

## **The Criminal History Exclusions in New Haven LEAD Are Excessive, Violate the LEAD Model, and Should be Eliminated**

Research prepared by the Global Health Justice Partnership, in coordination with the Sex Workers and Allies Network in New Haven  
December 9, 2018

New Haven has wide-ranging exclusions based on a person's history of involvement with the court system. LEAD Project Director Cynthia Watson has said that the city is maintaining these strict exclusions so that they can adhere to the LEAD model.<sup>1</sup> But based on a review of the policies of 3 other LEAD programs—Atlanta, Seattle, and Albany—New Haven is an outlier in the extent of its criminal history exclusions. Following the LEAD model would mean having fewer criminal history exclusions from the program.

None of the cities surveyed has a lifetime exclusion for all violent crimes or burglaries. No other city has a 10 year exclusion for all felonies. All other cities include at least some possession with intent to sell cases among offenses for which people can be diverted.

Removing criminal history exclusions is key for a successful LEAD program. A criminal history indicates that someone has had more harm done by the criminal system in the past and so is *more* in need of LEAD services, not less. Moreover, these exclusions are likely to have a disparate impact on people of color, who are more likely to have a criminal history due to discriminatory targeting by the police and other social factors.<sup>2</sup>

**Recommendation:** New Haven should remove criminal history checks from its LEAD diversion process. Atlanta's Pre-Arrest Diversion program does not have any exclusions based on criminal record, and examination of record is not part of their process: they exclude only those who have a pending charge for a violent offense. New Haven should adopt a similar policy.

### **Atlanta, Pre-Arrest Diversion**

Atlanta does not make criminal background check a part of its diversion criteria at all. The exclusions for other alleged offenses are only when the individual has currently pending charges for a violent offense, or when the officer has reason to believe that the individual presents a substantial risk of harm to others. Conducting a criminal background check is not detailed as part of the diversion process.

From the Atlanta Police Department Policy Manual, *APD.SO.17.04 Pre-Arrest Diversion Program (PAD)* (Sept. 22, 2017).

#### *Exclusion Criteria:*

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<sup>1</sup> Thomas Breen, *LEAD Gains Footing After Rocky Rollout*, New Haven Independent (Oct. 8, 2018) (“We’re trying to stay true to what the model is saying,” Watson said. “The model is based on low-level crime. In a pilot, one of the things you want to test is: so what is the best fit?”).

<sup>2</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010)

*The reasons that individuals are not eligible for the PAD program include but are not limited to the following:*

- 1. The individual is under the age of 17;*
- 2. The individual presents a substantial risk of harm to others;*
- 3. There is probable cause that the individual committed a violent crime or property crime against a complainant and the complainant objects to the PAD program;*
- 4. The individual has pending charges for violent offenses (i.e. murder, voluntary manslaughter, kidnapping, rape, aggravated sodomy, child molestation, incest, armed robbery, hijacking, home invasion, etc.);*
- 5. The individual has active exclusionary warrants; and*
- 6. The individual has an active warrant issued by a court other than the Atlanta Municipal Court or the Fulton County State and Superior Courts*

### **Seattle LEAD**

New Haven's criminal record exclusions are significantly more restrictive than Seattle's in the following ways:

- **Drug sale:**
  - Although Seattle does exclude some of those who have possession with intent to sell drugs, they do so only when “there is reason to believe the suspect is dealing for profit above a subsistence income.”
  - Their threshold for when an amount of drugs is presumed to be with intent to sell is higher than New Haven's. In Seattle, someone is presumptively excluded if they have more than 7 grams of drugs. New Haven does not specify a weight, but the numbers indicate that it would be lower: someone is excluded for “3 small bags” of crack or cocaine, “3 pills of any combination,” and “10 bags” of heroin.
- **Violent crimes**
  - New Haven has a lifetime exclusion for those convicted of “violent crimes,” with no clear definition of what counts as a violent crime. Seattle has a lifetime exclusion only for those who have committed a certain set of the most serious crimes. For most others, the exclusion is 10 years or 5 years since conviction.
- **Felonies**
  - New Haven excludes, for 10 years, anybody with a felony conviction. Seattle has no exclusions for felony convictions in general outside of its specified list of violent felonies.
- **Burglary or home invasion**
  - Seattle has a 10 year or 5 year exclusion based on burglary convictions, depending on degree, while New Haven excludes for life.
- **Calculation of exclusion period**
  - New Haven's exclusionary periods are even longer than they appear because of how they are calculated. For crimes where an individual is eligible after a certain amount of time, Seattle calculates the amount of time from “conviction,” whereas New Haven calculates the time from “when the defendant completes the

sentence.” Lead Jurisdictional Information Sheet 9 6-5-18-DM. Since many individuals are sentenced to lengthy terms of non-incarcerated supervision, this difference could significantly increase the number of people excluded from the program.

From Law Enforcement Assisted Diversion (LEAD), Referral and Diversion Protocol (June 2015), <http://static1.1.sqspcdn.com/static/f/1185392/26595193/1444410613677/June-2015-Seattle-LEAD-Referral-and-Diversion+Protocol.pdf?token=1Yzsbte29AaB1XDY3Q5YsDaS1r0%3D>

*Adults suspected of VUCSA [Violation of the Uniform Controlled Substances Act, i.e. drug crimes] and prostitution offenses will be eligible for diversion to LEAD and should be referred to LEAD, except when:*

- *The amount of drugs involved exceeds 7grams (except that where an individual has been arrested for delivery of or possession with intent to deliver marijuana, or possession, delivery or possession with intent to deliver prescription controlled substances (pills), officers will consider the other criteria listed here without reference to the amount limitation)*
- *The individual does not appear amenable to diversion;*
- *The suspected drug activity involves delivery or possession with intent to deliver (PWI), and there is reason to believe the suspect is dealing for profit above a subsistence income;*
- *The individual appears to exploit minors or others in a drug dealing enterprise;*
- *The individual is suspected of promoting prostitution;*
- *The individual has an existing no contact order, temporary restraining order, or anti-harassment order prohibiting contact with a current LEAD participant;*
- *The individual has an open case in Drug Diversion Court or King County District Court Mental Health Court; and/or the individual has disqualifying criminal history as follows:*

*Without time limitation: Any conviction for Murder 1 or 2 , Arson 1, Robbery 1, Assault 1, Kidnapping, VUFA 1, or any sex offense (or attempt of any crime listed here).*

*Unless more than 10 years has elapsed since conviction on any of the following: Robbery 2, Assault 2 or 3, Burglary 1.*

*Unless more than 5 years have elapsed since conviction on any of the following: Assault 4 – DV, Violation of a Domestic Violence No Contact Order, Violation of a Domestic Violence Protection Order, Burglary 2, or VUFA 2*

### **Albany LEAD**

New Haven’s exclusion criteria are more restrictive in the following ways:

#### **Possession with intent to sell**

- Albany includes possession with intent to sell (Criminal Possession of a Controlled Substance in the Fifth Degree) among its divertible offenses, while New Haven LEAD excludes these cases entirely.

### **Violent crimes**

- Albany excludes people based on criminal history only for a narrow set of the most serious violent offenses. For other serious violent felonies, the exclusion period is only 10 years. In contrast, New Haven excludes for life people convicted of any violent crime at all, with no definition of violent crime.

### **Felonies**

- There is no general exclusion for people who have committed felonies, unlike New Haven which has a 10-year exclusion based on any felony conviction.

From Albany LEAD, *Report to Albany on the LEAD Program One-Year Anniversary 14* (2017)

*Adults shall be considered temporarily ineligible for diversion to LEAD if, at the time of initial police contact, the individual meets any of the following criteria:*

- 1. The individual does not appear amenable to diversion.*
- 2. The individual exploits minors or others.*
- 3. There is probable cause to believe the individual committed a violent offense.*
- 4. There is probable cause to believe the individual committed a felony, any type, except Criminal Possession of a Controlled Substance in the Fifth Degree.*
- 5. There is probable cause to believe the individual committed promoting prostitution in the fourth degree or prostitution in a school zone offense.*
- 6. There is probable cause to believe the individual violated an order of protection.*
- 7. There is probable cause to believe the individual committed a domestic violence offense.*
- 8. The individual is currently under the supervision of Parole.*
- 9. The individual is a registered sex offender.*
- 10. The individual is in need of acute emergency care and is taken into custody under the NYS Mental Hygiene Law Section 9.41.*
- 11. The individual is under the age of sixteen (16) years old.*
- 12. The individual is permanently disqualified from the LEAD program if they have ever been convicted of any of the following offenses (including attempts):*
  - a. Murder 1st or 2nd*
  - b. Arson 1st or 2nd*
  - c. Robbery 1st*
  - d. Assault 1<sup>st</sup>*
- 13. The individual is temporarily disqualified from the LEAD program if they have ever been convicted of any of the following offenses within the past ten (10) years (including attempts)*
  - a. Robbery 2nd*
  - b. Assault 2nd*

- c. Burglary 1st or 2nd*
- d. Criminal Possession of a Weapon 3rd*