.pdf (“We believe that with access to appropriate services and treatment and the encouragement of the court system, clients in our new court will attain the courage and resolve to transition out from ‘the life,’ as it is called, to a new and better life.”); Rummana Hussain, \textit{Cook County Officials Say Diversion Program Will Help Those Charged with Prostitution}, CHI. SUN-TIMES (June 24, 2016, 10:41 AM) (“Without access to housing and treatment for substance abuse and mental illnesses, many find it hard to leave the life of prostitution . . . .”).


\textsuperscript{9} Amy Cohen, \textit{Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City}, 95 TEX. L. REV. 915, 960 (2017); see also Shdaimah & Bailey-Kloch, supra note 1, at 288 (“Problem-solving programs offer therapy, material, and bureaucratic interventions that are designed to address the underlying motivation for offending . . . .”).

\textsuperscript{10} Shdaimah, supra note 2, at 90; see also Cohen, supra note 9, at 960; Press Release, Anita Alvarez, supra note 7.

\textsuperscript{11} Gruber et al., supra note 8, at 1369–70; see also Shdaimah & Bailey-Kloch, supra note 1, at 292 (indicating that approximately 64 percent of program participants reported substance-abuse issues). Reasons for entering into or continuing sex work can also be a combination of circumstances. For example, pimps may coerce performance by pushing drugs onto sex workers in order to form an addiction and more easily control them. Catharine A. MacKinnon, \textit{Trafficking, Prostitution, and Inequality}, 46 HARV. C.R.-C.L. L. REV. 271, 287 (2011).


\textsuperscript{13} See Gruber et al., supra note 8, at 1340–41.

\textsuperscript{14} Carrasquillo, supra note 12, at 704.
ent in the practices of the prostitution diversion program in Chicago, Illinois.

This Comment argues that the current structure of the Chicago Prostitution and Trafficking Intervention Court program (Program) reinforces social stigmatization of sex workers, which in turn negatively impacts the defendants’ success in the Program. Part II of this Comment begins with an overview of the sex work stigma that influences the functioning of the Program. This Part then delves into the structure and purposes of the Program before providing information about two national diversion programs—elements of which can be seen in the Program’s procedures. Part III begins with an analysis of how the coercive practices utilized within the Program contradict the Program’s goal to end the victimization of sex workers, but also how the Program’s deferred prosecution structure minimizes the harm that can result from coercion. This Part continues with a recommendation to create a formalized role for the public defender in the Program to further reduce harm from coercion. Following this proposal, Part III delves into a discussion about the impact of the sex work stigma on defendants’ long-term success after completing the Program. Finally, this Part concludes with a second recommendation, which purports that establishing an after-care program for Program graduates would reduce the continuing impact of sex work stigma on graduates and would promote success after the Program.

II. BACKGROUND

A. Sex Work Stigma as a Legal Tool

The criminalization of prostitution under state law is evidentiary of the national impact of sex work stigma. By criminalizing prostitution, sex work stigma is used as a legal tool to control behavior that American society views as morally reprehensible. The linguistic roots of the word “prostitute” are significant in understanding how sex work stigma evolved into a legal tool. When the word “prostitute” entered the English language in the sixteenth century, it was only a verb. To prostitute meant “to set something up for

15. In this Comment, Program participants will be referred to as “defendants” when discussing participants in the Program because there are still criminal charges pending against them. The term “graduates” will be used when discussing participants who have completed the Program, at which point their charges are dropped.
sale.” It was not until the nineteenth century, that the word “prostitute” was used as a noun to refer to a person. Prostitute was created “to produce a person by transforming a behavior (however occasional) into an identity.” The creation of the noun prostitute led to an adjustment in the definition of the verb, to prostitute, to include a moral judgment. To prostitute came to mean “to sell one’s honor for base gain or to put one’s abilities to infamous use.” Attached to “honor” and “infamous use” were descriptors of shame, unworthiness, and wrongdoing. These linguistic changes connected an individual to a morally reprehensible behavior, thereby making it easier for that behavior to be controlled by law.

Although sex work stigma is still used as a legal tool to control behavior, the current stigma also conceptualizes sex workers as victims of sexual exploitation who are in need of saving. The idea of sex workers as victims stems from an overarching belief that sex work is a violent experience. Understanding sex work as a form of violence allows society to create its own preconceptions of what is to be “expected” in sex work. Journalist and former sex worker Melissa Gira Grant addresses these preconceptions in her book Playing the Whore: “[W]hen sex workers do face discrimination, harassment, or violence, these can be explained away as experiences intrinsic to sex work—and therefore, however horrifically, to be expected.”

Expanding on Grant’s idea, society has begun to perceive drug abuse as intrinsic to sex work, which in turn influences the way the justice system interacts with sex workers. For example, when a new defendant is introduced to the Program, the first question asked by attorneys and service providers is often, “Do you use?” If the defendant is a drug user, a majority of the services provided to her focus on

18. Id.
19. Id.
20. Id. at 15.
22. Id.
23. Id.
24. Grant, supra note 17, at 15; Pheterson, supra note 16, at 42 (“If a prostitute is a woman who ‘sells her honor for base gain or puts her abilities to infamous use,’ then by definition she has no honor and does no good.”).
26. Grant, supra note 17, at 104.
27. Id.
28. Id.
29. See MacKinnon, supra note 11, at 287; Gruber et al., supra note 8, at 1372.
30. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
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drug treatment, even if that is not one of her immediate needs or if she does not want drug treatment. This inflated focus on drug treatment furthers the stigma that all street-level sex workers abuse drugs as a result of their “shameful” work.

In some respects, it is logical for services to be tailored to drug treatment based upon some of the defendants’ other needs. For example, most defendants are in immediate need of stable housing. Yet, stable housing is very difficult to find for defendants who are struggling to maintain a steady income, which is common for street-level sex workers engaging in survival sex. Thus, in-patient drug treatment can be very appealing to defendants, even if they do not want to kick their habit, because at least the defendants have stable housing while in treatment. However, focusing the conversation between a defendant and a service provider on drug treatment only serves to reinforce the stigma that sex work and drug abuse are intrinsically linked.

Furthermore, prostitution diversion programs are founded on the belief that prostitution creates harm. This harm can be the negative impact of prostitution on the community, or it can be the “abusive and disrespectful treatment [of workers] by ‘johns’ and ‘pimps’ and the self-harm resulting from a person (typically a woman) ‘selling herself.’” However, there is also “harm stemming from the existence and framing of laws related to prostitution and the public stigmatization associated with such labeling” of prostitution as a creator of harm.

Constant criminalization of prostitution and the enforcement of anti-prostitution legislation strips the autonomy of the sex worker. Under a regime of criminalization, sex workers are unable to “manage

31. Id.
32. See MacKinnon, supra note 11, at 287.
34. Survival sex is the practice of “exchanging one’s body for basic subsistence needs, including clothing, food, and shelter.” Mike Mariani, Exchanging Sex for Survival, ATLANTIC (June 26, 2014), https://www.theatlantic.com/health/archive/2014/06/exchanging-sex-for-survival/371822/; see also Rachel Johnson, Criminalizing Victims: The Importance of Ending Felony Prostitution in Illinois, 3 DePaul J. Women, Gender, & L. 27, 30–31 (2014) (“Research reveals that women in prostitution in Illinois have found themselves in such vulnerable situations so that letting any man rape them without recourse is preferable to starvation, homelessness, or going through withdrawal alone.”).
35. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
37. Id.; see also Carrasquillo, supra note 12, at 706.
38. Lewis, supra note 25, at 292.
39. See Carrasquillo, supra note 12, at 711 (“Criminalizing prostitution is just another way to have control over a woman’s body . . . .”).
their own safety, security and well-being.” Thus, stigmatization of prostitution is reinforced because the marginalization of sex workers persists through criminalization.

B. The Chicago Prostitution and Trafficking Intervention Court

The Program became effective in June 2015 pursuant to a general administrative order issued by Chief Judge Timothy Evans. The order provides that defendants charged under specified statutes will be directed to the First Municipal District, Branch 46, to appear in front of Judge Clarence Burch. Those specified statutes include 720 Ill. Comp. Stat. 5/11-14 (Prostitution) and 625 Ill. Comp. Stat. 5/11-1006 (Pedestrian Soliciting Rides), both of which are misdemeanors. Because these statutes require that the commission of the offense be seen by the citing officer, the individuals most affected by the statutes are street-level sex workers. Defendants charged under these statutes are ordered to attend a specialized court call, where they will be introduced to the Program and various service providers.

Eligible defendants are invited to participate in the deferred prosecution offered by the Program, which asks defendants to complete a set of goals in exchange for dropped charges. These goals are based upon an individual defendant’s needs and may include finding housing, participating in drug rehabilitation, obtaining a state-issued identification card, obtaining health insurance, and visiting a doctor or mental health professional. From the outset, participation in the Program is voluntary. Those who do not wish to participate will be

40. Lewis, supra note 25, at 292.
41. General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015).
42. Id.; see also Hussain, supra note 7.
43. General Administrative Order No. 2015-04; see also 720 ILL. COMP. STAT. 5/11-14 (2017); 625 ILL. COMP. STAT. 5/11-1006 (2016).
44. Language requiring the commission of the offense be seen by the officer is not explicitly stated in the Illinois statutes. See 720 ILL. COMP. STAT. 5/11-14; 625 ILL. COMP. STAT. 5/11-1006. However, this language can be found in the Chicago Municipal Code. CHI., ILL., MUNICIPAL CODE § 8-4-016 (2018) (requiring the officer to take action “[w]henever a police officer observes one or more persons engaged in prostitution-related loitering in any public place”). Under the Chicago Municipal Code, loitering is another way an individual can be cited for prostitution, punishable either by a fine ranging from $50 to $500 or imprisonment up to six months for committing a misdemeanor. Id.
45. General Administrative Order No. 2015-04; see also Press Release, Anita Alvarez, supra note 7, at 2.
46. General Administrative Order No. 2015-04; see also Press Release, Anita Alvarez, supra note 7, at 2.
47. General Administrative Order No. 2015-04; see also Press Release, Anita Alvarez, supra note 10, at 2.
transferred to Branch 43.48 At Branch 43, a defendant can plead not guilty and go to trial, or plead guilty and take “time considered served.”49

1. Purpose

According to a press release from the Cook County State’s Attorney’s Office, the official purposes of the Program are to prevent jail overcrowding and recidivism by offering defendants “the tools and resources necessary to leave the life of prostitution.”50 The Program also hopes that by making services readily accessible, defendants will be able to combat issues that are prevalent in street-level sex work—such as chronic homelessness, substance abuse, and mental health concerns.51 Alongside these goals, the Program seeks to aid in the local fight against sex trafficking by providing “trafficking-oriented” services and treatment to those defendants who have been trafficked.52

2. Structure

A specialized court call has been established to maintain confidentiality within the Program and to promote safety for the defendants.53 The call occurs twice per week and is only open to defendants and their female companions.54 To protect against further coercion or trauma, men are not allowed inside the courtroom unless they are defendants or courtroom staff.55 Prior to the call, the Program implementers meet to discuss each case to determine the best course of action for each client.56 Attendees at these meetings include rep-
sentatives from the State’s Attorney’s Office, the Public Defender’s Office, and the Christian Community Health Center’s “Footprints” Program (CCHC), which is the Program’s primary social services provider.57 Other participating service providers and the presiding judge are also invited to join.58 These meetings include discussions regarding the defendant’s eligibility for the Program and weekly check-ins regarding any communication the Program implementers have had with participants.59

The defendant’s first step toward admission into the Program is to appear in court on a specified date indicated in a complaint.60 Typically, not appearing in court when mandated results in the issuance of a warrant for the defendant’s arrest.61 However, in the Program, first-time offenders are frequently given leeway if they do not attend their first court date.62 A later court date will be scheduled in order to give the assigned public defender an opportunity to contact the defendant and encourage her to attend court to seek help with her case.63

After the public defender is given a chance to contact her client, the defendant must then appear at the new specified court date.64 If she does not appear in court, the judge will issue a warrant for the defendant’s arrest.65 In the interest of granting more defendants the opportunity to participate in the Program, a defendant’s warrant may be quashed if she does appear in court, even on a day that she is not scheduled to be there.66 Quashing a warrant is subject to the judge’s discretion, however, and he may not be inclined to quash if the defendant has a history of not appearing in court when mandated.57

58. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017. Representatives from Haymarket Center often attend the weekly meetings since multiple defendants receive inpatient substance abuse treatment at Haymarket Center. Id. Additionally, the presiding judge is invited to join the weekly meetings, although he rarely attends. Id.
59. Id.
60. General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015).
61. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
62. Id.
63. Id.
64. Id.
65. There are situations in which the public defender is unable to contact her client by phone or mail. When this happens, the public defender will inform the State and put it on the record in court that contact was attempted. However, even if the public defender was unable to make contact with the client, the defendant is still expected to appear in court. If she does not appear on the specified date, an arrest warrant will be issued. Id.
66. Id.
67. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017. Judge Burch has
Once the defendant appears in court for the first time, the State will offer her the opportunity to complete four goals in exchange for having her charges dropped. These goals are based upon the defendant’s needs. To determine her needs, the defendant will undergo a confidential intake process with a representative from CCHC. Following the intake, the representative and the defendant will discuss her goals in order to provide her with the most beneficial services. For many of the Program participants, these services include receiving treatment for substance-abuse and finding safe housing. CCHC also offers classes to female and transgender defendants. Participation in one eight-hour class can satisfy multiple goals at once because the class offers a series of workshops. These workshops provide a multitude of services such as mental health evaluations, assistance with identification and insurance applications, and education about trafficking and indicators of trafficking. However long it takes, defend-
ants are encouraged to continue progressing in order to “graduate” from the Program. Once the defendant accomplishes all of her goals, she graduates, and her charges will be *nolle prossed* by the State. Following graduation, a defendant may have the charges and arrest expunged from her record.

As was previously mentioned, each aspect of the Program is voluntary. A defendant may choose how she participates in the Program, how she achieves her goals, and if she wants to participate at all. For example, a defendant may choose to opt out of completing an intake or attending a class with CCHC, while still participating in the other aspects of the Program. The one thing that is non-negotiable is how many goals the defendant must achieve in order for her charges to be dropped. The Program dictates that first-time participants must only complete four goals. However, if the defendant is charged again following her completion of the Program, then she will be required to complete more goals. Most repeat participants are required to fulfill five goals before they can complete the Program.

To keep the court up-to-date on the defendant’s progress, the defendant will be required to periodically appear in court to bring proof meant to be provided by New York City’s MCC, which taught defendants “market-oriented skills.” See *infra* note 125 and accompanying text.

75. Program participants typically take three to four months to complete all of their goals. However, a case can continue for longer so long as the defendant continues to show interest in the Program and make progress toward completing her goals. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017; see also Garwood, *supra* note 7.

76. General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015); Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017. *Nolle prosequi* means that the prosecutor has made a formal declaration to the court that the State is no longer prosecuting and has dropped the charges against the defendant. Gerald Hill & Kathleen Hill, *Nolle Prosequi*, *People’s Law Dictionary*, http://dictionary.law.com/Default.aspx?selected=1330 (last visited Feb. 4, 2018).

77. 20 ILL. COMP. STAT. 2630/5.2(b)(1) (2016) (stating that a defendant may file a petition to expunge any records of her arrest where the arrests sought to be expunged resulted in acquittal, dismissal, or the defendant’s release without charging).


79. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.

80. *Id.*

81. *Id.*; see also General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015).

82. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.

83. *Id.* The required number of goals will also increase if the defendant obtains additional prostitution charges during her ongoing case. *Id.*

84. *Id.*
of her completed goals. Proof of goals typically needs to be tangible. For example, if a defendant gets a state-issued identification card, she is asked to bring the card to court so the public defender can make copies for her file. Or if the defendant is tested for STIs, she is asked to bring in her results letter from the medical provider. The only two goals that do not require physical proof are the completion of a class with CCHC (although the defendants receive a certificate of completion) and participation in an in-patient treatment program with Haymarket. These two goals do not require physical proof because service providers from CCHC and Haymarket often attend the weekly status meetings and can confirm the defendants’ participation in their services.

If the defendant’s circumstances have changed since her previous court date, she may also use this time to further discuss her needs with a service provider or her public defender. Typically, mandatory check-ins are scheduled in one- or two-week increments, which often depends on when the next CCHC class is scheduled so that the defendant has the opportunity to attend a class if she chooses. If a defendant does not show up to court for her check-in date, the judge will issue an arrest warrant. If a defendant is arrested pursuant to a warrant, she will remain in police custody until the next Program call date. However, her arrest will not affect her eligibility for the Program, as she will still be given the opportunity to discuss her needs with her attorney and the service providers.

Defendants in the Program are given a significant amount of latitude by the Program implementers in order to build trust and encourage defendants to take advantage of the offered services. For example, a defendant will often be given a new court date if she contacts her public defender in advance about not being able to appear. The Program implementers believe that taking the time to make con-

86. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
87. Id.
88. Id.
89. General Administrative Order No. 2015-04.
90. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
91. Id.
92. Id.
93. Id.
94. Id.
95. Id.
tact shows that the defendant is taking responsibility for her case.96 Since the Program is about helping rather than punishing, it is important to the Program implementers that the defendants remain active in their cases.97 In these situations, the state’s attorney will often agree with the public defender to set another court date to give the defendant another opportunity to appear in court and continue her progress in the Program.98

The Program also provides protection for victims of sex trafficking who are charged with prostitution.99 Under Illinois law, a defendant may claim as an affirmative defense that she is a victim of trafficking or involuntary servitude.100 This also includes those defendants who were prostituted by pimps because pimping is recognized within the legal community as a form of trafficking and involuntary servitude.101 However, a claim of pimping may require that the defendant be willing to press charges against her pimp, and many defendants are reluctant to do so out of fear for their own safety.102 Instead, defendants often refer to pimps as boyfriends, husbands, or fiancés to avoid pressure to report their pimps.103 If it is suspected that the defendant has a trafficker or a pimp, her public defender will inform the defendant of her options and may connect her with a representative of STOP-IT, which is a Salvation Army outreach program dedicated to aiding victims of trafficking in Chicago.104

96. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
97. Id.
98. Id.
100. 720 Ill. Comp. Stat. 5/11-14(c). Any defendant can make this claim, regardless of the defendant’s gender. See id. For purposes of this section, “trafficking” and “involuntary servitude” are defined in 720 Ill. Comp. Stat. 5/10-9(b) and (d) (2017).
102. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017; see also Johnson, supra note 34, at 59 (“It is unreasonable to expect that women who are coerced and abused by their pimps while being trafficked can either safely come forward and identify their traffickers or even cooperate in prosecutions.”).
3. The Predecessor Program

Prior to 2013, prostitution was a felony in Illinois. Beginning in 2011, toward the end of the felony-prostitution era, Cook County created the Women in Need of Gender Specific Services (WINGS) court, which provided social services to defendants convicted of felony prostitution. The WINGS court was created in response to community advocacy calling for “an alternative to the incarceration of trafficking victims.” The purpose of the WINGS court was to provide defendants with rehabilitative resources in order to combat the causal issues that led the defendants to engage in prostitution.

The WINGS court differed significantly from the current Program in that a defendant needed to be convicted of prostitution in order to take advantage of the social services offered. If a defendant wanted the help being offered, she had to enter a guilty plea. From there, the judge would sentence the defendant to complete a two-year intensive probationary program. As part of the probation requirements, the defendant would be mandated to complete certain goals specific to her needs. These could include “counseling, treatment for drugs and alcoholism and work toward her high school diploma.” Once the rehabilitation program was successfully completed, the defendant could apply to have the felony prostitution charge expunged from her record.

Even though prostitution became a misdemeanor in 2013, any person arrested for prostitution after the first offense was charged with felony prostitution. Thus, the WINGS court continued for repeat offenders. However, in August 2013, the felony upgrade component was removed from the Illinois prostitution statute. Following the removal, the WINGS court program ended when all participants who

106. Reese, supra note 103.
107. Johnson, supra note 34, at 50.
108. Id.
109. Reese, supra note 103.
110. Id.
111. Weigel, supra note 105; see also Johnson, supra note 34, at 50–51.
112. Reese, supra note 103.
113. Id.
114. Id.
had begun prior to July 2013 completed their programs. During its
three-year run, 370 women participated in the WINGS court, and
more than 100 of those women successfully completed the program.

C. National Diversion Programs That Have Influenced
the Chicago Program

This Section provides an overview of the prostitution diversion pro-
grams in New York City and Baltimore in order to show how diver-
sion programs can differ throughout the United States. As the first
prostitution diversion program, New York City’s system is often used
as a model for other jurisdictions seeking to implement their own di-
version programs, including Chicago. Although effectuated nearly fif-
ten years after the initial New York City program, Baltimore’s
diversion program is also considered to be a model due to its unique
structure and high success rates. Elements of both of these programs
can be found in the procedures of the Chicago Program, even though
only New York City’s program is officially cited as having influ-
enced the Chicago Program.

1. New York Human Trafficking Intervention Court

In 1993, New York City was the first to implement a problem-solv-
ing court that dealt with prostitution. This court was called the Mid-
town Community Court (MCC), and it targeted public-order
misdemeanors, or “quality-of-life offenses,” which included prostitu-
tion. The MCC was founded upon an “accountability model,” which
combined community service with self-help. Individuals convicted
of prostitution were sentenced in a way that would prevent them from
returning to the “lifestyle.” For example, some sex workers were
ordered to complete their community service “at night to make it
harder for [them] ‘to walk the streets.’” This type of sentencing was
meant to rid neighborhood streets of visible crime because visible
crime was thought to be strongly linked to violent crime. Individu-
als convicted of prostitution were to be connected with treatment pro-
grams that would teach them “market-oriented skills like risk

117. Weigel, supra note 105.
118. Id.
120. Gruber et al., supra note 8, at 1341.
121. Id. at 1342.
122. See id. at 1341–42.
123. Id. at 1342; Cohen, supra note 9, at 957.
124. Gruber et al., supra note 8, at 1340–41.
assessments, and personal responsibility." Yet, despite the MCC’s efforts to treat prostitution as a non-disposable offense, prostitution defendants were often sentenced to short jail stints or given time served without being provided with social services or any disincentives to reoffend.

However, by 2010, the MCC had changed its perception of prostitutes from petty offenders to “likely victims of domestic violence.” As part of its reconceptualization, the MCC employed social workers to work with defendants charged with prostitution. The MCC’s new outlook can be contributed to Judge Fernando Camacho, who was the first New York judge to apply the theory of “coercive control” to domestic violence and prostitution. Coercive control is the theory that a sex worker did not make the autonomous decision to act criminally; rather, her action was compelled by her abuser. Judge Camacho applied this theory to prostitution because prostitution is often the “product of ‘power and control’ rather than autonomous choice.” Thus, defendants charged with prostitution became viewed by the legal community as victims rather than offenders.

Although the MCCs still exist in New York City, the current diversion court model for prostitution-related offenses is the Human Trafficking Intervention Courts (HTICs). Like the MCCs, the HTICs are also fueled by the theory of coercive control. As indicated by New York Chief Judge Jonathan Lippman, the primary purpose of the HTICs is to “eradicate the epidemic of human trafficking.” Essentially, under a trafficking-focused model, the HTICs equate coercive control with trafficking in the context of prostitution. The idea that victims of coercive control are also victims of trafficking is evident in Judge Judy Kluger’s statement regarding the operation of the HTICs: “Thus, ‘by and large,’ she explained, in the HTICs ‘we work under the

125. Cohen, supra note 9, at 957.
126. Gruber et al., supra note 8, at 1343.
127. Id. at 1350.
128. Id.
129. Id. at 1347–49.
130. Id. at 1347.
131. Id. at 1347–48.
132. Gruber et al., supra note 8, at 1349.
133. Id. at 1343; Midtown Community Court, CTR. FOR CT. INNOVATION, https://www.courtinnovation.org/programs/midtown-community-court (last visited Apr. 17, 2019). The MCCs still exist today to offer sentencing-alternatives to individuals charged with “quality of life” crimes, whereas HTICs focus on individuals charged with prostitution.
134. Gruber et al., supra note 8, at 1349.
135. Id. at 1336.
136. Id. at 1355.
assumption that anyone who’s charged with this kind of crime is trafficked in some way . . . [Y]ou can be trafficked from Brooklyn to Manhattan . . . .”137 Operating under a presumption of trafficking, those working in the HTICs are taught to perceive all prostitution defendants “as either victims of human trafficking or in a group that is at high risk for trafficking.”138

Each HTIC seeks to bring all prostitution-related cases in front of one judge, who is educated in the dynamics of human trafficking.139 The only outlined goal of the system is to decrease the number of prostitution case resolutions at arraignment by granting defendants the opportunity to take advantage of the services provided by the HTIC.140 Despite a common goal, each New York borough has its own eligibility requirements for participants in its HTIC.141 For example, Queens’s HTIC does not admit defendants with multiple charges or extensive criminal records, whereas Brooklyn’s program will accept repeat offenders and defendants with multiple charges.142 Although each borough has its own HTIC, the system overall is considered to be very centralized and has helped to simplify communication between the judges, prosecutors, public defenders, and defendants.143 Additionally, as a result of having only one HTIC in each borough, there has been increased participation from service providers in court sessions.144 Affording more service providers the opportunity to immediately connect with defendants increases the likelihood that a defendant will be provided with “culturally, linguistically, and age-appropriate” services that best suit the defendant’s needs.145

Once connected with a social-service provider, the defendant must complete approximately five or six “sessions” with the provider.146 The first few sessions are typically spent building a relationship of trust between the provider and the defendant.147 From there, the service provider connects the defendant with needed services such as obtaining a driver’s license or receiving mental health treatment.148 The services agreed upon are backed by court mandate, thus the defendant

137. Id.
138. Id. at 1355–56.
139. Id. at 1364.
140. Gruber et al., supra note 8, at 1364.
141. Id.
142. Id.
143. Id. at 1364–65.
144. Id.
145. Id. at 1365.
146. Gruber et al., supra note 8, at 1366.
147. Id. at 1367.
148. Id.
is compelled to adhere to the service suggestions. A prosecutor will be unlikely to grant a favorable disposition to the defendant if she does not participate in services.

2. **Baltimore City’s Specialized Prostitution Diversion Program**

Baltimore City’s Specialized Prostitution Diversion Program (SPD) has been in operation since September 2009, and its structure greatly differs from New York City’s HTICs. Unlike the HTICs, defendants do not need to plead guilty to participate, but the SPD is limited to those who have been charged with prostitution. Furthermore, enrollment in the SPD is limited to approximately eighty participants at one time. This is because defendants are each assigned a full-time social worker and a pretrial officer who explain the requirements of the SPD and review the defendant’s needs in order to set achievable goals. As part of the requirements, defendants must check in with their pretrial officer and their social worker through weekly meetings and telephone conversations. Due to the limited amount of space in the SPD, stricter eligibility rules are imposed on defendants. For example, a defendant will not be eligible if she has a prior violent felony conviction or if she is currently on parole or probation. Moreover, if a defendant obtains a felony charge during her participation in the SPD, she may be dismissed from the program and subsequently prosecuted for her original prostitution charge. Although rules are more stringent, admitted defendants are allowed to remain in the program if they reengage with their social worker and their pretrial officer following a breach of program requirements.

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149. Cohen, supra note 9, at 971.
150. Gruber et al., supra note 8, at 1367.
151. Shdaimah & Bailey-Kloch, supra note 1, at 259.
152. Shdaimah, supra note 2, at 94–95.
155. Id.
156. Id. at 259.
157. Id.
158. Shdaimah, supra note 2, at 95–96.
159. Shdaimah & Bailey-Kloch, supra note 1, at 260.
In some respects, the SPD is considered one of the more successful diversion programs because of its high graduation rates.\footnote{Data compiled between January and August of 2010 indicates that 54 of 93 participants completed the program. \citeid{262}. As the authors of the study appropriately point out, “formal written criteria for what constitutes successful completion does not exist.” \citeid{260}. The same is true for the Chicago Program.} Some scholars attribute the program’s success to the personalized care that each SPD participant receives.\footnote{\citeid{264}.} Although a 2014 study of the SPD showed that many defendants chose to participate in the program to avoid jail time, the majority of participants expressed positive opinions about the services provided by the SPD, which further incentivized them to complete the program.\footnote{\citeid{262–63}.} A few participants even credited their success in the program to the relationships they were able to form with their social workers because the participants truly believed that the SPD staff members were there to help them rather than control them.\footnote{\citeid{264}. Any “disagreement on what constitutes a breach or (dis)engagement worthy of termination . . . [is] resolved through staff discussion and consensus, sometimes with the input of the participant.” \citeid{260}.}

III. Analysis of the Sex Work Stigma’s Impact on the Chicago Program

In addition to the favorable disposition granted to Program graduates, there are practical benefits for defendants in achieving their goals. For example, although it might seem like a minor achievement, obtaining state-issued identification allows defendants to also acquire a social security number or food stamps.\footnote{See \citeid{SOC. SEC. ADMIN., PUB. NO. 05-10002, YOUR SOCIAL SECURITY NUMBER AND CARD 3–4 (2017), https://www.ssa.gov/pubs/EN-05-10002.pdf; Apply for Case, SNAP (Food Stamps) & Medical Assistance, ILL. DEPT’ HUM. SERVS., http://www.dhs.state.il.us/page.aspx?item=33698 (last visited Feb. 5, 2018).} Knowing their social security number is especially important for defendants because they must provide it when applying for medical insurance, which some defendants need in order to seek substance abuse or mental health treatment.\footnote{See generally \citeid{Get Ready to Apply for or Renew Your Health Insurance Marketplace Coverage, HEALTH INS. MARKETPLACE, https://www.healthcare.gov/downloads/application-checklist.pdf (last updated Aug. 2016). \citeid{See also Haymarket Center Insurance & Payment Options, HAYMARKET CTR., http://www.hcenter.org/about/insurance-accepted (last visited Feb. 5, 2018). Haymarket Center is the Program’s primary service provider for in-patient substance-abuse treatment, but the defendant must have compatible insurance to take advantage of Haymarket Center’s services.}} These practical benefits are stepping-stones that set the defendant on the path to long-term success after the Program.
However, a defendant’s potential for long-term success is negatively impacted by the Program’s perpetuation of the sex work stigma. This Section argues that using the threat of prosecution in order to gain Program participants is a coercive technique that butts against the goals of the Program.166 By employing coercion to gain participants, the Program continues the coercive cycle that diversion courts seek to end.167

Yet, the Program’s deferred prosecution component and current practices by Program implementers minimize the harm that can result from coercive tactics.168 Despite these efforts, a defendant’s long-term success following Program graduation is impacted by her legal status and her social support system. The ability to have her record expunged will aid in the defendant’s quests for stable housing and employment, but expungement is not an option for all Program defendants.169 Without a strong social support system after Program graduation, defendants are also more likely to return to sex work because encouragement and empowerment are essential to a successful transition from prostitution.170

A. Continuing the Coercive Cycle

I. Coercion as Characteristic of Diversion Programs

As was asserted by Judge Camacho of the HTIC, coercion is often understood as an integral part of prostitution.171 Sex workers who engage in “survival sex” are thought to be coerced into selling sex by the need to survive.172 One goal of prostitution diversion courts is to end the coercion that is supposedly inherent to prostitution.173 To achieve this goal, diversion courts should avoid treating prostitutes as criminals; rather, the courts should treat them as victims.174 Yet, this goal is contradicted by the courts’ practice of threatening prosecution

166. See discussion supra Section II.B.1.
167. See supra notes 129–138 and accompanying text.
168. See discussion infra Section III.A.3.
170. See discussion infra Section III.B.2.
171. See supra notes 129–132 and accompanying text.
172. MacKinnon, supra note 11, at 281.
173. See Gruber et al., supra note 8, at 1347–49 (describing sex work as the result of coercive control as opposed to autonomous choice); Lewis, supra note 25, at 289–90 (describing that prostitution diversion programs are “designed to demonstrate to the client and worker the harmful nature of the industry”).
174. Gruber et al., supra note 8, at 1349; see also Press Release, Anita Alvarez, supra note 7.
in order to “force” defendants to participate in treatment and services. 175

The use of coercion makes prostitution diversion courts a conundrum. 176 The courts and their proponents claim to want to help impoverished and victimized women. 177 But the program process involves the arrest, and sometimes the prosecution and incarceration, of those who the courts claim to protect. 178 Scholars refer to this practice as “penal welfare,” where states “provid[e] social benefits through criminal court.” 179 Legal scholars Aya Gruber, Amy Cohen, and Kate Mogulescu address “penal welfare” in the context of the HTICs:

In the HTICs, [the Chief Judge] explained, defendants charged with prostitution receive “services that will assist them in pursuing productive lives rather than sending them right back into the grip of their abusers.” Those who comply with service mandates have “the opportunity to receive non-criminal dispositions or dismissal.” Thus, although one might think the obvious consequence of re-envisioning prostitution defendants as victims would be less criminal intervention, the HTIC model suggests greater intervention in prostitution defendant’s lives. It does so by repackaging criminal intervention as welfare and the arrest and prosecution of presumed victims as a minimal cost of eradicating trafficking, if not a net benefit to arrestees. 180

Like the HTICs, the Chicago Program employs criminal intervention in order to achieve its goals. 181 The Chicago Program uses a deferred prosecution model to provide services by allowing defendants to participate in and successfully complete the program in exchange for dropped charges. 182

2. The Chicago Program’s Legal Limitations on Coercive Tactics

Although the Program utilizes criminal intervention in order to provide social services to defendants, the Program limits its use of coercive tactics through its deferred prosecution foundation. 183 Unlike the Program, the HTICs require that the defendant plead guilty to prosti-
tution in order to gain access to services through probation.\textsuperscript{184} In those situations, the defendants’ options are either probation and social services or mandatory jail time.\textsuperscript{185} Instead of this typical scenario, the Program offers services to the defendants first by deferring prosecution to allot the defendant time to complete the Program if she chooses.\textsuperscript{186}

If the defendant chooses to participate in the Program, she is given time to start her goals.\textsuperscript{187} However, if she does not show any signs of progress after so many court appearances, then she is told she has “one more chance” to complete her goals.\textsuperscript{188} If she does not complete her goals by her “final” court date, then her case is transferred to Branch 43 where she will be criminally prosecuted for prostitution.\textsuperscript{189} This “one more chance” tactic is a last-ditch effort on the part of the Program implementers to persuade the defendant to complete her goals and graduate from the Program.\textsuperscript{190} It is a coercive tactic used to remind the defendant of the lingering threat of prosecution if she does not comply with the Program requirements.\textsuperscript{191} In that moment, the defendant is once again reminded of her minimal choices for her future.\textsuperscript{192}

Although the Program is less coercive than other diversion court programs in the United States, the Program still perpetuates the coercive cycle due to the limited choices offered to defendants. The use of coercive tactics in diversion court programs is inevitable where prostitution is criminalized.\textsuperscript{193} Because prostitution is criminalized in Illinois, the threat of prosecution will always be lingering for defendants

\begin{itemize}
\item \textsuperscript{184} See generally Gruber et al., supra note 8, at 1366–69.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} General Administrative Order No. 2015-04; Press Release, Anita Alvarez, supra note 7.
\item \textsuperscript{187} Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
\item \textsuperscript{188} Id.
\item \textsuperscript{189} Id. This is only the final court date in Branch 46. If the defendant is transferred to Branch 43, she will continue to attend court until her case is resolved. Additionally, the “final” court date may not actually be the last in Branch 46. Sometimes Program implementers will say that this final court date is the defendant’s last chance, but then they will give her another opportunity to complete her goals, depending on the circumstances surrounding her inability to complete her “final” court date. Id.
\item \textsuperscript{190} Id.
\item \textsuperscript{191} See generally Gruber et al., supra note 8, at 1367–68.
\item \textsuperscript{192} Id.
\item \textsuperscript{193} See id.; see also supra notes 36–40 and accompanying text (describing how the stigmatization of sex work is perpetuated by the criminalization of prostitution). It can be argued that the only true way to end the legal coercion of sex workers is to legalize or decriminalize prostitution, thereby eliminating the prosecution of sex workers and the need for prostitution diversion programs. However, such an argument is outside the scope of this Comment.
\end{itemize}
offered the choice to participate in the Program. The Program is meant to end the coercion that forces people to engage in sex work, and the Program implementers do their best to limit the coercive effects of the Program. Yet, as a result of the criminalization of prostitution, the Program perpetuates the coercive cycle by diminishing the autonomy of the defendant. When presented with a decision between a criminal prosecution and the participation in a “rehabilitation” program, it is likely that the defendant will choose the rehabilitation program.

3. The Chicago Program’s Practical Limitations on Coercive Tactics

In practice, the use of coercive tactics does not diminish the intentions of the Program implementers because coercion is a characteristic of all diversion court programs due to the criminalization of the acts that allow defendants to qualify for the programs. There is nothing Program implementers can do to completely eliminate coercive elements, but the harms associated with coercion can be practically limited by Program implementers.

Public defenders assigned to the Program have provided clothing, food, job information, and a line of constant contact to all defendants, regardless of whether they choose to participate in the Program. By providing these items, the public defenders show the defendants that they are just as dedicated to helping and supporting them as the Program’s service providers. The public defenders’ efforts go a long way in establishing a relationship of trust with the defendants, which is essential for effective client advocacy and for a defendant’s success in the Program. Moreover, some public defenders provide these addi-

196. See Gruber et al., supra note 8, at 1367–68; see also supra notes 36–40 and accompanying text (describing how the stigmatization of sex work is perpetuated by the criminalization of prostitution).
197. Lewis, supra note 25, at 290–91; see also Shdaimah & Bailey-Kloch, supra note 1, at 262 (“Eighteen of our twenty respondents told us that they participated not so much due to the draw of the program, but because they did not want to go to jail.”).
198. See supra notes 36–40 and accompanying text (discussing the beliefs rooted in the stigmatization of the sex work that provide the foundation for prostitution diversion court programs).
199. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
200. A supportive environment is essential to a defendant’s success, especially when the defendant is receiving mental health and/or substance abuse treatment. See, e.g., Shdaimah & Bailey-Kloch, supra note 1, at 262–64 (defendants of the Baltimore program attribute their success to the relationships they built with their social workers); see also Johnson, supra note 34, at 30–31 (stating that research shows that some sex workers in Illinois prefer to engage in prostitu-
tional services even after the defendant’s case has concluded. This is especially important for Program graduates because their support system is not lost following completion of the Program. By providing a welcoming and supportive environment, the public defenders minimize the coercive effects of the Program because the defendant feels less like she is being forced to accept services and more like she has the opportunity to access helpful services needed to improve her quality of life.

However, these additional services provided by public defenders are not required by the court order that established the Program. In fact, the order does not mention the role of public defenders in the Program at all. Rather, public defenders rely on donations and their own resources to provide additional items and services to the defendants. Therefore, these additional allowances may disappear when public defenders leave the Program due to the Cook County Public Defender’s rotation system.

B. Formalized Role of the Assistant Public Defender

Creating an established role for the public defender in the Program would provide consistency for the defendants, which would help to establish trust between the public defender and the defendant. This established role would outline the responsibilities for the public defender that would differ from a typical public defender assignment due to the deferred prosecution and social services elements of the Program. Due to these elements, it is important for defendants to trust their public defender and the Program itself in order to successfully complete the Program. Without clear documentation about the role of the public defender in the Program and about the services to be

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201. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.

202. See supra note 200 and accompanying text.

203. The success of this tactic is evident in the positive opinions expressed by Baltimore program graduates who attributed their success to the support they received from SPD staff members. Shdaimah & Bailey-Kloch, supra note 1, at 262–64.

204. See generally General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015).

205. Id.

206. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.

207. A relationship of trust is important for the defendant to want to succeed in the Program because they feel supported. See Shdaimah & Bailey-Kloch, supra note 1, at 262–64.
provided by the public defender, the Program lacks consistency when public defenders are rotated.

Generally, public defenders in Cook County are rotated to new assignments every year. For example, a public defender may be assigned to a courtroom strictly defending against misdemeanor charges for one year before moving to a courtroom overseeing traffic violations. Public defenders who work in the First Municipal District of the Cook County Public Defender are assigned to the Program through the rotation system. However, when a public defender is assigned to the Program, she enters a new role with minimal guidance. 208

Attorneys have a duty to provide competent representation, which includes being familiar with the area of law governing the case. 209 In the context of a prostitution diversion court, the attorney’s duty encompasses knowing the law, but also being knowledgeable of the social elements of a treatment court system. 210 Additionally, the public defender would need to adjust her typical criminal defense role to that of a social advocate due to the deferred prosecution element of the Program. 211 Although criminal defense requires a certain level of social advocacy on behalf of all clients, the public defender’s role in the Program creates an increased need for social advocacy because there are very few elements of standard criminal defense involved in the representation of Program defendants.

In the Program, the public defender’s role does not require the interpretation of the law or facts to defend the defendant from criminal prosecution. She does not combat the prosecution of her client in the traditional sense. Rather, the public defender pushes for the defendant’s successful completion of the Program so that the defendant is not criminally prosecuted in another courthouse, where she would be assisted by another public defender. It is the new public defender in Branch 43 who would negotiate any plea deals or advocate for the defendant at trial. The only traditionally understood “lawyering” done by the Program public defender is the public defender’s discussions

208. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.

209. MODEL RULES OF PROF’L CONDUCT r. 1.1 (AM. BAR ASS’N 2018).

210. Cf. GENEVIEVE CITRIN & MONICA FUHRMANN, JUSTICE PROGRAMS OFFICE, THE ROLE OF DEFENSE COUNSEL IN DRUG COURTS 2 (2016) (listing the “core competencies” of defense counselors in drug court, which include that counsel be “knowledgeable of gender, age and cultural issues that may impact the offender’s success” and “knowledgeable about addiction, alcoholism and pharmacology generally and applies that knowledge to respond to compliance in a therapeutically appropriate manner”).

211. Cf. id. at 1 (discussing the non-adversarial role that defense counsel takes in drug courts, which are another common type of diversion program).
with the state’s attorney about the defendant’s progress and the public
defender’s appearance in court to speak to the judge on behalf of the
defendant.\footnote{212} The public defender is also responsible for advising the
defendant on all of her options, including whether to participate in the
Program or be transferred to Branch 43 for criminal prosecution.\footnote{213}
Because the Program public defender does not interpret the law or
facts or defend the defendant from criminal prosecution, the public
defender must become a strong advocate for the advances the defen-
dant makes in her life which propel her toward successful completion
of the Program. The public defender is often the sole reminder to the
judge that any progress the defendant makes is a huge step toward
leaving the sex work lifestyle, not just progress toward arbitrary com-
pletion of the Program.

However, the general order establishing the Program does not men-
tion the important role of the public defender.\footnote{214} Thus, when a new
public defender is assigned to the Program, she must rely on any train-
ing provided by the previous public defender and other Program im-
plementers.\footnote{215} If the Program were to include formal documentation
on the public defender’s role, then there would be more stability and
consistency in representation of defendants and it would allow for a
smoother transition between rotated public defenders.\footnote{216}

Consistency and stability in representation helps public defenders
establish trust with the defendants. Trust between the public defender
and the defendant is very important to the defendant’s success in the
Program.\footnote{217} If the defendant feels she is unable to trust her public
defender, then she may not feel inclined to complete the Program.\footnote{218}
When supportive practices are consistent between transitioning public
defenders, defendants are able to maintain their feelings of trust. Al-
though each public defender comes with her own strengths and com-

\footnotetext{212}{Cf. id. at 3 ("[I]n these courts, it is imperative that defense counsel is cross-trained in
substance use and mental health to ensure that they completely understand and are full advocates of each clients’ specific individual needs.").}

\footnotetext{213}{See Model Rules of Prof’l Conduct r. 1.4 & cmt. 2 (Am. Bar Ass’n 2018) (requiring
attorneys to communicate all information necessary for the client to make an informed decision).}

\footnotetext{214}{See General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29,
2015).}

\footnotetext{215}{Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W.
Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.}

\footnotetext{216}{See Kevin S. Burke & Sudha Rajan, Attorney Specialization: Good for the Attorney, the
attorney-specialization/ ("Legal specialization has a direct, positive impact on attorney
competence.").}

\footnotetext{217}{Shdaimah & Bailey-Kloch, supra note 1, at 264.}

\footnotetext{218}{Id.}
mon practices, setting baseline expectations for the Program’s public
defender helps to ensure that defendants feel like they are being fully
supported by their legal advocate.

Additionally, as part of the baseline expectations and to better pre-
pare public defenders for their new role, public defenders should be
required to attend specialized trainings on how to work in a diversion
court program and with defendants with prostitution backgrounds.
Such trainings would aid in minimizing the impact of coercive tactics
on defendants. Currently, there are accessible events that focus on di-
version court programs and human trafficking intervention.219 Requir-
ing attendance to one or two of these events would allow public
defenders to stay up-to-date on best practices when working with
human trafficking victims and with defendants undergoing treatment.
Specialized training would give public defenders additional tools to
help them convey information and provide positive support to Pro-
gram defendants without using coercive language that may cause the
defendant to mistrust the intentions of the public defender.220

If transitioning public defenders are able to maintain trust with de-
fendants, then the defendants will be more likely to succeed in the
Program and after graduation due to a consistent support system.221
Even with trust and consistency created by an established role for the
public defender, a defendant is not guaranteed to successfully com-
plete the Program once the reality of life after the Program becomes
more apparent to the defendant.

C. After-Effects of the Program

1. Social Effects of a Criminal Record

Even if a graduate leaves the Program without a conviction on her
record, that graduate does not necessarily come out of the Program
ready to succeed in the community. She will still have a criminal re-
cord showing an arrest for prostitution, which may impact her ability
to obtain long-term self-sufficiency due to social stigma surrounding
criminal records.222 Regardless of the case’s outcome, having a crimi-

219. See, e.g., Matt Kindler, 2017 Illinois Association of Problem-Solving Courts Conference,
EVENTBRITE, https://www.eventbrite.com/e/2017-illinois-association-of-problem-solving-courts-
conference-registration-34731139774# (last visited Mar. 16, 2018); Matt Kindler, Chicago, Il
Human Trafficking Events, EVENTBRITE, https://www.eventbrite.com/d/il—chicago/human-traf-
ficking/ (last visited Mar. 16, 2018).

220. See Burke & Rajan, supra note 216.

221. See Shdaimah & Bailey-Kloch, supra note 1, at 266.

nal record can impair a defendant’s ability to obtain housing or employment.\textsuperscript{223}

In her dissent in \textit{Utah v. Strieff}, a case about unlawful searches in violation of the Fourth Amendment, Justice Sotomayor poignantly stated: “Even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the ‘civil death’ of discrimination by employers, landlords, and whoever else conducts a background check.”\textsuperscript{224} The term “civil death” refers to an old form of legal punishment in the United States, in which a person’s civil rights were extinguished if that person was convicted of a crime.\textsuperscript{225} This person was thereby placed “outside the law’s protection.”\textsuperscript{226} Although this form of punishment no longer legally exists, the practice has reemerged through the emphasis society has placed on criminal records, including arrest records.\textsuperscript{227} In today’s society, the civil death created by criminal records occurs every time an employer or housing provider considers a background check and subsequently denies an applicant because of her criminal record.\textsuperscript{228}

Securing employment is particularly difficult for individuals with criminal records because employers are legally allowed to consider criminal records when hiring. As was stated in a report about employment discrimination based on criminal records:

A person’s interaction with the criminal justice system extends beyond what may be a minor arrest or conviction to a lifetime of social and economic disadvantage. One prominent researcher has found

\begin{itemize}
\item \textsuperscript{223} Id.; see also Katherine M. Young & Joan Petersilia, \textit{Keeping Track: Surveillance, Control, and the Expansion of the Carceral State}, 129 Harv. L. Rev. 1318, 1341 (2016) (reviewing Charles R. Epp et al., \textit{Pulled Over: How Police Sops Define Race and Citizenship} (2014); Alice Goffman, \textit{On the Run: Fugitive Life in an American City} (2014); and James B. Jacobs, \textit{The Eternal Criminal Record} (2015)) (“Under federal law and the laws of every state, a criminal record carries lifelong consequences. The American Bar Association identifies more than 38,000 punitive provisions that ‘apply to people convicted of crimes, pertaining to everything from public housing to welfare assistance to occupational licenses.’” (internal citations omitted)).
\item \textsuperscript{224} 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).
\item \textsuperscript{226} Id.
\item \textsuperscript{228} See Strieff, 136 S. Ct. at 2070 (Sotomayor, J., dissenting); Chin, supra note 225, at 1791 (discussing how criminal convictions cause “collateral consequences” such as lack of access to public benefits or employment opportunities).
\end{itemize}
that a criminal record reduces the likelihood of a job callback or offer by nearly 50 percent...229

For Program defendants, the impact of their criminal records on their employment opportunities greatly increases the defendants’ likelihood of returning to prostitution in order to survive. Former U.S. Secretary of Labor Hilda Solis exemplified this point when she stated, “Stable employment helps ex-offenders stay out of the legal system.”230 Although the Equal Opportunity Employment Commission (EEOC) has declared it illegal for an employer to bar an applicant based solely on the existence of a criminal record, employers continue to allow their perceptions of criminal records to inform their hiring decisions.231 Thus, Program defendants are at a disadvantage when searching for legal employment.

Additionally, an employer has the right to ask an applicant about her arrest record to determine “whether the arrest record reflects the applicant’s conduct.”232 Under Title VII of the Civil Rights Act of 1964, an employer who inquires about an arrest must afford the applicant the opportunity to reply.233 However, a Program defendant may be unwilling to answer due to the social stigma surrounding sex work. Constantly forcing a defendant to explain her socially-contentious past may be traumatizing for that defendant, and it reinforces the idea that sex workers are continuously criminalized even after criminal charges have been dismissed. To avoid this experience, a Program defendant may choose to not apply for employment that requires a background check, thereby further limiting her job opportunities.

Housing is another area in which Program defendants are likely to face discrimination based on their criminal records. The EEOC policy

231. Id. at 6 (observing that blanket hiring prohibitions based on the existence of a criminal record violate Title VII); id. at 13–14 (“[A] 2010 survey of employers indicated that over 30 percent [of employers] consider an arrest that did not lead to conviction to be at least ‘somewhat influential’ in a decision to withhold a job offer.”).
232. Id. at 14 (quoting U.S. EQUAL OPP’RTUNITY COMM’N, 915.061, THE CONSIDERATION OF ARREST RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (1990) [hereinafter EEOC 1990 POLICY GUIDANCE]). More recently, the EEOC has stated, “an exclusion based on an arrest, in itself, is not job related and inconsistent with business necessity;” however, “an employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question.” U.S. EQUAL OPP’RTUNITY COMM’N, 915.002, CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (2012).
guidances on employment discrimination based on criminal records span back to 1990. However, the U.S. Department of Housing and Urban Development (HUD) did not address housing discrimination based on criminal records until April 2016. In its policy guidance, HUD stated that a private or public housing provider may be in violation of the Fair Housing Act (Act) if the provider denies individuals access to housing on the basis of their criminal records. Generally, a denial of housing based on a criminal record is not a violation of the Act because the Act does not include “having a criminal record [as] a protected characteristic.” However, discrimination on the basis of criminal records often has a disparate impact on racial minority home seekers, and race is a protected characteristic under the Act. Regardless of the provider’s intent to discriminate, a violation of the Act is found where a “provider’s policy or practice has an unjustified discriminatory effect.” The provider’s policy or practice is only justified “if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider.” Following its legitimate interest analysis, HUD has explicitly stated that the exclusion of individuals on the basis of prior arrests without convictions will never be considered necessary under the analysis. Ultimately, the provider will be unable to show that the housing applicant’s arrest concretely indicates that the applicant will be a danger to resident safety or property because an arrest only shows that the applicant was suspected of the offense, not that the applicant actually engaged in criminal activity.

For Program graduates who only have an arrest for prostitution or solicitation on their records, housing should be easier—but not easy—to secure because the HUD guidance prohibits the denial of an application based solely on a criminal record showing an arrest. It is important to stress that the HUD guidance only indicates a violation of the Act where the housing provider has a policy or practice of refusing to accept applicants with criminal records, specifically where that

236. Id. at 2.
237. Id.
238. Id.
239. Id.
240. Id.
242. Id.
243. Id.
practice disproportionately affects minority applicants.244 But a criminal background check is only one component of a provider’s review of a housing application.245 The applicant must also be able to afford the rent, which she will be unable to do without employment. Not only are employers often reluctant to hire individuals with criminal backgrounds, they are also reluctant to hire homeless individuals.246 Many Program graduates do not have permanent or stable housing, thereby making it more difficult for graduates to obtain employment.247 Thus, without the ability to find and afford stable housing or employment, a graduate’s chance of returning to sex work drastically increases.248

Fortunately, some Program graduates may have a remedy available to prevent civil death resulting from their arrests and ultimately their return to sex work. Under the Illinois expungement statute, Program graduates may file a petition for the destruction of their criminal records, including records of arrests and charges.249 In Cook County, defendants whose charges were dismissed are not required to pay a fee for expungement.250 Thus, Program graduates may file for expungement for free. Following the successful destruction of her record, a background check will show that the graduate has a clear criminal background.251 Having a clear record is important for the

244. Id. at 2; see also Erin Eberlin, Renting to Tenants with Criminal Records: Using Criminal History in Tenant Screening, BALANCE SMALL BUS., https://www.thebalancesmb.com/renting-to-tenants-with-criminal-records-4149540 (last updated Jan. 25, 2019) (describing how a landlord can prevent accusations of discrimination when reviewing applicant’s criminal records).
247. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
249. 20 ILL. COMP. STAT. 2630/5.2(a)(1)(E) (2016).
251. EXPUNGEMENT GUIDE, supra note 169, at 3–4. It is important to note that expungement will only clear the graduate’s record of eligible offenses, such as the arrest and charges relating to misdemeanor prostitution and solicitation. STATE OF ILL., EX-I 2902.4, HOW TO EXPUNGE AND/ OR SEAL A CRIMINAL RECORD 3 (2018). Any ineligible offenses on the graduate’s record will remain and show up on background check.
TREATMENT WITH A SIDE OF STIGMA

The graduate’s long-term success following the Program because it affords her protection from housing and employment discrimination. These protections are imperative to the graduate’s ability to achieve economic stability and to prevent her from engaging in survival sex. In order to minimize the discriminatory effects of having a criminal record, Program graduates are advised of the expungement process by their public defender.

However, not all Program graduates are eligible for expungement. Some graduates’ records show felony prostitution convictions that were obtained prior to the change in Illinois prostitution law. Graduates with felony prostitution convictions are even more likely to experience civil death and have fewer opportunities for employment and housing as employers, public housing agents, and landlords can consider a person’s convictions when deciding to hire or house that person. As a result of fewer opportunities, these graduates are at a higher risk of being trafficked in the future. Traffickers and pimps will use their knowledge about graduates’ limited prospects to coerce graduates back into prostitution, which will likely lead graduates back into the Program.

2. Care Provided After Program Graduation

Because so many of the defendants graduate from the Program within three to six months, it is not practical to assume that the defendant has fully transitioned out of a prostitution lifestyle once she completes the Program. This is especially true for the majority of defendants who are still dealing with substance abuse issues or undergo-

252. EXPUNGEMENT GUIDE, supra note 169, at 4, 6.

253. See MacKinnon, supra note 11, at 276–77 (“Urgent financial need is the most frequent reason mentioned by people in prostitution for being in the sex trade. Having gotten in because of poverty, almost no one gets out of poverty through prostitution.”).

254. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.

255. See Johnson, supra note 34, at 55.

256. EXPUNGEMENT GUIDE, supra note 169, at 6; see also Chin, supra note 225, at 1791 (“For many people convicted of crimes, the most severe and long-lasting effect of conviction is not imprisonment or fine. Rather, it is being subjected to collateral consequences involving the actual or potential loss of civil rights, parental rights, public benefits, and employment opportunities. . . . People convicted of crimes are not subject to just one collateral consequence, or even a handful. Instead, hundreds and sometimes thousands of such consequences apply under federal and state constitutional provisions, statutes, administrative regulations, and ordinances.”); Young & Petersilia, supra note 223, at 1341 (“Former felons are often legally barred from the vote, financial aid for higher education, and government benefits such as Social Security.”).

257. Johnson, supra note 34, at 55.

258. Id.

259. Based on my experiences with the Assistant Public Defender in Branch 46 at 555 W. Harrison St., Room 303, Chicago, IL 60607 during June 2017–December 2017.
ing drug treatment following Program graduation.\textsuperscript{260} Many defendants will check themselves out of drug treatment once they graduate from the Program because the Program does not require that drug treatment be completed in order to achieve a goal.\textsuperscript{261} Often, it is enough for a defendant to check herself in to treatment to accomplish a goal because the defendant is taking an important step toward recovery.\textsuperscript{262} Following graduation, the Program does not include any formal aftercare program that would provide continued recovery support to graduates.\textsuperscript{263} Any aftercare that is provided to Program graduates is either offered personally by the Program implementers or is routine for the Program’s affiliated social service organizations.\textsuperscript{264}

Typically, aftercare programs provide follow-up treatment after the completion of a substance-abuse rehabilitation program.\textsuperscript{265} However, an aftercare program providing support and empowerment to all Program defendants would be beneficial to their continued success following graduation.\textsuperscript{266} Program aftercare could begin with the presentation of graduation certificates to all defendants who complete the Program. A graduation certificate would give defendants a sense of accomplishment and a physical acknowledgment of their hard work. This simple method empowers defendants and reminds them

\textsuperscript{260} Id.
\textsuperscript{261} Id.
\textsuperscript{262} When a defendant checks herself into a treatment program, she is both acknowledging that she has an addiction and she is taking action to combat that addiction. See The 5 Stages of Addiction Recovery, CRC Health, https://www.crchealth.com/find-a-treatment-center/washing
\textsuperscript{263} See General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015); Press Release, Anita Alvarez, supra note 7.
\textsuperscript{264} See supra notes 199–203 and accompanying text (describing additional services provided by some public defenders that are not required by the court order). Some public defenders inform defendants that they may continue to reach out to them after graduation for help with job information, clothes, connections to services, etc. CCHC Footprints social workers provide educational opportunities to individuals who have transitioned out of sex work. Garwood, supra note 7, at 5. These opportunities include trainings on life skills such as money management and doing laundry. Id. Additionally, the Program’s primary substance-abuse treatment center, Haymarket Center, has recovery homes for individuals leaving a treatment program and a Community Integration Program that motivates recovering individuals to reenter the community and live a drug-free lifestyle. See Recovery Homes, Haymarket Ctr., http://www.hcenter.org/programs-treatment/Recovery-Homes (last visited Mar. 16, 2018).
\textsuperscript{266} CCHC Footprints has already begun to employ a support-system method: “By combining encouragement and expectations with examples of positive outcomes, Footprints aims to have these women buy in to the infinite possibilities that are available in their life.” Garwood, supra note 73, at 5.
that they are not limited by their experiences as sex work stigma suggests.267

Following graduation, Program aftercare should incorporate sup-
port groups for and follow-up practices with Program implement-
ers.268 Support groups could be meetings between Program
implementers and all graduates. This would allow graduates to build a
social support network where they can relate to one another through
shared experiences and motivate each other to keep working hard.269
Sex work stigma often leaves sex workers feeling ashamed of their
experiences because society employs the stigma to label sex workers
as dishonorable and morally reprehensible.270 Creating a social sup-
port network would empower graduates to overcome the shame that
sex work stigma attaches to sex workers, even those who have left
prostitution.271

An aftercare program focusing on empowerment and support
would also help graduates combat the “victim” label that the sex work
stigma imposes.272 When a person is labeled as a victim, she often in-
ternalizes and outwardly manifests that identity even when this “vic-
tim” is not being victimized.273 Victim identity is often associated with
negative belief systems, such as “I can’t,” “You can’t trust anyone,” or
“Don’t get up, you’ll just get kicked back down again.”274 These nega-
tive thoughts in turn impact the defendant’s ability to motivate herself
after the Program because the victim identity prevents her from “en-
gag[ing] life and hurdl[ing] its hurdles.”275 Providing defendants with a
supportive environment made up of their peers would allow defend-
ants to motivate each other and to not feel consumed by the negative
thoughts associated with victim identity.

To further overcome the victim identity, support group participants
would have the opportunity to be seen as leaders to Program defend-

267. See generally Lewis, supra note 25, at 292.
268. Garwood, supra note 73, at 5; Shdaimah & Bailey-Kloch, supra note 1, at 266; Nat’l
Coalition for Homeless, supra note 200.
269. See sources cited supra note 268.
270. Grant, supra note 17, at 15; Pheterson, supra note 16, at 39, 42.
271. CCHC director Tricia Ford stated, “It is important to stress what they [defendants] are
capable of . . . reinforce that this time in their life does not define them . . . they are still mothers,
daughter, aunts, sisters, wives, and they can find this again.” Garwood, supra note 7, at 4.
272. See supra notes 25–28 and accompanying text.
273. Andrea Mathews, Recovering from the Victim Identity: Unwinding the Knotty Threads of
275. Id.
ants and to Program graduates who are new to the aftercare program.276 As a leader, the graduate would have the opportunity to encourage discussion among group members or organize social events for graduates to gather together and celebrate their achievements. Such a leadership role would motivate the graduate to continue her path of success.277 Becoming a leader would not only provide a role model for defendants and new graduates, but it would also allow the leader to rise above the victim identity—proving to herself that she can get back up when the sex work stigma tries to knock her down.

In practice, information about support group meetings and connections to other Program graduates could be provided through follow-up sessions with the assigned public defender or a designated social service provider, such as CCHC. After spending months building relationships, the continued support and encouragement of the Program implementers provided through follow-up sessions would be a positive influence on the graduate’s prolonged success.

Similar to participation in the Program, participation in aftercare would be voluntary. If the graduate does not want to participate in aftercare or she cuts off contact, then the Program implementers must respect her wishes. It is possible that Program graduates will not be interested in aftercare, especially if they associate the aftercare program with the criminal justice system. Additionally, there is no longer the threat of criminal prosecution to entice graduates to participate in aftercare services because their criminal cases have concluded.278 Any involvement in aftercare services would be determined by the Program graduate.

In spite of this very practical limitation, it is still important to provide aftercare services to Program graduates to encourage further success and empowerment. Without a formal aftercare program following graduation, the Program will continue to see the return of graduates in new criminal prostitution cases. Because an aftercare program would provide an enduring support and encouragement system, graduates will be more likely to continue to work hard to better their lives and separate themselves from sex work stigma.279

276. Continuing Care Following Addiction Treatment, Addiction-Treatment.com, https://www.addiction-treatment.com/research/aftercare-options/ (last updated Feb. 27, 2019) (“These groups can be very beneficial to those who have recovered from acute addiction or dependency, as they will be seen as leaders and role models by those who are still suffering.”).

277. Id.

278. General Administrative Order No. 2015-04, Circuit Court of Cook County (May 29, 2015).

279. See supra notes 272–275 and accompanying text; Beddoe, supra note 265.
Sex work stigma is the hidden force behind the Chicago Prostitution and Human Trafficking Intervention Court program because it is the backbone of the national criminalization of prostitution. Due to the criminalization of sex work, coercion is characteristic of prostitution diversion courts because of the constant lingering threat of prosecution if defendants do not complete the social service requirements. However, the Program’s deferred prosecution structure and the efforts of the public defender, state’s attorney, and social service providers have minimized the harm that results from coercive tactics. Yet, defendants are still not ready to succeed following the completion of the Program, due to sex work stigma and the imposed victim identity on defendants. To combat these barriers, the Program would benefit from a more formal incorporation of the public defender’s role in the Program. Additionally, Program graduates would continue on their paths of success if the Program were to include aftercare services that would provide graduates with an enduring support system to motivate their further success.

The Program does not successfully “rehabilitate” defendants if they still feel condemned either as sex workers or victims after leaving “the life.” When they are prevented from accessing employment, stable housing, or a safe exit from sex work, sex workers are re-victimized by being forced to carry the sex work stigma even after completing the Program. An aftercare program would provide defendants with the support and empowerment they need to combat sex work stigma and victim identity. This in turn will allow a defendant to take full advantage of the services offered to her. Without services that provide participants with long-term needs, like continued support and basic necessities, Program graduates are more likely to go back to sex work in order to survive.

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281. Johnson, supra note 34, at 45.
282. See generally Beddoe, supra note 265.
283. See Carrasquillo, supra note 12, at 709.
284. Id.
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