

Reform LEAD in New Haven

To: Dakibu Muley, Cynthia Watson, David Strollo, Interim Chief Otoniel Reyes, Loel Meckel, and the other members of the LEAD Operational and Policy Work Groups

From: **Sex Workers and Allies Network** (SWAN) (Beatrice Codianni, Ev Serio), **Connecticut Bail Fund** (Ana María Rivera-Forastieri and Brett Davidson), **My Brother's Keeper** (Barbara Fair), **Showing Up for Racial Justice** (SURJ) (Fabian Menges), with support from the Global Health Justice Partnership at Yale.

The current pilot of LEAD in New Haven has been operating since November of 2017, but it is not living up to its potential to reduce the harms of criminalization for people with substance use disorders and mental illness. The need for an effective diversion program was recently and tragically demonstrated by the death of Robby Talbot at Whalley Ave. Jail: clearly, this man with mental illness and substance use disorder who was picked up on a breach of peace should have been diverted instead of being sent to the dangerous environment of the jail.¹

Evidence of the challenges of LEAD New Haven include:

1. **People are not actually being diverted from arrest.** Only 2 people have been referred to LEAD instead of arrest. The other 65 entered through “social contact” by the police.² Rather than diversion from criminal justice, New Haven is *increasing* police contact with citizens by giving them the additional job of being street outreach social workers.
2. **No services are provided through LEAD other than access to New Haven’s already inadequate resources.** No more units of housing have been created, no more shelter beds or drug treatment beds. Participants access the same resources, but in a program where they are tracked by the police and prosecutors.

These are symptoms of more fundamental problems with LEAD: (1) there is no mechanism for meaningful community input. The “Community Leadership Team” has no powers. Metrics for evaluation of the program have not been made public, nor has ongoing tracking. (2) LEAD contains no plan for holding officers accountable for the suffering they cause which violates harm reduction principles: accountability under the Civilian Review Board must be part of LEAD.

Below are four changes that you could make to improve LEAD. These will not fix the fundamental problems but they will be first steps.

If LEAD cannot be reformed, the program should be discontinued and instead the City of New Haven should fund trained harm reduction street outreach workers, or provide some other way to meet the needs of people facing arrest for low level street offenses.

1. **Protect the Confidential Information of LEAD Participants by Changing the Consent Form**

Right now, the LEAD consent form authorizes "New Haven Police Department; the Office of the New Haven State's Attorney," among others, to "discuss and/or disclose and/or obtain 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" for all LEAD participants.³

These sensitive records could be used to incriminate participants. This information allows the State’s Attorney and police to make progress assessments that should be made only by service providers. Moreover, these disclosures violate privacy rights and are not in the spirit of HIPPA protections. Other LEAD programs do not have these over-broad coercive disclosure requirements: See attached an example consent form from Atlanta’s pre-arrest diversion program.

¹ Thomas Breen, “Clinics to Jail: Robby Talbot’s Hard Road,” NEW HAVEN INDEPENDENT (March 26, 2019).

² City of New Haven, “LEAD Public Dashboard,” VEOCI (Last accessed March 31, 2019).

³ “New Haven LEAD Consent Form,” Obtained from New Haven Community Service Administration in response to FOIL request, Sept. 27, 2019. Available in “Documents from City” section of bit.ly/LEADNHVWatch

The consent form should be revised to include a release of information only to the service provider. If the service provider plans to disclose information about a participant at Operational Work Group, this should require additional informed consent, and a right to be present at the meeting. It should contain a promise not to use this information for arrest or prosecution.

2. Delete the “Clawback” Provision that Can Result in Re-arresting LEAD Participants

LEAD enrollment is in two steps: (1) initial meeting with a case manager and then (2) a follow-up appointment within 30 days of the initial appointment. Information from the city indicates that "a misdemeanor summons will be issued" if the person fails to return to the next appointment.⁴ There does not appear to be any justification for this other than to potentially trap the participant. Albany has discussion before issuing the summons;⁵ Atlanta PAD contains no re-arrest provision.⁶ This provision is inconsistent with treatment best practices: severe substance use disorder leads to a chaotic schedule, which makes it inappropriate to punish participants for not making it to a meeting.

Have only one mandatory, initial intake for LEAD, with subsequent engagement optional.

3. Remove Criminal History Exclusions

New Haven excludes a larger range of people from participation in LEAD based on their criminal record than many other LEAD programs.⁷ Since LEAD is supposed to address behavior that leads to persistent criminal activity, excluding people with various records is excluding precisely those who LEAD is supposed to benefit. These exclusions are also likely part of the reason that only 2 people have been deferred from arrest.

New Haven should adopt Atlanta PAD’s procedures: no exclusions based on criminal history. Their exclusions are limited to situations where people have a currently open case for a violent offense.⁸

4. Expand Divertable Offenses to Include Drug Sale/Possession with Intent to Sell by Persons with Addiction

Drug sale is closely connected to drug addiction, as those who have some extra money make a larger purchase and then sell to finance their addiction. New Haven’s narrow focus on drug possession (and small quantities) ignores this reality. Moreover, since New Haven wisely does not have a prosecution scheme that leads to harsh penalties for drug possession, using LEAD in this circumstance does not represent much of a change over business-as-usual, and hence does not access the benefits of a LEAD program.

New Haven should adopt Seattle’s policy, which excludes possession with intent to sell from LEAD only when “there is reason to believe the suspect is dealing for profit above a subsistence income.”⁹

After these changes are made, we can reassess whether LEAD is a valuable program for New Haven. If these changes are not made, this program is not helping the people of the city and should be closed.

For a full assessment of LEAD in New Haven and an explanation of criticisms, please see the site maintained by SWAN and Global Health Justice: bit.ly/LEADNHVWatch

⁴ “New LEAD Brochure,” Obtained from Sept. 27, 2019 FOIL Request, Available in “Documents from City” section of bit.ly/LEADNHVWatch

⁵ ALBANY LEAD POLICY COORDINATING GROUP, REPORT TO ALBANY ON THE LEAD PROGRAM 13 (2017).

⁶ ATLANTA/FULTON COUNTY PRE-ARREST DIVERSION INITIATIVE, CARE NAVIGATION PROTOCOL 11-12 (2018), on file with GHJP.

⁷ See GHJP and SWAN, “Comparing New Haven LEAD Criminal History Exclusions to Seattle, Albany, and Atlanta,” available in the “Criticisms of New Haven LEAD” section of bit.ly/LEADNHVWatch

⁸ ATLANTA/FULTON COUNTY PRE-ARREST DIVERSION INITIATIVE, POLICE OPERATIONAL PROTOCOL (2018), on file with GHJP.

⁹ SEATTLE LEAD, REFERRAL AND DIVERSION PROTOCOL 4 (2015),

<http://static1.1.sqspcdn.com/static/f/1185392/26595193/1444410613677/June-2015-Seattle-LEAD-Referral-and-Diversion+Protocol.pdf?token=IYzsbte29AaB1XDY3Q5YsDaS1r0%3D>



Participant Name: _____

Date of Birth: _____

ROI: Authorization For Transfer of Information

I hereby request and authorize: PRE-ARREST DIVERSION INITIATIVE
236 Forsyth Street Suite 200
Atlanta, Georgia 30303
PH: 470-819-4853
FAX: 470-819-4854

COMPARE TO NEW HAVEN: Atlanta requests specific information on an as-needed basis. Further, this information is not released to other collaborators like the police or prosecutors unless additional consent is obtained.

to obtain and/or release to: _____

NAME OF PERSON OR AGENCY NAME

PH: _____

FAX: _____

the following type(s) of information from my records, and any specific portion thereof:

- | | |
|---|---|
| <input type="checkbox"/> Psychological Reports | <input type="checkbox"/> Probation Compliance |
| <input type="checkbox"/> Medical Reports | <input type="checkbox"/> Attorney |
| <input type="checkbox"/> Results of RPR Screening | <input type="checkbox"/> Previous Treatment Progress/Activity Notes |
| <input type="checkbox"/> Results of PPD/Chest X-Ray | <input type="checkbox"/> Other _____ |

The above information will be used for the following purposes:

- | | |
|--|---|
| <input type="checkbox"/> Determining Program Eligibility | <input type="checkbox"/> Planning Appropriate Treatment |
| <input type="checkbox"/> Updating Files | <input type="checkbox"/> Continuing Appropriate Treatment |
| <input type="checkbox"/> Facilitate Communications/Support | <input type="checkbox"/> Exchange of Information |

All information I hereby authorize to be obtained form/or released to the agencies listed above will be held strictly confidential and cannot be released by the recipient without my written consent. I understand that this authorization shall remain in effect for the period necessary to complete all the transactions on accounts related to services provided to me.

I understand that unless otherwise limited by state or federal regulation, and except to the extent that action has been taken which was based on my consent, that I may withdraw this consent at anytime, using the space provided below.

PAD Participant Signature

Date

PAD Representative

Date

USE THIS SPACE ONLY FOR WITHDRAWAL OF CONSENT BY CLIENT

Date of Revocation: _____

PAD Participant Signature: _____