

To: Cynthia Watson, Dr. Dakibu Muley, Chief State Prosecutor David Strollo, Chief Otoniel Reyes, Loel Meckel, and other members of the LEAD Operational Work Group, Policy Work Group, and Community Leadership Team

Re: Follow up to LEAD Reform Letter dated April 15, 2019

SUMMARY OF CONCERNS re: New Haven LEAD

We, the undersigned, write to follow up on our LEAD Reform Letter dated April 15, 2019, in light of the NHPD and Engagement Specialist (ES) protocols and LEAD Guidelines released in May 2019 and the draft recommendations issued by the National LEAD Support Bureau in October 2019. Our involvement in and analysis of New Haven LEAD to date suggests to us that the program is not living up to the National LEAD goal of reducing involvement in the criminal legal system “for people with unaddressed public health and human services needs.”¹ If that is a goal shared by New Haven, these core principles must be the focus of any review of the program, including decisions whether to continue, terminate, or reform LEAD in New Haven.

If it is not feasible to create a program that actually reduces the presence and authority of the criminal legal system in the lives of its intended beneficiaries, our position remains that LEAD should be terminated in New Haven, and that efforts and resources should be redirected to community-rooted groups and services. Pre-arrest diversion programs, when properly implemented, have some potential to reduce the harms of criminal legal system involvement. Ultimately, though, to reduce or eliminate these harms, New Haven needs structural change, including decriminalization of the offenses LEAD programs target and shifts of power and resources to community efforts outside of the penal context.

Despite new developments since our April 2019 letter, many of our concerns about LEAD as implemented and on paper, remain the same. This letter and our general approach thinking about New Haven’s LEAD program have been guided by the following two overarching questions:

- First, how does New Haven LEAD plan to ensure its fidelity to the principles, guidelines and goals articulated by National LEAD? This includes the core principles for engagement with sex workers set forth by National LEAD², which acknowledges the multiple and overlapping impacts LEAD can have on people involved in survival and street-based sex work. These principles delineate standards for accountable, ethical and harm reduction-based engagement, which, if followed, could reduce some of negative impacts of sex work criminalization.
- Our second guiding question is whether LEAD as a model is an appropriate intervention in New Haven, given the local context and community needs.

We believe the answers to these questions are essential to figuring out whether and how it could be feasible to build a functional, harm reduction-based LEAD program in New Haven.

Based on our discussions with various LEAD stakeholders, and from the statistics published on New Haven LEAD’s dashboard, it is clear that very few, if any, arrest diversions are taking place and the majority of diversions are via police-initiated social contact referrals. Social contact referrals could increase police-community encounters, as police use these referrals to engage people who have committed no offense, but who they believe are at risk of committing a *future* offense. Encounters with the police for marginalized people carry potential for disrespect, harm and violence³; therefore, a

¹LEAD National Support Bureau, What is LEAD? (2019)

²LEAD National Support Bureau, LEAD and Diversion of Sex Work (2019)

³American Public Health Association, “Addressing Law Enforcement Violence as a Public Health Issue” (Nov 2018)

harm reduction-based LEAD program should not be primarily dependent on participation via police-centered social contact referrals.

Secondly, as per Dr. Joudrey's preliminary evaluation report, very few people eligible for arrest diversion are opting into the program. This seems to be for two main reasons: first, people facing arrest for LEAD-eligible offenses in New Haven are not motivated to participate in LEAD because they know the charges are unlikely to result in severe consequences and that LEAD participation might be more burdensome than arrest; second, LEAD's ineligibility criteria and criminal history exclusions mean that those who are more likely to opt into and benefit from LEAD are not actually eligible for arrest diversion.

It is likely that those who are committing offenses ineligible for arrest diversion or who have prior convictions that exclude them from participation in LEAD in its current form, are the same people who are being arrested for offenses that are being most severely prosecuted in New Haven. It is also likely that these are the people who could most benefit from connection to social services – for instance, people who are experiencing homelessness and living with substance use disorders. Any steps taken to revise LEAD, if the city remains committed to implementing LEAD, must first expand the number of offenses that are eligible for arrest diversion and reduce—or eliminate entirely—criminal history exclusions.

Our letter continues with three parts. **Part I** goes into further depth about problems generated by the current ineligibility criteria and criminal history exclusions. **Part II** addresses our continued concerns originally outlined in our April 2019 reform letter. **Part III** presents our questions and comments arising from the latest iteration of the LEAD guidelines and NHPD and ES protocols.

As per the updates shared at the Community Leadership Team (CLT) meeting on Monday December 3rd, all of the recommendations in this letter are contingent on LEAD being an appropriately funded and staffed program. Absent sufficient funding and dedicated staff, creating a functional and harm reduction-based LEAD program in New Haven would be impossible. If LEAD ceases to exist in New Haven, the principles and recommendations we articulate still stand: we believe New Haven must increase accountability in policing, minimize or remove criminal legal regulation of people in street economies, and invest in community-led resources and services.

We hope to set up a meeting with you in the near future to hear your thoughts about the questions and concerns we have raised. Please direct any follow up to Ev Serio at SWAN via email at eserioswan@gmail.com.

Thank you for your time, and we look forward to discussing this letter with you.

Signed by,

Sex Workers and Allies Network
Connecticut Bail Fund
Unidad Latina en Acción
Showing Up for Racial Justice, New Haven
Yale Global Health Justice Partnership

Part I: Ineligibility Criteria and Criminal History Exclusions

If the New Haven LEAD program is to divert arrests—and thus reduce criminal legal system involvement for individuals caught in cycles of criminalization—it must expand the list of offenses eligible for arrest diversion and dramatically reduce or eliminate the current criminal history exclusions.

Currently, arrest diversion in New Haven’s LEAD program is only available for “low level, non-violent offenses related to substance use, mental health, homelessness, sex work or poverty.”⁴ While this has been an effective strategy in other cities that have adopted LEAD programs, it is far less effective in New Haven. In other cities, low-level arrests still have severe ramifications, which in turn motivates people to opt for diversion programs. In New Haven, according to Chief Reyes, New Haven Chief Prosecutor David Strollo⁵, and Dr. Joudrey’s preliminary evaluation report, the current LEAD-eligible offenses are rarely processed, and when they are, dispositions are generally mild. Moreover, absent an expansion of social services or meaningful improvement of those currently available, many people may have little interest in being connected to providers and programs they have already tried and which may not have been useful to them or appropriate for their needs. Thus, there is little incentive for people arrested on LEAD-eligible low-level charges to participate in LEAD, which in many cases could actually be more burdensome to them. For LEAD to begin the process of interrupting criminalization, the eligibility criteria must be amended.

New Haven LEAD’s extensive exclusion criteria create an insurmountable obstacle to participation by those whom LEAD is intended to help. Many of the offenses included in the list of exclusions in the May 2019 LEAD Protocols are crimes of poverty—the very crimes that LEAD is intended to address without resorting to arrest and which should be divertable under a harm reduction-based model.

- The protocols identify “possession with intent to sell” as an exclusion criterion. “Possession with intent to sell” includes “3 small bags of crack; 3 small bags of cocaine, 1 bundle of heroin (10 bags); and 3 pills of any combination.”⁶ These amounts are very low, and will likely exclude many people with substance use disorders from a program intended to help them. We

⁴ NHPD LEAD, NHPD LEAD Protocol, Approved by PG Group (May 2019)

⁵ Breen, Thomas “Prosecutors offers a reason for a Programs slow start”, New Haven Independent (Oct 24, 2018)

⁶ NHPD LEAD, NHPD LEAD Protocol, Approved by PG Group (May 2019)

recommend either eliminating criminal exclusions or reducing them dramatically. New Haven LEAD could look to Seattle LEAD for one example of a more reasonable exclusion criterion: “dealing for profit above a subsistence income.”⁷ Seattle LEAD also has tiered levels of exclusion for crimes depending on severity.

- The protocols also include a 10 year exclusion for people with felony convictions, with few exceptions. LEAD is meant to address behavior that leads to persistent criminal activity, so excluding people with criminal records, including felony convictions, is counterintuitive and unhelpful in building a robust LEAD program. Again, New Haven can look to other pre-arrest and pre-bookings programs for guidance. In the Atlanta/Fulton County Pre-Arrest Diversion Initiative, for instance, there are no exclusions based on criminal history: exclusions are limited to cases where an individual has active warrants or pending charges for violent crimes.⁸

While we enumerate further recommendations in this letter, we believe that LEAD cannot realistically reduce involvement in New Haven’s criminal legal system without first expanding the offenses eligible for diversion and eliminating or curtailing the criminal history exclusions. This must be the first reform step by the City if it is committed to building a LEAD that might work for the New Haven community.

⁷ Seattle LEAD, Referral and Diversion Protocol 4 (2015)

⁸ Atlanta/Fulton County Pre-Arrest Diversion Initiative, Police Operational Protocol (2017)

Part II: Continued Concerns from April Reform Letter

In addition to the exclusion criteria, we have identified several areas of concern that remain unresolved since our April 2019 letter.

1. Protecting participant privacy in LEAD, especially with respect to consent forms.

- a. The LEAD consent form has not been revised since our writing in April. The waiver on the form allows the disclosure of “all medical information” including “diagnosis or treatment of mental illness or drug or alcohol abuse and/or confidential HIV-related information, and to share photographs” with the State’s Attorney and the police.⁹ It is unclear to us why the State’s Attorney is a recipient of information from a pre-arrest diversion program. We are concerned about LEAD sharing protected participant information beyond the scope of what is necessary for the program. While it might be useful to share information with healthcare providers as requested, participants’ privacy should be maintained as much as possible.
- b. Further, Parts 2 and 4 of the consent form both pertain to the release of participant information. Part 2 seems to be a blanket release, while Part 4 seems to offer participants more control over some sensitive information (such as HIV-related information and mental health information), but it is not clear how the sections interact, making the form confusing and contradictory. Participants are unlikely to be able to figure this out without assistance. We would like clarification on these sections (Parts 2 and 4), and recommend that the consent form be revised to give participants expanded and clearer control over how and with whom their information is shared.

2. LEAD’s “clawback” create a barrier to successful completion of LEAD

- a. The “clawback” provision is still in effect. As per the New Haven LEAD guidelines, “If an arrest diversion participant has not completed an assessment within the first 30 days, the OG [operational group] will determine the appropriate step - either extending the deadline for completing the assessment or processing the offense. If an

⁹ “New Haven LEAD Consent Form,” Obtained from New Haven Community Service Administration in response to FOIL request, Sept. 27, 2019.

extension is granted, a plan of action to engage the Participant is developed.” We would like clarification on:

- i. How many meetings may be required to complete the needs assessment;
- ii. The location and duration of meetings;
- iii. How it is determined whether an extension will be granted and, if it is, what the “plan of action to engage the Participant” entails.

3. LEAD continues to lack transparency and community engagement that could enable trust-building between stakeholders and the program’s overall success.

- a. LEAD is an ostensibly community-oriented program, but its primary vehicle for community input (the Community Leadership Team) still has weak membership and lacks meaningful integration into the governance structure of LEAD. According to the guidelines, the purpose of the CLT is to “...gather community feedback to inform the PC [...] and advise on steps to ensure that LEAD is implemented and operated in a transparent manner.” The CLT has not fulfilled these roles due to dwindling participation and ambiguity about the actual powers and responsibilities of the group.
- b. Information about the program is very difficult to locate. The LEAD dashboard, which has the only publicly available information from the City about participation in LEAD, is not hosted on a government website and is not accessible through any of the City’s webpages, which contributes to an ongoing lack of public transparency about the program’s activities and impacts. And while the information on the dashboard is potentially useful, it is not clear how cases reported on the site are assessed and verified to be LEAD cases.
- c. While New Haven has received a number of grants for LEAD, there is no publicly accessible documentation of how that money is being spent. Financial transparency about the use of grant funding is critical for trust-building and accountability. Will LEAD management make public the program’s budget and expenditures?

Part III: Questions arising from the Guidelines and NHPD and ES Protocols

Unfortunately, we know very little about how LEAD is operating day-to-day in New Haven. These questions aim to help us better understand how LEAD is being implemented—to the extent that it is—at a practical level.

1. Participant experiences and opt outs

- a. To date, how many people have been offered LEAD? Of those, how many have opted out of the program?
- b. Which service providers are engaged in LEAD and receiving referrals?
- c. What information is available on the experiences of participants who have entered LEAD? To what services have participants been connected? What proportion of participants have successfully completed a needs assessment within 30 days?

2. Active zones and police training

- a. In which areas of New Haven is LEAD currently being offered?
- b. How many officers are trained on LEAD? How many are trained on the new 2019 protocols? How can officers trained in LEAD be identified in diversion by potential participants?
- c. How are social contact referrals carried out? When engaging with community members, how do officers use their discretion to determine whether to make a social contact referral?
- d. What is the plan for training new officers on LEAD? Will the CLT and other interested groups be able to review and provide input on the training curriculum?

3. Police and Engagement Specialist (ES) perceptions of the current LEAD protocol

- a. Both our internal review of the protocol and Dr. Joudrey's report have flagged that the NHPD protocol seems excessively complex and cumbersome. In practice, how does an arrest or social contact referral work?
- b. How are police officers or engagement specialists in touch with people after their initial contact, especially if the participant does not have a phone?
- c. Are people waiting in police cars while their exclusion criteria are checked, and if so, how is this meaningfully different from an arrest?

We would appreciate an opportunity to sit down with a LEAD-trained officer and the engagement specialists to hear first-hand how both the arrest diversions and social contact referrals are taking place.

Engagement Specialist Protocol

The role of engagement specialist (ES) has had a notably high turnover rate. This must negatively impact the LEAD program, since the program is primarily dependent on having a strong and actively engaged ES. We are interested in learning more about how the ES interacts with LEAD participants (expanded below), and about how the city plans to better retain engagement specialists moving forward.

1. Timeline and location of ES meetings with LEAD participants

- a. The protocol states that the first meeting with the ES involves an intake, DDaP and/or HMIS admissions, and completion of the needs assessment *if time permits; otherwise, complete at next scheduled appointment*. Our questions include: where are meetings typically held and how long do they typically last? How are meetings made accessible to participants (e.g., in cases where transportation is a barrier)? How many meetings with the ES may be required over the course of 30 days in order to complete the required needs assessment? Our concern is that 30 days is a very short timeline, especially for people with chaotic lives and unpredictable schedules, and the protocol implies that more than one meeting may be required to complete the needs assessment, or else the participant risks facing a misdemeanor summons.

2. Protection of participant personal privacy

- a. The ES protocol states that police officers are to be notified when the needs assessment is completed. If the needs assessment is not completed, are the police notified? There is another clause that involves the ES updating the referring officer about “what’s going on with the client,” which seems intrusive, overly involving the police in a program aimed at diverting people from incarceration. How does this benefit the participant? What kind of information is being shared with the referring officer and Operations Group?