

Law Enforcement Assisted Diversion (LEAD): Reducing the Role of Criminalization in Local Drug Control

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Many U.S. cities are taking steps to reduce the role of criminalization in their local drug policies. Seattle, Washington has been at the forefront of this effort, pioneering a novel pre-booking diversion program for minor drug law violations known as Law Enforcement Assisted Diversion (LEAD). Santa Fe, New Mexico and several other cities have begun exploring LEAD as a promising new strategy to improve public safety and health.

What is LEAD?

After a growing realization that Seattle's existing approach to drug law enforcement was a costly failure, the city decided to take a different approach. In 2011, it instituted a pilot program known as "Law Enforcement Assisted Diversion," or LEAD, the first pre-booking diversion program in the country. Instead of arresting and booking people for certain nonviolent offenses, including low-level drug possession and sales (of three grams or less), law enforcement in two Seattle-King County neighborhoods may immediately direct them to housing, treatment and other services.¹

LEAD is a collaborative effort among the King County Prosecuting Attorney, Seattle City Attorney, Seattle Police Department, King County Sheriff, King County Executive, Seattle Mayor, State Department of Corrections, Public Defender Association, ACLU of Washington and the community.

Harm Reduction: A Core Principle of LEAD

LEAD is based on a commitment to "a harm reduction framework for all service provision."² *Critically, LEAD does not require abstinence, and clients cannot be sanctioned for drug use or relapse.* Instead, LEAD recognizes that drug misuse is a complex problem and people need to be reached where they currently are in their lives. Whether a person is totally abstinent from alcohol or other drugs matters far less than whether the problems associated with their drug misuse are getting better or not. Metrics like health, employment and family situation are far more important than the outcome of a drug test.

LEAD acknowledges this reality and incorporates these measures – instead of abstinence – into the program's goals and evaluation, so that participants are not punished simply for failing a drug test. The program emphasizes "individual and community wellness, rather than an exclusive focus on sobriety."³ Former Interim Police Chief James Pugel explains that LEAD's "over-all philosophy is harm reduction...we know there may be relapse and falls."⁴

"Other programs want you to jump through so many hoops. But when a person got an addiction, you got to get them some help...a roof over their head...LEAD helped me get back to my true self."

– LEAD Participant.⁵

Perhaps most importantly, LEAD has precipitated a fundamental policy reorientation in Seattle-King County, from an "enforcement-first" approach, to a health-centered model – reinforced by specialized harm reduction training required of every police officer. When given the choice, Seattle police seem to prefer making referrals than making arrests. In this sense, LEAD is succeeding in changing law enforcement's mindset about public safety priorities.

LEAD is a working example of how, even in the absence of state legislation, cities can craft policies that bypass the criminal justice system – and that benefit public safety and health.

“Unlike drug court, LEAD does not require the presence of judges, court staff, prosecutors, or public defenders. The resources saved from keeping participants out of the criminal justice system are directed towards those individuals.”

– Lisa Daugaard, Defender Association, Seattle.⁶

LEAD is a promising alternative to expensive court-based interventions. In the LEAD model, “the court is completely taken out of the equation.”⁷ Participants are given immediate access to services without displacing voluntary treatment candidates. LEAD seems to be reaching its target population, with reports indicating that a majority of clients are “referred on drug related offenses.”⁸ LEAD also accommodates “social contact” referrals – through which people in need can access services without getting arrested.

LEAD: Seattle’s Response to Racially Disparate Drug Arrests

The war on drugs is a major driver of racial disparities in criminal justice. A decade ago, Seattle had one of the worst racial disparities in drug arrests of any city in the country, propelling a multi-year lawsuit against the Seattle Police Department (SPD). In 2003, sociologist Katherine Beckett undertook a series of studies commissioned as part of the lawsuit, which proved that SPD’s enforcement of drug laws was vastly unequal and racially motivated: in 2006, for example, blacks were “more than 21 times more likely to be arrested for selling serious drugs than whites,” even though whites are the “majority of sellers and users” in Seattle.⁹ The litigation sparked an open dialogue between SPD and the community – which ultimately gave rise to LEAD.

“Alternative law enforcement responses such as LEAD...provide important clues about what equitable policing might really look like.”

– Professor Katherine Beckett, University of Wash.¹⁰

LEAD Will Be Rigorously Evaluated

To ensure LEAD is effective and replicable, it will undergo a rigorous, two-year evaluation that will measure a host of short- and long-term outcomes, including: reductions in drug-related harms, drug use and recidivism; improvements in health, psycho-social functioning, employment and family/community involvement; cost-savings; impacts on the community; and racial disparities in drug law enforcement.¹¹

“Treatment is expensive...but less expensive than booking people in jail. Jail is the most expensive and...least effective way to deal with drug crimes.”

– Dan Satterberg, King County Prosecuting Attorney.¹²

Responses to LEAD have been positive and initial indications are quite promising. A multi-year evaluation by the University of Washington shows that LEAD reduces the number of people arrested, prosecuted, incarcerated and otherwise caught up in the criminal justice system, while also achieving significant reductions in recidivism. The evaluation team found that LEAD participants were up to 60 percent less likely to reoffend.¹³ This result is particularly encouraging in light of the high re-arrest rate for this population under the traditional criminal justice model.

A prior report, published in 2014, found that LEAD improves coordination among multiple stakeholders who too often have been working at cross purposes. It’s perhaps not surprising, then, that LEAD data strongly suggest improvements in the health and well-being of participants struggling at the intersection of poverty, drug misuse, and mental health problems.¹⁴ Drug arrests in Seattle fell more than 30 percent from 2010 to 2011 – continuing a longer-term trend in the city – and local jail populations appear to be declining, too.¹⁵

Law Enforcement Supports LEAD

LEAD enjoys the enthusiastic support of local law enforcement. It allows law enforcement to focus on serious crime while playing a key role in linking people to services *instead* of funneling them into the justice system.¹⁶ According to officials, “Law enforcement is supportive of the program because it gives them additional tools to handle public safety issues. Instead of jailing every low-level drug offender and cycling him or her through the criminal justice system, veteran police officers determine whether someone is an

appropriate candidate...to receive services."¹⁷

"We're out in the community, we know the offenders by name, know their situations...and we're tired of the revolving door, too."

– Sgt. Sean Whitcomb, Seattle Police Department.¹⁸

Scaling and Replicating the LEAD Model

LEAD operated in the first four years with private funding and the City of Seattle thereafter committed funds to help scale up locally.

In 2013, Santa Fe, New Mexico, became the second city in the U.S. to do so by unanimous city council vote. Its experience shows how different communities can adapt the LEAD model to their particular local contexts. Santa Fe's LEAD program was developed after nine months of study and community engagement and is tailored to the community's needs: unlike Seattle, Santa Fe's main concerns are not drug markets, but rather opioid misuse, dependence and overdose, as well as rising rates of property crime. Eligibility for Santa Fe LEAD will be limited to those caught possessing or selling three grams or less of opioids. A cost-benefit analysis estimates that the city spends \$1.5 million per year to criminalize people for these offenses; LEAD could cut those costs in half.¹⁹

In June 2015, Albany, New York became the third city in the United States, and the first in the Northeast, to adopt LEAD after officials signed a memorandum of understanding to implement it. The program took effect immediately pursuant to Albany's "community policing" philosophy.

Finally, several communities across the United States, including Atlanta, Baltimore, Chicago, Houston, New Orleans, and San Francisco have expressed interest in replicating LEAD.

¹ The Defender Association, "Law Enforcement Assisted Diversion (L.E.A.D.): A Pre-Booking Diversion Model for Low-Level Drug Offenses," (2010).

² LFA Group, "Law Enforcement Assisted Diversion (L.E.A.D.) Program and Evaluation Plan Narrative," (2011).

³ The Defender Association, "L.E.A.D.: A Pre-Booking Diversion Model."

⁴ James Pugel, "Law Enforcement Assisted Diversion" (presentation at the Smart Justice Symposium, Spokane, Washington, November 9 2012).

⁵ David Nelson, "55 Drug Offenders and Prostitutes Chose Treatment over Jail through Belltown's L.E.A.D. Program," *SeattlePI.com*, August 29 2012.

⁶ Lisa Daugaard and Anita Khandelwal, "Finding Common Ground among Communities and Police in Seattle," in *Arthur Liman Public Interest Program Newsletter*, Confrontation, Cooperation, and Collaboration: (En)Countering Disagreement in Pursuit of the Public Interest (Yale Law School, 2011).

⁷ Maggie Clark, "Seattle Police Test Taking Drug Offenders Straight to Treatment," *Stateline: The Daily News Service of The Pew Charitable Trusts* 2011.

⁸ Nelson, "55 Drug Offenders and Prostitutes Chose Treatment over Jail through Belltown's L.E.A.D. Program," *SeattlePI.com*, August 29 2012.

⁹ The Defender Association, "L.E.A.D.: A Pre-Booking Diversion Model; Katherine Beckett, "Race and Drug Law Enforcement in Seattle," (Racial Disparity Project and ACLU Drug Law Reform Project., 2008); Katherine Beckett, "Race, Drugs, and Law Enforcement," *Criminology & Public Policy* 11, no. 4 (2012); Katherine Beckett, Kris Nyrop, and Lori Pfingst, "Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests," *Criminology* 44, no. 1 (2006); Katherine Beckett et al., "Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle," *Social Problems* 52, no. 3 (2005).

¹⁰ Katherine Beckett, "Race, Drugs, and Law Enforcement."

¹¹ LFA Group, "L.E.A.D. Program and Evaluation Plan."

¹² Maggie Clark, "Seattle Police."

¹³ Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, "Lead Program Evaluation: Recidivism Report," (University of Washington, Harborview Medical Center, 2015).

¹⁴ Katherine Beckett, "Seattle's Law Enforcement Assisted Diversion Program: Lessons Learned from the First Two Years," (Ford Foundation, 2014).

¹⁵ Seattle Police Department, "Reported Part II Offenses in Seattle, from 2008," (2013); Ty Swenson, "King County Jail Population Drops Significantly over 13 Years," *West Seattle Herald*, September 4 2013; Laurie Sylla, "Impact of DCHS-Supported Programs on Jail Use," (King County Department of Community and Human Services, Mental Health, Chemical Abuse and Dependency Services Division, 2013).

¹⁶ The Defender Association, "L.E.A.D.: A Pre-Booking Diversion Model; Mary Fan, "Street Diversion and Decarceration," *American Criminal Law Review* 50(2012); Katherine Beckett, "Race, Drugs, and Law Enforcement."

¹⁷ Dan Satterberg et al., "Seattle L.E.A.D.'S on Law Enforcement Diversion."

¹⁸ Maggie Clark, "Seattle Police."

¹⁹ LEAD Task Force City of Santa Fe, "Healthy Families, Safer Streets: City of Santa Fe's Lead Task Force: Recommendations to the City Council " (2013).